

EXPLANATORY STATEMENT

Social Security (Circumstances in which the Job Commitment Bonus will not be paid) Determination 2014

Summary

The *Social Security (Circumstances in which the Job Commitment Bonus will not be paid) Determination 2014* (the Determination) is made by the Secretary of the Department of Employment under subsection 861(8) of the *Social Security Act 1991*.

The Job Commitment Bonus provides an incentive to encourage young, long-term unemployed Australians to remain off income support payments. Broadly, a person is qualified to receive a payment of \$2,500 if they:

- have been receiving Newstart Allowance or Youth Allowance¹ or a combination of both continuously for at least 12 months;
- cease to receive their payment while are aged 18 or over and under 31;
- upon cessation of their payment, or within 30 days of such cessation, commence a period of 12 months of continuous gainful work; and
- do not receive an income support payment in relation to any day during the above 12 month period.

In addition, if the person completes a further 12 months of continuous gainful work immediately following the first 12 month period of gainful work, they may be eligible for another bonus of \$4,000.

Subsection 861(7) and subsection 861(8) of the *Social Security Act 1991* provide that the Employment Secretary may, by legislative instrument, prescribe circumstances in which a Job Commitment Bonus will not be payable even if a person would otherwise meet the eligibility criteria for a Job Commitment Bonus.

The Determination specifies circumstances in which a Job Commitment Bonus will not be payable to a person, including for example where:

- work which does not involve a real commitment to workforce participation, or which is not likely to lead to the development of workplace skills, is undertaken by the person;
- work which is likely to place participants at risk is undertaken by the person;
- the person has engaged in fraud or a scheme for the purpose of obtaining a Job Commitment Bonus, or engaged in work which is contrary to law; or
- the person engages in work under certain Commonwealth programmes or receives certain other Commonwealth payments.

Explanation of provisions

Sections 1 and 2 of the Determination are mechanical provisions that provide for the name of the Determination and its commencement, respectively.

¹ Other than Youth Allowance received as an apprentice or full-time student.

Section 3 defines the terms used in the Determination.

Section 4 specifies kinds of work for which a Job Commitment Bonus is not payable – work which is in the opinion of the Employment Secretary of a kind which falls within one or more of the paragraphs in subsection 4(1) will not attract a Job Commitment Bonus.

The purpose of the Job Commitment Bonus is to encourage young people to make a real commitment to improving their employment skills and to gaining genuine workforce experience, including through consistent workforce participation. Accordingly, as outlined below, work which is unlikely to lead to improved employment skills or to involve such experience or participation will not attract a Job Commitment Bonus.

Work which does not involve substantial and consistent personal exertion on the part of the person

Paragraph 4(1)(a) of the Determination provides that a Job Commitment Bonus is not payable for work which does not involve substantial and consistent personal exertion on the part of the person throughout the work period to which the person's claim for a Job Commitment Bonus relates. 'Personal exertion' is defined in section 3 of the Determination.

Paragraph 4(1)(a) is intended to exclude work which is undertaken infrequently, occasionally, or inconsistently. It is also intended to exclude work which involves little personal exertion even if done regularly.

Work consisting of domestic, maintenance, gardening or similar tasks in relation to a person's residence or investment property

Under paragraph 4(1)(b), work which consists of domestic tasks, household maintenance tasks, gardening or similar tasks in relation to the person's place of residence, the place of residence of a family member of the person, or an investment property owned by the person or a family member of the person will not attract a Job Commitment Bonus. 'Place of residence' is defined in section 3 of the Determination.

Work involving the care of family members or certain other people, or domestic tasks in relation to certain people

Work which involves the person caring for a family member or foster child of the person, or caring for a person who resides at person's place of residence or at the place of residence of a family member is excluded under paragraph 4(1)(c). Work which involves the person doing domestic tasks or similar tasks for a person who resides at the person's residence or a family member's place of residence is also excluded under that paragraph. 'Family member' is defined in section 3 of the Determination.

Work consisting of the care of pets or animals at a person's residence or the residence of their family

Paragraph 4(1)(d) excludes work which involves the care of a pet or other animal at the person's place of residence or at the place of residence of a family member of the person.

Management or administration of financial investments in which the person or a family member of the person has an interest

Paragraph 4(1)(e) provides that a Job Commitment Bonus is not payable in respect of work which consists of the management or administration of a financial investment in which the person or a family member of the person has a legal or equitable interest. For the purpose of this provision, the definition of 'financial investment' in section 9 of the Act applies.

Academic, sporting or other scholarships

Paragraph 4(1)(f) provides that a Job Commitment Bonus is not payable in respect of 'work' undertaken for the purpose of an academic, sporting or other scholarship awarded to the person or which might be awarded to the person. While study might not be considered to amount to gainful work as it may not be considered to be 'work', this paragraph excludes work or study done for the purpose of scholarships for the avoidance of doubt.

This paragraph is intended to relate to work or study done by the person in receipt of, or who may potentially receive, the scholarship. It does not apply, for example, to work done by an employee at an educational institution who is responsible for the administration of scholarships.

Work for the purpose of certain Commonwealth programmes

Paragraph 4(1)(g) provides that a Job Commitment Bonus is not payable in respect of work for the purpose of certain programmes funded by the Commonwealth. The programmes specified are the Green Army Programme (by non-supervisor participants), the New Enterprise Incentive Scheme, or the Drought Force programme.

Work involving nudity

Paragraph 4(1)(h) provides that a Job Commitment Bonus is not payable in respect of work which involves nudity. This approach is consistent with that of successive Australian Governments aimed at protecting vulnerable job seekers – the Australian Government and its contracted employment services providers cannot and do not require or encourage job seekers to participate in work involving nudity.

Work undertaken in the sex industry

Paragraph 4(1)(i) provides that a Job Commitment Bonus is not payable in respect of work which is undertaken in the sex industry including retail and hospitality positions. This approach is consistent with that of successive Australian Governments aimed at protecting vulnerable job seekers – the Australian Government and its contracted employment services providers cannot and do not require or encourage job seekers to undertake work in the sex industry.

Work primarily involving gambling

Paragraph 4(1)(j) provides that a Job Commitment Bonus is not payable in respect of work that primarily involves gambling. This is intended to exclude 'work' which primarily involves gambling by an applicant for a Job Commitment Bonus. It is also intended to exclude work such as that undertaken by a croupier at a casino. It is not intended to exclude all work undertaken at premises or clubs where some gambling may occur, for example it is not intended to exclude work that involves serving food or drinks at a club.

Work which is contrary to law

Section 5 provides that the Job Commitment Bonus is not payable to a person where the work is contrary to law.

Paragraph 5(1)(a) specifies that a Job Commitment Bonus is not payable in respect of work which contravenes Commonwealth, State or Territory legislation or which is unlawful at common law.

Paragraph 5(1)(b) provides that a Job Commitment Bonus is not payable in respect of work which, to the knowledge of the person at the time they entered or continued in the work, provides terms or conditions of employment which are contrary to the relevant workplace relations laws or any instruments made under such laws.

Subsection 5(2) provides that either or both paragraph 5(1)(a) or paragraph 5(1)(b) do not apply if the Employment Secretary is satisfied in all the circumstances that it is appropriate that either or both do not apply.

Participation failures or engagement in fraud or a scheme for the purpose of qualifying for a Job Commitment Bonus

Section 6 provides for the non-payment of a Job Commitment Bonus if the person deliberately fails to meet participation requirements, is involved in a scheme, or engages in fraud, for the purpose of qualifying for a Job Commitment Bonus.

Participation failures

Subsection 6(1) specifies that a person is not qualified to receive a Job Commitment Bonus if during the continuous period of 12 months or more that the person received Newstart Allowance or Youth Allowance, or a combination of both, the person failed to seek or undertake suitable work as required by the activity test under the Act to remain qualified for their payment, and that failure was committed by the person for the purpose of increasing their likelihood of becoming eligible for a Job Commitment Bonus.²

Involvement in a scheme

Subsection 6(2) provides a Job Commitment Bonus is not payable to a person if one or more persons entered into, commenced to carry out or carried out a scheme, and having regard to specified factors in relation to the scheme, it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of enabling a person to obtain a Job Commitment Bonus.

The factors specified in paragraph 6(2)(a)-(d) are: the manner in which the scheme was entered into or carried out; the form and substance of the scheme; the time when the scheme was entered into and the length of the period during which the scheme was carried out; and the result in relation to the person's qualification for a Job Commitment Bonus that, but for subsection 6(2), would be achieved by the scheme. 'Scheme' is defined in section 3 of the Determination.

Fraud

Under subsection 6(3), a person is not qualified for a Job Commitment Bonus if in the opinion of the Employment Secretary the person engaged in fraud to obtain payment of a Job Commitment Bonus.

² The activity test requires a person to be actively seeking and willing to undertake suitable paid work - in other words to make a genuine effort to find a job they are capable of doing even if it is not their most preferred job, and to accept any suitable job offered to them, in order to remain qualified for their payment - sections 541 and 601 of the *Social Security Act 1991*.

Receipt of certain payments in relation to any day in a work period

Section 7 provides that the Job Commitment Bonus is not payable to a person if the person receives, in relation to any day in a work period, an ABSTUDY payment or an activity supplement or a farm financial assessment supplement under the *Farm Household Support Act 2014*. Notes to section 7 indicate that due to subsections 861(2) and (4) of the Act a person will not be qualified for a Job Commitment Bonus for a work period if they received certain other payments, which are defined as income support payments, in relation to any day in the work period.

Consultation

The Department of Human Services was consulted about this Determination.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement (Office of Best Practice Regulation reference number 16944). The Determination is not regulatory in nature, will not impact on business activity and will not impact on compliance costs or competition.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Social Security (Circumstances in which the Job Commitment Bonus will not be paid) Determination 2014 (the Determination)

Overview of the Determination

The Determination prescribes the circumstances in which a person is not qualified to receive a Job Commitment Bonus even if the person would otherwise meet the qualification criteria for a Job Commitment Bonus.

The Job Commitment Bonus provides an incentive to encourage young, long-term unemployed Australians to remain off income support payments. Broadly, a person is qualified to receive a payment of \$2,500 if they:

- have been receiving Newstart Allowance or Youth Allowance³ or a combination of both continuously for at least 12 months;
- cease to receive their payment while are aged 18 or over and under 31;
- upon cessation of their payment, or within 30 days of such cessation, commence a period of 12 months of continuous gainful work; and
- do not receive an income support payment in relation to any day during the above 12 month period.

In addition, if the person completes a further 12 months of continuous gainful work immediately following the first 12 month period of gainful work, they may be eligible for another bonus of \$4,000.

The circumstances prescribed in the Determination include where:

- the person undertakes work which does not involve a real commitment to workforce participation, or which is not likely to lead to the development of workplace skills, is undertaken;
- the person undertakes work which is likely to place the person at risk;
- the person has engaged in fraud or a scheme for the purpose of obtaining a Job Commitment Bonus, or engaged in work which is contrary to law; or
- the person engages in work under certain Commonwealth programmes, or receives certain other Commonwealth payments.

Human rights implications

Right to social security and the right to an adequate standard of living

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security. Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

The Job Commitment Bonus is a new social security payment and promotes the right of recipients to social security and to an adequate standard of living. Recipients will not be limited or restricted in their future access to social security payments, subject to them meeting the usual eligibility requirements for particular payments.

³ Other than as Youth Allowance received as an apprentice or full-time student.

The limitations placed by the Determination on the circumstances in which a Job Commitment Bonus is payable do not have an unreasonable impact on a person's right to social security or right to an adequate standard of living. It is reasonable, for example, to restrict eligibility for a Job Commitment Bonus where a person engages in fraud, is involved in a scheme, fails to meet their participation requirements for the purpose of qualifying for a Job Commitment Bonus, or is receiving an income support or similar payment from the Commonwealth.

Despite the limitations, persons will still have a wide range of options for becoming qualified for a Job Commitment Bonus. Further, the Job Commitment Bonus is not intended to be income support for recipients to meet their living expenses but rather an incentive to move off income support into gainful work and therefore to a higher standard of living. While the Determination means that certain types of work will not attract a Job Commitment Bonus, remuneration from gainful work will help a person to meet their living expenses whether or not the work attracts a Job Commitment Bonus and whether or not the person is entitled to receive a Job Commitment Bonus.

Right to work

Article 6 of the ICESCR recognises the right to work. The Job Commitment Bonus will be made to eligible young Australian job seekers and will encourage them to consistently engage with their right to work. The Determination promotes this objective as it means that certain forms of work which are not generally likely to lead to the development of a range of skills necessary to maintaining long-term employment will not attract a Job Commitment Bonus.

Also, to enable people to realise their right to work, States are required, among other things, to protect people's right to just and favourable conditions of employment.⁴ The Determination does so by avoiding the incentivisation of employment which does not involve just and favourable conditions.

Right to equality and non-discrimination

Article 2 of the ICESCR and article 26 of the International Covenant on Civil and Political Rights (ICCPR), recognise the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or 'other status'. Employment type has been considered to constitute 'other status' for the purposes of articles 2 and 26.

The Determination treats some types of work differentially in that some types of gainful work will not attract a Job Commitment Bonus even if the person satisfies all other eligibility criteria to receive a Job Commitment Bonus. As outlined below, such treatment can be justified because it is for a legitimate aim, based on reasonable and objective criteria, and proportionate to the aims of the Job Commitment Bonus.

The Determination treats work differentially for the following legitimate aims:

- to encourage young people to make a genuine commitment to improving their employment skills and experience, including by being part of the workforce on a consistent basis;
- to avoid the incentivisation of certain work which involves significant risks to vulnerable young job seekers, or work which is contrary to law; and
- to avoid providing a Job Commitment Bonus in respect of work undertaken as part of Commonwealth programmes where the participants receive payment from the Commonwealth for such participation.

⁴ Committee on Economic, Social and Cultural Rights, General Comment 18, paragraph 12.

The Determination means that work in the following categories will not attract a Job Commitment Bonus:

- *which does not involve substantial and consistent personal exertion on the part of the person;*
- *consisting of domestic, maintenance, gardening or similar tasks in relation to a person's residence or investment property;*
- *involving the care of family members or certain other people, or domestic tasks in relation to certain people;*
- *consisting of the care of pets or animals at a person's residence or the residence of their family;*
- *involving management or administration of financial investments in which the person or a family member of the person has an interest;*
- *undertaken for the purpose of academic, sporting or other scholarship.*

The purpose of the Job Commitment Bonus is to encourage young people to make a genuine commitment to improving their employment skills and experience, including by consistently being part of the workforce.

This purpose would not be satisfactorily achieved if any type of gainful work could attract the Job Commitment Bonus. This is because not all types of work promote the development of behaviours or skills which are important to ensuring ongoing and productive workforce participation. Such behaviours or skills include punctuality, being well presented for work, team work, communication skills, resilience and a willingness to consistently be part of the workforce. The kinds of work listed above are generally not likely to sufficiently promote the development of a wide range of those skills or behaviours, and/or consistent workforce participation. This is a reasonable and objective criterion on which to exclude work from attracting a Job Commitment Bonus.

The Determination also means that work in the following categories will not attract a Job Commitment Bonus:

- *involving nudity;*
- *undertaken in the sex industry including retail and hospitality positions;*
- *primarily involving gambling;*
- *which, to the knowledge of the person at the time they entered or continued in the work, provides terms or conditions of employment which are contrary to the relevant workplace relations laws or any instruments made under such laws.*

The exclusion of work involving nudity or which is undertaken as a sex worker does not involve a subjective conclusion about the appropriateness of these forms of work *per se*. Rather, it takes account of the fact that incentivising such work may increase risk, for example risk of exploitation, to job seekers. This is a reasonable and objective basis on which to exclude work from attracting a Job Commitment Bonus.

Similarly, the exclusion of work which involves terms or conditions which are contrary to relevant workplace relations laws (unless the Employment Secretary determines that in the circumstances the work should not be excluded⁵), or which primarily involves gambling, is based on the reasonable and objective criterion of protecting job seekers from involvement in work which is likely to either cause injury or financial loss to them, or to fail to provide them with adequate remuneration.

⁵ Unless the Employment Secretary determines in accordance with subsection 5(2) of the Determination that it is appropriate in the circumstances for the work to attract a Job Commitment Bonus.

The Determination also provides that a Job Commitment Bonus will not be available where work which contravenes Commonwealth, State or Territory legislation (whether or not the legislation relates to workplace relations) or which is unlawful at common law is involved.⁶ The unlawfulness of work is a reasonable and objective basis for excluding it from attracting a Job Commitment Bonus. However under subsection 5(2) of the instrument the Employment Secretary will have a discretion to determine that work will not be excluded if appropriate in the circumstances, for example so that a person would not be inappropriately disadvantaged by any failings of their employer to meet workplace standards or conditions, or to otherwise comply with the law.

The Determination further provides that work for the purpose of certain Commonwealth programmes will not attract the Job Commitment Bonus, since persons engaging in such work will receive payment from the Commonwealth for such work. This is also a reasonable and objective basis on which to exclude work from attracting a Job Commitment Bonus.

To the extent that the Determination treats types of work differentially, such treatment is proportionate to the aims of the Job Commitment Bonus. As noted above, the limitations placed by the Determination on the types of work which may attract a Job Commitment Bonus do not have an unreasonable impact on a person's right to social security, or on their right to an adequate standard of living.

Despite the limitations, persons will still have a wide range of options for becoming qualified for a Job Commitment Bonus. Further, the Job Commitment Bonus is not intended to be income support for recipients to meet their living expenses but rather an incentive to move off income support into gainful work and therefore to a higher standard of living. Remuneration from gainful work will help a person to meet their living expenses whether or not the work attracts a Job Commitment Bonus.

Conclusion

The Determination is compatible with human rights because to the extent that it may have an adverse impact on human rights, the impact is reasonable and for legitimate reasons.

⁶ Unless the Employment Secretary determines in accordance with subsection 5(2) of the Determination that it is appropriate in the circumstances for the work to attract a Job Commitment Bonus.