



Social Security (Circumstances in which a Job Commitment Bonus is not payable) Determination 2014

Social Security Act 1991

I, RENÉE LEON, Secretary of the Department of Employment, make this legislative instrument under subsection 861(8) of the *Social Security Act 1991*.

Dated 26 June 2014

RENÉE LEON PSM
Secretary
Department of Employment

1 Name of instrument

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

2 Commencement

This Determination commences on 1 July 2014.

3 Definitions

In this Determination:

Act means the *Social Security Act 1991*.

family member, in relation to a person, includes the person's:

- (a) spouse, to whom the person is legally married, or with whom the person is in a registered or de facto relationship within the meaning of the *Acts Interpretation Act 1901*;
- (b) natural child, adoptive child or stepchild;
- (c) natural parent, adoptive parent or step-parent;
- (d) brother, sister, stepbrother or stepsister;
- (e) niece, nephew, aunt or uncle;
- (f) grandparent; or
- (g) in-law.

Note: in relation to paragraph (a) of the definition of family member, section 2E of the *Acts Interpretation Act 1901* provides that a person is in a registered relationship with another person if the relationship between the persons is registered under a prescribed law of a State or Territory as a prescribed kind of relationship.

personal exertion means physical or mental effort on the part of the person concerned.

place of residence means the dwelling, including a house, flat, home unit, caravan, tent or other structure, in which a person lives and includes any land or building that is adjacent to that place, or a garage or a storeroom that is used for private or domestic purposes in association with that place.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, regardless of the number of parties involved.

work period means the period referred to in paragraph 861(1)(c) of the Act or the period referred to in paragraph 861(3)(b) of the Act.

4 Kinds of work for which a Job Commitment Bonus is not payable

- (1) For the purpose of subsection 861(8) of the Act, the kinds of work to which subsection 861(1) and subsection 861(3) do not apply in relation to a person include work which, in the opinion of the Employment Secretary:

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- (a) does not involve substantial and consistent personal exertion on the part of the person, either alone or in combination with other gainful work for which a Job Commitment Bonus is payable, throughout the work period to which the person's claim for a Job Commitment Bonus relates;
 - (b) consists of domestic tasks, household maintenance tasks, gardening tasks or similar tasks in relation to:
 - (i) the person's place of residence;
 - (ii) the place of residence of a family member of the person;
 - (iii) an investment property owned by the person; or
 - (iv) an investment property owned by a family member of the person.
 - (c) involves:
 - (i) the care of a family member of a person;
 - (ii) the care of a foster child of the person;
 - (iii) the care of a person residing at the person's place of residence or at the place of residence of a family member of the person; or
 - (iv) domestic tasks or similar tasks in relation to a person residing at the person's place of residence or at the place of residence of a family member of the person;
 - (d) 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;
 - (e) 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;
 - (f) is undertaken for the purpose of an academic, sporting or other scholarship awarded to the person or which might be awarded to the person;
 - (g) is undertaken for the purpose of any of the following Commonwealth programmes by the person:
 - (i) Green Army Programme by non-supervisor participants;

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- (ii) New Enterprise Incentive Scheme; or
 - (iii) Drought Force;
 - (h) involves nudity;
 - (i) is undertaken in the sex industry including retail and hospitality positions; or
 - (j) primarily involves gambling.

Note 1: in relation to paragraph 4(1)(e), 'financial investment' is defined in section 9 of the Act.

5 Non-payment of a Job Commitment Bonus where work is contrary to law

- (1) For the purpose of subsection 861(8) of the Act, the kinds of work to which subsection 861(1) and subsection 861(3) do not apply in relation to a person include work:
 - (a) which contravenes Commonwealth, State or Territory legislation or which is unlawful at common law; or
 - (b) 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 instrument made under such laws.
- (2) Paragraphs 5(1)(a) or 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.

6 Non-payment of a Job Commitment Bonus if person engages in fraud, is involved in a scheme, or fails to meet participation requirements

- (1) For the purpose of subsection 861(8) of the Act, subsection 861(1) and subsection 861(3) do not apply in relation to a person if during the continuous period of 12 months or more that the person received Newstart Allowance or Youth Allowance:
 - (a) the person was required to seek or undertake suitable work under the Act in order to remain qualified for their payment; and
 - (b) the person failed to seek or undertake suitable work; and

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- (c) the failure was, in the Employment Secretary's opinion, committed by the person for the purpose of increasing the likelihood of the person becoming eligible for a Job Commitment Bonus.
- (2) For the purpose of subsection 861(8) of the Act, subsection 861(1) and subsection 861(3) do not apply in relation to a person if one or more persons entered into, commenced to carry out or carried out a scheme; and having regard to the following:
- (a) the manner in which the scheme was entered into or carried out;
 - (b) the form and substance of the scheme;
 - (c) the time when the scheme was entered into and the length of the period during which the scheme was carried out; and
 - (d) the result in relation to the operation of subsection 861(1) or subsection 861(3) of the Act that, but for this subsection, would be achieved by the scheme;

the Employment Secretary is of the opinion 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.

- (3) For the purpose of subsection 861(8) of the Act, subsection 861(1) and subsection 861(3) do not apply in relation to a person if, in the opinion of the Employment Secretary, the person engaged in fraud to obtain payment of a Job Commitment Bonus.

7 Non-payment of the job commitment bonus if certain other payments are received

- (1) For the purpose of subsection 861(8) of the Act, subsection 861(1) and subsection 861(3), as the case may be, do not apply in relation to a person if the person receives, in relation to any day in a work period:
- (a) an ABSTUDY payment; or
 - (b) an activity supplement or a farm financial assessment supplement under the *Farm Household Support Act 2014*.

Note 1: section 93 of the *Farm Household Support Act 2014* modifies the operation of the Act so that a farm household allowance under the Farm Household Support Act is an income support payment under the Act. Therefore if a person receives farm household allowance in a work period they will not qualify for a Job Commitment Bonus for that period, due to subsections 861(2) and (4) of the Act.

Note 2: the definition of income support payment in subsection 23(1) of the Act includes service pension. Subsection 23(1) defines 'service pension' as including certain pensions under Part III of the *Veterans Entitlement Act 1986*. The definition of income support payment also includes income support supplement, which is defined in subsection 23(1) as income support supplement under Part IIIA of the *Veteran's Entitlement Act 1986*. Therefore if a person receives a service pension or income support supplement in a work period they will not qualify for a Job Commitment Bonus for that period, due to subsections 861(2) and (4) of the Act.