

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (New Apprentice) Determination 2016

Purpose

This Determination is made by the Minister for Social Services under subsection 23(7) of the *Social Security Act 1991* ('the Act').

Section 23 sets out definitions for the purposes of the Act. As a result of the *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016*, the definition of **new apprentice** in subsection 23(1) was repealed and a new definition substituted. The new definition provides that **new apprentice** means a person who satisfies the requirements determined in an instrument under subsection (7). The *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016* inserted a new subsection 23(7) into the Act, which states that the Minister may, by legislative instrument, determine requirements for the purposes of the definition of **new apprentice** in subsection (1).

The *Social Security (New Apprentice) Determination 2016* sets out the requirements a person must meet for the purposes of the new definition of **new apprentice** in subsection 23(1) of the Act. A person must be employed under a training contract as a full-time apprentice and that training contract must have been submitted to a state or territory training authority for approval as a full-time apprenticeship under the scheme known as Australian Apprenticeships.

Background

A person may qualify for youth allowance or austudy payment if, among other things, the person is a new apprentice. The Act previously defined **new apprentice** by reference to a person who has a Commonwealth registration number (CRN) in relation to a full-time apprenticeship, traineeship or trainee apprenticeship under the scheme known as New Apprenticeships, and excluded a person whose CRN was suspended.

The link in this definition to the issuing of a CRN created some issues. This was because there could be delays in both issuing a CRN and in cancelling or suspending a CRN. Where a person's CRN had been cancelled or suspended, the person could continue to qualify for youth allowance or austudy payment as a new apprentice even though they were no longer undertaking a full-time apprenticeship. Also, the New Apprenticeships scheme is now known as the Australian Apprenticeship scheme.

The *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016* repealed and substituted the definition of **new apprentice** in subsection 23(1) of the Act, so that it is defined by reference to a person who meets the requirements determined by the Minister in a legislative instrument under subsection 23(7).

Commencement

The Determination commences on the day that Schedule 4 to the *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016* commences.

Consultation

The Department consulted with the Department of Education and Training (DET) and Department of Human Services (DHS). The consultation consisted of discussions with DET with regard to the manner in which apprentices are employed within the Australian Apprentices scheme.

DHS administer Youth Allowance and Austudy for apprentices. This consultation consisted of discussions with DHS about how the Determination would operate.

No other consultation was considered necessary.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has been consulted and has advised that a RIS is not required (OBPR ID 20879). The Determination is not regulatory in nature and will not have a regulatory impact.

Explanation of the provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on the day that Schedule 4 to the *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016* commences.

Section 3 provides definitions for terms that are used in the Determination.

Any references to the **Act** in the Determination are references to the *Social Security Act 1991*.

Under paragraph 13(1)(b) of the *Legislation Act 2003*, where enabling legislation confers on a rule-maker the power to make a legislative instrument, then, unless the contrary intention appears expressions used in any legislative instrument so made have the same meaning as in the enabling legislation as in force from time to time.

Section 4 sets out the requirements a person must meet for the purposes of the new definition of **new apprentice** in subsection 23(1) of the Act. A person must be employed under a training contract as a full-time apprentice and that training contract must have been submitted to a state or territory training authority for approval as a full-time apprenticeship under the scheme known as Australian Apprenticeships.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SECURITY (NEW APPRENTICE) DETERMINATION 2016

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

The *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016*, amended the definition of **new apprentice** in subsection 23(1) of the *Social Security Act 1991* (the Act) so that the requirements for that definition can be determined by the Minister in a legislative instrument.

The Determination sets out the requirements a person must meet for the purposes of the new definition of **new apprentice** in subsection 23(1) of the Act. A person must be employed under a training contract as a full-time apprentice and that training contract must have been submitted to a state or territory training authority for approval as a full-time apprenticeship under the scheme known as Australian Apprenticeships.

Human rights implications

The Determination engages the following human rights:

Right to Social Security

This Determination engages the right to social security, as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security recognises the right of everyone to social security, including social insurance.

This Determination does not adversely impact a person's right to social security.

This Determination amends the definition of **new apprentice** in the Act so that the requirements for that definition can be determined by the Minister. A person who is currently undertaking an apprenticeship will continue to meet the requirements for the definition that will be determined in this Determination.

This Determination will only affect those people who are no longer undertaking an apprenticeship but who currently may continue to qualify for Youth Allowance or Austudy payment because they still hold a CRN. This measure does not extinguish the right of those people who are no longer undertaking an apprenticeship to qualify for Newstart Allowance or Youth Allowance as a jobseeker. The measure ensures that social security, particularly Youth Allowance and Austudy payment, is appropriately targeted to people who are undertaking full-time apprenticeships.

Right to Education

This Determination engages the right to education, as recognised in Article 13 of the ICESCR.

In particular, Article 13(2)(b) states that secondary education, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.

This Determination will promote an individual's right to education by providing access to Youth Allowance or Austudy payment, while undertaking an apprenticeship. This will improve the accessibility of technical and vocational education, as individuals need not miss out on Youth Allowance or Austudy payment due to delays in approving training contracts by a State or Territory Training Authority. This Determination will therefore expand the accessibility of technical and further education.

The Determination will not prevent any people undertaking a full-time apprenticeship who are currently qualified for Youth Allowance or Austudy payment from continuing to be qualified for that payment. This Determination will remove the requirement for a person to have a CRN as issued by a State/Territory training authority.

Conclusion

This Determination is compatible with human rights. This Determination will continue to ensure access to social security for people undertaking an apprenticeship and will not limit their right to education.

[Circulated by the authority of the Minister for Social Services, Christian Porter MP]