

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security Act 1991

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Carer Payment) Determination 2018

Summary

Under subsection 201AA(5B) of the *Social Security Act 1991* (the Act), the Minister may, by legislative instrument, determine a class of visas for the purposes of subsection 201AA(5).

The purpose of the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Carer Payment) Determination 2018* (the Determination) is to exempt holders of Subclass 116 (Carer) and Subclass 836 (Carer) visas from the Newly Arrived Resident’s Waiting Period (NARWP) for carer payment.

Background

A person may be qualified for carer payment if, among other things, they are an Australian resident. An Australian resident includes a person who resides in Australia and holds a permanent visa. As both Subclass 116 (Carer) and Subclass 836 (Carer) are permanent visas, the holders of these visas may, in some circumstances, qualify for carer payment under the Act.

Subsection 201AA(1) provides that, subject to some exceptions, a person is subject to a NARWP if the person has entered Australia and has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Subsection 201AA(5) provides that a NARWP does not apply to a person if, at the time the person made a claim for carer payment, the person holds a visa that is in a class of visas determined in an instrument under subsection 201AA(5B).

The effect of this Determination is that the NARWP will not apply to a person who holds either a Subclass 116 (Carer) or Subclass 836 (Carer) visa at the time the person makes a claim for carer payment.

These visas are intended for individuals who have migrated to Australia for the specific purpose of caring for their relatives in Australia who are suffering from long term medical conditions, or to assist a relative in providing this care to a member of their family unit living in their household.

Commencement

This Determination will commence on 1 October 2018 immediately following the repeal of the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Carer Payment) Determination 2017* (the 2017 Determination) on that date.

Retrospectivity

This Determination has prospective operation.

Explanation of provisions

Section 1 of the Determination states the name of the Determination.

Section 2 provides that the Determination commences on 1 October 2018.

Section 3 provides that the authority for making this Determination is subsection 201AA(5B) of the Act.

Section 4 provides that Subclass 116 (Carer) and Subclass 836 (Carer) visas are in a class of visas for the purposes of subsection 201AA(5) of the Act. The effect of this is that a NARWP for carer payment does not apply to the holder of one of these two visa Subclasses.

Section 5 provides that the Determination is repealed at the start of 1 October 2021.

Consultation

The Department of Home Affairs was consulted and confirmed Carer visas (Subclasses 116 and 836) are still the relevant visa Subclasses. The Department of Human Services was consulted and confirmed holders of Carer visas (Subclasses 116 and 836) continue to be granted carer payment. Public consultation was considered unnecessary as the Determination gives effect to administrative arrangements that are already in place.

Regulation Impact Statement

The Office of Best Practice Regulation (the OBPR) considers that this Determination will have no more than a minor regulatory impact, and therefore no Regulation Impact Statement will be required.

Statement of Compatibility with Human Rights

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

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Carer Payment) Determination 2018

The 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 legislative instrument

The purpose of the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Carer Payment) Determination 2018* (the Determination) is to exempt holders of Carer visas (Subclass 116) and (Subclass 836) from the Newly Arrived Resident’s Waiting Period for carer payment.

Human rights implications

This Determination engages or gives effect to the following human rights:

- the right to social security contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 11(1)(e) and 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD); and
- the right to an adequate standard of living contained in Article 11(1) of the ICESCR, Article 11(1)(e) of the CEDAW and Article 28 of the CRPD.

The Newly Arrived Resident’s Waiting Period ensures permanent skilled or family migrants support themselves when they first settle in Australia, either through work or family support.

The Determination will provide financial assistance, in the form of an exemption from the Newly Arrived Resident’s Waiting Period, for those granted a Subclass 116 (Carer) or Subclass 836 (Carer) visa. The exemption enables more immediate access to carer payment for these visa holders. This supports the intention of the visa Subclasses, which are designed to enable people to come to Australia to provide full-time care for a relative who has been unable to obtain the care they need from any relatives in Australia or from welfare, hospital, nursing or community services in Australia. As such, the Determination is consistent with Australia’s international obligations under the ICESCR, the CEDAW and the CRPD.

Conclusion

This Determination supports a person’s human right to social security and is therefore compatible with human rights.

The Hon Paul Fletcher MP, the Minister for Families and Social Services