

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Social Services

Social Security Act 1991

Social Security (Qualifying Agricultural Work) Determination 2020

Purpose

The Social Security (Qualifying Agricultural Work) Determination 2020 (the instrument) specifies the kinds of work that are 'qualifying agricultural work' for the purposes of subsection 1067A(15) of the *Social Security Act 1991* (the Act).

The definition of 'qualifying agricultural work' is relevant to determining whether a person is to be regarded as independent for the purposes of the Youth Allowance student (YA student) payment, for purposes under subsection 1067A(14) of the Act.

Background

Subsections 1067A(14) to 1067A(16) of the Act, inserted by the *Social Services and Other Legislation Amendment (Coronavirus and Other Measures) Act 2020*, establish a temporary pathway for young people who are seeking to qualify as independent for the purposes of assessing their qualification for the YA student payment.

Subsections 1067A(14) to 1067A(16) of the Act create a temporary incentive in the income support system to encourage young Australians to undertake seasonal agricultural work to address concerns across the agricultural sector about immediate workforce availability for the upcoming harvest season.

Under item 4 of Schedule 3 to the *Social Services and Other Legislation Amendment (Coronavirus and Other Measures) Act 2020*, a young person claiming the YA student payment, who demonstrates participation in agricultural work throughout the forthcoming harvest season, would have access to the new independence criteria if in receipt of YA student payment immediately before 1 March 2021 or if claiming between 1 March 2021 and 1 March 2023 (both dates inclusive).

Under the new criteria, a person who earns \$15,000 through employment in the agricultural industry between 30 November 2020 and 31 December 2021 would be considered as independent for the purpose of the YA student payment, subject to a parental income threshold. This change will shorten the period of time a young person engaging in agricultural work would need to work to demonstrate financial independence from their parents. The instrument determines what constitutes 'qualifying agricultural work' for the purposes of the new independence criteria.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Commencement

The instrument will commence the day after it is registered on the Federal Register of Legislation.

Consultation

Consultation was undertaken with the Department of Agriculture, Water and the Environment, the Department of Education, Skills and Employment and Services Australia.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation, a RIS is not required for this instrument (OBPR ID 43276).

Explanation of the provisions

Section 1

This section provides that the name of the instrument is the Social Security (Qualifying Agricultural Work) Determination 2020.

Section 2

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section provides that the instrument is made under subsection 1067A(16) of the Act.

Section 4

This section provides that “Act” as referred to in the instrument is the *Social Security Act 1991*.

Section 5

This section sets out the kinds of agricultural work that are determined to be ‘qualifying agricultural work’ for the purposes of subsection 1067A(15) of the Act.

The kinds of work that are determined are:

- harvesting fruit or vegetable crops
- packing fruit or vegetable crops
- pruning or trimming vines and trees directly associated with the cultivation and commercial sale of plant produce
- general maintenance crop work
- cultivating or propagating plants, fungi or their products or parts
- immediate processing of plant products
- maintaining animals for the purpose of selling them or their bodily produce, including natural increase
- immediate processing of animal products including shearing, butchery, packing and tanning, but not including secondary processing
- manufacturing dairy produce from raw material.

The kinds of work determined to be ‘qualifying agricultural work’ in the instrument are the same as the kinds of work within the ‘plant and animal cultivation work’ category specified for working holiday visas (subclass 417) in the Migration (LIN 20/182: Subclass 417 (Working Holiday) visa—Specified work and places) Instrument 2020 (the working holiday visa instrument). The working holiday visa instrument can be accessed on the legislation.gov.au website.

Working holiday visas allow young people from certain partner countries to holiday and work in Australia for up to 12 months. The work specified for working holiday visas is relevant to determine eligibility for second and third working holiday visas. To be eligible for a second working holiday visa, a person must have completed at least three months of specified work while holding their first working holiday visa. To be eligible for a third working holiday visa, a person must have completed at least six months of specified work while holding a second working holiday visa or a bridging visa, in certain circumstances.

The instrument determines the same kinds of work as specified for the ‘plant and animal cultivation work’ category in the working holiday visa instrument to create an incentive to fill positions that would likely have been filled by working holiday makers, if not for the effects of COVID-19 and the associated travel restrictions.

Examples of work that fall within the ‘qualifying agricultural work’ definition as a result of the making of the instrument are:

- picking fruits on an orchard
- feeding and herding cattle on a farm
- horse breeding and stud farming
- conservation and environmental reforestation work.

Examples of work that do not fall within the ‘qualifying agricultural work’ definition are:

- working as a nanny on a farm
- maintaining animals for tourism or recreational purposes
- secondary processing or provision of plant and animal products, such as:
 - wine-making, brewing and distillation
 - milling
 - manufacturing of smallgoods
 - retail of dairy or butchery products
 - giving wine tastings at a vineyard.

Statement of Compatibility with Human Rights

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

Social Security (Qualifying Agricultural Work) Determination 2020

The Social Security (Qualifying Agricultural Work) Determination 2020 (the instrument) 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 instrument is made under subsection 1067A(16) of the *Social Security Act 1991*.

The instrument specifies the kinds of work that are ‘qualifying agricultural work’ for the purposes of subsection 1067A(15) of the Act.

The definition of ‘qualifying agricultural work’ is relevant to determining whether a person is to be regarded as independent for Youth Allowance student (YA student) payment under subsection 1067A(14) of the Act. Subsection 1067A(14) establishes a temporary incentive in the income support system to encourage young Australians to undertake seasonal agricultural work to address concerns across the agricultural sector about immediate workforce availability for the upcoming harvest season.

Human rights implications

This legislative instrument engages the following human rights:

- Right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Right to social security – Article 9 of the ICESCR.

Right to education

- Article 13 of the ICESCR recognises the right of everyone to education and, with a view to achieving full realisation to this right that higher education should be made equally accessible to all. The instrument engages and promotes this right as the arrangements assist individuals to be considered independent, which will enable individuals to receive financial assistance to support their study.

Right to social security

- Article 9 of the ICESCR recognises the right of everyone to social security. The instrument provides an incentive that is intended to address the shortage of workers for the upcoming harvest season. The agricultural sector generally relies on migrant seasonal workers to undertake harvesting work and this workforce is not available because of the strict restrictions to travel for migrant workers that are in place because of COVID-19. This instrument acknowledges a need and offers incentive, by relaxing eligibility requirements for YA student payment and ABSTUDY, for this need to be filled. The instrument engages and promotes this right by providing individuals, who would otherwise not be eligible, access to payments.

Conclusion

The instrument is compatible with human rights because it promotes the protection of human rights.

Kathryn Campbell AO CSC, Secretary, Department of Social Services