

## **EXPLANATORY STATEMENT**

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

*Social Security Act 1991*

*Social Security (Assurances of Support) Amendment Determination 2022*

### **Purpose**

An assurance of support, under Chapter 2C of the *Social Security Act 1991* (the Act), is an undertaking by a person (individual or body) (the assurer) to pay the Commonwealth the amount of any specified social security payments received by another identified person (the assuree) while the assurance is in force.

Subsection 1061ZZGH(1) of the Act provides that the Minister must, by legislative instrument, make a determination specifying the following matters:

- social security payments for the purposes of the definition of assurance of support in section 1061ZZGA and section 1061ZZGG of the Act;
- requirements to be met for persons (individual or body) to be permitted by section 1061ZZGB of the Act to give assurances of support;
- requirements to be met in relation to persons giving assurances of support for the Secretary to be permitted by subsection 1061ZZGD(2) of the Act to accept such assurances;
- values of securities to be given for the Secretary to be permitted to accept assurances of support under paragraph 1061ZZGD(3)(b) of the Act;
- periods for which assurances of support accepted under Chapter 2C of the Act remain in force in respect of persons under section 1061ZZGF of the Act;
- circumstances in which assurances of support accepted under Chapter 2C of the Act cease to be in force under subparagraph 1061ZZGF(1)(b)(iii) of the Act.

The Social Security (Assurances of Support) Determination 2018 (the Determination) specifies these matters.

The amendments made by the Social Security (Assurances of Support) Amendment Determination 2022 (the Instrument) will:

- increase the number of Community Support Programme (CSP) entrants an individual or body can sponsor under an assurance of support; and
- specify what is required for a body corporate to be considered to have capacity to support adult assurees under an assurance of support in line with existing policy and practice; and
- provide an alternative means for bodies (incorporated or unincorporated) to satisfy this capacity test.

The Instrument also makes a number of minor changes to clarify the operation of current provisions in the Determination in line with existing policy and practice.

## Background

An assurance of support may be required as a condition of the grant of a visa under the *Migration Act 1958*. The assurance of support is designed to ensure that migrants who may have a higher likelihood of claiming specified social security payments are financially supported by their assurer for the duration of the assurance rather than seeking taxpayer-funded social security payments.

The CSP enables communities, business owners, families and individuals to support refugee and humanitarian entrants to Australia to achieve settlement outcomes. An assurance of support for a CSP entrant remains in force for 12 months (see section 24 of the Determination).

In the 2021–22 Mid-Year Economic and Fiscal Outlook (MYEFO), the Government announced a number of measures to drive better settlement and integration outcomes for refugees and humanitarian entrants in Australia, including changes to the CSP. These new measures follow the 2020 Review of the CSP conducted by the Commonwealth Coordinator-General for Migrant Services.

The amendments in this Instrument will support these changes by providing increased flexibility and clarity for individuals and bodies seeking to provide an assurance of support for a CSP entrant.

Sections 11 and 12 of the Determination currently limit an individual or body to sponsoring up to two adult assurees at any one time. According to the Department of Home Affairs, the reported average refugee family size is five people. The family composition can include more than two adults, for example, a couple with an 18-year-old child. The Instrument increases the number of CSP entrants an individual can sponsor under an assurance of support from two to four adult assurees to capture most families who are likely to participate in the CSP.

The Instrument also increases the number of CSP entrants a body can sponsor under an assurance of support from two to 15 adult assurees. This aims to encourage greater participation of bodies, particularly unincorporated bodies, in the CSP. This also reflects the fact that bodies generally have greater resources to draw on to provide financial support, and facilitate settlement outcomes, for their assurees.

Generally, an individual or body will need to meet an income or capacity test before they can give an assurance of support. These requirements mitigate the risk of assurers being unable to support their assurees and meet their assurance obligations if called upon to do so.

Subsection 17(2) of the Determination currently provides that a body, other than a State agency, may only give an assurance of support if the Secretary is satisfied that the body has the capacity to support its adult assurees. What it means for a body to have capacity is currently governed by policy and depends on whether the body is incorporated or unincorporated.

- Generally, an incorporated body has the capacity to support an assuree if “trading profitably at a similar level to the income test for individuals, as well

as any other additional in-kind resources it can offer. In most circumstances, incorporated bodies should provide reliable and verifiable evidence of its profit levels for at least two financial years prior to the date of [assurance of support] application.” This policy is outlined in Instruction 9.4.3.30 of the Social Security Guide. The income test for individuals referred to in Instruction 9.4.3.30 is outlined at sections 15 and 16 of the Determination, for single and joint individual assurers respectively.

- The capacity test for corporations, therefore, does not accommodate corporations that are less profitable than what is required under the capacity test currently stipulated by policy but still have funds to draw on to provide support (e.g. incorporated not-for-profit organisations).
- An unincorporated body is not required to meet a particular test or provide specific evidence to show it has the capacity to meet its assurance obligations if called upon to do so (see Instruction 9.4.3.40 of the Social Security Guide).

The Instrument addresses these issues with the current capacity test, and introduces new elements to the test, as outlined below. These changes apply in relation to all bodies (other than a State agency) seeking to provide an assurance of support, regardless of whether they are participating in the CSP or not. They are particularly relevant to those participating in the CSP, noting the other amendments in the Instrument that increase the number of CSP entrants a body can sponsor.

#### *Capacity of incorporated bodies*

The Instrument integrates the current capacity test for incorporated bodies provided in policy into the Determination, namely that the incorporated body’s profits for each of the previous two financial years must be at least equal to the annual maximum basic JobSeeker Payment amount multiplied by the number of adult assurees.

The Instrument also adds an alternative way for an incorporated body to show it has capacity. This alternative is to demonstrate it has at least \$5,000 in readily available funds per adult assuree on the day it gives an assurance of support.

For the purposes of section 17, readily available funds means:

- money in an account, or on deposit, with an authorised deposit-taking institution within the meaning of the *Banking Act 1959*;
- bank bills accepted, or endorsed, by an authorised deposit-taking institution;
- marketable securities (within the meaning of section 9 of the *Corporations Act 2001*).

The first meaning of ‘readily available funds’ is modelled on the definition of liquid assets in section 14A of the Act. As section 14A of the Act is framed in terms of the individual, the second and third meanings are adapted from the meaning of liquid assets in subsection 601KA(5) of the *Corporations Act 2001*.

Although \$5,000 is less than the annual rate of JobSeeker Payment, it is intended to reflect an appropriate level of capacity to support an adult assuree in the first

instance, and encourage the body to achieve employment outcomes for their assuree(s).

The alternative readily available funds test is designed to enable more incorporated bodies to participate in the CSP by providing greater flexibility for them to demonstrate their capacity to provide assurances of support.

#### *Capacity of unincorporated bodies*

The Instrument introduces a requirement for unincorporated bodies to demonstrate it has at least \$5,000 in readily available funds per adult assuree on the day it gives an assurance of support.

This requirement aligns with the alternative test introduced for incorporated bodies as outlined above. It is designed to ensure that unincorporated bodies have the capacity to support its assuree(s) and meet its assurance obligations if called upon to do so.

#### *Capacity of incorporated and unincorporated bodies*

Aside from the above requirements, the Instrument retains some discretion for the Secretary to find that a body (whether incorporated or unincorporated) otherwise has the capacity to meet its assurance obligations if called upon to do so.

The use of this discretion is a matter for the decision-maker on a case-by-case basis. It should generally only be used where a body does not meet above requirements but can otherwise provide suitable evidence of its capacity to support its assuree(s) and meet its assurance obligations if called upon to do so.

#### *Other minor changes*

The Instrument repeals the definition of 'rate of jobseeker payment' and introduces the term 'maximum basic jobseeker payment amount', which better reflects current policy and practice. This is to ensure greater clarity with respect to determining the rate of jobseeker payment used when assessing the income or capacity of individuals and bodies providing an assurance of support. The term 'maximum basic jobseeker payment amount' is described in detail in the explanation of item 1 to Schedule 1 of the Instrument below.

### **Commencement**

The Instrument commences on 1 July 2022.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The Minister has the power under subsection 1961ZZGH(1) of the Act to amend the Determination.

## Consultation

Consultation was undertaken with the Department of Home Affairs, which manages the policy settings and operation of the CSP. The Department of Home Affairs regularly consults with community stakeholders, including community sponsors and authorised proposing organisations related to the CSP. These stakeholders also made up a significant part of the extensive consultations undertaken as part of the 2020 Review of the CSP, conducted by the Commonwealth Coordinator-General for Migrant Services.

Services Australia has also been consulted in relation to the administration of the changes introduced by the Instrument.

## Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted in relation to this Amendment Determination (OBPR ID 01899) and has advised the instrument is unlikely to have a more than minor regulatory impact. A Regulation Impact Statement is not required.

## Availability of independent review

A decision made as informed by the Determination under sections 1061ZZGD and 1061ZZGF, regarding the acceptance or rejection of an assurance of support and when an accepted assurance of support is in force, is subject to internal and external review under the enabling Act and Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

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

## Explanation of the provisions

**Section 1** states that the name of the Instrument is the *Social Security (Assurances of Support) Amendment Determination 2022*.

**Section 2** specifies that the Instrument commences on 1 July 2022.

**Section 3** provides that the Instrument is made under the Act.

**Section 4** sets out the operation of the Schedules and provides that any instrument specified in a Schedule to the Instrument is amended or repealed according to the terms of the relevant Schedule.

**Schedule 1** outlines the following amendments to the Determination.

**Item 1** inserts into subsection 5(1) the term ‘maximum basic jobseeker payment amount’, defined as the amount equal to 26.0714286 multiplied by the amount stated in column 3A of item 4A in Table B in point 1068-B1 of the Act (including that amount as indexed). Column 3A of item 4A in Table B of point 1068-B1 of the Act stipulates the maximum basic rate of JobSeeker Payment for a person under 60 who has a dependent child and is not a member of a couple.

The figure of 26.0714286 is the number of fortnights per year currently used by Services Australia in administering the Determination and associated policy. This figure averages by reference to four years the number of fortnights in a year, to give a consistent outcome despite the fact the year may be a leap year. Accounting for the possibility of a leap year reflects the fact that the rate of JobSeeker Payment is a daily rate, calculated on the basis of a fortnightly rate.

**Item 2** repeals from subsection 5(2) the definition of 'rate of jobseeker payment', given that the term 'maximum basic jobseeker payment amount' is now substituted by item 1 above.

**Item 3** repeals and substitutes subsection 11(3) to provide that the total number of CSP entrants covered by assurances of support currently proposed to be given by an individual, currently in force and/or awaiting a decision of the Secretary under subsection 1061ZZGD(1) of the Act, must not exceed four. This reflects the increase to the number of CSP entrants an individual can sponsor.

**Item 4** repeals and substitutes subsection 12(4) to provide that the total number of CSP entrants covered by assurances of support currently proposed to be given by a body, currently in force and/or awaiting a decision of the Secretary under subsection 1061ZZGD(1) of the Act, must not exceed 15. This reflects the increase to the number of CSP entrants a body can sponsor.

**Item 5** omits from subsection 15(2) 'for a financial year if the amount of the individual's assessable income for the year' and substitutes 'for the current financial year, first financial year or second financial year if the amount of the individual's assessable income for that year', as it applies to the income requirement for a single individual assurer. This clarifies the existing provision and ensures consistency with section 14, which outlines how an individual must demonstrate they have satisfied the relevant income requirement for the current financial year and either the first financial year or the second financial year.

**Items 6 and 10** omit 'applicable rate of jobseeker payment' and substitute 'maximum basic jobseeker payment amount, applicable on 1 July of the current financial year' from paragraphs 15(2)(a) and 16(2)(a) respectively, consequential to item 1.

**Items 7 and 11** omit 'as at 1 July in the financial year' and substitute 'applicable on 1 July of the current financial year' from subparagraphs 15(2)(b)(i) and (ii) and 16(2)(b)(i) and (ii) respectively. This ensures greater clarity for determining the rate of family tax benefit and supplement amount applicable in assessing whether a prospective single or joint individual assurer meets the income requirement where the adult receiving the assurance of support has a child or children.

**Items 8 and 12** repeal the examples at subsections 15(2) and 16(2) respectively, which illustrate how to calculate the minimum required income amounts for single and joint individual assurers respectively. Examples of how to calculate the required income amounts are provided in Instruction 9.4.3.20 of the Social Security Guide.

**Item 9** omits from subsection 16(2) 'for a financial year if the combined amount of assessable income of the assurers for the year' and substitutes 'for the current financial year, first financial year or second financial year if the combined amount

of assessable income of the assurers for that year', as it applies to the income requirement for joint individual assurers. This clarifies the existing provision and ensures consistency with section 14. Section 14 outlines how an individual must demonstrate they have satisfied the relevant income requirement for the current financial year and either the first financial year or the second financial year.

**Item 13** repeals subsection 17(2) and substitutes new subsections 17(2), (3), (4) and (5).

New subsection 17(2) states that a body, other than a State agency, must meet the requirements outlined in new subsections (3) and/or (4) depending on whether it is incorporated or not. New paragraph 17(2)(c) provides that the body can also show that it otherwise has the capacity to meet its assurance obligations under the assurance of support.

New subsection 17(3) outlines the capacity test for incorporated bodies seeking to provide an assurance of support. It provides that a body satisfies this subsection if the body's profit for each of the last two financial years ending before the financial year in which the body gave the assurance of support (the current year) was at least equal to the maximum basic jobseeker payment amount, applicable on 1 July of the current year, multiplied by the number of adults receiving assurance under the assurance of support.

New subsection 17(4) provides that a body (incorporated or unincorporated) satisfies this subsection if the body has at least \$5,000 in readily available funds multiplied by the number of adults receiving assurance under the assurance of support on the day it gives the assurance of support.

New subsection 17(5) defines readily available funds to mean:

- money in an account, or on deposit, with an authorised deposit-taking institution within the meaning of the *Banking Act 1959*;
- bank bills accepted, or endorsed, by an authorised deposit-taking institution;
- marketable securities (within the meaning of section 9 of the *Corporations Act 2001*).

**Item 10** inserts new Part 9 – Application provisions.

New Part 9 provides that the amendments to sections 11, 12 and 17 made by Schedule 1 apply to applications to give an assurance of support made on or after 1 July 2022.

New subsections 26(1) and (2) provide that assurances of support in force or awaiting a decision of the Secretary under subsection 1061ZZGD(1) before 1 July 2022 are taken into account when determining whether an assurance of support can be given under section 11 or 12 of the Determination.

## **Statement of Compatibility with Human Rights**

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

### **Social Security (Assurances of Support) Amendment Determination 2022**

The Social Security (Assurances of Support) Amendment Determination 2022 (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 1061ZZGH(1) of the *Social Security Act 1991* (the Act).

The purpose of the Instrument is to enact changes to provide increased flexibility and clarity for individuals and bodies seeking to provide an assurance of support, including by:

- increasing the number of Community Support Programme (CSP) entrants an individual or body can sponsor under an assurance of support;
- specifying what is required for a body corporate to be considered to have capacity to support adult assurees under an assurance of support in line with existing policy and practice;
- provide an alternative means for bodies (incorporated or otherwise) to satisfy this capacity test; and
- clarifying the operation of current provisions in the Social Security (Assurances of Support) Determination 2018 (the Determination) in line with existing policy and practice.

These changes will support measures announced in the 2021–22 Mid-Year Economic and Fiscal Outlook (MYEFO) to drive better settlement and integration outcomes for refugees and humanitarian entrants in Australia, including through the CSP.

#### **Human rights implications**

The Instrument engages the following rights:

- the right to social security contained in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living contained in article 11(1) of the ICESCR;
- the right to equality and non-discrimination as contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to freedom of movement as contained in articles 12 and 13 of the ICCPR;



- the right to protection of the family as contained in articles 23 and 17(1) of the ICCPR and article 10 of the ICESCR; and
- the rights of parents and children as contained in article 3 of the Convention on the Rights of the Child and article 24(1) of the ICCPR.

## Background

The Determination sets out key requirements underpinning the assurance of support scheme. The primary objective of the assurance of support scheme is to protect social security outlays while allowing the migration of people who might otherwise not normally be permitted to come to Australia. An assurance of support is a legally binding commitment by an eligible Australian resident (the assurer) to support a new visa entrant (the assuree) for the duration of the assurance period and to repay any recoverable social security payments made to the assuree during that period.

The requirements set out in the Determination include the number of assurances an individual or body can have given at any one time and the income or capacity test an individual or body must meet to give an assurance.

## The right to social security and an adequate standard of living

This Instrument does not limit a permanent visa holder's right to social security and an adequate standard of living after migrating to Australia once an assurance of support has been provided. These visa holders will have access to Australia's social security system where eligible and subject to meeting any existing waiting periods.

If the assurer is not able to provide adequate support to the visa entrant during the assurance period, the visa holder may be eligible for a social security payment. In this event, the assurer will be required to repay any recoverable social security payments made to the visa holder during the assurance period.

The Determination already includes certain requirements designed to ensure that individuals and bodies are able to support their assuree(s) to an adequate standard of living and limit the risk of assurees needing to access a recoverable social security payment. The detail of the requirements for bodies is currently provided in the Social Security Guide.

The Instrument integrates the existing capacity test for incorporated bodies into the Determination and introduces an alternative financial requirement for bodies (incorporated or unincorporated) to satisfy prior to being an eligible assurer. The \$5,000 in readily available funds per adult assuree provides an alternative means for bodies to satisfy the financial requirement.

The Instrument broadens the ways in which a body can satisfy the requirements to give an assurance of support and provides greater flexibility and opportunities for bodies to act as an assurer.

## The right to equality and non-discrimination

This Instrument engages the right to equality and non-discrimination. The differential treatment of migrants subject to an assurance of support compared to other migrants, reflects the purpose of the assurance of support scheme, which is to allow migrants with a higher likelihood of needing income support payments (such as parents of Australian residents) entry into Australia, while protecting social security outlays.

The Instrument includes changes to increase the number of CSP entrants a person can give an assurance for at any one time. The more beneficial treatment of CSP entrants reflects the purpose of the CSP and the measures announced in the 2021–22 MYEFO. These measures are specifically designed to encourage more individuals, businesses and organisations to participate in the settlement of refugees in their communities and to facilitate better settlement outcomes.

To the extent that this Instrument, and the broader assurance of support scheme provided for in social security law, limit the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate purpose of the assurance of support scheme, the CSP and the 2021–22 MYEFO measures.

## The right to freedom of movement, the protection of the family, and rights of parents and children

This Instrument does not change or impact on current arrangements with regards to the right of visa holders to freedom of movement, the protection of the family, and rights of parents and children.

Migrants will continue to be able to apply for a visa to come to, or remain in, Australia permanently (including to reunite with family) and have their visa application granted, subject to meeting the eligibility criteria including, where relevant, obtaining an assurance of support.

The Instrument will increase the number of CSP entrants an individual can sponsor from two to four, and the number of CSP entrants a body can sponsor from two to 15. This is designed to better accommodate the average refugee family size and composition and allow for entire families to obtain an assurance of support and be reunited through the CSP. In doing so, this Instrument promotes the right to freedom of movement, the protection of the family, and rights of parents and children.

To the extent that the broader assurance of support scheme, provided for in social security law, limits the right to freedom of movement, the protection of the family, and rights of parents and children, this is reasonable and proportionate to achieving the legitimate purpose of the assurance of support scheme.

## **Conclusion**

The Instrument is compatible with human rights. It does not limit the right to social security and an adequate standard of living for visa entrants. It promotes the right to freedom of movement, the protection of the family, and rights of parents and children for refugees by increasing the ability of individuals and bodies to provide an

assurance of support for CSP entrants. To the extent that it may limit the rights to equality and non-discrimination by providing more beneficial rules for CSP entrants compared to other migrants, this limitation is legitimate, reasonable, necessary and proportionate in the context of encouraging and support community involvement in the successful settlement of refugees in Australia. This is consistent with the purpose of the CSP.

**Senator the Hon Anne Ruston, Minister for Families and Social Services and  
Minister for Women's Safety**