

## EXPLANATORY STATEMENT

### *A New Tax System (Family Assistance) Act 1999*

#### *A New Tax System (Family Assistance) (Pacific Australia Labour Mobility Scheme– Family Tax Benefit) Determination 2024*

### **Purpose**

The *A New Tax System (Family Assistance) (Pacific Australia Labour Mobility Scheme–Family Tax Benefit) Determination 2024* (the Determination) specifies that workers participating in the Pacific Australia Labour Mobility scheme (the PALM scheme) who are approved for family accompaniment, and relevant members of their family, are classes of individuals for the purposes of family tax benefit eligibility under the *A New Tax System (Family Assistance) Act 1999* (the Act). The Determination also prescribes PALM stream visas and (now repealed) Pacific Labour Scheme (PLS) stream visas, for the purposes of including the time a person has held such a visa towards the time they are subject to a newly arrived resident’s waiting period for family tax benefit Part A.

### **Background**

#### Pacific Australia Labour Mobility scheme

The PALM scheme enables eligible employers to hire workers from select Pacific countries and Timor-Leste to fill roles in unskilled, low-skilled and semi-skilled positions in rural and regional Australia, and nationally for the agriculture sector.

The PALM scheme is central to Australia’s relationship with Pacific island countries and Timor-Leste. It develops skills, addresses youth unemployment and supports economic integration of our region.

Under the “Enhancing the Pacific Australia Labour Mobility Scheme” 2022-23 Budget measure, primary visa holders participating in the PALM scheme on long-term placements of one to four years (“long-stay PALM stream participants”) can bring their partners and children to Australia with the support of their employer. The roll-out of family accompaniment will commence with a pilot including a limited number of families selected in accordance with program criteria.

Currently, PALM scheme workers are issued with a visa referred to in the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa. This will also be the case for members of the worker’s family unit brought to Australia under family accompaniment.

Amendments have been made to the Act by the *Social Services and Other Legislation Amendment (Australia’s Engagement in the Pacific) Act 2023* to support implementation of family accompaniment under the PALM scheme through allowing workers and their families, who are approved for family accompaniment, to access family tax benefit and child care subsidy.

Extending access to these payments is intended to provide financial assistance to families of PALM scheme workers while they are raising children in Australia and reduce barriers to workforce participation by family members. Without this support, families reunited in Australia through family accompaniment may face hardship that could jeopardise the success of their work placement and the objective of the family accompaniment policy.

### Eligibility for family tax benefit

Subsection 21(1) of the Act relevantly provides that an individual is eligible for family tax benefit including if they have at least one FTB child or has at least one regular care child who is also a rent assistance child, and the individual satisfies subsection 21(1B).

Subsection 21(1B) relevantly provides that an individual satisfies this subsection if the individual is the holder of a Subclass 403 (Temporary Work) (International Relations)) visa, is either a participant, as a worker, in the PALM scheme or a relevant member of their family unit, and is in a class determined under subsection 21(1C).

Subsection 21(1C) relevantly provides that the Minister may determine classes of individuals for the purposes of paragraph 21(1B)(c) by legislative instrument. Subsection 21(1E) provides that a class of individuals for these purposes may be determined by reference to the fact that an individual holds a visa of a specified kind, for example, a visa of a kind referred to in a specified way in the regulations under the *Migration Act 1958*.

The Determination is made under paragraph 21(1C)(b) of the Act, and prescribes that PALM scheme workers who have been approved for family accompaniment, and members of their family unit, are classes of individuals for the purposes of paragraph 21(1B)(c). This enables these PALM scheme workers and their relevant family members to be eligible for family tax benefit, subject to meeting all other relevant requirements.

### Newly arrived resident's waiting period

A newly arrived resident's waiting period is the period of time a migrant must have been an Australian resident and in Australia before receiving certain payments. A 52-week waiting period applies to family tax benefit Part A under the Act.

Subsection 61AA(1) of the Act provides that an individual's rate of family tax benefit Part A is nil in respect of a day that occurs while the individual is subject to a newly arrived resident's waiting period. Subsection 61AA(2) sets out when an individual is subject to a newly arrived resident's waiting period.

Paragraph 61AA(2)(a) provides that an individual is subject to a newly arrived resident's waiting period if the individual becomes the holder of a relevant visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*. The visas currently determined by the Minister for the purposes of subparagraph 729(2)(f)(v) are temporary visa subclasses 060, 070, 309, 449, 785, 786, 790 and 820 and a criminal justice stay visa where certain circumstances are met. These are currently specified in the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)*. Of these subclasses, only the subclasses 309 and 820 visas are currently subject to a newly arrived resident's waiting period. The other subclasses are currently exempt from the newly arrived resident's waiting period by virtue of subsection 61AA(6).

Paragraph 61AA(2)(b) provides that an individual is subject to a newly arrived resident's waiting period if the individual becomes the holder of a permanent visa, except visas listed in subparagraphs 61AA(2)(b)(i) to (iii).

Paragraph 61AA(2)(c) provides that an individual is subject to a newly arrived resident's waiting period if the individual satisfies subsection 21(1B). This provision is discussed above, and refers to PALM scheme workers and their relevant family members who hold a Subclass 403 (Temporary Work (International Relations)) visa.

Subsections 61AA(4A) and (5A) set out the start date of a newly arrived resident's waiting period that applies to certain individuals, and provides that this waiting period ends after 52 weeks.

Where an individual is subject to a newly arrived resident's waiting period because of paragraph 61AA(2)(a) or (b), and the individual has previously held one or more visas covered by paragraph 21(1B)(a) that is also a kind of visa determined under subsection 61AA(5B), subsection 61AA(4A) enables the waiting period to start on the day on which the individual first held one of those visas. Relevantly, the visa specified in paragraph 21(1B)(a) is a Subclass 403 (Temporary Work (International Relations)) visa.

Where an individual is subject to a newly arrived resident's waiting period because of paragraph 61AA(2)(c), subsection 61AA(5A) provides that the waiting period starts on the day the individual first held the visa covered by paragraph 21(1B)(a), where this is also a visa of a kind determined under subsection 61AA(5B). Relevantly, the visa specified in paragraph 21(1B)(a) is a Subclass 403 (Temporary Work (International Relations)) visa.

Subsection 61AA(5B) provides that the Minister may determine kinds of visas for the purposes of paragraphs 61AA(4A)(b) and (5A)(a). The Determination determines kinds of visa for these purposes. These kinds of visas are a Subclass 403 (Temporary Work (International Relations)) visa in the PLS stream and the PALM stream of this visa subclass.

The effect of this determination is that a PALM scheme worker and their relevant family members can count time spent in Australia on a Subclass (Temporary Work (International Relations)) visa in the PLS stream and the PALM stream towards the 52-week newly arrived resident's waiting period for the purposes of family tax benefit Part A. Time spent in Australia on this visa in a different stream does not count. It is expected that most PALM scheme workers will have fully served this waiting period prior to their family arriving in Australia and will effectively have immediate access to the payment, where otherwise eligible, once their family arrives.

## **Commencement**

The Determination commences on the day after it is registered on the Federal Register of Legislation.

## **Authority**

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 subsections 21(1C) and 61AA(5B) of the Act to make the Determination.

## **Consultation**

The Department of Social Services consulted with the Department of Foreign Affairs and Trade, the Department of Home Affairs, the Department of Employment and Workplace Relations, the Department of Health, the Department of Education and Services Australia on the text of the Determination.

## **Impact Analysis**

The Determination does not require an Impact Analysis because it is not regulatory in nature, will not impact on business activity and will have no or minimal compliance costs or competition impact (OBPR22-02810).

## **Availability of independent review**

A decision made under the family assistance law, as informed by the Determination, is subject to internal and external review under Part 5 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

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

## **Explanation of Provisions**

**Section 1** provides that the name of the Determination is the *A New Tax System (Family Assistance) (Pacific Australia Labour Mobility Scheme–Family Tax Benefit) Determination 2024*.

**Section 2** provides that the Determination is to commence the day after the Determination is registered on the Federal Register of Legislation.

**Section 3** provides that the authority for making the Determination is subsections 21(1C) and 61AA(5B) of the Act.

**Section 4** sets out the definitions of the terms used in the Determination.

A reference to the “Act” is a reference to the *A New Tax System (Family Assistance) Act 1999*.

The term “member of the family unit” as defined has the same meaning as in the *Migration Act 1958*.

A “member of the family unit” is defined in subsection 5(1) of the *Migration Act 1958* as having the meaning given by the regulations made for the purposes of the definition. As per regulation 1.12 of the *Migration Regulations 1994*, for a PALM scheme participant, a

“member of the family unit” includes the worker’s spouse or de facto partner, a child or step-child who is aged up to 18, or who is aged 18 to 23 and is dependent on the PALM scheme participant or their spouse or de facto partner, or who has turned 23 and is dependent on the PALM scheme participant or their spouse or de facto partner due to being incapacitated, and any dependent child of a child or step-child who is a “member of the family unit”.

**Section 5** prescribes classes of individuals under paragraph 21(1C)(b) of the Act, for the purposes of paragraph 21(1B)(c), which relates to eligibility for family tax benefit for workers participating in the PALM scheme and their relevant family members.

Firstly, this section prescribes persons who have been approved, by a Department in administering the PALM scheme, to bring members of the family unit of the PALM scheme worker to Australia. These persons are workers participating in the PALM scheme, as provided in subparagraph 21(1B)(b)(ii). Currently, the Department of Foreign Affairs and Trade and the Department of Employment and Workplace Relations are responsible for administering the PALM scheme, and one of these departments will approve PALM scheme workers for family accompaniment.

Secondly, this section prescribes members of the family unit of a person approved to bring family members to Australia for family accompaniment, as a class of individuals for the purposes of paragraph 21(1B)(c). These are relevant family members of PALM scheme workers, who have been granted a visa on the basis that they are a member of the family unit of the PALM worker, as provided in subparagraph 21(1B)(b)(ii). In relation to PALM workers, a “member of the family unit” is defined in section 4 of the Determination, as discussed above.

The effect of section 5 is that individuals in either of these prescribed classes may be eligible for family tax benefit under section 21 of the Act, subject to meeting all other relevant requirements.

**Section 6** prescribes kinds of visas under subsection 61AA(5B) of the Act, for the purposes of paragraphs 61AA(4A)(b) and (5A)(a), which relate to the newly arrived resident’s waiting period for family tax benefit Part A.

Firstly, this section prescribes a Subclass 403 (Temporary Work (International Relations)) visa in the PLS stream, as referred to in the regulations made under the *Migration Act 1958*. The PLS stream was closed to new applications in 2022, and replaced by the PALM stream (see below).

It is intended that if any workers participating in the PALM scheme, or their relevant family members, holds or previously held a Subclass 403 (Temporary Work (International Relations)) visa under the PLS stream, their newly arrived resident’s waiting period will start on the day they first held that visa (subsections 61AA(4A) and (5A) of the Act). As the PLS stream has been closed for some time, this means that the 52-week newly arrived resident’s waiting period for family tax benefit Part A would have now ended for any such individuals, and they would not be precluded from accessing this payment on this basis. It is intended that these individuals would not be required to restart the waiting period if they are now issued a Subclass 403 (Temporary Work (International Relations)) visa under the current PALM stream.

Secondly, a Subclass 403 (Temporary Work (International Relations)) visa in the PALM stream is also prescribed by section 6 of the Determination. This kind of visa is referred to in the regulations under the *Migration Act 1958*. This is the current visa that is issued to PALM scheme workers and their relevant family members, where the worker is approved for family accompaniment.

If a worker or their family member has not previously held a Subclass 403 (Temporary Work (International Relations)) visa under the former PLS stream, and is now issued such a visa under the PALM stream, their 52-week newly arrived resident's waiting period will commence when they first held the PALM stream visa (subsection 61AA(5A) of the Act). It is expected most PALM scheme participants will have served this waiting period prior to their family coming to Australia, effectively providing immediate access to family tax benefit Part A once their family arrives. Further, if such individuals are granted successive Subclass 403 (Temporary Work (International Relations)) visas, they would not have to restart the waiting period with each new visa grant.

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

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

### ***A New Tax System (Family Assistance) Act 1999***

#### ***A New Tax System (Family Assistance) (Pacific Australia Labour Mobility Scheme– Family Tax Benefit) Determination 2024***

The *A New Tax System (Family Assistance) (Pacific Australia Labour Mobility Scheme–Family Tax Benefit) Determination 2024* (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 Determination specifies that workers participating in the Pacific Australia Labour Mobility (PALM) scheme who are approved for family accompaniment, and relevant members of their family, are classes of individuals for the purposes of family tax benefit eligibility under the *A New Tax System (Family Assistance) Act 1999* (the Act). The Determination also prescribes PALM and former Pacific Labour Scheme (PLS) visas, for the purposes of including the time a person has held such a visa towards the time they are subject to a newly arrived resident's waiting period for family tax benefit Part A.

The Determination is made under subsections 21(1C) and 61AA(5B) of the Act.

### **Human rights implications**

The Determination engages the following human rights:

- Rights to social security and an adequate standard of living
- Rights of parents and children
- Right to privacy
- Rights to equality and non-discrimination.

#### *Right to social security and an adequate standard of living*

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to social security and requires a social security scheme to be established under domestic law that provides a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs. Article 26 of the Convention on the Rights of the Child (CRC) requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.

Article 11 of the ICESCR recognises the right to an adequate standard of living, which provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

The Determination promotes the rights to social security and an adequate standard of living by allowing eligible PALM scheme participants and their family members to access family tax benefit. This payment helps eligible families with the cost of raising children.

Access to most social security and family assistance payments is generally limited to Australian citizens and permanent visa holders. This reflects the residence-based nature of the Australian social security and family assistance systems, which are different to the contributory systems that operate in most other countries. As a result, most temporary visa holders do not have access to social security or family assistance payments.

A newly arrived resident's waiting period for PALM scheme participants will apply in relation to family tax benefit Part A. This is consistent with the rules and expectations for holders of other relevant visa types. Time spent in Australia on a relevant PALM or PLS visa will count towards the waiting period, as a result of this Determination. It is expected that most PALM scheme workers will have fully served the waiting period prior to their family arriving in Australia and will effectively have immediate access to family tax benefit Part A, where otherwise eligible, once their family arrives.

### *Rights of parents and children*

Article 3 of the CRC and Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR) recognise the rights of parents and children. In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy special rights, particular to their status.

The Determination promotes these rights by supporting access to family tax benefit for eligible PALM scheme participants and family members on a subclass 403 (Temporary Work (International Relations)) visa, who would otherwise be ineligible as temporary visa holders.

A newly arrived resident's waiting period of 52 weeks applies for family tax benefit Part A, consistent with the rules for most other relevant visa types. As any time spent in Australia on a relevant PALM or PLS visa will count towards the waiting period, most PALM scheme participants will have served this waiting period prior to their family coming to Australia, effectively providing immediate access once their family arrives. Access to these payments will assist eligible PALM and PLS visa holders with the costs of raising their children in Australia and to successfully integrate into the Australian economy and society.

### *Right to privacy*

Article 17 of the ICCPR recognises that no one shall be subjected to arbitrary or unlawful interference with their privacy. The disclosure of personal information without a person's consent will engage, and limit, the protection from arbitrary and unlawful interference with privacy.

The right in Article 17 may be subject to permissible limitations, where the limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of "reasonableness" to imply that



any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The Determination engages the right to privacy as data will be linked between Commonwealth departments to enable the administration of family tax benefit payments to eligible PALM scheme participants, including verification of an individual's visa status and associated eligibility.

To the extent that the Determination may limit the right to privacy, the limitation is lawful and non-arbitrary. The linking of data between Commonwealth departments is limited to visa related information necessary to administer family tax benefit payments, including verification of an individual's eligibility. This data linkage reduces the administrative burden for visa holders and facilitates the provision of financial support to eligible individuals.

### *Right to equality and non-discrimination*

Article 2(2) of the ICESCR and Article 26 of the ICCPR recognise rights to equality and protection against discrimination on any ground. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

The Determination engages the right to equality and non-discrimination by direct differential treatment of eligible PALM scheme participants and family members compared to other PALM scheme participants, other non-PALM subclass 403 (Temporary Work (International Relations)) visa holders, and holders of other temporary subclass visas. The intent is that eligible PALM scheme participants who have been approved for family accompaniment (and their families) will be able to access family tax benefit, if they are otherwise eligible. Other temporary residents generally do not have access to family assistance payments and that will remain the case.

To the extent that the Determination limits the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate purposes of family accompaniment for the PALM scheme.

Family accompaniment for PALM scheme workers is designed to address the social impacts of long periods of family separation and build relationships with participating Pacific Island countries and Timor-Leste. PALM scheme workers are often engaged in lower skilled and lower paid industries than other temporary workers. Access to family tax benefit supports the objectives of family accompaniment by ensuring families of PALM scheme workers are appropriately supported with the cost of raising children in Australia. Without this support, families reunited in Australia through family accompaniment may face hardship.

## **Conclusion**

The Determination is compatible with human rights because it promotes the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Amanda Rishworth MP, Minister for Social Services**