



Social Security (Special Benefit – Class of Visas) Determination 2025

I, Tanya Plibersek, Minister for Social Services, make the following determination.

Dated 15.09.2025

Tanya Plibersek
Minister for Social Services

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Part 1 Preliminary

1 Name

This instrument is the *Social Security (Special Benefit – Class of Visas) Determination 2025*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subparagraph 729(2)(f)(v), subparagraph 729(2)(g)(i), paragraph 739A(1)(e), paragraph 739A(3)(b), paragraph 739A(4)(b) and subsection 739A(6) of the *Social Security Act 1991*.

4 Definition

In this instrument:

Act means the *Social Security Act 1991*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 Classes of visas

6 Classes of visas – subparagraph 729(2)(f)(v)

For the purposes of subparagraph 729(2)(f)(v) of the Act, the classes of visas are:

- (a) Subclass 060 (Bridging F);
- (b) Subclass 070 (Bridging (Removal Pending));
- (c) Subclass 309 (Partner (Provisional));
- (d) Subclass 449 (Humanitarian Stay (Temporary));
- (e) Subclass 785 (Temporary Protection);
- (f) Subclass 786 (Temporary (Humanitarian Concern));
- (g) Subclass 790 (Safe Haven Enterprise); and
- (h) Subclass 820 (Partner).

7 Classes of visas – subparagraph 729(2)(g)(i)

For the purposes of subparagraph 729(2)(g)(i) of the Act, the classes of visas are:

- (a) Subclass 070 (Bridging (Removal Pending));
- (b) Subclass 449 (Humanitarian Stay (Temporary));
- (c) Subclass 785 (Temporary Protection);
- (d) Subclass 786 (Temporary (Humanitarian Concern)); and
- (e) Subclass 790 (Safe Haven Enterprise).

8 Classes of visas – paragraph 739A(1)(e)

For the purposes of paragraph 739A(1)(e) of the Act, the classes of visas are:

- (a) Subclass 309 (Partner (Provisional)); and
- (b) Subclass 820 (Partner).

9 Classes of visas – paragraph 739A(3)(b)

For the purposes of paragraph 739A(3)(b) of the Act, the classes of visas are:

- (a) Subclass 309 (Partner (Provisional)); and
- (b) Subclass 820 (Partner).

10 Classes of visas – paragraph 739A(4)(b)

For the purposes of paragraph 739A(4)(b) of the Act, the classes of visas are:

- (a) Subclass 309 (Partner (Provisional)); and
- (b) Subclass 820 (Partner).

11 Classes of visas – subsection 739A(6)

For the purposes of subsection 739A(6) of the Act, the classes of visas are:

- (a) Subclass 060 (Bridging F);
- (b) Subclass 070 (Bridging (Removal Pending));
- (c) Subclass 449 (Humanitarian Stay (Temporary));
- (d) Subclass 785 (Temporary Protection);
- (e) Subclass 786 (Temporary (Humanitarian Concern)); and
- (f) Subclass 790 (Safe Haven Enterprise).

Schedule 1—Repeals

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)

1 The whole of the instrument

Repeal the instrument

Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)

2 The whole of the instrument

Repeal the instrument

Social Security (Declaration of Visa in a Class of Visas – Special Benefit Activity Test) Determination 2015 (No. 2)

3 The whole of the instrument

Repeal the instrument

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Special Benefit – Class of Visas) Determination 2025

Purpose

The *Social Security (Special Benefit – Class of Visas) Determination 2025* (the Determination) sets out the classes of visas determined by the Minister that may enable holders of those visas to qualify for special benefit under subparagraph 729(2)(f)(v) of the *Social Security Act 1991* (the Act).

Such visa holders may also qualify for other payments as a result of this Determination, such as family tax benefit, child care subsidy, parental leave pay, Disaster Recovery Allowance and Australian Government Disaster Recovery Payment.

The Determination also specifies the classes of visas determined by the Minister for the purposes of subparagraph 729(2)(g)(i) of the Act that may be required to satisfy the “mutual obligation requirements” in subsection 729(2B) of the Act to qualify for special benefit.

Finally, the Determination specifies classes of visas determined by the Minister for the purposes of the newly arrived resident’s waiting period (NARWP) for special benefit.

The Determination specifies the classes of visas under paragraphs 739A(1)(e) of the Act for the purposes of determining the persons subject to a NARWP, and under 739A(3)(b) and 739A(4)(b) of the Act for the purposes of **determining the date on which the NARWP starts**. Holders of the determined visas do not satisfy the **payability requirements for special benefit** until their NARWP has been served, **unless an exemption applies**. Holders of these determined visas may also be subject to the NARWP for family tax benefit Part A and parental leave pay.

The Determination also specifies the classes of visas under subsection 739A(6) of the Act which exempt the holders and former holders of the determined visas from the 208-week NARWP for special benefit. This ensures that these persons may be granted special benefit immediately on the grant of the determined visas, provided the person otherwise satisfies relevant qualification and **payability requirements**. **Holders of these visas may also be exempt from the NARWP for family tax benefit Part A and parental leave pay, enabling immediate access to these payments where eligible.**

Background

Qualification for special benefit

Special benefit is a discretionary benefit and is only available to a person who is unable to get any other income support payment.

In broad terms, a person may be qualified for special benefit under the Act if:

- they are unable to earn a sufficient livelihood for themselves and dependants due to age, disability or domestic circumstances or for any other reason;
- no other social security benefit or pension is payable to them; and
- they are an Australian resident or the holder of a visa in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Act.

Under subsection 7(2) of the Act, a person is an Australian resident if they are residing in Australia and they are either an Australian citizen, the holder of a permanent visa or a Special Category Visa (SCV) holder who is a protected SCV holder. Subparagraph 729(2)(f)(v) of the Act allows holders of determined temporary visas, which do not fall within the definition of Australian resident, to qualify for special benefit.

Paragraph 729(2)(g) of the Act provides a further qualification criterion for special benefit where the person is:

- (i) the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes that is determined by the Minister for the purposes of subparagraph 729(2)(g)(i); and
- (ii) a person to whom subsection 729(2A) applies. This requires considering the person's circumstances in the context of certain disability support pension and youth allowance qualification criteria.

Such a person is a "nominated visa holder" as defined in subsection 23(1) of the Act. A nominated visa holder must meet the additional criteria in subsection 729(2B) of the Act to qualify for special benefit.

Subsection 729(2B) requires that the person must satisfy the employment pathway plan requirements in Division 2A of Part 3 of the *Social Security (Administration) Act 1999* (the Administration Act) and satisfy the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except unsuitable paid work. Alternatively, where the person is exempt from the employment pathway plan requirements under Subdivision C of Division 2A of Part 3 of the Administration Act, the person must satisfy the Employment Secretary that the person would have been willing to actively seek and to accept and undertake suitable paid work were it not for the circumstances relating to the exemption. These requirements are often described informally as "mutual obligation requirements".

Mutual obligation requirements are based on the principle that it is fair and reasonable to expect unemployed people receiving a participation payment (including special benefit) to do their best to find paid work, undertake activities that will improve their skills and increase their employment prospects and, in some circumstances, contribute something to their community in return for receiving income support. A person can be exempted from mutual obligation requirements for various reasons, for example if they are sick or injured, have caring responsibilities or are impacted by domestic violence.

Compliance consequences (such as payment suspensions, reductions or cancellations) may be imposed on a person who does not comply with their mutual obligation requirements, in accordance with Division 3AA or 3A of Part 3 of the Administration Act.

Newly arrived resident's waiting period for special benefit

Subsection 739A(1) of the Act provides that, subject to some exemptions, certain persons are subject to a NARWP for special benefit. These are persons who enter Australia, become the holder of a permanent visa, or become the holder of a visa in a class of visas determined by the Minister for the purposes of paragraph 739A(1)(e). Paragraph 739A(1)(e) allows the NARWP to be applied to holders of determined temporary visas.

Special benefit is not payable to a person during the period in which they are subject to a NARWP, unless an exemption applies. For example, a person will be exempt from the NARWP if, in the Secretary's opinion, the person has suffered a substantial change in circumstances beyond their control after they first entered Australia (subsection 739A(7) of the Act).

Subsections 739A(3), (4) and (5) of the Act set out the rules for determining the day on which the NARWP starts and ends.

Subsections 739A(3) and (4) state that if a person is subject to a NARWP and applies for or was the holder of a visa determined under paragraph 739A(3)(b) or 739A(4)(b) as applicable, then the NARWP starts on the day on which the person applied for the relevant visa and ends when the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

Subsection 739A(5) states that if a person is subject to a NARWP and neither subsection 739A(3) nor (4) apply, then the NARWP starts on the day the person first entered Australia or becomes the holder of a permanent visa, and ends when the person has been in Australia for the required period of weeks.

Subsection 739A(6) of the Act provides that the application of the NARWP under subsections 739A(1) and 739A(2) does not apply if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of subsection 739A(6). This in effect exempts holders and former holders of the determined visas from the NARWP for special benefit.

Determination

This Determination repeals and consolidates three current determinations that are due to sunset on 1 October 2025.

These three determinations are the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)*, the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)* and the *Social Security (Declaration of Visa in a Class of Visas – Special Benefit Activity Test) Determination 2015 (No. 2)*. These determinations are collectively referred to as the 2015 Determinations.

Key changes to 2015 Determinations

The Determination remakes and consolidates the 2015 Determinations in similar terms, but with two key changes.

The first change is removing special benefit residential qualification under subparagraph 729(2)(f)(v) of the Act and the NARWP exemption under subsection 739A(6) of the Act for persons who are granted a Criminal Justice Stay (CJS) visa under subsection 158(2) of the *Migration Act 1958*.

The residential qualification was provided under the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)*, and the NARWP exemption applied under the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)*. The relevant provisions of those determinations applied only where the CJS visa was granted for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices. Individuals are now granted Subclass 060 (Bridging F) visas in these circumstances and CJS visas are no longer considered for these purposes. As the Subclass 060 (Bridging F) visa is specified in the Determination for the purposes of subparagraph 729(2)(f)(v) and subsection 739A(6) of the Act, it is no longer necessary to separately refer to CJS visas.

The second change is the removal of the classes of visas determined under paragraph 739A(8)(c) of the Act. These were included in the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)*. However, paragraph 739A(8)(c) of the Act was repealed and substituted in the *Budget Savings (Omnibus) Act 2016* and no longer contains an instrument-making power to determine classes of visas for the purposes of that paragraph.

Visas specified under subparagraph 729(2)(f)(v)

The Determination specifies the classes of visas, determined under subparagraph 729(2)(f)(v) of the Act, that may qualify for special benefit. The determined visas are Subclass 060 (Bridging F), Subclass 070 (Bridging (Removal Pending)), Subclass 309 (Partner (Provisional)), Subclass 449 (Humanitarian Stay (Temporary)), Subclass 785 (Temporary Protection),

Subclass 786 (Temporary (Humanitarian Concern)), Subclass 790 (Safe Haven Enterprise), and Subclass 820 (Partner) visas.

The determined visas remain the same as previously determined, apart from the removal of CJS visas granted under subsection 158(2) of the *Migration Act 1958* for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices.

This aspect of the Determination also applies to other payments apart from special benefit. Where a person holds a visa determined under subparagraph 729(2)(f)(v) of the Act, this is relevant for the purposes of qualification for family tax benefit and child care subsidy under the *A New Tax System (Family Assistance) Act 1999*, eligibility for parental leave pay under the *Paid Parental Leave Act 2010*, and qualification for Disaster Recovery Allowance and Australian Government Disaster Recovery Payment under the Act.

Visas specified under subparagraph 729(2)(g)(i)

The Determination also specifies the classes of visas, determined under subparagraph 729(2)(g)(i) of the Act, which may require holders of the determined visas to be subject to mutual obligation arrangements in order to qualify for special benefit. The determined visas are Subclass 070 (Bridging (Removal Pending)), Subclass 449 (Humanitarian Stay (Temporary)), Subclass 785 (Temporary Protection), Subclass 786 (Temporary (Humanitarian Concern)), and Subclass 790 (Safe Haven Enterprise) visas. There are no changes to the classes of visas previously determined for these purposes.

These visa holders are subject to mutual obligation requirements in order to demonstrate they are looking for work and are participating in activities to assist them into employment.

This aspect of the Determination is also relevant for the purposes of the approved program of work supplement, as a nominated visa holder receiving special benefit and participating in an approved program of work may have this supplement added to their rate under section 747 of the Act.

Visas specified under paragraph 739A(1)(e)

The Determination specifies the classes of visas, determined under paragraph 739A(1)(e) of the Act, which require the holder of such a visa to serve a NARWP. The determined visas are Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner) visas. There are no changes to the classes of visas previously determined for these purposes.

These visa holders are subject to a NARWP if they enter Australia, in accordance with paragraph 739A(1)(a), unless an exemption applies. However, determining the classes of visas for the purposes of paragraph 739A(1)(e) clearly provides that holders of these visas are also subject to a NARWP in accordance with that provision.

These visa subclasses are granted under the family stream of Australia's migration program and allow the partner or spouse of an Australian citizen, Australian permanent resident or eligible New Zealand citizen to live in Australia while their application for a permanent Subclass 100 (Partner) or Subclass 801 (Partner) visa is processed. These permanent visas are subject to a NARWP under paragraph 739A(1)(b).

The application of the NARWP to these temporary visa subclasses reflects the purpose of the NARWP, which is that people seeking to settle permanently in Australia under the family stream support themselves initially, including through support from their partner or spouse already in Australia.

Visas specified under paragraphs 739A(3)(b) and 739A(4)(b)

The Determination also determines classes of visas for the purposes of paragraphs 739A(3)(b) and 739A(4)(b) of the Act, which relate to the start date for the NARWP in certain circumstances. There are no changes to the classes of visas previously determined for these purposes.

Paragraphs 739A(3)(b) and 739A(4)(b) are intended to prevent persons who have served all or part of their NARWP for special benefit while in Australia on a determined temporary visa from being required to restart or re-serve the NARWP if they are subsequently granted a permanent visa. That is, even if the person is granted a permanent visa, their NARWP continues to be measured from the day on which they applied for the specified temporary visa.

The determined visas are Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner) visas. This reflects that holders of these visas are on a pathway to permanent residency, as these visas are granted to allow the holder to stay in Australia while their application for a permanent partner visa is being processed.

This aspect of the Determination is also relevant for the purposes of the NARWP in relation to family tax benefit Part A under the *A New Tax System (Family Assistance) Act 1999*, and parental leave pay under the *Paid Parental Leave Act 2010*. This means that Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner) visa holders who have already served all or part of the NARWP for family tax benefit Part A or parental leave pay while on a temporary partner visa do not have to restart or re-serve the NARWP if they are granted a permanent visa.

Visas specified under subsection 739A(6)

The Determination specifies classes of visas which exempt holders and former holders of those determined visas from the 208-week NARWP for special benefit under subsection 739A(6) of the Act. The determined visas are Subclass 060 (Bridging F), Subclass 070 (Bridging (Removal Pending)), Subclass 449 (Humanitarian Stay (Temporary)), Subclass 785 (Temporary Protection), Subclass 786 (Temporary (Humanitarian Concern)), and Subclass 790 (Safe Haven Enterprise) visas.

This ensures that a person may be paid special benefit immediately subsequent to being granted one of the determined visas, subject to the person otherwise satisfying the qualification and payability requirements for that payment.

The determined visas remain the same, apart from the removal of CJS visas granted under subsection 158(2) of the *Migration Act 1958* for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices.

This aspect of the Determination is also relevant for the purposes of NARWP exemptions for family tax benefit Part A under the *A New Tax System (Family Assistance) Act 1999* and parental leave pay under the *Paid Parental Leave Act 2010*.

Authority

The Determination is made under subparagraphs 729(2)(f)(v) and 729(2)(g)(i), paragraphs 739A(1)(e), 739A(3)(b), 739A(4)(b), and subsection 739A(6) of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke such instrument. In repealing the 2015 Determinations, the Minister is relying on this provision in conjunction with the instrument-making powers above.

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

Commencement

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

Consultation

The Department of Social Services consulted with the following agencies on the intention to make this Determination:

- Services Australia, given that agency's responsibility for administering special benefit,
- the Department of Employment and Workplace Relations, given that agency's responsibility for mutual obligation requirements and compliance for relevant special benefit recipients,
- the Department of Education, given that agency's responsibility for child care subsidy, which is affected by the Determination, and
- the National Emergency Management, given that agency's responsibility for Disaster Recovery Allowance and Australian Government Disaster Recovery Payment, which are affected by the Determination, and
- the Department of Home Affairs, to assist with ensuring that the visa classes in the Determination are current. The reference to the CJS visa has been removed from this Determination following this consultation.

These agencies supported the Determination being made.

Public consultation was considered unnecessary because this Determination is administrative in nature. There are no substantive changes to the practical application of the law as a result of this Determination.

Availability of independent review

A decision made under the social security law, as informed by the Determination, is subject to internal and external review under Parts 4 and 4A of the Administration Act.

Explanation of the provisions

Details of the *Social Security (Special Benefit – Class of Visas) Determination 2025*

Part 1 - Preliminary

Section 1 – Name

Section 1 states how the Determination is to be cited, that is, as the *Social Security (Special Benefit – Class of Visas) Determination 2025*.

Section 2 - Commencement

Section 2 specifies that the Determination commences on the day after it is registered.

Section 3 – Authority

Section 3 provides that the Determination is made under subparagraphs 729(2)(f)(v) and 729(2)(g)(i), paragraphs 739A(1)(e), 739A(3)(b) and 739A(4)(b), and subsection 739A(6) of the Act.

Section 4 – Definition

Section 4 provides that in the Determination, “Act” means the *Social Security Act 1991*.

Section 5 – Schedules

Section 5 provides that each instrument that is specified in a Schedule to the Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Determination has effect according to its terms.

Schedule 1 repeals the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)*, the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)* and the *Social Security (Declaration of Visa in a Class of Visas – Special Benefit Activity Test) Determination 2015 (No. 2)*.

Part 2 – Classes of visas

Section 6 - Classes of visas - subparagraph 729(2)(f)(v)

Section 6 determines classes of visas for the purposes of subparagraph 729(2)(f)(v) of the Act. The classes of visas are:

- Subclass 060 (Bridging F);
- Subclass 070 (Bridging (Removal Pending));
- Subclass 309 (Partner (Provisional));
- Subclass 449 (Humanitarian Stay (Temporary));
- Subclass 785 (Temporary Protection);
- Subclass 786 (Temporary (Humanitarian Concern));
- Subclass 790 (Safe Haven Enterprise); and
- Subclass 820 (Partner).

The effect of this is that holders of these visas may qualify for special benefit (subject to meeting all other requirements).

Section 7 – Classes of visas - subparagraph 729(2)(g)(i)

Section 7 determines classes of visas for the purposes of subparagraph 729(2)(g)(i) of the Act. The classes of visas are:

- Subclass 070 (Bridging (Removal Pending));
- Subclass 449 (Humanitarian Stay (Temporary));
- Subclass 785 (Temporary Protection);
- Subclass 786 (Temporary (Humanitarian Concern)); and
- Subclass 790 (Safe Haven Enterprise).

The effect of this is that holders of these visas may be required to satisfy the requirements in subsection 729(2B) of the Act in order to qualify for special benefit.

Section 8 – Classes of visas - paragraph 739A(1)(e)

Section 8 determines classes of visas for the purposes of paragraph 739A(1)(e) of the Act. The classes of visas are:

- Subclass 309 (Partner (Provisional)); and
- Subclass 820 (Partner).

The effect of this is that a person who holds one of these visas is subject to a newly arrived resident's waiting period (NARWP).

Section 9 – Classes of visas - paragraph 739A(3)(b)

Section 9 determines classes of visas for the purposes of paragraph 739A(3)(b) of the Act. The classes of visas are:

- Subclass 309 (Partner (Provisional)); and
- Subclass 820 (Partner).

The effect of this is that if a person is subject to a NARWP and applies for one of these visas, the NARWP starts on the day on which the person applied for that visa and ends when the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

Section 10 – Classes of visas - paragraph 739A(4)(b)

Section 10 determines classes of visas for the purposes of paragraph 739A(4)(b) of the Act. The classes of visas are:

- Subclass 309 (Partner (Provisional)); and
- Subclass 820 (Partner).

The effect of this is that if a person is subject to a NARWP and was the holder of one of these visas, the NARWP starts on the day on which the person applied for that visa and ends when the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

Section 11 – Classes of visas - paragraph 739A(6)

Section 11 determines classes of visas for the purposes of subsection 739A(6) of the Act. The classes of visas are:

- Subclass 060 (Bridging F);
- Subclass 070 (Bridging (Removal Pending));
- Subclass 449 (Humanitarian Stay (Temporary));
- Subclass 785 (Temporary Protection);
- Subclass 786 (Temporary (Humanitarian Concern)); and
- Subclass 790 (Safe Haven Enterprise).

The effect of this is that a person who is the holder or former holder of any of these visa classes is exempt from the NARWP for special benefit.

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the whole of the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)*.

Item 2 of Schedule 1 repeals the whole of the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)*.

Item 3 of Schedule 1 repeals the whole of the *Social Security (Declaration of Visa in a Class of Visas – Special Benefit Activity Test) Determination 2015 (No. 2)*.

All three instruments are due to sunset on 1 October 2025.

The Determination is intended to remake these 2015 Determinations in similar terms, but with minor updates which do not make substantive changes to the practical application of the law.

Statement of Compatibility with Human Rights

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

Social Security (Special Benefit – Class of Visas) Determination 2025

The *Social Security (Special Benefit – Class of Visas) Determination 2025* (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 sets out the classes of visas determined by the Minister that may enable holders of those visas to qualify for special benefit under subparagraph 729(2)(f)(v) of the *Social Security Act 1991* (the Act). Holders of the determined visas may be granted special benefit, provided they satisfy all other relevant qualification and payability requirements. Such visa holders may also qualify for other payments as a result of this Determination, such as family tax benefit, child care subsidy, parental leave pay, Disaster Recovery Allowance and Australian Government Disaster Recovery Payment.

The Determination also specifies the classes of visas for the purposes of subparagraph 729(2)(g)(i) of the Act, and holders of these visas may be required to satisfy the requirements in subsection 729(2B) of the Act to qualify for special benefit. Subsection 729(2B) requires that the person must satisfy the employment pathway plan requirements in Division 2A of Part 3 of the *Social Security (Administration) Act 1999* (the Administration Act) and satisfy the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except unsuitable paid work. Alternatively, where the person is exempt from the employment pathway plan requirements under Subdivision C of Division 2A of Part 3 of the Administration Act, the person must satisfy the Employment Secretary that the person would have been willing to actively seek and to accept and undertake suitable paid work were it not for the circumstances relating to the exemption. These requirements are often described informally as “mutual obligation requirements”.

Finally, the Determination specifies classes of visa for the purposes of the newly arrived resident’s waiting period (NARWP) for special benefit.

The Determination specifies the classes of visas under paragraphs 739A(1)(e) of the Act for the purposes of determining the persons subject to a NARWP, and under 739A(3)(b) and 739A(4)(b) of the Act for the purposes of determining the date on which the NARWP starts. Holders of the determined visas do not satisfy the payability requirements for special benefit until their NARWP has been served, unless an exemption applies. Holders of these determined visas may also be subject to the NARWP for family tax benefit Part A and parental leave pay.

The Determination also specifies the classes of visas under subsection 739A(6) of the Act which exempt the holders and former holders of the determined visas from the 208-week NARWP for special benefit. This ensures that these persons may be granted special benefit immediately on the grant of the determined visas, provided the person otherwise satisfies relevant qualification and payability requirements. Holders of these visas may also be exempt from the NARWP for family tax benefit Part A and parental leave pay, enabling immediate access to these payments where eligible.

Human rights implications

This Determination engages the following human rights:

- the right to social security as contained in Article 9 under the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living, including food, water and housing as contained in Article 11 of the ICESCR and Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- the right to maternity leave as contained in Article 10(2) of the ICESCR and Article 11(2)(b) of the CEDAW;
- the right to respect for the family as contained in Articles 23 and 17(1) of the International Covenant on Civil and Political Rights (ICCPR);
- the rights of parents and children as contained in Article 3 of the Convention on the Rights of the Child (CRC) and Article 24(1) of the ICCPR; and
- the right to equality and non-discrimination as contained in Articles 2, 16 and 26 of the ICCPR.

Right to social security, right to an adequate standard of living, right to maternity leave, right to respect for the family and rights of parents and children

The Determination engages the right to social security, right to an adequate standard of living, right to maternity leave, right to respect for the family and rights of parents and children by providing that holders of the determined visas will qualify for special benefit and other relevant payments, including family payments.

To the extent that the Determination limits these rights by imposing qualification requirements on receipt of special benefit, including mutual obligations and waiting periods on holders of the determined visas, the limitations are legitimate, reasonable, necessary and proportionate.

It is longstanding policy and legislation that special benefit is a discretionary benefit and is only available to a person who is unable to get any other income support payment. The Determination enables holders of certain temporary visas to have access to special benefit and certain other social security payments and family payments. Most other temporary visa holders do not have

access to these payments, which reflects the residency-based nature of Australia's welfare payments system. Enabling holders of the determined temporary visas to qualify for these payments reflects the particular circumstances in which these visas are granted and is reasonable and proportionate to achieving the legitimate objective of ensuring that special benefit and other relevant payments are targeted to vulnerable persons who require financial assistance.

Mutual obligation requirements support people in receipt of relevant social security payments to find and keep paid work which is suitable for them and facilitate their participation in, and contribution to, Australian society and the economy. It is reasonable to expect that recipients of social security payments undertake activities and programs that will increase their chances of finding and keeping paid work. The application of mutual obligation requirements to the determined temporary visa holders is reasonable and proportionate to achieving this objective and promotes consistency with recipients of other relevant social security payments. Where the determined visa holders comply with their mutual obligations, they will not have their special benefit payment affected. There are also exemptions from mutual obligation requirements for those in certain circumstances, for example, those with caring responsibilities and those who have an illness or disability.

It is also longstanding policy and legislation that a NARWP applies to certain welfare payments, including special benefit. The NARWP is designed to encourage migrants under the skilled and family streams of Australia's migration program to take steps to provide for their own support when they first settle in Australia.

To the extent that the application of a NARWP to holders of the determined temporary visas limits the above rights, this is reasonable and proportionate to the objective of the NARWP and promotes consistency with recipients of other relevant social security payments that are subject to the NARWP. This limitation is mitigated through the provision of exemptions from the NARWP, including as provided through the Determination, such that a safety net remains in place for people whose circumstances mean they may be less able to support themselves or whose circumstances change such that they can no longer support themselves as planned. This enables these persons to have immediate access to special benefit and family payments, subject to satisfying all other relevant requirements.

This limitation is also mitigated by providing that holders and former holders of a determined temporary visa that is subject to the NARWP do not have to wait longer than the intended NARWP before having access to certain welfare payments, including special benefit, family tax benefit Part A and paid parental leave payments. That is, people who have already partially or fully served a NARWP while holding a determined temporary visa do not have to serve another NARWP for these payments if they are subsequently granted a permanent visa.

Right to equality and non-discrimination

This Determination specifies holders of certain temporary visas residentially qualify for special benefit and certain other social security payments and family payments. Most other temporary visa holders do not have access to these payments, which reflects the residency-based nature of Australia's welfare payments system.

Differential treatment enabling qualification to special benefit for this cohort reflects the particular circumstances of these temporary visa holders, who are temporary humanitarian and temporary partner/partner provisional visa holders, and certain bridging visa holders. It is reasonable and proportionate to achieving the legitimate objective of ensuring that special benefit and other relevant payments are targeted to vulnerable persons who require financial assistance.

This Determination applies mutual obligation requirements to holders of visas that are issued for temporary protection, humanitarian or safe haven purposes.

Differential treatment in applying mutual obligations for this cohort reflects the nature and purpose of these temporary visas and recognises these visa holders need additional support to find employment and facilitate their participation in, and contribution to, Australian society and the economy. These obligations are not extended to Subclass 060 Bridging F visa holders as these visa holders have been granted the visa for the specific purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices and they are not expected to seek employment. The application of mutual obligation requirements to the determined temporary visa holders is reasonable and proportionate to achieving this objective and promotes consistency with recipients of other relevant social security payments.

This Determination specifies that Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner) visas are subject to a NARWP for special benefit. This has a flow on effect to the equivalent waiting periods for family tax benefit Part A and parental leave pay.

Unlike most other temporary visa types, a person must apply for a temporary partner or partner provisional visa at the same time as a permanent partner visa. While other temporary visa holders may choose to subsequently apply for a permanent visa, the temporary visa is not part of the application process for the permanent visa.

Temporary partner and partner provisional visa holders are treated differently to other temporary visa holders under existing legislation to recognise that these visa holders have entered Australia with the intention of settling permanently. The provisional or temporary partner visa is granted so the visa holder can stay in Australia while their application for a permanent partner visa is processed.

Differential treatment for this cohort reflects the nature and purpose of these temporary visas which are granted to allow the holder to stay in Australia while their application for a permanent partner visa is being processed. To the extent that this limits the right to equality and non-discrimination, this is considered reasonable and proportionate to achieving the legitimate objective of ensuring that these visa holders meet their own living costs for a reasonable period before receiving Government assistance, and without having to serve multiple waiting periods once they are granted a permanent visa.

To the extent that the application of NARWP exemptions to holders and former holders of certain temporary visas limits the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate objective of ensuring that vulnerable persons who require financial assistance are immediately able to access special benefit and family payments.

Conclusion

This Determination is compatible with human rights. To the extent that a human rights obligation is engaged or limited, the impact is reasonable and proportionate in achieving the objectives of the Determination and of special benefit, mutual obligations and NARWP policy more broadly.

The Hon Tanya Plibersek MP
Minister for Social Services