

# **SOCIAL SECURITY REGULATIONS 2022**

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

under the *Social Security (Administration) Act 1999*

### **Purpose**

The Social Security Regulations 2022 (regulations) are made under the *Social Security (Administration) Act 1999* (Administration Act) for the purposes of the *Social Security Act 1991* (Act). The regulations repeal and remake the *Social Security Regulation 2012* (2012 regulation) in substantially the same terms.

The regulations specify particular ‘humanitarian purposes’ relating to overseas portability of certain social security payments. If a recipient of jobseeker payment, youth allowance (other than a full-time student), special benefit or disability support pension is temporarily absent overseas for a ‘humanitarian purpose’, their payment may be continued for a certain period during that absence.

The regulations specify the same humanitarian purposes as the 2012 regulation. These relate to competing and qualifying for the Paralympic Games, and attending an approved memorial service. The regulations are not intended to change the effect of the 2012 regulation.

### **Background**

#### **Overseas portability**

Part 4.2 of the Act deals with the overseas portability of certain social security payments. This refers to the circumstances in which recipients of such payments can travel outside Australia and continue to receive the payment.

Under section 1217 of the Act, social security payments may not be paid to a person who is absent from Australia, unless the absence is an allowable absence and the absence falls within the maximum portability period for the payment.

Generally, disability support pension recipients are eligible for 28 days of portability in a rolling 12-month period. However, if they are temporarily absent overseas for a specified purpose, including a ‘humanitarian purpose’, their payment may be paid for up to an additional four weeks. Recipients of jobseeker payment, youth allowance (other than a full-time student) and special benefit may continue payment for up to six weeks while temporarily absent overseas for a specified purpose, including a ‘humanitarian purpose’.

#### **Humanitarian purpose**

The term ‘humanitarian purpose’ is defined in section 1212B of the Act. This includes paragraph 1212B(c), which provides a person’s overseas absence is for a

humanitarian purpose at a particular time if the Secretary is satisfied the absence is, at that time, for a purpose specified in the regulations for the purposes of this paragraph.

The 2012 regulation specified three humanitarian purposes for the purposes of paragraph 1212B(c). These same three purposes are also specified in the regulations to ensure they are continued.

### Regulations

The regulations are not intended to change the effect of the 2012 regulation, and in particular, do not make any changes to the humanitarian purposes specified in the 2012 regulation. The regulations clarify that the term 'Australian resident' has the same meaning as in the Act, by inserting a new definition. The regulations also make minor typographical changes consistent with current drafting practices.

### **Authority**

The regulations are made under subsection 243(1) of the Administration Act, which provides that the Governor-General may make regulations prescribing matters required or permitted by the Act or the Administration Act to be prescribed, or are necessary or convenient for carrying out or giving effect to the Act or the Administration Act. The regulations are made for the purposes of paragraph 1212B(c) of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 regulations rely on this subsection as the basis for repealing the 2012 regulation.

### **Information sharing**

Information about a person that is collected by an officer in relation to the overseas portability of social security payments will have the character of protected information. This is because it is information obtained for the purposes of the social security law.

The Administration Act has protections in place that limit the way in which protected information is handled. Under Division 3 of Part 5 of the Administration Act, a person will be authorised to record, disclose or use protected information, for example, where this is for the purposes of the social security law or family assistance law, with consent or in accordance with a public interest certificate. If the recording, disclosure or use of protected information is not authorised under the Administration Act and the person knows or ought reasonably to know that the information is protected information, the person may commit an offence, which is punishable on conviction by imprisonment for a term not exceeding two years.

The collection, use, recording, disclosure and security of information about social security recipients and other individuals is also subject to the Australian Privacy Principles in the *Privacy Act 1988*.

### **Availability of independent review**

Under subsection 23(17) of the Act, legislative instruments made under the Administration Act form part of the social security law. Accordingly, decisions made under the regulations are subject to internal and external merits review under Parts 4 and 4A of the Administration Act (unless specified as a decision that is not reviewable under sections 127 and 144 of the Administration Act).

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

### **Commencement**

The regulations commence on the day after registration on the Federal Register of Legislation.

### **Consultation**

The Department of Social Services consulted with Services Australia as the service delivery agency, and the Australian Institute of Sport as the agency responsible for para-athletes.

Further external consultation was undertaken with Paralympics Australia as the peak national body responsible for Australian elite athletes with disability.

Stakeholders supported the regulations.

### **Regulation Impact Statement**

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as the regulations are unlikely to have more than a minor regulatory impact (OBPR ID: 22-02767).

### **Explanation of the provisions**

#### Part 1 - Preliminary

##### Section 1 – Name

This section provides that the name of the regulations is the *Social Security Regulations 2022*.

##### Section 2 - Commencement

This section provides that the whole of the regulations commence on the day after the regulations are registered on the Federal Register of Legislation.

### Section 3 - Authority

This section provides that the authority for making the regulations is the *Social Security (Administration) Act 1999*.

### Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to the regulations is amended or repealed as set out in the applicable items in the relevant Schedule, and any other item in a Schedule to the regulations has effect according to its terms.

### Section 5 - Definitions

This section contains definitions that are used in the regulations.

In the regulations, the term '1991 Act' is defined in section 5 as having the same meaning as in the *Social Security (Administration) Act 1999*. Subclause 1(1) of Schedule 1 to the Administration Act provides that '1991 Act' means the *Social Security Act 1991*.

Section 5 defines the term 'Australian resident' as having the same meaning as in subsection 7(2) of the Act. Subsection 7(2) provides that an 'Australian resident' is a person who resides in Australia and is either an Australian citizen, the holder of a permanent visa, or a special category visa holder who is a protected special category visa holder.

The term 'family member' is defined in section 5 as having the same meaning as in subsection 23(14) of the Act. In relation to a relevant person, subsection 23(14) provides that a 'family member' is their partner, parent, sister, brother or child, or any other person who, in the Secretary's opinion, should be treated as one of these relations in respect of the relevant person, for the purposes of this definition.

## Part 2 – Meaning of humanitarian purpose

### Section 6 – Meaning of humanitarian purpose

Section 6 specifies the meaning of 'humanitarian purpose' for the purposes of paragraph 1212B(c) of the Act. These are the same three humanitarian purposes as those specified in the 2012 regulation. If a recipient of jobseeker payment, youth allowance (other than a full-time student), special benefit or disability support pension is temporarily absent overseas for any of these humanitarian purposes, their payment may be continued for a certain period during that absence.

Paragraphs 6(a) and 6(b) relate to the Paralympic Games. The Paralympic Games are an international athletic competition for athletes with disability. Both Summer and Winter Games are generally held alternatively every four years. The next Paralympic Games is scheduled to be held in Paris, France in August-September 2024. Paragraphs 6(a) and 6(b) will benefit relevant Australian athletes in relation to the 2024 Paralympic Games, and subsequent Paralympic Games.

Paragraph 6(a) specifies that a humanitarian purpose is attendance for participation as a competitor at the Paralympic Games, as a formally selected member of the Australian Paralympic Team. This requires that the recipient must have officially qualified to represent Australia at the Paralympic Games, and be temporarily overseas to attend and compete in those Games in that capacity. This attendance would occur on relevant days surrounding and during the dates on which the Paralympic Games are held.

Paragraph 6(b) only applies to disability support pension recipients. For this provision to apply, the disability support pension recipient must attend an overseas athletic competition or other event to participate as an athlete, for Paralympic Games qualifying or preparatory purposes. That is, the attendance must be necessary for the disability support pension recipient to either:

- qualify as a competitor at the Paralympic Games, or
- prepare as a competitor for the Paralympic Games, whether or not the recipient has actually qualified as a competitor.

This may include competing in overseas athletic competitions or attending overseas training camps. This provision covers those athletes who have already been preselected for the Paralympic team or qualified for the Games, as well as those who do not ultimately qualify for the Games or are selected as a member of the Paralympic team.

Paragraph 6(b) also requires that the disability support pension recipient's attendance at the competition or event must occur in the 12 months before the start of the relevant Paralympic Games.

Paragraph 6(c) provides that a humanitarian purpose is a person's attendance at a relevant memorial service. The following requirements must be met for this provision to apply:

- the memorial service must be to commemorate an event involving the death or serious injury of an Australian resident
- the memorial service must have been approved by the Australian Government, and
- the person's attendance at the memorial service must be either:
  - o as an Australian resident who was seriously injured in the event themselves, or
  - o as a family member of an Australian resident who died or was seriously injured in the event.

The terms 'Australian resident' and 'family member' are defined in section 5 of the regulations by reference to subsection 7(2) and subsection 23(14) of the Act respectively.

The note following paragraph 6(c) provides that examples of an 'event', as referred to in this provision, are a war, an act of terrorism and a natural disaster.

An example of a previous similar humanitarian purpose, under a former similar provision in the 2012 regulation, was attendance by an eligible Australian at the Bali bombing memorial event held in Bali, Indonesia, in 2012.

Paragraph 6(c) applies to benefit relevant social security recipients attending an approved memorial service after the regulations commence.

#### Schedule 1 – Repeals

Item 1 of Schedule 1 provides that the whole of the *Social Security Regulation 2012* is repealed.

The 2012 regulation is due to sunset on 1 October 2022, and the regulations replace the 2012 regulation in substantially the same terms.

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

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

### **Social Security Regulations 2022**

The regulations are 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**

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#### **Human rights implications**

The regulations engage the right to social security, the rights of people with disability and the rights to equality and non-discrimination.

##### Right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to social security.

The right to social security requires a system be established under domestic law and public authorities take responsibility for the effective administration of the system. The social security system must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

Article 4 of the ICESCR provides that parties may limit the right to social security by law only in so far as this may be compatible with the nature of the right and solely for the purpose of promoting the general welfare in a democratic society. Such a limitation must be proportionate to the objective to be achieved.

The regulations do not place limitations on human rights and do not impact on an individual’s right to social security. The regulations increase access to social security and advance human rights as they allow social security recipients to

maintain continuity of payments while they travel overseas for certain humanitarian purposes.

#### Rights of people with disability and rights to equality and non-discrimination

Article 2(2) of the ICESCR and Article 26 of the International Covenant on Civil and Political Rights contain rights to equality and protection against discrimination on any ground.

Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD) recognises the right of people with disability to an adequate standard of living and social protection. Article 28 requires parties to take appropriate steps to safeguard and promote the realisation of this right without discrimination, including through ensuring access to social protection programmes.

Article 30 of the CRPD recognises the right of people with disability to equally participate in cultural life, recreation, leisure and sport. Article 30 requires parties to take appropriate measures to ensure people with disability have an opportunity to organise, develop and participate in disability-specific sporting and recreational activities.

The regulations support the participation of people with disability in the Paralympic Games and related competitions and events, and advance human rights by ensuring continuity of their social security payments.

#### **Conclusion**

The regulations are compatible with human rights as they promote human rights and do not limit or preclude people, particularly people with disability, from gaining or maintaining access to social security in Australia or during temporary overseas absences for certain humanitarian purposes.

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