



Social Services Legislation Amendment (Portability Extensions) Act 2021

No. 53, 2021

**An Act to amend the law relating to social security,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 53, 2021

**An Act to amend the law relating to social security,
and for related purposes**

[Assented to 24 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the Social Services Legislation Amendment (Portability Extensions) Act 2021.

2 Commencement

- (1) Each provision of this Act 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 Act	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Social Security Act 1991

1 Subsections 1216(2) and (3)

Repeal the subsections, substitute:

- (2) If:
- (a) the Secretary is satisfied that the person's absence from Australia is temporary; and
 - (b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (3);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.

- (3) The events are the following:
- (a) a serious accident involving the person or a family member of the person;
 - (b) a serious illness of the person or a family member of the person;
 - (c) the hospitalisation of the person or a family member of the person;
 - (d) the death of a family member of the person;
 - (e) the person's involvement in custody proceedings in the country in which the person is located;
 - (f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in the country in which the person is located;

- (i) a public health crisis affecting Australia or the country in which the person is located or both;
 - (j) political or social unrest in the country in which the person is located;
 - (k) industrial action in the country in which the person is located;
 - (l) a war in the country in which the person is located.
- (4) The Secretary must not make a determination under subsection (2) unless:
- (a) the event occurred or began during the period of absence; and
 - (b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in, the event.
- (5) If the Secretary determines another number (the *new number*) of weeks under subsection (2), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (2), is taken to be a reference to that new number.

2 After subsection 1220A(1)

Insert:

- (1A) If:
- (a) the Secretary is satisfied that the person's absence from Australia is temporary; and
 - (b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (1B);
- the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.
- (1B) The events are the following:
- (a) a serious accident involving the person or a family member of the person;
 - (b) a serious illness of the person or a family member of the person;

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- (c) the hospitalisation of the person or a family member of the person;
 - (d) the death of a family member of the person;
 - (e) the person's involvement in custody proceedings in the country in which the person is located;
 - (f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in the country in which the person is located;
 - (i) a public health crisis affecting Australia or the country in which the person is located or both;
 - (j) political or social unrest in the country in which the person is located;
 - (k) industrial action in the country in which the person is located;
 - (l) a war in the country in which the person is located.
- (1C) The Secretary must not make a determination under subsection (1A) unless:
- (a) the event occurred or began during the period of absence; and
 - (b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating, in the event.
- (1D) If the Secretary determines another number (the *new number*) of weeks under subsection (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (1A), is taken to be a reference to that new number.

3 Subsections 1220A(6) and (7)

Repeal the subsections.

4 After subsection 1220B(1)

Insert:

(1A) If:

- (a) the Secretary is satisfied that the person's absence from Australia is temporary; and
- (b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (1B);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.

(1B) The events are the following:

- (a) a serious accident involving the person or a family member of the person;
- (b) a serious illness of the person or a family member of the person;
- (c) the hospitalisation of the person or a family member of the person;
- (d) the death of a family member of the person;
- (e) the person's involvement in custody proceedings in the country in which the person is located;
- (f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
- (g) robbery or serious crime committed against the person or a family member of the person;
- (h) a natural disaster in the country in which the person is located;
- (i) a public health crisis affecting Australia or the country in which the person is located or both;
- (j) political or social unrest in the country in which the person is located;
- (k) industrial action in the country in which the person is located;
- (l) a war in the country in which the person is located.

(1C) The Secretary must not make a determination under subsection (1A) unless:

- (a) the event occurred or began during the period of absence; and
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(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in, the event.

(1D) If the Secretary determines another number (the *new number*) of weeks under subsection (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (1A), is taken to be a reference to that new number.

5 Subsections 1220B(3) and (4)

Repeal the subsections.

6 Division 4 of Part 4.2

Repeal the Division.

7 After subclause 128(1) of Schedule 1A

Insert:

(1A) If:

- (a) the Secretary is satisfied that the person's return to Australia is temporary; and
- (b) the Secretary is satisfied that the person is unable to leave Australia before the end of the 26 weeks mentioned in paragraph (1)(b) because of an event referred to in subclause (1B);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(b) is taken to be a reference to another number of weeks.

(1B) The events are the following:

- (a) a serious accident involving the person or a family member of the person;
- (b) a serious illness of the person or a family member of the person;
- (c) the hospitalisation of the person or a family member of the person;
- (d) the death of a family member of the person;

- (e) the person's involvement in custody proceedings in Australia;
 - (f) a legal requirement for the person to remain in Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in Australia;
 - (i) a public health crisis affecting Australia or the country to which the person intends to return to or both.
- (1C) The Secretary must not make a determination under subclause (1A) unless the event occurred or began during the period of return to Australia.
- (1D) If the Secretary determines another number (the *new number*) of weeks under subclause (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(b), and each reference to a number of weeks in subclause (1A), is taken to be a reference to that new number.

8 Subclauses 128(4) and (5) of Schedule 1A

Repeal the subclauses.

Social Security (Administration) Act 1999

9 At the end of Subdivision B of Division 9 of Part 3

Add:

114A Date of effect of favourable determination—portability extensions

A favourable determination that is made as a result of a determination referred to in:

- (a) subsection 1216(2), 1220A(1A) or 1220B(1A) of the 1991 Act; or
- (b) subclause 128(1A) of Schedule 1A to the 1991 Act; or

(c) subitem 6(6) or 14(8) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014*;
may be expressed to take effect on a day earlier than otherwise permitted by this Subdivision.

Social Services and Other Legislation Amendment Act 2014

10 At the end of item 6 of Schedule 4

Add:

Portability extension

(6) If:

- (a) in relation to a person referred to in subitem (3) or (4), the Secretary is satisfied that the person's return to Australia is temporary; and
- (b) the Secretary is satisfied that the person is unable to leave Australia before the end of the 26 weeks mentioned in paragraph (3)(d) or (4)(d) because of an event referred to in subitem (7);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (3)(d) or (4)(d) is taken to be a reference to another number of weeks.

(7) The events are the following:

- (a) a serious accident involving the person or a family member of the person;
- (b) a serious illness of the person or a family member of the person;
- (c) the hospitalisation of the person or a family member of the person;
- (d) the death of a family member of the person;
- (e) the person's involvement in custody proceedings in Australia;
- (f) a legal requirement for the person to remain in Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);

- (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in Australia;
 - (i) a public health crisis affecting Australia or the country to which the person intends to return to or both.
- (8) The Secretary must not make a determination under subitem (6) unless the event occurred or began during the period of return to Australia.
- (9) If the Secretary determines another number (the **new number**) of weeks under subitem (6), then, immediately after that determination is made, a reference to a number of weeks in paragraph (3)(d) or (4)(d), and each reference to a number of weeks in subitem (6), is taken to be a reference to that new number.
- (10) Subitems (6) to (8) apply in relation to the following:
 - (a) a period of return to Australia starting on or after the commencement of those subitems;
 - (b) a period of return to Australia starting before that commencement, where the person is in Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph (3)(d) or (4)(d) of this item had not ended immediately before that commencement; or
 - (ii) under subsection 1221A(1) of the *Social Security Act 1991*, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred to in paragraph (3)(d) or (4)(d) of this item ended at the end of 30 June 2021.
- (11) If subitems (6) to (8) apply in relation to a period of return because of the operation of subparagraph (10)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph (3)(d) or (4)(d) of this item, and each reference to 26 weeks in subitem (6), is taken to be a reference to that other number of weeks.

11 At the end of item 14 of Schedule 4

Add:

Portability extension

- (8) If:
- (a) in relation to a person referred to in subitem (3) or (4), the Secretary is satisfied that the person's return to Australia is temporary; and
 - (b) the Secretary is satisfied that the person is unable to leave Australia before the end of the 26 weeks mentioned in paragraph (3)(d) or (4)(d) because of an event referred to in subitem (9);
- the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (3)(d) or (4)(d) is taken to be a reference to another number of weeks.
- (9) The events are the following:
- (a) a serious accident involving the person or a family member of the person;
 - (b) a serious illness of the person or a family member of the person;
 - (c) the hospitalisation of the person or a family member of the person;
 - (d) the death of a family member of the person;
 - (e) the person's involvement in custody proceedings in Australia;
 - (f) a legal requirement for the person to remain in Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in Australia;
 - (i) a public health crisis affecting Australia or the country to which the person intends to return to or both.
- (10) The Secretary must not make a determination under subitem (8) unless the event occurred or began during the period of return to Australia.
- (11) If the Secretary determines another number (the ***new number***) of weeks under subitem (8), then, immediately after that determination is made, a reference to a number of weeks in paragraph (3)(d) or (4)(d), and each
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reference to a number of weeks in subitem (8), is taken to be a reference to that new number.

- (12) Subitems (8) to (10) apply in relation to the following:
- (a) a period of return to Australia starting on or after the commencement of those subitems;
 - (b) a period of return to Australia starting before that commencement, where the person is in Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph (3)(d) or (4)(d) of this item had not ended immediately before that commencement; or
 - (ii) under subsection 1221A(1) of the *Social Security Act 1991*, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred to in paragraph (3)(d) or (4)(d) of this item ended at the end of 30 June 2021.
- (13) If subitems (8) to (10) apply in relation to a period of return because of the operation of subparagraph (12)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph (3)(d) or (4)(d) of this item, and each reference to 26 weeks in subitem (8), is taken to be a reference to that other number of weeks.

12 Application and transitional provisions—amounts added to rate

- (1) The amendment of section 1216 of the *Social Security Act 1991* made by this Schedule applies in relation to the following:
- (a) a period of absence from Australia starting on or after the commencement of this item;
 - (b) a period of absence from Australia starting before that commencement, where the person is absent from Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph 1216(1)(a) of that Act had not ended immediately before that commencement; or
 - (ii) under subsection 1216(2) of that Act, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred

to in paragraph 1216(1)(a) of that Act ended at the end of 30 June 2021.

- (2) If the amendment of section 1216 of the *Social Security Act 1991* made by this Schedule applies in relation to a period of absence because of the operation of subparagraph (1)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph 1216(1)(a) of that Act, and each reference to 26 weeks in subsection 1216(2) of that Act (as substituted by this Schedule), is taken to be a reference to that other number of weeks.

13 Application and transitional provisions—age pension rate

- (1) The amendments of section 1220A of the *Social Security Act 1991* made by this Schedule apply in relation to the following:
- (a) a period of absence from Australia starting on or after the commencement of this item;
 - (b) a period of absence from Australia starting before that commencement, where the person is absent from Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph 1220A(1)(a) of that Act had not ended immediately before that commencement; or
 - (ii) under subsection 1220A(6) of that Act, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred to in paragraph 1220A(1)(a) of that Act ended at the end of 30 June 2021.
- (2) If the amendments of section 1220A of the *Social Security Act 1991* made by this Schedule apply in relation to a period of absence because of the operation of subparagraph (1)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph 1220A(1)(a) of that Act, and each reference to 26 weeks in subsection 1220A(1A) of that Act, is taken to be a reference to that other number of weeks.

14 Application and transitional provisions—disability support pension rate for a severely disabled person

- (1) The amendments of section 1220B of the *Social Security Act 1991* made by this Schedule apply in relation to the following:
- (a) a period of absence from Australia starting on or after the commencement of this item;
 - (b) a period of absence from Australia starting before that commencement, where the person is absent from Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph 1220B(1)(a) of that Act had not ended immediately before that commencement; or
 - (ii) under subsection 1220B(3) of that Act, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred to in paragraph 1220B(1)(a) of that Act ended at the end of 30 June 2021.
- (2) If the amendments of section 1220B of the *Social Security Act 1991* made by this Schedule apply in relation to a period of absence because of the operation of subparagraph (1)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph 1220B(1)(a) of that Act, and each reference to 26 weeks in subsection 1220B(1A) of that Act, is taken to be a reference to that other number of weeks.

15 Application and transitional provisions—portability rules relating to rates of pension

- (1) The amendments of clause 128 of Schedule 1A to the *Social Security Act 1991* made by this Schedule apply in relation to the following:
- (a) a period of return to Australia starting on or after the commencement of this item;
 - (b) a period of return to Australia starting before that commencement, where the person is in Australia immediately before that commencement and where:
 - (i) the 26 weeks mentioned in paragraph 128(1)(b) of Schedule 1A to that Act had not ended immediately before that commencement; or

- (ii) under subclause 128(4) of Schedule 1A to that Act, as in force before 1 July 2021, the Secretary had determined another number of weeks with the result that the period referred to in paragraph 128(1)(b) of that Schedule ended at the end of 30 June 2021.
- (2) If the amendments of clause 128 of Schedule 1A to the *Social Security Act 1991* made by this Schedule apply in relation to a period of return because of the operation of subparagraph (1)(b)(ii) of this item, then, at the commencement of this subitem, a reference to 26 weeks in paragraph 128(1)(b) of Schedule 1A to that Act, and each reference to 26 weeks in subclause 128(1A) of Schedule 1A to that Act, is taken to be a reference to that other number of weeks.
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*[Minister's second reading speech made in—
House of Representatives on 27 May 2021
Senate on 17 June 2021]*

(65/21)
