

## EXPLANATORY STATEMENT

### **Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011**

#### **Summary**

The *Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011* (the Determination) is made by the Minister for Families, Housing, Community Services and Indigenous Affairs (the Minister) for the purposes of subsections 94(3C) and 94(3E) of the *Social Security Act 1991* (the Act).

The Determination sets out the requirements and guidelines the Secretary must take into account in determining whether a person has actively participated in a program of support for the purposes of determining whether the person is qualified for disability support pension.

#### **Background**

Disability support pension provides income support to people who, because of an ongoing physical, intellectual or psychiatric impairment are prevented from working or from being re-trained for work. The qualification for disability support pension requires, amongst other things, that a person has a continuing inability to work because of an impairment.

The Government believes long-term dependence on disability support pension is not the best option for people who have skills and capacity to participate in the workforce or are able to build such skills with appropriate assistance.

Schedule 3 of *Family Assistance and Other Legislation Amendment Act 2011* amended the qualification criteria for disability support pension to require that, where appropriate, a person claiming disability support pension must demonstrate that they have undertaken and actively participated in a program of support.

Relevantly, Schedule 3 of *Family Assistance and Other Legislation Amendment Act 2011* inserts subsections 94(3C), (3D) and (3E) into the *Social Security Act 1991*. Subsection 94(3C) provides that a person has actively participated in a program of support if the person satisfies the requirements specified in a legislative instrument made by the Minister. Subsection 94(3D) provides that the Secretary must comply with any guidelines, made by the Minister under subsection 94(3E), when deciding whether he or she is satisfied that the person has actively participated in a program of support. Subsection 94(3E) provides that any guidelines, made by the Minister for the purposes of subsection 94(3D), are to be made in a legislative instrument.

## **Explanation of the provisions**

### **Part 1 - Preliminary**

**Section 1** states the name of the Determination.

**Section 2** states that the Determination commences immediately after the commencement of Schedule 3 of *Family Assistance and Other Legislation Amendment Act 2011*. Schedule 3 of the *Family Assistance and Other Legislation Amendment Act 2011* comes into effect on 3 September 2011.

**Section 3** contains interpretation provisions.

**Section 4** sets out the matters addressed in Parts 2 and 3 of the Determination. Subsection 4(1) states that Part 2 of the Determination specifies requirements for the purposes of subsection 94(3C) of the Act.

Subsection 4(2) states that Part 3 of the Determination sets out guidelines that the Secretary must comply with in deciding whether he or she is satisfied that, where a person's impairment is not a severe impairment, the person has actively participated in a program of support within the meaning of subsection 94(3C) of the Act.

### **Part 2 – Requirements for active participation**

**Section 5** sets out the requirements a person must meet in order to satisfy the Secretary that the person has actively participated in a program of support.

Subsection 5(1) states that a person has actively participated in a program of support if the person has, while undertaking the program of support, complied with the requirements of the program of support, participated in the program of support in the 36 months prior to the person's claim for disability support pension, satisfied the requirements set out in subsections (2), (3), (4) or (5), and satisfied the requirements of subsection (6).

Generally, a person must participate in the program of support for at least 18 months in order to satisfy the requirement in paragraph 5(1)(b) (subsection 5(2)).

A person will not be actively participating in a program of support during periods in which the person is disengaged from the program (i.e. due to non-compliance with the program requirements or during periods of exemption or relief).

For example, if a person has been actively participating in a program of support for 12 months and suffers a temporary injury, and is provided with a 2 month period of exemption to recover from the temporary injury, the person will need to actively participate for a further 6 months following the expiration of the period of exemption to meet the 18 month requirement.

A person may participate in more than one program of support with more than one designated provider and all periods of active participation will be counted, provided that while participating in each program the person complied with the requirements of the program. The period of a person's participation will be determined by adding all periods of active participation the person has undertaken in the last 36 months prior to claim with any designated provider.

For example, a person who has been participating with a Job Services Australia provider for 9 months, who is reassessed and found to require assistance from a Disability Employment Service, will only have to participate in a Disability Employment Service program for a further 9 months.

Subsections 5(3), (4) and (5) address situations where a person can participate in a program of support for less than 18 months and satisfy the requirement in paragraph 5(1)(b).

Subsection 5(3) sets out that a person can satisfy the requirement in paragraph 5(1)(b) if the duration program of support is for a period less than 18 months and the person completes the program.

Subsection 5(4) sets out that a person can satisfy the requirement in paragraph 5(1)(b) if the program of support was terminated prior to the person's claim for disability support pension and the program was terminated because the person was unable, solely because of the person's impairment, to improve his or her capacity to find, gain or remain in employment through continued participation in the program.

For example, a person with Multiple Sclerosis (MS) has been participating in a program of support for 6 months and during this time the person's MS deteriorates significantly. The person will have actively participated in the program of support if, the person complied with the requirements of the program and the program was terminated because the person was unable, solely due to the deterioration of his or her MS, to improve his or her capacity to find, gain or remain in employment through continued participation in the program.

Subsection 5(5) sets out that a person can satisfy the requirement in paragraph 5(1)(b) if at the date the person makes a claim for disability support pension the person is participating in a program of support and solely because of the impairments from which person suffers, the person is prevented from improving his or her capacity to find, gain or remain in employment through continued participation in the program.

For example, a person with MS makes a claim for disability support pension and at the date of claim the person has been participating in a program of support for 6 months. During the time the person was participating in the program the person's MS deteriorated significantly. The person will have actively participated in the program of support if, the person complied with the requirements of the program and the person is prevented, solely due to the deterioration of the person's MS, from improving his or her capacity to find, gain or remain in employment through continued participation in the program.

Subsection 5(6) sets out that to satisfy the requirement in paragraph 5(1)(c) the person must provide the Secretary with the information set out in subparagraphs 5(6)(a) to (i).

The information the person provides will enable the Secretary to make a fully informed and considered assessment of the person's participation in a program of support.

### **Part 3 – Guidelines**

**Section 6** sets out guidelines in relation to the form and content of the program of support the Secretary must take into account to be satisfied that a person has actively participated in a program of support for the purposes of paragraph 94(2)(aa) of the Act.

**Section 7** sets out guidelines in relation to the material and documents the Secretary may take into account to be satisfied that a person has actively participated in a program of support for the purposes of paragraph 94(2)(aa) of the Act.

### **Consultation**

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) undertook consultations with the following in relation to the Determination:

- Department of Education, Employment and Workplace Relations
- Department of Human Services
- National Disability Services
- Mental Health Council of Australia
- National Employment Service Association
- National Welfare Rights Network
- People with Disability Australia
- Australian Council of Social Services
- Australian Federation of Disability Organisations
- Disability Employment Australia

### **Regulatory Impact Analysis**

This Determination does not require a Regulatory Impact Statement (RIS) nor a Business Cost Calculator Figure. This Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.