

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 228

Issued by the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform

Social Security Act 1991 and *Social Security (Administration) Act 1999*

Social Security Regulation 2012

The *Social Security Act 1991* (the *Act*) provides for a range of payments, benefits and allowances (*social security payments*) to be provided to certain persons in certain circumstances. Part 4.2 of the Act deals with the overseas portability of certain social security payments, being the circumstances in which recipients of such payments can travel outside Australia and continue to receive the payment.

Division 2, Subdivision A of Part 4.2 of the Act addresses the portability of social security payments generally. Section 1217 of the Act sets out the maximum portability period and allowable absences for each payment. Some social security payments are subject to a portability period of 13 weeks for an absence from Australia relating to seeking eligible medical treatment, attending an acute family crisis or for an *humanitarian purpose*.

Section 1212B of the Act provides, among other things, that a person's absence is for a humanitarian purpose at a particular time if the Secretary is satisfied that the absence is, at that time, for a purpose specified in the regulations for the purposes of paragraph 1212B(c).

Subsection 243(1) of the *Social Security (Administration) Act 1999* (the Admin Act) provides, among other things, that the Governor-General may make regulations prescribing matters required or permitted by the Admin Act or the Act to be prescribed, or, necessary or convenient for carrying out or giving effect to the Admin Act or the Act.

Regulation 4 of the *Social Security Regulations 2004* (the *2004 Regulations*) currently specifies for this purpose, attendance as a formally selected member of the Australian Paralympic Team, for participation as a competitor in the Paralympic Games.

The *Social Security Regulation 2012* (the *Regulation*) specifies attendance, at a memorial service that has been approved by the Australian Government to commemorate an event involving the death or serious injury of an Australian resident, as one of the following persons:

- (i) an Australian resident who was seriously injured in the event;
- (ii) a family member of an Australian resident who died or was seriously injured in the event.

In addition to the above, the Regulation also specifies attendance at the Bali bombing memorial event in Bali on 12 October 2012 by a person who is eligible to receive an ex-gratia payment for eligible Australians attending that event.

The Regulation repeals and replaces the 2004 Regulations with the *Social Security Regulation 2012* but includes the existing provisions of the 2004 Regulations. Details of the Regulation are set out in the Attachment.

The amendments are to commence on the day after they are registered.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

The Department of Education, Employment and Workplace Relations and the Department of Industry, Innovation, Science, Research and Tertiary Education were consulted.

Regulatory Impact Analysis

The Regulation is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Details of the Social Security Regulation 2012

Section 1 – Name of regulation

This section states the name of the regulation as the *Social Security Regulation 2012*.

Section 2 – Commencement

This section provides for the regulation to commence on the day after it is registered.

Section 3A – Repeal of the Social Security Regulations 2004

This section provides that the *Social Security Regulations 2004* are repealed. This section expires at the end of the day it commences as if it had been repealed by another legislative instrument.

Section 3 – Definitions

This section provides definitions that are used in this regulation. These are the *Act* which means the *Social Security Act 1991* and **family member** which has the same meaning as in subsection 23(14) of the Act.

Sections 4 and 5

These sections specify what is an humanitarian purpose for the purposes of paragraph 1212B(c) of the Act.

Consistent with the *Social Security Regulations 2004*, paragraph 4(a) specifies attendance, as a formally selected member of the Australian Paralympic Team, for participation as a competitor, at the international athletic competition known as the Paralympic Games, as a humanitarian purpose.

Paragraph 4(b) provides attendance, at a memorial service that has been approved by the Australian Government to commemorate an event involving the death or serious injury of an Australian resident, as one of the following persons:

- an Australian resident who was seriously injured in the event (paragraph 4(b)(i));
- a family member of an Australian resident who died or was seriously injured in the event (paragraph 4(b)(ii)).

Paragraph 4(b) provides examples of an event include a war, an act of terrorism and a natural disaster.

Subsection 5(1) provides a purpose is the attendance at the Bali bombing memorial event in Bali on 12 October 2012 by a person who is eligible to receive an ex-gratia payment for eligible Australians attending that event. Subsection 5(2) provides section 5 expires on 31 October 2012 as if it had been repealed by another legislative instrument.

Statement of Compatibility with Human Rights

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

Social Security Regulation 2012

This Legislative Instrument 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

This Regulation introduces attendance by a person specified in the Regulation at memorial and similar services held for victims of events in which Australian residents, have been killed or severely injured overseas, as a “humanitarian purpose” under section 1212B of the *Social Security Act 1991* (the Act).

Human rights implications

This Legislative Instrument has considered the human rights implications particularly with reference to the right to social security as contained within Article 9 of the International Covenant on Economic, Social and Cultural Rights. It was concluded that the Legislative Instrument does not place limitations on human rights and will have no impact on an individual’s right to social security.

Conclusion

The Legislative Instrument is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.

Minister for Families, Community Services and Indigenous Affairs and

Minister for Disability Reform