

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*Social Security Act 1991*

*Social Security Amendment Regulation 2016 (No.1)*

### **Purpose**

The purpose of the *Social Security Amendment Regulation 2016 (No.1)* (the Amendment Regulation) is to extend portability provisions for disability support pension recipients who need to travel overseas to prepare and qualify as a competitor for the Paralympic Games in the 12 month period lead up to the Games.

### **Background**

Under section 1217 of the *Social Security Act 1991* (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.

For disability support pension, the maximum additional portability period is four weeks if the absence is, relevantly, for a humanitarian purpose.

Section 1212B of the Act defines a person's absence as for a humanitarian purpose at a particular time if the Secretary is satisfied that the absence is, at that time relevantly for a purpose specified in the regulations.

Paragraph 4(a) of the *Social Security Regulation 2012* (the Regulation) prescribes a humanitarian purpose as 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.

A limitation of the Regulation is that persons who need to travel overseas to prepare and qualify for the Paralympic Games are not covered by the current humanitarian purpose Regulation. Athletes in receipt of disability support pension are currently subject to the general portability provision (under table item 2 of the table at the foot of section 1217 of the Act) which only allows for a temporary absence from Australia for a total of 28 days, whether consecutive or not, in a 12 month period. This limits disability support recipients' ability to adequately prepare and qualify for the Paralympics.

The proposed Regulation would prescribe as a humanitarian purpose, attendance, by a disability support pension recipient as an athlete at an athletic competition or other event if the attendance is necessary to prepare and qualify as a competitor for the Paralympic Games within the 12-months leading up to the Games.

## Commencement

The Regulation commences on the day after it is registered.

## Consultation

Consultation on this change took place with the Department of Human Services, who will implement the change and re-assess DSP recipients entitlement to payment during absences overseas within 12 months of the Paralympic Games.

The Department of Health and the Australian Sports Commission were also consulted as they will have the responsibility to verify eligible absences overseas for Paralympic qualifying or preparatory events. The Australian Sports Commission will also assist in communicating this change to its para-athletes.

## Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) have advised that the proposal appears likely to have no more than minor regulatory impacts on business, community organisations or individuals and a Regulatory Impact Statement (RIS) is not required to be prepared (OBPR ID 20785).

## Explanation of the provisions

**Section 1** states the name of the instrument - *Social Security Amendment Regulation 2016 (No.1)*.

**Section 2** provides that the instrument commences on the day after it is registered.

**Section 3** states that the instrument is made under paragraph 1212B(c) of the *Social Security Act 1991*.

**Section 4** provides that Schedule 1 of the instrument amends the *Social Security Regulation 2012*.

**Schedule 1** sets out the amendments to the *Social Security Regulation 2012*.

**Item 1** would insert new paragraph 4(aa) as a new humanitarian purpose for the purposes of allowable absences from Australia for disability support pension recipients. This new humanitarian purpose would allow attendance, within the 12-month period before the international athletic competition known as the Paralympic Games, by a person receiving a disability support pension for participation as an athlete at an athletic competition or other event, if that attendance is necessary to qualify as a competitor at the Paralympic Games or that attendance is necessary to prepare as a competitor for the Paralympic Games (whether or not the person has qualified as such a competitor).

The new paragraph would allow continuation of payment during absences from Australia for disability support pension for up to 4-weeks at a time that are necessary to qualify or prepare as a competitor for the Paralympic Games, regardless of whether the person qualifies for the Games or is selected as a member of the Australian Paralympic team. This may include competing in athletic competitions or

attending training camps. However, this provision still covers those athletes who have already been preselected for the Paralympic team or qualified for the Games.

**Item 2** inserts new section 6 which would be an application provision. This new provision would state that item 1 applies in relation to the Paralympic Games to be held in Rio de Janeiro, Brazil in September 2016 and future Paralympic Games. This would result in the new humanitarian purpose applying retrospectively to September 2015.

By proposing the application of the exemption retrospectively, it is estimated that around 100 disability support pension recipients will benefit from this extension of the portability periods. To date disability support pension recipients have not been paid whilst overseas beyond their 28 day general portability period for the purpose of preparing and qualifying for the 2016 Paralympic Games. This proposed retrospective operation will not have an adverse effect on any person's right or obligations.

This provision would also allow disability support pension recipients travelling overseas to prepare or qualify as a competitor for future Paralympic Games to be subject to the extended portability provisions from 12-months prior to the Games.

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

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

### *Social Security Amendment Regulation 2016 (No.1)*

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**

The purpose of the *Social Security Amendment Regulation 2016 (No.1)* (the Amendment Regulation) is to extend portability provisions for disability support pension recipients who need to travel overseas to prepare and qualify as a competitor for the Paralympic Games in the 12 month period lead up to the Games.

#### **Human rights implications**

These amendments are likely to engage the following human right:

##### Right to social security

The amendment to extend portability provisions for disability support pension recipients continues to allow these pension recipients a reasonable period of time while overseas.

This amendment advances human rights as it allows additional portability periods for disability support pension recipients to travel overseas and participate in qualifying competitions and preparatory events in the 12 months lead-up to the Paralympic Games.

#### **Conclusion**

The Regulations are compatible with human rights because they do not limit or preclude people from gaining or maintaining access to social security in Australia or for short absences overseas.

**The Hon Christian Porter MP, Minister for Social Services**