

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Social Security Act 1991

Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Amendment Determination 2017

Purpose

The *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Amendment Determination 2017* (the **Amendment Determination**) amends the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011* (the **2011 Determination**) for the purposes of progressing implementation of the principle that the tables relating to the assessment of work-related impairment for Disability Support Pension (the **Impairment Tables**) made under section 26(1) of the *Social Security Act 1991* (the **Act**) should be function-based rather than based on diagnosis.

The effect of the Amendment Determination will be that functional impairments affecting a person's ability to work that result from the medical conditions currently covered in a condition-based Table 6 of the Impairment Tables, will be assessed under other existing function-based Tables that are relevant to the affected areas of functioning.

Background

Under paragraph 94(1)(b) of the Act, one of the criteria that a person must meet to be qualified for Disability Support Pension is that their impairment (unless permanently blind) is of 20 points or more under the Impairment Tables.

The Impairment Tables contained in the 2011 Determination are designed around the principle outlined in section 5(2)(b) of the 2011 Determination that they are to be function-based rather than diagnosis-based. This principle is based on the findings and recommendations of a comprehensive review of the Impairment Tables undertaken in 2011 that was overseen by an Advisory Committee, comprising medical and allied health experts and disability advocates. The Committee strongly supported the Impairment Tables being function-based, and in its final report, recommended that the Department 'should aim to implement Impairment Tables that are fully functionally-based within the next decade'.

Consistent with the function-based approach, in assessing eligibility for Disability Support Pension, the Impairment Tables are used to assign impairment ratings to assess the level of functional impairment caused by medical conditions and not to assess the conditions themselves. Most of the current Impairment Tables are function-based rather than based on diagnosis.

Table 6 is the exception, as it assesses a single disorder or condition. Accordingly, under Table 6, a person is able to qualify for Disability Support Pension solely due to their alcohol, drugs or other harmful substance use, without needing to demonstrate long term functional incapacity independent of the substance use.

This is not in line with community expectations and does not align with the rules for the other Impairment Tables. The Disability Support Pension is designed to give people an adequate means of support if they are unable to work for at least 15 hours or more per week, independent of a program of support, due to a permanent physical, intellectual or psychiatric impairment. The intention is that people should not be eligible for Disability Support Pension while they still have the capacity to seek employment.

This change will assist in delivering the Advisory Committee's recommendation that the Impairment Tables are fully functionally-based.

Explanation of Provisions

Amendment Determination

Section 1 of the Amendment Determination states the name of the instrument.

Section 2 provides that the Amendment Determination commences on 1 July 2017.

Section 3 provides that the authority for making this Amendment Determination is subsection 26(1) of the Act.

Section 4 provides that the 2011 Determination is amended as set out in Schedule 1 to the Amendment Determination.

Schedule 1 of the Amendment Determination

Item 1 repeals Table 6 and substitutes Table 6 with a 'place holder'.

The Impairment Tables are designed to be function-based rather than based on diagnosis. Under Table 6, a person is able to qualify for Disability Support Pension solely due to their alcohol, drugs or other harmful substance use, without needing to demonstrate long term functional incapacity independent of the substance use.

This is not in line with community expectations and does not align with the other Impairment Tables. This change implements the recommendations from the 2011 review of the Impairment Tables.

In this context it is noted that the use of harmful substances does not in itself constitute or necessarily indicate there is a permanent impairment.

Consultation

Advice was sought from medical professionals in the Health Professional Advisory Unit within the Department of Human Services.

Statement of Compatibility with Human Rights

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

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The Determination 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*.

This measure engages the following rights in the International Covenant on Economic, Social and Cultural Rights (the ICESCR): the right to social security (article 9); the right to an adequate standard of living (article 11); rights of the family and child to protection and assistance (article 10); and the right to equality and non-discrimination in the exercise of these rights (article 2(2)). The proposals also engage related rights in the Convention on the Rights of Persons with Disabilities (the CRPD), the Convention on the Rights of the Child (the CRC), the International Covenant on Civil and Political Rights (the ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD).

Removal of Table 6 for the purpose of ensuring no one will qualify for the DSP on the basis of substance misuse without demonstrating a permanent functional impairment seeks to achieve a legitimate objective that promotes the general welfare in a democratic society, in that it seeks to maintain the integrity of, and public confidence in, the social security system. Further, the proposal is directed towards encouraging people with substance abuse issues to manage or overcome their issues.

A person with a substance use disorder may still qualify for Disability Support Pension, if their condition is assessed as fully diagnosed, treated and stabilised, and their impairment is able to be assessed under the remaining Tables, for example under Table 7 (Brain Function). These changes do not prevent a person from applying for other income support payments.

The majority of people affected by the proposal will qualify for an alternative means of income support, such as Newstart Allowance. As they will still have access to income support the measure is a reasonable and proportionate means of achieving the objective.

In some cases affected people may not be eligible for Newstart Allowance due to the application of the income and asset test, which is different to that applied for receipt of the Disability Support Pension. In these cases it follows that the affected person is not being denied the ability to fulfil their basic needs, or the needs of their families, as by definition they have either the income or assets to provide for those needs.

The amendments to the Disability Support Pension Impairment Tables contained in this legislative instrument do not prevent a person accessing social security within Australia, they ensure that social security is appropriately targeted.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights, it does not limit or preclude people from gaining or maintaining access to social security in Australia and ensures more equitable assessment of people with disability, based on functional ability.

The Hon Christian Porter MP, Minister for Social Services