



Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012

No. 51, 2012

**An Act to amend the law relating to social security,
family assistance, child support and veterans'
entitlements, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to social security,
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[Assented to 26 May 2012]

The Parliament of Australia enacts:

*Social Security and Other Legislation Amendment (Disability Support Pension Participation
Reforms) Act 2012 No. 51, 2012 1*

1 Short title

This Act may be cited as the *Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012*.

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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 May 2012
2. Schedules 1, 2 and 3	1 July 2012.	1 July 2012
3. Schedule 4, Part 1, Division 1	The day this Act receives the Royal Assent.	26 May 2012
4. Schedule 4, Part 1, Division 2	1 January 2013.	1 January 2013
5. Schedule 4, Part 1, Division 3	1 July 2013.	1 July 2013
6. Schedule 4, item 25	The day this Act receives the Royal Assent.	26 May 2012
7. Schedule 4, item 26	Immediately after the commencement of item 15 of Schedule 3 to the <i>Clean Energy (Household Assistance Amendments) Act 2011</i> .	20 March 2013

Note: This table relates only to the provisions of this Act as originally enacted.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.

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- (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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Work rule for disability support pension

Social Security Act 1991

1 After Section 95

Insert:

96 Continuation of disability support pension

- (1) This section applies to a person if:
 - (a) the person is receiving disability support pension; and
 - (b) the person would, apart from this section, cease to be qualified for disability support pension because the person obtains paid work that is for:
 - (i) at least 15 hours per week; and
 - (ii) not more than 30 hours per week.
- (2) A person to whom this section applies continues to be qualified for disability support pension.

2 Paragraph 1035A(4)(b)

Omit “15”, substitute “30”.

3 Subparagraph 1035A(4)(e)(i)

Omit “15”, substitute “30”.

4 Paragraph 1061ZD(2)(b)

Omit “15”, substitute “30”.

Social Security (Administration) Act 1999

5 Paragraph 96(1)(a)

Omit “15”, substitute “30”.

6 Paragraph 97(1)(a)

Omit “15”, substitute “30”.

7 Paragraph 97A(2)(b)

Omit “15”, substitute “30”.

8 Transitional

If:

- (a) before this item commences, the Secretary suspended a person’s disability support pension because the person obtained paid work that was for:
 - (i) at least 15 hours per week; and
 - (ii) not more than 30 hours per week; and
- (b) immediately before this item commences, the suspension is in effect;

then:

- (c) as soon as practicable after this item commences, the Secretary must, for the purposes of section 85 of the *Social Security (Administration) Act 1999*, reconsider the suspension; and
- (d) if, having regard to the *Social Security Act 1991* as in force on 1 July 2012, the Secretary is satisfied that disability support pension is payable to the person—the Secretary must, under that section, determine that disability support pension is payable to the person; and
- (e) section 114 of the *Social Security (Administration) Act 1999* applies to any such determination.

Schedule 2—Participation requirements for disability support pension

Social Security Act 1991

1 After paragraph 94(1)(d)

Insert:

- (da) in a case where the following apply:
 - (i) the person is under 35 years of age;
 - (ii) the Secretary is satisfied that the person is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that exists in Australia, even if not within the person's locally accessible labour market;
 - (iii) if the person has one or more dependent children—the youngest dependent child is 6 years of age or over;
- the person meets any participation requirements that apply to the person under section 94A; and

2 After section 94

Insert:

94A Participation requirements

- (1) The participation requirements are as follows:
 - (a) the person must enter into a participation plan when the person is required by the Secretary under section 94B to do so;
 - (b) if a participation plan is in force in relation to the person—the person must enter into another participation plan (instead of the existing one) if required by the Secretary under section 94B to do so;
 - (c) while a participation plan is in force in relation to the person, the person must comply with the requirements in the plan.

- (2) However, this section does not apply to the person during a period when the person is covered by a participation exemption under section 94C, 94D, 94E or 94F.

94B Participation plans

- (1) If a participation plan is not in force in relation to the person, the Secretary may require the person to enter into a participation plan under this section.
- (2) If a participation plan is in force in relation to the person, the Secretary may require the person to enter into another participation plan instead of the existing one.

Notice of requirement

- (3) The Secretary is to give the person notice of:
- (a) the requirement; and
 - (b) the place and time at which the participation plan is to be entered into.

Suitable requirements

- (4) A participation plan that is in force in relation to a person must contain one or more terms (the **requirements**) that:
- (a) the person is required to comply with; and
 - (b) the Secretary regards as suitable for the person.

Approval of requirements

- (5) The requirements in a plan are to be approved by the Secretary.

Optional terms

- (6) A participation plan may also contain one or more terms that the person may, but is not required to, comply with.

Form of plan

- (7) A participation plan must be in a form approved by the Secretary.

94C Illness or accident

- (1) A person is covered by a participation exemption if the Secretary is satisfied that the person is temporarily unable to meet the participation requirements because of illness or an accident.
- (2) The person is covered by the participation exemption for a period determined by the Secretary.
- (3) In deciding whether he or she is satisfied as mentioned in subsection (1), the Secretary may request the person to give the Secretary a certificate from a medical practitioner.
- (4) Subsection (3) does not limit subsection (1).
- (5) A determination under subsection (2) is not a legislative instrument.

94D Pre-natal and post-natal relief

- (1) A pregnant woman is covered by a participation exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

94E Supported employment

- (1) A person is covered by a participation exemption for a period if:
 - (a) the person is employed throughout the period; and
 - (b) the work undertaken by the person in the course of that employment is for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.
- (2) A person is covered by a participation exemption for a period if the person is, throughout the period, in employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*.

94F Special circumstances

- (1) A person is covered by a participation exemption for a period determined by the Secretary if:
 - (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
 - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.
- (2) The period determined under subsection (1) must not exceed 13 weeks.
- (3) A determination under subsection (1) is not a legislative instrument.

3 Application

The amendments made by this Schedule apply for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

Schedule 3—Portability of disability support pension

Social Security Act 1991

1 Paragraph 94(1)(ea)

Omit “either”, substitute “one of the following applies”.

2 Subparagraph 94(1)(ea)(i)

Omit “or”.

3 After subparagraph 94(1)(ea)(i)

Insert:

- (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);

4 Paragraph 95(1)(d)

Omit “either”, substitute “one of the following applies”.

5 Subparagraph 95(1)(d)(i)

Omit “or”.

6 After subparagraph 95(1)(d)(i)

Insert:

- (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);

7 Section 1212

Insert:

severely impaired disability support pensioner means a person in respect of whom the Secretary has made a determination under subsection 1218AAA(1).

8 Section 1217 (table item 2, column 5)

After “sections”, insert “1218AAA,”.

9 Section 1217 (after table item 2)

Insert:

2A	Disability support pension	Severely impaired disability support pensioner	Any absence	Unlimited period
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10 Before section 1218AA

Insert:

1218AAA Unlimited portability period for disability support pension—severely impaired disability support pensioner

- (1) The Secretary may make a written determination that a particular person’s maximum portability period for disability support pension is an unlimited period, if all of the following circumstances (the *qualifying circumstances*) exist:
 - (a) the person is receiving disability support pension;
 - (b) the Secretary is satisfied that the person’s impairment is a severe impairment (within the meaning of subsection 94(3B));
 - (c) the Secretary is satisfied that the person will have that severe impairment for at least the next 5 years;
 - (d) the Secretary is satisfied that, if the person were in Australia, the severe impairment would prevent the person from performing any work independently of a program of support (within the meaning of subsection 94(4)) within the next 5 years.
- (2) The Secretary must not make a determination under subsection (1) in relation to a person who is outside Australia unless the Secretary is satisfied that:
 - (a) the person is unable to return to Australia because of either of the following events:
 - (i) a serious accident involving the person;
 - (ii) the hospitalisation of the person; and

- (b) the person's portability period for disability support pension had not ended at the time the event occurred.
- (3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.
- (4) A determination under subsection (1) is not a legislative instrument.
- (5) In this section:
 - work* means work:
 - (a) that is on wages that are at or above the relevant minimum wage; and
 - (b) that exists in Australia, even if not within the person's locally accessible labour market.

11 Section 1218AA (heading)

Repeal the heading, substitute:

1218AA Unlimited portability period for disability support pension—terminally ill overseas disability support pensioner

12 Subsection 1220B(1)

Omit "for a severely disabled person for whom an unlimited maximum portability period for the pension has been determined under section 1218AA", substitute "for a person for whom an unlimited maximum portability period for the pension has been determined under section 1218AAA or 1218AA".

13 Application

- (1) The amendments made by items 1 to 6 apply for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.
- (2) The amendments made by items 7 to 12 apply in relation to periods of absence from Australia beginning on or after the commencement of those items.

Schedule 4—Average weekly earnings and other amendments

Part 1—Average weekly earnings

Division 1—Amendments commencing on Royal Assent

Child Support (Assessment) Act 1989

1 Subsection 155(2A)

Repeal the subsection.

2 Transitional—publication of figures

Subsection 155(2) of the *Child Support (Assessment) Act 1989* applies in relation to the calendar year ending on 31 December 2012 as if the amendments of:

- (a) section 5 of that Act; and
- (b) section 5A of that Act; and
- (c) subsection 155(2) of that Act;

made by Division 2 of this Part had already commenced.

3 Transitional—assessments for child support periods starting on or after 1 January 2013

The *Child Support (Assessment) Act 1989* applies in relation to the making or amendment, before 1 January 2013, of an administrative assessment for a child support period starting on or after 1 January 2013 as if the amendments of that Act made by Division 2 of this Part had already commenced.

Division 2—Amendments commencing on 1 January 2013

Child Support (Assessment) Act 1989

4 Subsection 5(1)

Insert:

Schedule 4 Average weekly earnings and other amendments

Part 1 Average weekly earnings

relevant June quarter has the meaning given by subsection 5A(2).

5 Subsection 5(1) (definition of *relevant September quarter*)

Repeal the definition.

6 Subsection 5A(1)

Omit “September”, substitute “June”.

7 Subsection 5A(2)

Repeal the subsection, substitute:

- (2) The *relevant June quarter*, in relation to a child support period, means the quarter ending on 30 June of the last calendar year ending before the child support period begins.

8 Paragraph 5A(5)(a)

Omit “September”, substitute “June”.

9 Section 45

Repeal the section, substitute:

45 Working out the self-support amount

A parent’s *self-support amount* for a day in a child support period is:

$$\frac{1}{3} \times \begin{array}{l} \text{Annualised MTAW figure} \\ \text{for the relevant June quarter} \end{array}$$

Note: A parent’s self-support amount can be varied by a determination or order under section 98S or 118.

10 Paragraph 58(4)(d)

Omit “September”, substitute “June”.

11 Subsection 58(5)

Omit “September”, substitute “June”.

12 Subsection 58D(2)

Omit “September”, substitute “June”.

13 Subparagraph 98S(1)(e)(i)

Omit “September”, substitute “June”.

14 Subparagraph 118(1)(e)(i)

Omit “September”, substitute “June”.

15 Paragraph 155(2)(a)

Omit “September”, substitute “June”.

16 Subparagraph 155(2)(b)(i)

Omit “September”, substitute “June”.

17 After subsection 155(2)

Insert:

- (2A) Before the end of each financial year, the Secretary must publish in the *Gazette* the AWE amount (within the meaning of subsection 58AA(1)) for the quarter ending on 31 December of that year.

18 Transitional—publication of figures

Subsection 155(2A) of the *Child Support (Assessment) Act 1989* applies in relation to the financial year ending on 30 June 2013 as if the amendments of section 58AA of that Act made by Division 3 of this Part had already commenced.

19 Subclause 2(3) of Schedule 1

Omit “September”, substitute “June”.

20 Application of amendments

The amendments made by items 6 to 16 apply in relation to child support periods starting on or after the commencement of this Division.

21 Transitional—assessments for child support periods starting on or after 1 July 2013

The *Child Support (Assessment) Act 1989* applies in relation to the making or amendment, before 1 July 2013, of an administrative assessment for a child support period starting on or after 1 July 2013 as if the amendments of that Act made by Division 3 of this Part had already commenced.

Division 3—Amendments commencing on 1 July 2013

Child Support (Assessment) Act 1989

22 Subsection 58AA(1)

Repeal the subsection, substitute:

- (1) The *ATI indexation factor* is:

AWE amount for the December quarter
of the last relevant year of income

AWE amount for the December quarter of the tax return year

where:

AWE amount for a December quarter of a year of income means the amount published for the reference period in the quarter by the Australian Statistician in a document titled “Average Weekly Earnings, Australia” (or, if that title changes, in a replacement document) under the headings “Average Weekly Earnings—Trend—Persons—All employees total earnings” (or, if any of those headings change, under any replacement headings).

December quarter of a year of income means the quarter ending on 31 December of that year.

reference period in a December quarter of a year of income means the period described by the Australian Statistician as the last pay period ending on or before the third Friday of the middle month of the quarter.

tax return year means:

- (a) if subsection 58(3) applies—the year of income before the last relevant year of income in relation to a child support period; or
- (b) if subsection 58(4) applies—the earlier year of income that applies under paragraph 58(4)(c).

23 Paragraph 58AA(3)(a)

Omit “September”, substitute “December”.

24 Application of amendments

The amendments made by this Division apply in relation to child support periods starting on or after the commencement of this Division.

Part 2—Other amendments

Social Security Act 1991

25 Sub-subparagraphs 1139(2)(b)(iv)(A) and (B)

Repeal the sub-subparagraphs.

Veterans' Entitlements Act 1986

26 Paragraph 58A(6)(c)

Repeal the paragraph, substitute:

- (c) apart from this subsection, the portion of the instalment corresponding to that day would be more than a nil amount but less than $\frac{1}{364}$ of the total of:
 - (i) the minimum pension supplement amount, if an amount described in subparagraph (a)(i) was added as described in paragraph (a); and
 - (ii) the clean energy supplement (if any) added as described in paragraph (a);

[Minister's second reading speech made in—
House of Representatives on 15 February 2012
Senate on 29 February 2012]

(8/12) *Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012* No. 51, 2012