



# Social Security (Administration) (Persistent Non-compliance) (DEEWR) Determination 2009 (No. 1)

## *Social Security (Administration) Act 1999*

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I, BRENDAN O'CONNOR, Minister for Employment Participation, make this determination under subsection 42M (4) of the *Social Security (Administration) Act 1999*.

Dated 10<sup>th</sup> May 2009

BRENDAN O'CONNOR  
Minister for Employment Participation

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### **1 Name of determination**

This determination is the *Social Security (Administration) (Persistent Non-compliance) (DEEWR) Determination 2009 (No. 1)*.

### **2 Commencement**

This determination commences on 1 July 2009.

### **3 Interpretation**

(1) In this determination:

*Act* means the *Social Security (Administration) Act 1999*.

*comprehensive compliance assessment* has the meaning given by section 42NA of the Act.

*failure* means a failure to comply with an obligation in relation to a participation payment, and includes a no show no pay failure, a connection failure and a reconnection failure.

**4 Matters to be taken into account in determining persistent non-compliance**

- (1) For subsection 42M (4) of the Act, the following matters are matters that the Secretary must take into account in deciding whether a person persistently failed to comply with his or her obligations in relation to a participation payment:
- (a) the findings of the most recent comprehensive compliance assessment in respect of the person (*current comprehensive compliance assessment*);
  - (b) whether, during the following period (*assessment period*), the person has committed 3 or more failures (whether those failures are of the same kind or of different kinds):
    - (i) the period of 6 months before the start of the current comprehensive compliance assessment; or
    - (ii) if the person has incurred a serious failure period in the period of 6 months before the start of the current comprehensive compliance assessment — the period from the end of that serious failure period until the start of the current comprehensive compliance assessment;
  - (c) if the person committed 3 or more failures during the assessment period:
    - (i) the number of failures; and
    - (ii) whether or not the failures demonstrate a pattern of non-compliance or should be viewed as a single instance of non-compliance;

*Example*

A job seeker who incurred three no show no pay failures for missing three consecutive days of an activity several months ago but has fully met their requirements since then would not necessarily be considered to be persistently non-compliant on the basis of those failures.

- (d) the extent to which the person has otherwise complied with his or her obligations in relation to a participation payment during the assessment period.

*Note 1* The Secretary must not take into account failures that are outside the person's control, and may only take into account failures that occurred intentionally, recklessly or negligently: subsection 42M (2) of the Act.

*Note 2* The matters in subsection (1) are not exhaustive. The Secretary may take other matters into account in determining whether a person persistently failed to comply with his or her obligations: subsection 42M (6) of the Act.

- (2) However, subsection (1) does not require the Secretary to take into account a matter if, in the particular case, the matter is not relevant to whether a person persistently failed to comply with his or her obligations in relation to a participation payment.