

EXPLANATORY STATEMENT

Social Security (Administration) (Payment Pending Review) (DEEWR) Guidelines 2009

Summary

The *Social Security (Administration) (Payment Pending Review) (DEEWR) Guidelines 2009* (the Guidelines) are made by the Minister for Employment Participation (the Minister) under sections 132 and 146 of the *Social Security (Administration) Act 1999* (the Act).

The purpose of this instrument is to set out guidelines for the exercise of the Secretary's power to make a declaration that payment of a person's social security payment is to continue where that person has applied for review of a decision in regard to the payment which resulted in a compliance penalty period.

Background

Sections 131 and 145 of the Act provide for when, in situations where an adverse decision has been made, the Secretary may declare that a social security payment is to continue. If an adverse decision, one that suspends, cancels or reduces the rate of a social security payment, is made and the adverse decision depends on the exercise of a discretion by a person or the holding of an opinion by a person or would result in the application of a compliance penalty period and a person applies to the Secretary or the SSAT for a review of that decision, the Secretary may declare that the payment of the social security payment is to continue pending the determination of the review, as if the adverse decision had not been made.

Under sections 132 and 146, the Minister is to make a legislative instrument (these Guidelines) to assist the Secretary in exercising the power to make such declarations. The Guidelines set out the circumstances when payment may be continued and the time period for which payment can be continued.

This instrument replaces prior guidelines that assisted the Secretary in exercising the power to continue social security payments. This is necessary due to the machinery-of-government changes which created the Department of Education, Employment and Workplace Relations (DEEWR) out of the former Department of Employment and Workplace Relations (DEWR) and the former Department of Education, Science and Training (DEST). Furthermore, the amendments made by the *Social Security Legislation Amendment (Employment Services Reform) Act 2009* (the Reform Act), which provides a new compliance framework for social security payments, has changed the concept of the compliance penalty period resulting in the need for updated instruments. These Guidelines, however, do not change pre-existing policy regarding when payment pending review is available.

Explanation of Provisions

Part 1- Preliminary

Section 1 states the name of the Guidelines.

Section 2 states that the Guidelines commence on 1 July 2009. This corresponds with the commencement date of the amendments made by the Reform Act.

Subsection 3 (1) revokes the payment pending review guidelines made by the former DEST and DEWR. These are:

- (a) the Social Security (Payment Pending—ARO Application for Review) (DEST) Guidelines 2007;
- (b) the *Social Security (Payment Pending—ARO Application for Review) (DEWR) Guidelines 2007*;
- (c) the *Social Security (Payment Pending—SSAT Application for Review) (DEST) Guidelines 2007*;
- (d) the *Social Security (Payment Pending—SSAT Application for Review) (DEWR) Guidelines 2007*.

Subsection 3 (2) provides that the revoked guidelines continue to apply to a compliance penalty period that is in effect on or after 1 July 2009 because of the operation of subitem 56 (2) or (3) of Schedule 1 to the Reform Act. Subitem 56 (2) provides that if, immediately before the commencement of Schedule 1, a participation payment is not payable to a person for an 8 week period because of repeated failures or a serious failure, the provisions of the *Social Security Act 1991*, as in force prior to the commencement of the Reform Act, apply. Subitem 56 (3) provides that section 42Q of the Reform Act, which gives the Secretary the power to end serious failure periods, will apply to these 8 week non-payment periods, unless the non-payment period is imposed because the person is unemployed due to a voluntary act or due to the person's misconduct as a worker.

Section 4 contains interpretation provisions.

Part 2 - Guidelines

Section 5 provides that for sections 131 and 145 of the Act, the provisions in Division 1 of the Guidelines only apply to participation payments, other than special benefit. Special benefit is excluded because the *Social Security (Administration) (Payment Pending Review) (FaHCSIA) Guidelines 2009* will apply to adverse decisions in relation to special benefit.

Section 6 states that if a person who is in receipt of youth allowance (and is not a full-time student or a new apprentice), newstart allowance or parenting payment is subject to an adverse decision that results in the application of a compliance penalty period for a serious failure or unemployment due to a voluntary act or misconduct and that person applies for a review to the Secretary or the SSAT of the decision prior to the end of the compliance penalty period, the Secretary may declare that the person's payment is payable to them from the date that the penalty period commenced or is to

commence and the payment is to continue to be payable pending the determination of the review as if the adverse decision had not been made.

Note 1 provides that such a declaration takes effect on the day it is made or on an earlier day if specified in the declaration. This is stated in paragraphs 131 (5) (a) and 145 (4) (a) of the Act.

Note 2 provides that such a declaration ceases to have effect on the day the application for review is withdrawn, when the declaration is revoked by the Secretary, or 13 weeks after a decision reviewing the adverse decision is made. This is stated in paragraphs 131 (5) (b) and 145 (4) (b) of the Act.

Section 7 provides that for sections 131 and 145 of the Act, the guidelines in Division 2 apply to adverse decisions in relation to a youth allowance recipient who is undertaking full-time study or is a new apprentice, and austudy payment.

The **Note** explains that youth allowance payable to a person who is not undertaking full-time study or is a new apprentice is a participation payment. This is set out in the definition of participation payment in the Dictionary to the Act.

Section 8 states that if a person who is in receipt of youth allowance or austudy payment is subject to an adverse decision that results in the application of a compliance penalty period for a participation failure or repeated or serious failure and that person applies for a review to the Secretary or the SSAT of the decision prior to the end of the compliance penalty period, the Secretary may declare that the person's payment is payable to them from the date that the penalty period commenced or is to commence and the payment is to continue to be payable pending the determination of the review as if the adverse decision had not been made.

Note 1 provides that such a declaration takes effect on the day it is made or on an earlier day if specified in the declaration. This is stated in paragraphs 131 (5) (a) and 145 (4) (a) of the Act.

Note 2 provides that such a declaration ceases to have effect on the day the application for review is withdrawn, when the declaration is revoked by the Secretary, or 13 weeks after a decision reviewing the adverse decision is made. This is stated in paragraphs 131 (5) (b) and 145 (4) (b) of the Act.

Consultation

The Department of Families, Housing, Community Services and Indigenous Affairs was consulted during the preparation of this determination. This was done to ensure a co-ordinated and consistent approach for all social security payments under the Social Security Act.

The instrument is beneficial in nature, as it provides for payments to be made to social security recipients while their payments would ordinarily be reduced, suspended or cancelled, pending the outcome of a review of the adverse decision. The instrument maintains the existing policy in prior instruments. No public consultation was therefore considered necessary.

Regulatory Impact Statement

This Determination does not require a Regulatory Impact Statement (RIS) nor a Business Cost Calculator Figure. This Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.