



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

Social Security (Administration) Act 1999

I, BRENDAN O'CONNOR, Minister for Employment Participation, make these guidelines under sections 132 and 146 of the *Social Security (Administration) Act 1999*.

Dated 7th May 2009

BRENDAN O'CONNOR
Minister for Employment Participation

Part 1 Preliminary

1 Name of guidelines

These guidelines are the *Social Security (Administration) (Payment Pending Review) (DEEWR) Guidelines 2009*.

2 Commencement

These guidelines commence on 1 July 2009.

3 Revocation and transitional

- (1) The following instruments are revoked:
 - (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*.
- (2) However, an instrument revoked by subsection (1) continues to apply in relation 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 *Social Security Legislation Amendment (Employment Services Reform) Act 2009*.

4 Definition

In these guidelines:

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

Part 2 Guidelines

Division 1 Payment pending review of decisions in relation to participation payments

5 Application

For sections 131 and 145 of the Act, the guidelines in this Division apply to adverse decisions in relation to participation payments other than special benefit.

Note Guidelines for sections 131 and 145 of the Act applicable to adverse decisions in relation to special benefit are the *Social Security (Administration) (Payment Pending Review) (FaHCSIA) Guidelines 2009*.

6 Declaration continuing payment during a compliance penalty period

If a person in receipt of a participation payment:

- (a) is subject to an adverse decision that results in the application of a compliance penalty period under subsection 42P (1) or 42S (1) of the Act; and
- (b) applies for review of the adverse decision under section 129 or 142 of the Act; and
- (c) the compliance penalty period has not ended before the person applies for review;

the Secretary may declare under section 131 or 145 of the Act, as the case may be, that:

- (c) the participation payment is payable to the person from the date that the compliance penalty period commenced or is to commence; and
- (d) the participation payment is to continue to be payable to the person pending the determination of the review, as if the adverse decision had not been made.

Note 1 A declaration under section 131 or 145 takes effect on the day it is made or an earlier day specified in the declaration: see paragraphs 131 (5) (a) and 145 (4) (a) of the Act.

Note 2 A declaration under section 131 or 145 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: see paragraphs 131 (5) (b) and 145 (4) (b) of the Act.

Division 2 Payment pending review of decisions in relation to youth allowance (student) and austudy payment

7 Application

For sections 131 and 145 of the Act, the guidelines in this Division apply to adverse decisions in relation to:

- (a) youth allowance payable to a person who is undertaking full-time study or is a new apprentice; and
- (b) austudy payment.

Note Youth allowance payable to a person who is neither a full-time student nor a new apprentice is a participation payment: see definition of *participation payment* in the Dictionary to the Act.

8 Declaration continuing payment during a compliance penalty period

If a person in receipt of youth allowance or austudy payment:

- (a) is subject to an adverse decision that results in the application of a compliance penalty period under section 550B, 551, 576A or 577 of the *Social Security Act 1991*; and

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- (b) applies for review of the adverse decision under section 129 or 142 of the Act; and
- (c) the compliance penalty period has not ended before the person applies for review;

the Secretary may declare under section 131 or 145 of the Act, as the case may be, that:

- (c) the allowance or payment is payable to the person from the date that the compliance penalty period commenced or is to commence; and
- (d) the allowance or payment is to continue to be payable to the person pending the determination of the review, as if the adverse decision had not been made.

Note 1 A declaration under section 131 or 145 takes effect on the day it is made or an earlier day specified in the declaration: see paragraphs 131 (5) (a) and 145 (4) (a) of the Act.

Note 2 A declaration under section 131 or 145 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: see paragraphs 131 (5) (b) and 145 (4) (b) of the Act.