

EXPLANATORY STATEMENT

Social Security (Reasonable Excuse — Participation Payment Obligations) (DEEWR) Determination 2009 (No. 1)

Summary

The *Social Security (Reasonable Excuse – Participation Payment Obligations) DEEWR) Determination 2009 (No. 1)* (the Determination) is made by the Secretary of the Department of Education, Employment and Workplace Relations (the Secretary).

The purpose of the Determination is to specify matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing:

- a participation failure in regard to youth allowance and austudy payment under subsections 550 (2A), 550B (2A), 576 (2A) and 576A (2A) of the *Social Security Act 1991* (the Social Security Act).
- a failure to comply with obligations in relation to a participation payment for the purposes of subsection 42U (1) of the *Social Security (Administration) Act 1999* (the Administration Act).

The Determination applies to failures committed by recipients of youth allowance, austudy payment, newstart allowance, and parenting payment. A similar determination made by the Secretary for Families, Housing, Community Services and Indigenous Affairs applies to failures committed by recipients of special benefit.

The matters specified in the Determination are not exhaustive; that is, the Secretary may take other matters into account (see subsection 42U (2) of the Administration Act, subsection 576A (2B) of the Social Security Act, *et. al.*).

The Determination largely replicates prior determinations that provided for matters that needed to be taken into account in determining participation failures, for example, the *Social Security (Reasonable Excuse) (DEWR) Determination 2006*. These earlier determinations are repealed by this Determination.

Explanation of Provisions

Section 1 states the name of the Determination.

Section 2 states that the Determination commences on 1 July 2009. This corresponds with the commencement date of the amendment to the Administration Act under which the Specification is made. This amendment is made by the *Social Security Legislation Amendment (Employment Services Reform) Act 2009*.

Section 3 revokes the previous determinations, namely, the *Social Security (Reasonable Excuse) (DEST) Determination 2006* and the *Social Security (Reasonable Excuse) (DEWR) Determination 2006*.

Section 4 contains interpretation provisions.

Section 5 has the effect of providing that where recipients of the above income support payments commit a participation failure, a no show no pay failure, a connection failure, a reconnection failure, or a serious failure, the Secretary must take into account matters listed in subsection (2) in determining whether the recipients have a reasonable excuse.

Paragraph 5 (1) (a) provides that in determining whether a person had a reasonable excuse for committing a youth allowance participation failure or an austudy participation failure for the purposes of subsections 550 (2A), 550B (2A), 576 (2A) and 576A (2A) of the Social Security Act, the Secretary must take into account the matters listed in subsection 5 (2).

Paragraph 5 (1) (b) has the effect of providing that in determining whether a person had a reasonable excuse for a no show no pay failure, a connection failure, a reconnection failure, or a serious failure, the Secretary must take into account the matters listed in subsection 5 (2).

Subsection 5 (2) provides for a list of matters that the Secretary must have regard in determining whether a person had a reasonable excuse for the purposes of the above sections of the Social Security Act and the Administration Act.

Paragraph (a) provides that the fact that the person was living in a non-permanent location on the streets, using emergency accommodation or refuge at the time the failure occurred would constitute a reasonable excuse. In addition, the person is taken not to have access to safe, secure and adequate housing in the circumstances specified under subsection 5 (4).

Paragraph (b) provides that in determining whether a person had a reasonable excuse the person's lack of language and literacy skills are relevant. For example, although a requirement or an instruction is delivered in a form the person is most likely to understand, there may be a situation whereby a person is unable to comprehend the requirement or instruction. That is, people with poor literacy and language skills may be faced with a situation where they have not read and understood what is required of them, which could lead to a failure to comply with the relevant sections of the Social Security Act or the Administration Act.

Paragraph (c) provides that any illness of the person that requires treatment must be taken into account. Such an illness includes an illness that is episodic or unpredictable. For example, people who have an episodic or unpredictable illness may not always be able to plan ahead to take into account a flare-up of their condition. For example, because of such condition, the person may not be able to attend an appointment or interview.

Paragraphs (d) and (e) require that any cognitive, neurological, psychological or psychiatric impairment or mental illness of the person are taken into account. This recognises that a person may be unable to comply with his or her obligations as a result of one of these conditions. For example, a neurological impairment may make it very difficult for a person to consistently attend appointments.

Paragraph (f) provides that any drug or alcohol dependency of the person needs to be considered. This acknowledges that in some cases such a dependency can impact on the person's everyday functioning and capacity to comply with a requirement under the social security law.

Paragraph (g) requires consideration of any unforeseen significant family or caring responsibilities. For example, there may be a situation where a person is unexpectedly required to meet a family responsibility and hence appropriate alternative arrangements were unable to be made.

Paragraph (h) recognises that being subjected to criminal violence, including domestic violence and sexual assault, may impact on a person's ability to comply with a requirement under the Social Security Act or the Administration Act.

Paragraph (i) has the effect of acknowledging that the crisis associated with the death of an immediate family member or close relative may inhibit a person's capacity to comply with a requirement and may constitute a reasonable excuse.

Paragraph (j) provides that the impact of a person's recent imprisonment (for a continuous period of more than 14 days ending within the last 28 days) needs to be considered in determining whether the person had a reasonable excuse for a failure.

This recognises that a person who was recently imprisoned for more than two weeks may undergo a period of adjustment, which could impact upon the person's capacity to comply with the Social Security Act or the Administration Act.

Subsection 5(3) has the effect of ensuring that the matters that are listed in subsection 5(2) must only be taken into account where the Secretary is satisfied that the matter had a significant effect on the person's capacity to comply with the relevant provisions of the Social Security Act or the Administration Act.

Subsection 5(4) sets out, non-exclusively, circumstances under which a person is taken not to have access to safe, secure and adequate housing. This definition is derived from the *Supported Accommodation Assistance Act 1994*, and is intended to encompass the particular characteristics or incidents of a person's accommodation that may adversely affect them or place them at risk. This definition encompasses people who would be considered homeless under the definitions of primary, secondary and tertiary homelessness currently used by the *Australian Bureau of Statistics* but is preferred for the purpose of the instrument because it defines homelessness by its impacts on individuals and on their capacity to meet their obligations.

Consultation

Consultations were undertaken with the following organisations.

- Homelessness Australia;
- Catholic Social Services Australia;
- Mission Australia;
- National Employment Services Association;
- National Welfare Rights Network

- Australian Council of Social Service;
- Commonwealth Ombudsman's office; and
- Centrelink

The organisations consulted were provided with a draft of the Determination and were invited to provide comments at a forum held on [12 March 2009].

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 Act.

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.