



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

*Social Security Act 1991*  
*Social Security (Administration) Act 1999*

---

I, LISA MARIAN PAUL, Secretary of the Department of Education, Employment and Workplace Relations, make this determination under subsections 550 (2A), 550B (2A), 576 (2A) and 576A (2A) of the *Social Security Act 1991* and subsection 42U (1) of the *Social Security (Administration) Act 1999*.

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

LISA PAUL  
Secretary of the Department of Education, Employment and Workplace Relations

---

**1 Name of determination**

This determination is the *Social Security (Reasonable Excuse — Participation Payment Obligations) (DEEWR) Determination 2009 (No. 1)*.

**2 Commencement**

This determination commences on 1 July 2009.

**3 Revocation**

The following instruments are revoked:

- (a) the *Social Security (Reasonable Excuse) (DEST) Determination 2006*;
- (b) the *Social Security (Reasonable Excuse) (DEWR) Determination 2006*.

**4 Definitions**

In this determination:

*1991 Act* means the *Social Security Act 1991*.

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

**5 Matters to be taken into account in determining if a person had a reasonable excuse**

(1) For:

- (a) subsections 550 (2A), 550B (2A), 576 (2A) and 576A (2A) of the 1991 Act; and
  - (b) subsection 42U (1) of the Administration Act;
- the matters set out in subsection (2) are matters that the Secretary must take into account in determining whether a person has a reasonable excuse.

(2) The matters are:

- (a) that the person did not have access to safe, secure and adequate housing, or was using emergency accommodation or a refuge, at the time of the failure; and
- (b) the literacy and language skills of the person; and

*Example for paragraph (b)*

If the person is unable to comprehend a requirement or an instruction, despite the requirement or instruction being delivered in a form that the person is most likely to comprehend.

- (c) an illness, impairment or condition of the person that requires treatment, including an illness that is episodic or unpredictable in nature; and
- (d) a cognitive or neurological impairment of the person; and
- (e) a psychiatric or psychological impairment or mental illness of the person; and
- (f) a drug or alcohol dependency of the person; and
- (g) unforeseen family or caring responsibilities of the person; and
- (h) that the person was subjected to criminal violence (including domestic violence and sexual assault); and
- (i) that the person was adversely affected by the death of an immediate family member or close relative; and
- (j) if:
  - (i) the person has been imprisoned for a continuous period of more than 14 days; and
  - (ii) the person has been released; and
  - (iii) the person was released not more than 28 days before the failure was committed;

the person's imprisonment or release from imprisonment.

- (3) However, the Secretary must not take into account a matter if the Secretary is not satisfied that the matter had a significant effect on the person's capacity to comply with the requirement, or the provision of the 1991 Act or the Administration Act, to which the failure relates.
- (4) Without limiting paragraph (2) (a), a person is taken not to have access to safe, secure and adequate housing if:
  - (a) the housing to which the person has access:
    - (i) damages, or is likely to damage, the person's health; or
    - (ii) threatens or is likely to threaten the person's safety; or
    - (iii) does not provide the person with access to a reasonable level of personal amenities or the economic and social support that housing normally affords; or
  - (b) in the circumstances, the adequacy, safety, security or affordability of the housing to which the person has access is adversely affected or may be adversely affected; or
  - (c) the person does not have a right to remain, or a reasonable expectation of being able to remain, in the housing to which the person has access.