



## **Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1)**

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I, MICHAELIA CASH, Minister for Jobs and Innovation, make the following Determination.

Dated 12 June 2018

Michaelia Cash

MICHAELIA CASH  
Minister for Jobs and Innovation

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## 1 Name

This instrument is the *Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1)*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsection 42AR(1) of the Act.

## 4 Definitions

Note: Some expressions used in this instrument are defined in the Act or the 1991 Act, including the following:

- (a) participation payment;
- (b) post-cancellation non-payment period;
- (c) Human Services Department;
- (d) Employment Department; and
- (e) employment pathway plan.

In this instrument:

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

**3 active months** means:

- (1) the shorter of:
  - (a) 91 consecutive days (beginning on or after 1 July 2018) plus any days equal to the number of days a person spends in the following periods during those 91 days:
    - (i) time spent exempt or relieved from activity test requirements under Division 3A of Part 2.10, Subdivision C of Division 1 of Part 2.11, Subdivision BA of Division 1 of Part 2.12, sections

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- 602B, 602C, 603, 603A, 603AAA, 603AB, 731DA, 731DB, 731E, 731F, 731GA, 731JA, 731K of the 1991 Act;
    - (ii) one week for each instance that the Secretary has determined that an instalment of the person's participation payment be reduced by an amount specified in paragraph 42AN(3)(a) of the Act;
    - (iii) two weeks for each instance the Secretary has determined that an instalment of the person's participation payment be reduced by an amount specified in paragraph 42AN(3)(b) of the Act;
    - (iv) a post-cancellation non-payment period under 42AP(5);
    - (v) the time between:
      - i. a person's referral to the Human Services Department for a DHS assessment; and
      - ii. the completion of that assessment; and
  - (b) twelve months.
- (2) For the purposes of this definition, if any two or more of the periods listed in paragraph 1(a) overlap, the days that overlap will only count once when calculating the days equal to the number of days the person spends in those periods.

**6 active months** means:

- (1) the shorter of:
- (a) 182 consecutive days (beginning on or after 1 July 2018) plus any days equal to the number of days a person spends in the following periods during those 182 days:
    - (i) time spent exempt or relieved from activity test requirements under Division 3A of Part 2.10, Subdivision C of Division 1 of Part 2.11, Subdivision BA of Division 1 of Part 2.12, sections 602B, 602C, 603, 603A, 603AAA, 603AB, 731DA, 731DB, 731E, 731F, 731GA, 731JA, 731K of the 1991 Act;
    - (ii) one week for each instance that the Secretary has determined that an instalment of the person's participation payment be reduced by an amount specified in paragraph 42AN(3)(a) of the Act;
    - (iii) two weeks for each instance the Secretary has determined that an instalment of the person's participation payment be reduced by an amount specified in paragraph 42AN(3)(b) of the Act;
    - (iv) a post-cancellation non-payment period under 42AP(5);
    - (v) the time between:
      - i. a person's referral to the Human Services Department for a DHS assessment; and
      - ii. the completion of that assessment; and
  - (b) twelve months.
- (2) For the purposes of this definition, if any two or more of the periods listed in paragraph 1(a) overlap, the days that overlap will only count once when calculating the days equal to the number of days the person spends in those periods.

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

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**demerit** means a record on the Employment Department’s Information Technology System that the person has committed a mutual obligation failure without a valid reason.

**DHS assessment** means an assessment by the Human Services Department to assess whether the person’s employment pathway plan is suitable for them.

**mutual obligation failure** means a mutual obligation failure under subsection 42AC of the *Social Security (Administration) Act 1999*.

**relevant failure** means the relevant failure described in subsection 42AF(1) of the Act.

## **5 Circumstances where a person has, and has not, persistently committed mutual obligation failures**

*Circumstances where a person has persistently committed mutual obligation failures*

- (1) For the purposes of paragraph 42AF(2)(a) of the Act, the Secretary must be satisfied that a person has persistently committed mutual obligation failures if:
  - (a) the relevant failure was committed within 3 active months beginning on a day worked out under subsections (2) or (3); or
  - (b) in the 3 active months prior to the relevant failure, the person has committed at least 1 mutual obligation failure without a reasonable excuse where the Secretary was satisfied that the person had persistently committed mutual obligation failures.
- (2) For the purposes of subsection (1), and subject to subsection (3), if, in any 6 active months:
  - (a) a person commits:
    - (i) at least 5 mutual obligation failures to which a demerit is attached; or
    - (ii) 2, 3 or 4 mutual obligation failures to which a demerit is attached, where at least 1 of those mutual obligation failures was:
      - (A) failing to attend a job interview; or
      - (B) failing to act on a job opportunity when requested to do so by an employment services provider; or
      - (C) the person intentionally acting in a manner and it is reasonably foreseeable that acting in that manner could result in an offer of employment not being made to the person; and
  - (b) the person undergoes a DHS assessment;  
then the day is the day on which the DHS assessment is complete.
- (3) For the purposes of subsection (1), and despite subsection (2), if, in any 6 active months, the circumstances set out in either:
  - (a) subparagraph 5(2)(a)(i) and subsection 5(2)(b); or
  - (b) subparagraph 5(2)(a)(ii) and subsection 5(2)(b);apply to a person, but one or more of the person’s demerits is reversed after the person undergoes the DHS assessment, and the person subsequently commits one or more mutual obligation failures to which a demerit is attached that is not subsequently reversed, then the day is the day upon which the person commits:

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- (c) the fifth mutual obligation failure in 6 active months to which a demerit is attached that is not subsequently reversed; or
  - (d) the second, third or fourth mutual obligation failure in 6 active months to which a demerit is attached that is not subsequently reversed, where at least 1 of the mutual obligation failures recorded in the Employment Department's Information Technology System is of the kind described in subparagraphs 5(2)(a)(ii)(A), (B) or (C).
- (4) For the purposes of this section, a demerit is *reversed* if it is removed from the Employment Department's Information Technology System, including because:
- (a) it was recorded in respect of a mutual obligation failure by a person who subsequently underwent a DHS assessment, and the outcome of the DHS assessment was that the person's employment pathway plan was not suitable for the person;
  - (b) it was recorded in respect of a mutual obligation failure by a person who subsequently underwent a capability assessment with their employment services provider, and the outcome of that assessment was that the person's employment pathway plan was not suitable for the person;
  - (c) it was recorded in respect of a mutual obligation failure by a person and the person was subsequently found to have had a valid reason for committing the failure; or
  - (d) it was recorded in error.

Note: If the outcome of the DHS assessment is that the person's employment pathway plan is not suitable for the person, then all the person's demerits will be removed from the Employment Department's Information Technology System at that time.

#### *Circumstances where a person has not persistently committed mutual obligation failures*

- (5) Despite subsections (1) to (3), for the purposes of paragraph 42AF(2)(a) of the Act, the Secretary must not be satisfied that a person has persistently committed mutual obligation failures if the person has not committed a mutual obligation failure to which a demerit is attached, or a mutual obligation failure without a reasonable excuse, in the 3 active months prior to the relevant failure.
- (6) For the avoidance of doubt, despite subsections (1) to (3), for the purposes of paragraph 42AF(2)(a) of the Act, the Secretary must not be satisfied that a person has persistently committed mutual obligation failures if one or more of the person's demerits referred to in subparagraphs 5(2)(a)(i) or (ii) is reversed, with the result that:
  - (a) the person has not committed at least 5 mutual obligation failures to which a demerit is attached, for the purposes of subparagraph 5(2)(a)(i); or
  - (b) the person has not committed 2, 3, or 4 mutual obligation failures to which a demerit is attached (at least one of which was a mutual obligation failure described in subparagraphs 5(2)(a)(ii)(A), (B) or (C)), for the purposes of subparagraph 5(2)(a)(ii).

## **6 Circumstances where a person's participation payment is to be reduced (and by how much) or cancelled**

### *Reduction of payment by half the instalment*

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- (1) For the purposes of paragraph 42AF(2)(c) and subsection 42AN(4) of the Act, the Secretary must determine that an instalment of a person's participation payment is to be reduced by the amount specified in paragraph 42AN(3)(a) if the Secretary is satisfied the circumstances set out in paragraphs 5(1)(a) or 5(1)(b) of this instrument apply to the person.

*Reduction of payment by the whole instalment*

- (2) Despite subsection (1), for the purposes of paragraph 42AF(2)(c) and subsection 42AN(4) of the Act, the Secretary must determine that an instalment of a person's participation payment is to be reduced by the amount specified in paragraph 42AN(3)(b) if, in the 3 active months prior to the relevant failure:
- (a) the Secretary has made a determination under paragraph 42AF(2)(c) to reduce an instalment of the person's participation payment by the amount specified in paragraph 42AN(3)(a); and
  - (b) that determination was the last determination made under paragraph 42AF(2)(c) in relation to the person.

*Cancellation of payment*

- (3) Despite subsections (1) and (2), for the purposes of paragraph 42AF(2)(d) of the Act, and subject to subsection 42AF(4) of the Act, the Secretary must determine that a person's participation payment is cancelled if, in the 3 active months prior to the relevant failure:
- (a) the Secretary has made a determination under paragraph 42AF(2)(c) to reduce an instalment of the person's participation payment by the amount specified in paragraph 42AN(3)(b); and
  - (b) that determination was the last determination made under paragraph 42AF(2)(c) in relation to the person.

Note: The effect of subsection 42AF(4) of the Act is that if the Secretary has previously determined that a person's payment is to be reduced by the whole amount of the instalment for an instalment period, and the person commits the relevant failure during that instalment period, no compliance action may be taken in relation to that failure.

*First relevant failure after cancellation – reduction of payment by half the instalment*

- (4) Despite subsections (1), (2) and (3), for the purposes of paragraph 42AF(2)(c) and subsection 42AN(4) of the Act, the Secretary must determine that an instalment of a person's participation payment is to be reduced by the amount specified in paragraph 42AN(3)(a) if:
- (a) the person previously received a participation payment; and
  - (b) that payment was cancelled under paragraph 42AF(2)(d); and
  - (c) the relevant failure is the first mutual obligation failure where the person does not have a reasonable excuse in the 3 active months since that cancellation.