THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS LEGISLATION AMENDMENT (SCHOOLING REQUIREMENTS) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education and the Minister for Employment and Workplace Relations, the Honourable Julia Gillard MP)
The Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008 amends the Social Security (Administration) Act 1999, the A New Tax System (Family Assistance) Act 1999, the Student Assistance Act 1973 and the Veterans’ Entitlements Act 1986 to give effect to measures announced in the 2008-09 Budget that concern parental responsibilities in relation to the school enrolment and attendance of their children.

Amendments to the Social Security (Administration) Act 1999 include the addition of Part 3C to provide for implementation of the 2008-09 Budget measure - Improving School Enrolment and Attendance through Welfare Reform (SEAM). The Bill also makes amendments to disclosure of information provisions to support and facilitate implementation of the measure.

Amendments to the A New Tax System (Family Assistance) Act 1999, the Student Assistance Act 1973 and the Veterans’ Entitlements Act 1986 provide legislative support for payments affected by the measure.

SEAM introduces conditions on the receipt of income support payments whereby parents are obliged to ensure their children of compulsory school age are enrolled in school as well as to take reasonable action to ensure children attend school regularly.

Part 3C outlines requirements for parents in receipt of income support in relation to the enrolment and attendance of their compulsory school age children.

For enrolment, the amendments allow for the provision of notices to affected parents requiring them to provide information to Centrelink about the status of their child’s enrolment at school. Parents who do not comply with the notice without a reasonable excuse or other special circumstance will have their income support payments suspended.

For attendance, the amendments allow for the provision of notices to parents who have been identified by education authorities or schools as failing to take reasonable steps to address their child’s unsatisfactory school attendance. These parents may have their income support payments suspended if they do not take reasonable steps to engage with the school and the school continues to be dissatisfied with the child’s attendance. Before a suspension is applied, the Secretary (or his or her delegate) needs to determine whether a reasonable excuse or special circumstance prevents the parent from complying with the requirement.

For both the enrolment and attendance components, payments will be reinstated with full back pay if parents comply within a 13 week period. Part 3C allows for
discretion in the lifting of suspension periods and for the payment of arrears beyond a 13 week suspension period.

**FINANCIAL IMPACT**

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Total $17.6 m
NOTES ON CLAUSES

Clause 1 provides for the Act to be cited as the Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Act 2008.

Clause 2 sets out that the Act will commence on the day on which it receives Royal Assent.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

For ease of description, this explanatory memorandum uses the following abbreviation:

‘Administration Act’ means the Social Security (Administration) Act 1999

‘Family Assistance Act’ means the A New Tax System (Family Assistance) Act 1999;

‘Social Security Act’ means the Social Security Act 1991;

‘Student Assistance Act’ means the Student Assistance Act 1973; and

Schedule 1 – Amendments

**A New Tax System (Family Assistance) Act 1999**

**Item 1** amends the definition of ‘receiving’ in subsection 3(1) to provide that the meaning of ‘receiving’ in relation to a social security pension, social security benefit, a service pension or income support supplement is affected by new section 3AA.

**Item 2** inserts new section 3AA. This new section modifies the definition of ‘receiving.’ This new subsection will provide that where a person is receiving a pension, benefit or income support supplement which is subject to the schooling requirement provisions in Part 3C of the Administration Act and the payment is suspended for less than 13 continuous weeks under that Part, the person will be taken to be receiving a social security payment for the purposes of specified provisions in the Family Assistance Act. This will ensure that where a person’s social security payments are suspended under Part 3C of the Social Security Act for less than 13 weeks, the person’s Part A rate of family tax benefit will continue to be calculated without regard to the income test, the person’s child care benefit rate will continue to be calculated using 100% as a taxable income percentage resulting in the maximum child care benefit rate and the person’s eligibility for child care benefit special grandparent rate will continue.

However, where a person’s payment is suspended for a period of more than 13 weeks, they will not be deemed to have been receiving a pension, benefit or income support supplement which is subject to the schooling requirement provisions for any part of the period (subsection (4) refers). Subsection (5) then provides an exception to this whereby if a person’s continuous suspension period overlaps two income years, the person will be deemed to have been receiving the payment for the period of the suspension in the first income year and not for the period in the second income year. This exception would avoid delaying or revisiting a decision regarding the reconciliation of family tax benefit or child care benefit for the first financial year.

**Social Security (Administration) Act 1999**

**Item 3** inserts a new section 37AA with the effect that a person who is not payable due to the operation of new Part 3C can still be granted a claim for a social security payment. This does not mean that a person will be paid. The operation of clause 5 of schedule 2 of the Administration Act means that a person’s start date for payment will be when the person’s payment becomes payable. Subsection 37AA(2) makes it clear that subsection 37AA(1) does not apply to a claim for a schooling requirement payment paid under the Veterans’ Entitlement Act. The grant of those payments will still be subject to, and determined under, that Act. However, where a person claiming a schooling requirement payment under the Veterans’ Entitlements Act is subject to new Part 3C of the Administration Act, the person’s claim may be granted under the Veterans’ Entitlements Act and then immediately suspended under new Part 3C.

**Item 4** amends paragraph 85(1)(a) of the Administration Act. The effect of this is that if a person’s payment is cancelled under new Part 3C it can be reinstated under
section 85. As this determination would be a favourable determination under section 108, the date of effect rules contained in section 109 of the Administration Act would apply, with the result that for a person to receive arrears of payment, a person would need to seek review within 13 weeks of the cancellation decision. This will apply to both reconsiderations of decisions initiated by the Secretary or by the person.

Item 5 amends paragraph 123(1)(c) of the Administration Act to include a reference to new sections 124H and 124M. This is a consequential amendment.

Item 6 inserts new Part 3C. Part 3C will contain the substantive provisions relating to schooling requirements.

New section 124 sets out when new Part 3C will apply to a person. A person to whom new Part 3C applies is a schooling requirement person. The first criterion that needs to be met for a person to be a schooling requirement person is that a person needs to have made a claim for a schooling requirement payment that is being determined under the Administration Act or the Veterans’ Entitlement Act (for Veterans’ Affairs payments) or have had a claim determined and that claim has not been cancelled. This would capture a person who is receiving a payment or a person who may not be receiving a payment, who is suspended or who has a nil rate.

The second criterion is that a person has a schooling requirement child or that the person had a schooling requirement child of the person during a period as set out in the schooling requirement guidelines. A schooling requirement child is a child as set out in new section 124B. The inclusion of a circumstance whereby a person had a schooling requirement child is intended to cover situations where it is considered appropriate that the requirements should remain applicable for a limited period, for example, when a person temporarily changes their circumstances. It is necessary to ensure that people are not able to change their circumstances solely to circumvent the operation of new Part 3C but at the same time it is important that any period contained in a legislative instrument is both reasonable and proportionate. For example, it may be disproportionate that the new Part continues to apply where a child has not been a person’s schooling requirement child for 12 months but reasonable if a child was the person’s schooling requirement child in the past 13 weeks.

The final criterion for new Part 3C to apply in respect of a person is that the person’s schooling requirement child is required under a State or Territory law to be either or both enrolled at or attending school at times required under the law. If there was a circumstance under a State or Territory law whereby a child was required to be enrolled in a school but not attending for a particular reason then new Part 3C would still apply as the child would still be required to be enrolled at school. The reference to attendance at school at times required under the law recognises that a child is only actually required to attend school at certain times (e.g. generally a child isn’t required to attend during school holidays).

New subsection 124(2) sets out how the Part applies if the person becomes a person to whom subsection (1) no longer applies. This could be for example because the person’s schooling requirement child is no longer required to be enrolled in or attending school under a State or Territory law.
Where subsection (1) no longer applies to a person and the person’s payment has been suspended under new Part 3C, subsection (2) provides the mechanism by which the person’s payment can be reinstated.

New subsection 124(2) provides that where Part 3C stops applying to a person that section 124J and 124N (which provide for the resumption of payment) will still apply. Paragraph 124(2)(b) provides that the date of the reconsideration decision for the purposes of those sections will be the date on which the Part stopped applying and paragraph 124(2)(c) has the effect that the person’s payment will be considered to have become payable as at that reconsideration date. The date of effect rules in those sections will then also apply.

Elizabeth is in receipt of a schooling requirement payment and is a schooling requirement person and is therefore subject to Part 3C. Elizabeth’s parenting payment is suspended under Part 3C as she is not taking reasonable steps to ensure that her daughter Mary is attending school. Mary turns 17 and is no longer required to attend school under the applicable State legislation. As a result Elizabeth falls outside of the scope of Part 3C. However, subsection 124(2) provides that the provisions that enable Elizabeth’s payments to be resumed will still apply. These provisions require a reconsideration of the decision to suspend Elizabeth’s payment and subsection 124(2) provides that the date of that reconsideration will be the date that Part 3C ceased to apply to Elizabeth (i.e. when Mary turned 17). The other provisions relating to resumption of payments will also apply. This means that if Elizabeth has been suspended for less than 13 weeks (not necessarily continuously) then the decision to reinstate her payments will take effect from the day she was originally suspended.

If new subsection 124(2) was not included it would be unclear how a person would resume payment and a person could arguably remain suspended indefinitely even though subsection (1) no longer applied to the person.

New section 124A provides definitions relevant to the new part. The ordinary meaning of attendance at a school is extended so that it includes attendance at a place that is acceptable under a State or Territory law as an alternative to a requirement under that law to attend school. Similarly the ordinary meaning of enrolment at a school is extended to include anything that is acceptable under a State or Territory law as an alternative to a requirement under that law to enrol at school.

Angela lives in Queensland (QLD) and is of compulsory school age under QLD legislation. Instead of attending a school, Angela undertakes another full-time activity approved by the QLD Government. This other activity satisfies the compulsory enrolment requirement contained in QLD legislation and would therefore be included within the scope of being enrolled at a school in new Part 3C.

Brett lives in Western Australia (WA) and is of compulsory school age under WA legislation. He is home-schooled by his mother, Teena who is registered as a home educator (as required under WA legislation) and is receiving a schooling requirement payment. In this case, home-schooling is regulated by the
WA Government. Brett satisfies the enrolment and attendance requirements under WA legislation. As Brett is Teena’s dependent child she would fall within the scope of section 124.

Person responsible for the operation of a school includes a person responsible for schooling (or the administration of schooling) at a place, other than a school, to which the definitions of attendance and enrolment apply.

Sylvia lives in QLD and is of compulsory school age under QLD legislation. Instead of attending school Sylvia undertakes a full-time traineeship. This is approved by the QLD Government and therefore satisfies the compulsory enrolment and attendance provisions in QLD legislation. Centrelink receives a notice from the director of the traineeship provider that Sylvia has unsatisfactory attendance. The director of the traineeship provider will fall within the definition of person responsible for the operation of a school and this notice may therefore trigger the attendance provisions in Part 3C.

New section 124B includes a definition of schooling requirement child. A child will be a schooling requirement child if the child is a dependent child of the person or the child is supposed to live with a person or spend time with a person under a family law order, registered parenting plan or parent plan for 14 per cent of a schooling requirement period.

Subsection 124B(2) provides that a schooling requirement period will be contained in a legislative instrument made by the Minister. A schooling requirement period could be a recurring period such as a fortnight or it could be a longer period such as a school term or school year. People caring for a child during a schooling requirement period will be covered under the schooling requirements, which includes, for example, share-care arrangements where multiple persons may have responsibility for the care of a child during a schooling requirement period. Subsection 124B(4) has the effect that a schooling requirement period can have commenced before the commencement of new Part 3C. This new definition is similar to the definition of eligible care child in section 123UH.

New section 124C provides that the Minister may make a legislative instrument determination relating to school enrolment and attendance.

In particular the determination is relevant in the exercise of certain discretions contained in new Part 3C. These include when a person will have a reasonable excuse for a failure or where special circumstances may exist or when a person will be considered to be taking reasonable steps to ensure a child complies with school attendance requirements. The determination is not limited to only being able to contain guidance for decision makers by way of guidelines. The determination may, for example set out what is a reasonable excuse for a particular failure and what cannot be taken to be a reasonable excuse when exercising this particular discretion or it may provide what does or does not amount to a special circumstance in particular contexts.

Consistent with subsection 33(3A) of the Acts Interpretation Act, the ability to determine matters in new Part 3C includes the power to make different provision with
respect to different matters or different classes of matter. For example, the legislative instrument determination could set out different types of reasonable excuses related to an enrolment notice failure than reasonable excuses related to an attendance notice failure.

New section 124D sets out a definition of ‘schooling requirement payments’, which are the income support payments to which the new provisions contained in Part 3C will apply. They include social security benefits and pensions (as defined in section 23 of the Social Security Act) as well as three payments under the Veterans’ Entitlement Act. These are Defence Force Income Support Allowance; income support supplement and service pension.

New section 124E provides that in relation to a schooling requirement payment that is made under the Veterans’ Entitlement Act (being Defence Force Income Support Allowance; income support supplement and service pension) for the purposes of new Part 3C the Administration Act and the provisions in subsection (2) will apply to those payments as if the payments were social security payments.

The provisions specified in subsection (2) are Part 1, section 85, Divisions 9 and 10 of Part 3, Part 4, Part 5, Part 6, Part 7 and Schedule 1 of the Administration Act. These provisions include provisions relating to the review of decisions, information management, offences and delegations as far as they relate to Part 3C, the ability to delegate powers and the dictionary in the Administration Act. This is not intended to effect the operation of the Veterans’ Entitlement Act in any other way apart from for the purposes of Part 3C and these provisions. The payment and administration of Veterans’ Entitlement payments remain subject to the Veterans’ Entitlement Act.

As Centrelink will be administering this measure on behalf of the Department of Veterans’ Affairs, this amendment will facilitate the effective and streamlined administration of the measure. It will ensure consistency in the application of the measure, including decision-making, reviews and appeal processes, which will be undertaken by Centrelink in accordance with the specified provisions of the Administration Act.

**Division 2 - School enrolment**

Division 2 sets out the substantive provisions related to school enrolment. New section 124F sets out when the Secretary may give a schooling requirement person an enrolment notice. Broadly, as provided under subsection 124F(1) an enrolment notice is a notice given to a person requiring the person to give evidence that his or her schooling requirement child is enrolled at school as required by a law of a State or Territory. Where a person has more than one school requirement child such a requirement can be included in the same notice in respect of each child but it would give rise to separate requirements in respect of each child.

Subsection 124F(2) provides that the enrolment notice may require evidence of enrolment to be in the form of a written or oral statement by the person or to be provided by another person confirming enrolment.
It is envisaged that persons in receipt of income support will be asked to provide verbal advice of enrolment details while new claimants will need to provide documentary evidence. This evidence may be in the form of existing documents, such as a school report.

Subsection 124F(3) provides that the notice must set out:
- how to comply with the notice;
- the period for compliance;
- that the period for compliance may be extended; and
- the consequence of not complying with the notice.

The initial period of compliance as provided by new subsection 124F(4) must be at least 14 days after the notice is given but it may be extended under subsection 124F(5). The extension may occur before or after the end of the initial stated period. It would also be possible to provide more than one extension. The ability to extend the period of compliance after the initial period has ended supports the ability to suspend a person’s payment for non compliance, reinstate the person’s payment and then provide the person additional time to comply with the requirement to provide the required evidence.

Additionally, it may be appropriate to extend the period where personal or external situations which would prevent or impede the person from complying within the stipulated time period. Examples could include illness of the person or late receipt of the notice.

New section 124G sets out the consequence of failing to comply with an enrolment notice. Under subsection 124G(1) where a person has failed to comply with the requirement to provide evidence about a child being enrolled at a school then a person’s payment will cease to be payable.

This will not apply where the initial compliance period (or any extension of that period) has not ended.

It will also not apply if a person has a reasonable excuse for the failure to comply or there are special circumstances in which it is not appropriate that a person’s payment ceases.

Andrew is a schooling requirement person and is sent an enrolment notice. Andrew does not comply with the notice. Centrelink determines that Andrew has a reasonable excuse for failing to comply with the notice. Therefore, Andrew’s income support payment cannot be suspended.

Whether a person has a reasonable excuse or special circumstances exist need to be determined in accordance with a legislative instrument determination (if any) made by the Minister under section 124C. These discretions ensure that a range of circumstances will be available for consideration by the Secretary or to bind the Secretary (or delegate) to ensure that decision-making takes into account the individual circumstances of a person before deciding to suspend or cancel their income support payment. A legislative instrument determination regarding the types of situations that constitute reasonable excuse or special circumstances will be
developed in consultation with relevant stakeholders and aim to support consistent and appropriate decision-making.

Subsection 124G(3) provides that a person’s payment cannot be suspended or cancelled as result of failing to comply with an enrolment notice except as provided by new Division 2 of Part 3C. For example, section 80 of the Administration Act which provides a general power for the Secretary to suspend or cancel a person’s social security payment if the payment is not payable will not apply.

Subsection 124G(4) provides that this section does not apply in relation to a grant of schooling requirement payment under the Veterans’ Entitlement Act. For the new subsection to apply to the person claiming a schooling requirement payment under the Veterans’ Entitlements Act, the claim must first be granted under the Veterans’ Entitlements Act. The pension may then become subject to Part 3C of the Administration Act and may be immediately suspended in accordance with this provision and new section 124H.

New section 124H sets out when a person’s payment will be suspended for enrolment reasons. This is when a person has been given an enrolment notice and the person has failed to comply with the notice and the person’s payment is not payable under subsection 124G(1).

Where this occurs, subsection 124H(2) provides that the Secretary must determine that the person’s payment is suspended or cancelled. However, cancellation cannot occur until the person’s payment has been suspended for at least 13 weeks.

The 13 weeks does not need to be a continuous period. However, whether or not it is appropriate to cancel a person’s payment as opposed to continuing the suspension of a payment needs to be carefully considered and it is appropriate that the Secretary take into account that the purposes of the legislation should be fulfilled and that cancellation is rational and proportionate in the circumstances. The primary purpose of the measure is to engender behavioural change in parents who are receiving income support with the aim being to improve the school enrolment and attendance of their children. In recognition that the circumstances and intentions of parents are varied, the legislation allows for a range of methods to be employed to help achieve the goals of the measure.

Any cancellation decision will take effect from the day it is made not from an earlier date.

Subsection 124H(3) provides that the Secretary may make more than one determination under subsection (2). This means that a person’s payment could be resumed under section 124J but then suspended again.

A resumption of suspended payments is a tool that may be used as an inducement to encourage parental cooperation. In this way, a person may have their payments reinstated on the promise of compliance within a future stipulated time period. If they do not comply within that time period, payments may be suspended once again.
Subsection 124H(4) intends that where a person has been granted a payment but at the time the person was not payable for reasons relating to school enrolment (or for another reason), even though the person’s start date would delay payment, a decision must still be made to suspend the person’s payment. This ensures that the resumption provisions relating to suspension will apply including the date of effect provisions which can result in payments of arrears.

New section 124J sets out when a person’s payment will be reinstated where the Secretary reconsiders the decision. This can be as a result of a customer or Secretary initiated review.

If having considered the person’s payment situation the Secretary considers that 124G(1) no longer applies; then subsection 124J(2) operates so that the Secretary must make a determination that the schooling requirement is payable to the person. This may, for example, be because in the special circumstances of the case it is appropriate to determine that the payment is payable or it is determined the person has a reasonable excuse for the failure.

The Secretary must also determine when any amounts of income support will be paid to the person.

New subsections 124J(3) and (4) set out the date of the effect of a decision made under subsection 124J(2).

If a person has been suspended under section 124H for a period of less than 13 weeks the decision that a person’s payment is payable under subsection 124J(2) will take effect from the last date of non compliance. That is, the date of the most recent suspension decision. This will then allow for arrears of payments back to that date.

The 13 weeks of suspension is not necessarily a continuous period. For example, if a person has been suspended for five weeks then reinstated and given further time to provide the requested enrolment information and the person is again suspended at a later point for three weeks, then the person will still have been suspended for less than 13 weeks and subsection 124J(3) will apply. However, if the person is again suspended for example, for six weeks in relation to the same enrolment notice then subsection 124J(3) will not apply.

Where a person has been suspended for more than 13 weeks, whether this is a continuous period of 13 weeks or made up of a number of periods that are not necessarily continuous but amount to 13 weeks of suspension, then subsection 124J(4) will apply.

Subsection 124J(4) provides that in this circumstance the date of effect of the decision that the person is payable will be the date that the Secretary has reconsidered the decision or an earlier date if appropriate in the special circumstances of the case as determined in accordance with the schooling requirement determination.

Where the Secretary has determined that under paragraph 124J(4)(b) that the date of effect of the decision under subsection 124J(2) that a person is payable from an earlier date, then the effect of this is that payment will be payable back to that date.
Subsection 124J(5) allows the Secretary to make a determination that a person is payable from the reconsideration day but then to later vary that determination so that the decision will take effect from an earlier day.

There could be for example, special circumstances that arise at a later time that were not known at the time the decision to reinstate payments is made which make it appropriate to make such a determination and entitle the person to arrears of payments.

Sue is a schooling requirement person. Sue was sent an enrolment notice and her schooling requirement payment was subsequently suspended as she failed to comply with the notice. Fourteen weeks later Centrelink made a decision that Sue had special circumstances for failing to comply with the enrolment notice from the date of the original decision but that these special circumstances only existed for the last six weeks. Section 124J will allow Centrelink to pay Sue for the period for which special circumstances exist.

Subsection 124J(6) provides that arrears that result from a determination under subsection (3) or (4) can be paid to a person as a lump sum payment, a series of regular payments or otherwise in accordance with the determination.

A range of treatments for the payment of arrears will provide options for the Secretary to ensure that the best interests of the person and their circumstances are taken into account.

Subsection 124J(7) provides that the actual entitlement to any amount only arises when the amount is actually paid. This means that a person cannot be considered to have received an amount when in fact the person has not actually received it. Where a person is subject to income management under Part 3B, the rules in that Part will still apply to any payments. For example any payments of a schooling requirement payment that is a newstart allowance would be a social security benefit and therefore a Category A welfare payment.

Subsection 124G(8) provides that Division 9 of Part 3 which contain date of effect rules do not apply in relation to a determination under section 124G. This makes it clear that determinations made under this section are subject to the date of effect rules contained in this section.

**Division 3 - School attendance**

New Division 3 sets out the substantive provisions relating to school attendance. New subsection 124K(1) provides when new section 124K will apply to a person. This is when the person has a school requirement child who is enrolled at a school; a person responsible for the operation of the school gives the Secretary written notice that the child is failing to comply with the school attendance requirements to the satisfaction of the person responsible for the operation of the school and the person is failing to take reasonable steps to ensure that the child attends school to the responsible person’s satisfaction.
A person responsible for the operation of a school could be the principal of the school, a person within the management structure of a school or a person who has responsibility of the school within a relevant State or Territory government department or other non-government authority. The ordinary meaning of person responsible for the operation of a school is extended under section 124A to capture a person responsible for a place a child is attending (other than a school) as an alternative to a school.

If the Secretary has received such a notice from a school then the Secretary may send a notice (an attendance notice) to the person requiring the person to take reasonable steps (as contained per legislative instrument determination) to ensure that the child complies with the attendance requirements.

This notice is intended to be a warning to the person that they need to take reasonable steps to ensure that their child is attending school and if they do not take reasonable steps, there may be consequences for the person’s income support payment.

As provided under subsection 124K(2) the attendance notice must provide:

- how to comply with the notice;
- the period for compliance;
- that the period for compliance may be extended; and
- the consequence of not complying with the notice.

The period for compliance must be at least 28 days after the notice is given. This time period allows a person to demonstrate that they are taking reasonable steps to ensure their schooling requirement child is attending school and for those steps to potentially translate to improved school attendance. The effect of this is that a person’s schooling requirement payment could only be suspended under new section 124L at least 28 days after the person has received this warning.

However, as provided under subsection 124K(5) this initial compliance period may also be extended (either before or after the initial compliance period has ended).

Circumstances under which an extension of the compliance period may be granted would include personal or external situations which would prevent or impede the person from complying within the stipulated time period. Examples include illness of the person or the child, travel away from the area or an inability to comply because of a school vacation period.

New section 124L sets out the consequence of failing to comply with an attendance notice. Under subsection 124K where a person has failed to comply with the notice requirement to take reasonable steps to ensure that his or her child is attending school then the person’s payment will cease to be payable. This will not apply where the initial compliance period (or any extension of that period) has not ended.

Subsection 124L(1) will also not apply if a person has a reasonable excuse for the failure to comply or there are special circumstances in which it is not appropriate that a person’s payment ceases.
Leila is a schooling requirement person and receives an attendance notice under subsection 124K(2). Leila fails to take appropriate steps to ensure her child is attending school. Centrelink determines that special circumstances as set out in the determination exist in Leila's case and that as a result it is not appropriate to suspend Leila's schooling requirement payment.

Whether a person has a reasonable excuse or special circumstances exist will need to be determined in accordance with a legislative instrument determination made by the Minister under section 124C. A legislative instrument determination regarding the types of situations that constitute reasonable excuse or special circumstances will be developed in consultation with relevant stakeholders and aim to support consistent and appropriate decision-making.

Subsection 124L(2) provides that a person's payment cannot be suspended or cancelled as result of failing to comply with an attendance notice except as provided by new Division 3 of Part 3C.

For example, section 80 of the Administration Act which provides a general power for the Secretary to suspend or cancel a person’s social security payment if the payment is not payable will not apply.

Subsection 124L(4) provides that this section does not apply in relation to a grant of schooling requirement payment under the Veterans' Entitlement Act. For the new subsection to apply to the person claiming a schooling requirement payment under the Veterans’ Entitlements Act, the claim must first be granted under the Veterans’ Entitlements Act. The pension may then become subject to Part 3C of the Administration Act and may be immediately suspended in accordance with this provision and new section 124M.

New section 124M sets out when a person’s payment will be suspended for attendance reasons. This is when a person has been given an attendance notice and the person has failed to comply with the notice and the person’s payment is no longer payable under subsection 124L(1).

Where this occurs, subsection 124M(2) provides that the Secretary must determine that the person’s payment is suspended or cancelled. However, cancellation cannot occur if a person’s payment has not been suspended for 13 weeks. The 13 weeks does not need to be a continuous period. However, whether or not it is appropriate to cancel a person’s payment as opposed to continuing the suspension of a payment needs to be carefully considered and it is appropriate that the Secretary take into account whether cancellation is appropriate in the circumstances given the purpose of these new provisions.

Subsection 124M(3) provides that the Secretary may make more than one determination under subsection (2). This means that a person’s payment could be resumed under section 124N but then suspended again.

Subsection 124M(4) intends that where a person has been granted a payment but at the time the person was not payable for reasons relating to school attendance (or for another reason), even though the person’s start date would delay payment, a decision
must still be made to suspend the person’s payment. This ensures that the resumption provisions relating to suspension will apply including the date of effect provisions which can result in payments of arrears.

New section 124N sets out when a person’s payment will be reinstated if it has been suspended for attendance reasons. This will be when the person’s payment has been suspended and a person responsible for the operation of school at which a person’s school requirement child is enrolled gives the Secretary written notice that the child is complying with the requirements for school attendance.

A person’s payment will also be reinstated if the Secretary reconsiders the suspension of the payment and has determined that subsection 124L(1) no longer applies to the person. For example this may be because the person is now taking reasonable steps to ensure his or her child is attending school or there are special circumstances that make it appropriate to determine that the payment is payable.

Where this occurs, subsection 124N(2) provides the Secretary must determine that the payment is payable and determine when any amounts of income support resulting from the operation of the section will be paid to the person.

New subsections 124N(3) and (4) set out the date of the effect of a decision made under subsection 124N(2).

If a person has been suspended under section 124M for a period of less than 13 weeks the decision that a person’s payment is payable under subsection 124N(2) will take effect from the last date of non compliance. That is, the date of the most recent suspension decision. This will then allow for arrears of payments back to that date.

The 13 weeks of suspension is not necessarily a continuous period. For example, if a person has been suspended for five weeks then reinstated and suspended at a later point for three weeks, the person will still have been suspended for less than 13 weeks and subsection 124N(3) will apply. However, if the person is again suspended for example for six weeks then subsection 124N(3) will not apply.

Where a person has been suspended for more than 13 weeks, whether this is a continuous period of 13 weeks or made up of a number of periods which are not necessarily continuous but amount to 13 weeks of suspension and that relate to the same school attendance notice, then subsection 124N(4) will apply.

Subsection 124N(4) provides that in this circumstance the date of effect of the decision that the person is payable will be the date that the Secretary has reconsidered the decision or another earlier date depending on any special circumstances of the case as determined in accordance with the schooling requirement determination.

Where the Secretary has determined that under paragraph 124N(4)(b) that the date of effect of the decision under subsection 124N(2) that a person is payable from an earlier date, then the effect of this is that arrears of payment will be payable back to that date.
Subsection 124N(5) has the effect that the Secretary may vary a determination under paragraph 4(b). This allows the Secretary to make a determination that a person is payable from the reconsideration day but then to later make another determination that that decision will take effect from an earlier day.

There could be for example, special circumstances that arise at a later time that were not known at the time the decision to reinstate payments is made which make it appropriate to make such a determination and entitle the person to arrears of payments.

Subsection 124N(6) provides that arrears that result from a determination under subsection (3) or (4) can be paid to a person as a lump sum payment, a series of regular payments or otherwise in accordance with the determination. Where a person is subject to income management under Part 3B, the rules in that Part will still apply to any payments. For example any payments of a schooling requirement payment that is a newstart allowance would be a social security benefit and therefore a Category A welfare payment.

A range of treatments for the payment of arrears will provide options for the Secretary to ensure that the best interests of the person and their circumstances are taken into account.

Subsection 124N(7) provides that the actual entitlement to any amount only arises when the amount is actually paid. This means that a person cannot be considered to have received an amount when in fact the person has not actually received it.

Subsection 124N(8) provides that Division 9 of Part 3 which contains date of effect rules does not apply in relation to a determination under section 124G. This makes it clear that determinations made under this section are subject to the date of effect rules contained in this section only.

Subsection 124N(9) provides that Division 9 of Part 3 which contain date of effect rules does not apply in relation to a determination under section 124N.

**Division 4 – Information about schooling**

To facilitate and support the implementation of the school enrolment and attendance measure it will be necessary that information can be exchanged between schools, education departments, portfolio departments and Centrelink.

New section 124P provides that despite any State or Territory law, a State or Territory, non-government school authority or any other person who is responsible for the operation of one or more schools can give information to the Secretary about enrolment or non-enrolment, or attendance or non-attendance, of children at school.

This ensures that information can be provided to Centrelink or a department without people being in breach of State or Territory laws, if ordinarily such a disclosure would breach these laws.

**Item 7** is a consequential amendment.
**Item 8** amends section 195 of the Administration Act. Section 195 is an information collection power which allows the Secretary to require information to be provided about a class of persons.

Item 8 inserts new paragraph 195(1)(ca) which provides that information may be required from a person if it is to facilitate the administration of Part 3C. Such a purpose may, for example, include identifying people receiving social security or Veterans’ Entitlements Act payments that could be subject to Part 3C because they have school aged children.

While the types of information contained in current subsection 195(2) will still be able to be required, **Item 9** inserts an additional type of information that can be required. This allows for information to be required for the purposes of Part 3C, which is relevant to the child’s past or present enrolment, or attendance, at school within the meaning of Part 3C. The ordinary meanings of attending and being enrolled at school are extended for the purposes of Part 3C under section 124A.

**Item 10** repeals the note at subsection 202(2A) which reminds readers of the need to comply with the *Privacy Act 1988*. This note has been included in Item 11 so it more generally applies to section 202.

**Item 11** repeals and replaces current subsection 202(6) and (7) and inserts new subsection 202(8). While the current provisions provide for disclosure of information they do not expressly provide for obtaining or using the information. New subsection 202(6) clarifies this and provides that protected information that relates to a matter covered by subsection (7) can be obtained and recorded by a person, disclosed to a person responsible for the operation of the school (or any other school), and otherwise used by a person. Subsection (7) refers to the enrolment (or non-enrolment) or attendance (or non-attendance) of a child at a school and to a person whose child is or is not enrolled at, or is or is not attending school. Such information could be disclosed and used, for example, to ensure children are enrolled and attending a school, or to determine infrastructure or resourcing requirements at a school.

A person responsible for the operation of a school could be the principal of the school, a person within the management structure of a school or a person who has responsibility for the school within a relevant State or Territory government department or other non-government authority. Subsection (8) provides that the terms attendance, enrolment and person responsible for have the same meanings as provided for in new Part 3C which extend the ordinary meanings of these terms.

The note repealed by Item 10 is also included.

**Items 12 to 20** insert new definitions in the dictionary in Schedule 1 which are relevant to new Part 3C.

**Item 21** inserts new paragraph (f) into the definition of *exclusion period* in subclause 2 of Schedule 2. This ensures it is clear that where a person is not payable due to the operation of new Part 3C that the person’s start date will not be until the person becomes payable.
Student Assistance Act 1973

While the Student Assistance Act appropriates money and provides for debt recovery of overpayments in relation to the ABSTUDY scheme, the scheme is generally administered under Guidelines contained in the ABSTUDY Policy Manual. Therefore, the substantive provisions relating to schooling requirements will be contained in the ABSTUDY Policy Manual. However, it is necessary that some minor amendments are made to the information exchange provisions in the Student Assistance Act relevant to ABSTUDY.

Item 22 amends the current definition of ‘protected information’ to clarify that information that is obtained for the purposes for the administration of the ABSTUDY scheme is protected information under the Student Assistance Act. This ensures that the relevant protections contained in the Act apply to this information and that the information collected for the purpose of administering the ABSTUDY scheme needs to be managed in accordance with the Student Assistance Act.

This item also makes a technical amendment to the definition of ‘protected information’ to replace references in the Student Assistance Act to the Department of Employment, Education and Training and the Department of Social Security with the Department of Education, Employment and Workplace Relations and a Department administered by a Minister responsible for the administration of the Social Security Act 1991.

Item 23 amends section 343 so that the Secretary can require information related to a child’s past or present enrolment or attendance at school where it is for the purposes of the administration of the ABSTUDY scheme.

Item 24 gives the meanings of attendance at school and enrolment at school in section 343 the same meanings as in the Administration Act. The ordinary meanings of these terms have been extended in the Administration Act.

Items 25 to 27 also ensure that the confidentiality exchange provisions cover the ABSTUDY scheme.

Item 28 inserts new subsection 351(4) which provides that a person may obtain, make a record, disclose the information to a person responsible for the operation of a school (or any other school), or otherwise use the information that relates to the enrolment (or non-enrolment) or the attendance (or non-attendance) of a child at a school.

Schedule 2 – Veterans’ entitlements amendments

Veteran’s Entitlement Act 1986

Item 29 amends paragraph 36A(1) by repealing paragraph 36A(1)(d) and substituting a new paragraph 36A(1)(d). New paragraph 36A(1)(d) provides that age service pension may not be payable because the pension has been cancelled or suspended
under sections 56E, 56EA, 56J and 56K of the Veterans’ Entitlements Act or under new Part 3C of the Administration Act.

**Item 30** amends paragraph 37A(1) by repealing paragraph 37A(1)(d) and substituting a new paragraph 37A(1)(d). New paragraph 37A(1)(d) provides that invalidity service pension may not be payable because the pension has been cancelled or suspended under sections 56E, 56EA, 56J and 56K of the Veterans’ Entitlements Act or under new Part 3C of the Administration Act.

**Item 31** amends paragraph 38A(1) by repealing paragraph 38A(1)(d) and substituting a new paragraph 38A(1)(d). New paragraph 38A(1)(d) provides that partner service pension may not be payable because it has been cancelled or suspended under sections 56E, 56EA, 56J and 56K of the Veterans’ Entitlements Act or under new Part 3C of the Administration Act.

**Item 32** amends paragraph 45B(1) by repealing paragraph 45B(1)(d) and substituting a new paragraph 45B(1)(d). New paragraph 45B(1)(d) provides that income support supplement may not be payable because it has been cancelled or suspended under sections 56E, 56EA, 56J and 56K of the Veterans’ Entitlements Act or under new Part 3C of the Administration Act.

**Item 33** amends section 125 of the Veterans’ Entitlements Act to take account of the new Part 3C of the Administration Act. Under new Part 3C of the Administration Act, a service pension, income support supplement or Defence Force Income Support Allowance payable under the Veterans’ Entitlements Act, may be cancelled or suspended if a person fails to comply with the schooling requirements set out in the new Part.

**Item 33** includes an application provision making it clear that the amendments made in Schedule 1 apply to schooling requirements payment whether the payment is claimed or granted before on or after the commencement of the provisions. That is, the amendments don’t only apply to claims made or granted after the commencement of the provisions.