THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
SOCIAL SECURITY LEGISLATION AMENDMENT BILL 2011

OUTLINE

This Bill makes amendments to support disadvantaged and vulnerable Australians, and improve school attendance, as described below.

Income management

The Bill provides greater flexibility for the operation of income management, so it can be implemented in the five new sites announced in the 2011-12 Budget. Amendments also ensure that income management may be triggered by referrals from State and Territory agencies, such as the Alcohol and Other Drug Tribunal in the Northern Territory.

School attendance plans

The Bill amends the provisions in the social security law that underpin the Government’s Improving School Enrolment and Attendance through Welfare Reform Measure (known as SEAM). It enables some local tailoring of this measure so the operation of SEAM can be integrated with the Northern Territory Government’s Every Child, Every Day initiative, to support greater improvement of school attendance. Under the amended arrangements, a parent may be required to attend a compulsory conference to discuss their child’s school attendance, to enter into a school attendance plan, and to comply with the plan. Failure to meet the compliance arrangements provided by the Bill would lead to suspension of a parent’s income support payment, unless certain circumstances apply.

Financial impact statement

Income management

There is no direct cost related to making these amendments. Future costs will depend on the content of legislative instruments for new implementations.

School attendance plans

This measure forms part of the Stronger Futures in the Northern Territory legislation package’s expansion of the Improving School Enrolment and Attendance through Welfare Reform Measure. The financial impact of implementing that measure is $28.2 million over four years from 1 July 2011, with the measures in this Bill commencing from 1 July 2012.
NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- ‘Social Security Act' means the *Social Security Act 1991*
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*

Clause 1 sets out how the new Act is to be cited, that is, as the *Social Security Legislation Amendment Act Act 2011*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Income management

Summary

This Schedule provides greater flexibility for the operation of income management, to facilitate its implementation in the five new sites announced in the 2011-12 Budget. The amendments also ensure that income management may be triggered by referrals from State and Territory agencies, such as the alcohol and drug tribunal in the Northern Territory.

Background

The income management regime under Part 3B of the Social Security Administration Act operates as a tool to support vulnerable individuals and families. It provides a tool to stabilise people’s circumstances by limiting expenditure of income support payments on excluded items, including alcohol, tobacco, pornography, gambling goods and activities. A person subject to the income management regime has an income management account. Amounts are deducted from the person’s welfare payments and credited to the person’s income management account. Amounts are debited from the person’s income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of the person. Income managed funds cannot be used for excluded items.

Income management triggered by State and Territory agency referral

The provisions in Part 1 of Schedule 1 amend Part 3B of the Social Security Administration Act, inserting a new income management measure to enable income management referrals from a range of State and Territory authorities.

The State and Territory authorities will be specified by legislative instrument, and they will be able to make referrals for income management in a similar way to the current child protection income management measure. This measure could be used to accept referrals from the Northern Territory Alcohol and Other Drug Tribunal. While the default deductible portion will be 70 per cent, the measure will also allow for varying deductible portions to be set by legislative instrument, depending on the referring body, the person’s usual place of residence and the type of welfare payment the person is receiving.

Enabling targeted place-based income management

The Building Australia’s Future Workforce package announced in the 2011-12 Budget includes the introduction of targeted place-based income management in five disadvantaged communities across Australia – Playford (SA), Bankstown (NSW), Shepparton (Vic) and Rockhampton and Logan (Qld).
In these communities from 1 July 2012, income management will apply to vulnerable families and individuals, including:

- parents referred for income management by State or Territory child protection authorities;
- people assessed by Centrelink social workers as being vulnerable to financial crisis, which could include people referred by housing authorities who are at risk of homelessness due to rental arrears; and
- people who volunteer for income management.

This Schedule makes minor legislative changes to allow these child protection, vulnerable welfare payment recipient and voluntary income management measures to apply without necessarily applying other measures currently linked to the vulnerable measure. (At present, the long-term welfare payment recipient and the disengaged youth income management measures currently in place in the Northern Territory are linked to the child protection, vulnerable welfare payment recipient and voluntary measures of income management.)

The provisions will enable the Minister to specify separately, by legislative instrument, States, Territories or areas in which the vulnerable, long-term welfare payment and disengaged youth income management measures will apply.

**Continuing income management despite change of residence**

Many of the current income management measures are location-specific. That is, a person may be subject to income management as a vulnerable welfare payment recipient, long-term welfare payment recipient or disengaged youth only if their usual place of residence is within a declared income management area. Similarly, a person may only volunteer to be income managed if their usual place of residence is within a declared voluntary income management area. However, having become subject to income management, it may not be to the person's benefit for income management to end upon their moving to reside outside the declared area. The current provisions may also create an inappropriate incentive for people to move in order to avoid income management. These amendments provide for income management to continue despite a change in residence, provided the other elements of income management qualification are maintained.
**Minor amendment – exemptions for acceptable absences from school**

Exemptions to the long-term welfare recipient and disengaged youth measures of income management are available where people are engaged in study or work, and for parents who demonstrate responsibility for their children, like getting them to school and having regular health checks. A person with dependent children may be exempt if each child is enrolled at school and has had no more than five unacceptable absences in each of the two school terms ending immediately before that time.

This Schedule makes a minor amendment to clarify the types of school absence which would prevent a person being exempted from income management. This will make it clearer that these types of absence are not considered satisfactory to a person responsible for the operation of the school (including a school principal, manager or truancy officer). Alternatively, if the absences may not be satisfactory, but the person is taking reasonable steps to ensure that the child attends school, they may nonetheless be exempt from income management.

The amendments made by this Schedule commence on the later of 1 July 2012 and the 28th day after the Act receives the Royal Assent. This will allow time for the necessary instruments to be made to support the amendments, including specifying and, where necessary, re-specifying areas in which affected measures will apply from commencement.

**Explanation of the changes**

**Part 1 – State/Territory referrals**

**Amendments to the Social Security Act**

**Item 1** omits the reference in section 1061WG(1)(c) to section 123UE of the Social Security Administration Act and substitutes a reference to both section 123UE and the new section 123UFAA that is created by **item 10** below. This amendment ensures that people subject to income management under the new measure will qualify for the matched savings scheme.

**Amendments to the Social Security Administration Act**

**Item 2** inserts a new paragraph (ga) into the simplified outline of income management set out in section 123TA of the Social Security Administration Act, to include a reference to the new external referral measure.

**Item 3** inserts a definition of **recognised State or Territory** into section 123TC by reference to new section 123TGAB inserted by **item 6** below, which enables the Minister, by legislative instrument, to determine that a specified State or Territory is a recognised State or Territory.
Item 4 inserts a definition of **recognised State/Territory authority** into section 123TC to refer the reader to new section 123TGAA inserted by item 6 below.

Item 5 amends the definition of **subject to the income management regime** in section 123TC to add a reference to the new external referral measure set up in new section 123UFAA as set out in item 10 below.

Item 6 inserts new sections 123TGAA and 123TGAB after section 123TG. New section 123TGAA provides that the Minister may determine, by legislative instrument, that a specified department, or part of a department, body or agency of a State or Territory is a recognised State/Territory authority for the purposes of the new external referral power. New section 123TGAB provides that the Minister may determine, by legislative instrument, that a particular State or Territory is a recognised State or Territory for the purposes of the new referral measure. These new sections provide the mechanism by which the external referral measure is turned on in a particular area.

Items 7, 8 and 9 make minor amendments to paragraphs 123UCA(e), 123UCB(1)(f) and 123UCC(1)(f) to provide that a person who is subject to income management under the external referral measure cannot be subject to income management under the vulnerable, disengaged youth or long term welfare recipient measures as well.

Item 10 inserts new section 123UFAA into Division 2 of Part 3B of the Social Security Administration Act. The new section sets out how a person becomes subject to income management under the new external referral measure.

Subsection 123UFAA(1) provides that a person will be subject to income management at the test time if:

(a) the person or their partner is an eligible recipient of a category H welfare payment;

(b) before the test time, an employee or officer of a recognised State/Territory authority (as defined in new section 123TGAA) gave the Secretary a written notice requiring that the person be subject to the income management regime;

(c) the notice was given under either a law of, or the executive power of, the recognised State or Territory;

(d) at the test time, the notice had not been withdrawn or revoked;

(e) at the test time, the State or Territory is a recognised State or Territory (as defined in new section 123TGAB);

(f) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee; and
(g) at the test time, the person is not subject to income management under section 123UC, 123UD, 123UE or 123UF.

Subsection 123UFAA(2) provides that, for the purposes of Part 3B, a person will also be subject to income management at the test time, if, at that time:

(a) the person is not subject to income management under any other provision;

(b) the person had a payment nominee; and

(c) the payment nominee is subject to income management under subsection 123UFAA(1).

Items 11, 12 and 13 make minor amendments to the circumstances in which a voluntary income management agreement can be entered into by a person and the Secretary, and when the agreement starts and terminates.

Item 11 makes amendments to paragraph 123UM(5)(a) to provide that a person cannot enter into a voluntary income management agreement if they are subject to income management under the external referral measure.

Item 12 makes amendments to subparagraph 123UN(1)(a)(v) to provide that a voluntary income management agreement cannot start while a person is subject to income management under the external referral measure.

Item 13 makes amendments to subparagraph 123UO(3)(b)(v) to provide that a voluntary income management agreement will end if the person becomes subject to income management under the external referral measure.

Item 14 makes minor amendments to paragraphs 123WJ(1)(c) and (d) to provide that, if a person has a credit balance in their income management account at the time they cease to be subject to income management under the external referral measure, that credit balance can be paid to the person in a manner specified in section 123WJ.

Section 123WJ provides that a credit balance may be paid directly to the person by instalments or in a lump sum. Alternatively, with the consent of the person, the credit balance can be used to pay an expense of the person, or another person, or offset against a debt owed to the Commonwealth by a person.

Item 15 inserts a new Subdivision DAA into Division 5 of Part 3B of the Social Security Administration Act. Subdivision DAA deals with the deduction of amounts from a person’s relevant welfare payments under the income management regime if the person is subject to income management under new section 123UFAA (because of a referral from a recognised State/Territory authority in relation to the person).
New section 123XPAA applies if a person is subject to income management under new section 123UFAA and an instalment of a category I welfare payment is payable to the person. The term category I welfare payment is defined in section 123TC of the Social Security Administration Act. If section 123XPAA applies, the Secretary must deduct 70 per cent (or another percentage if the Minister has, by legislative instrument, specified another percentage, which may be up to 100 per cent) of the net amount of that payment and credit the person’s income management account and the Income Management Record accordingly. (The term net amount is defined in section 123TC of the Administration Act.)

New section 123XPAB applies if a person is subject to income management under new section 123UFAA and a payment of a category I welfare payment is payable to the person other than by instalments (that is, by lump sum). If section 123XPAB applies, the Secretary must deduct 100 per cent (or a lower percentage if the Minister has, by legislative instrument, specified a lower percentage) of the net amount that is payable and credit it to the person’s income management account and the Income Management Record accordingly.

New subsections 123XPAA(4) and 123XPAB(4) provide that the Minister may specify, in a legislative instrument, a different percentage to be deducted from an instalment or lump sum payable to a person based on the type of welfare payment received, where the person usually lives, and/or which State/Territory authority has made the referral.

The Minister’s capacity to make legislative instruments to specify varying deductible portions provides for the greatest flexibility for this income management measure to ensure the most appropriate levels of support for people at risk relevant to their circumstances.

Item 16 inserts a new section 123ZDA into Division 7 of Part 3B of the Social Security Administration Act. Section 123ZDA provides that, where a person is no longer subject to income management under section 123UFAA because they, or their partner, have their category I welfare payment cancelled, and the notice from the recognised State/Territory authority has not been withdrawn or revoked, the Secretary must give notice of the cancellation to an officer or employee of the relevant recognised State/Territory authority as soon as practicable.
**Item 17** inserts a new section 123ZEAA. The new section 123ZEAA provides that, despite any State or Territory law, an officer or employee of a recognised State/Territory authority can give information about a particular person to the Secretary if the officer or employee is considering whether to give a notice under paragraph 123UFAA(1)(b) or the person in question is already subject to income management under section 123UFAA, and the information being disclosed is relevant to Part 3B (that is, the application of income management). Where information has been provided to the Secretary by an officer or employee of a recognised State/Territory authority, then the Secretary will be authorised to release protected information back to an officer or employee of the relevant recognised State/Territory authority for the purposes of the performance of the functions and duties, or the exercise of the powers, of the officer or employee in relation to the care, protection or welfare of the person.

**Item 18** is an application provision that ensures the new external referral measure will only be effective in relation to referral notices given on or after the commencement of this Act.

**Part 2 – Other amendments**

This Part amends the Social Security Administration Act.

Decoupling the vulnerable income management measure

The vulnerable, long-term welfare payment recipient and disengaged youth measures are decoupled by empowering the Minister to declare areas separately for the purposes of each measure.

**Items 19, 20 and 21** are incidental to decoupling these measures. **Item 19** repeals the definition of *declared income management area*, by reference to section 123TFA. This definition currently applies commonly across all three measures. **Item 20** repeals section 123TFA. **Item 21** inserts subsection (1) before the existing paragraphs of section 123UCA, to allow for new subsections (2) and (3) inserted by **item 23** below.

**Item 22** repeals and substitutes paragraph 123UCA(b), relating to the vulnerable measure. New paragraph (b) replaces the previous reference to a person’s usual place of residence being within a declared income management area with a requirement that the person’s usual place of residence is within a State, a Territory or an area specified in an instrument under new subsection (3) (which will be inserted by **item 23** below). This wording provides the same scope for specification of areas as repealed section 123TFA, which dealt with declared income management areas.
Item 24 repeals and substitutes paragraph 123UCB(1)(c) for the purposes of the disengaged youth measure. New paragraph (c) replaces the previous reference to a person’s usual place of residence being within a declared income management area with a requirement that the person’s usual place of residence be within a State, a Territory or an area specified in an instrument under new subsection (4) (which will be inserted by item 25 below). This wording provides the same scope for specification of areas as repealed section 123TFA, which dealt with declared income management areas.

Item 26 repeals and substitutes paragraph 123UCC(1)(c) for the purposes of the long-term welfare payment recipient measure. New paragraph (c) replaces the previous reference to a person’s usual place of residence being within a declared income management area with a requirement that the person’s usual place of residence be within a State, a Territory or an area specified in an instrument under new subsection (4) (which will be inserted by item 27 below). This wording provides the same scope for specification of areas as repealed section 123TFA, which dealt with declared income management areas.

Continuing income management despite change of residence

Item 23 relates to the vulnerable measure provided by section 123UCA. New subsection (2) provides that, if a person is subject to the income management regime under subsection (1), and the person’s usual place of residence ceases to be within a State, a Territory or an area specified in an instrument under subsection (3), and, at the time of that cessation, the other elements of qualification for income management continue to apply, then the person remains subject to the income management regime despite the change in residence. However, if any of the other qualifying elements subsequently cease to apply, then income management will end.

New subsection (3) empowers the Minister, by legislative instrument, to specify a State, a Territory or an area for the purposes of section 123UCA.

Item 25 similarly relates to the disengaged youth measure provided by section 123UCB. New subsection (3) provides that, if a person is subject to the income management regime under subsection (1), and the person’s usual place of residence ceases to be within a State, a Territory or an area specified in an instrument under subsection (4), and, at the time of that cessation, the other elements of qualification for income management continue to apply, then the person remains subject to the income management regime despite the change in residence.

If any of the other qualifying elements subsequently cease to apply, then income management will end. In any case, the continuation of income management will end 13 weeks after the person’s usual place of residence ceased to be within the specified State, Territory or area. This measure will end after 13 weeks because, unlike the vulnerable and child protection measures, it is not subject to review at least annually.
New subsection (4) empowers the Minister, by legislative instrument, to specify a State, a Territory or an area for the purposes of section 123UCB.

**Item 27** similarly relates to the long-term welfare recipient measure provided by section 123UCC. New subsection (3) provides that, if a person is subject to the income management regime under subsection (1), and the person’s usual place of residence ceases to be within a State, a Territory or an area specified in an instrument under subsection (4), and, at the time of that cessation, the other elements of qualification for income management continue to apply, then the person remains subject to the income management regime despite the change in residence.

If any of the other qualifying elements subsequently ceases to apply, then income management will end. In any case, the continuation of income management will end 13 weeks after the person’s usual place of residence ceased to be within the specified State, Territory or area. This measure will end after 13 weeks because, unlike the vulnerable and child protection measures, it is not subject to review at least annually.

New subsection (4) empowers the Minister, by legislative instrument, to specify a State, a Territory or an area for the purposes of section 123UCC.

**Item 31** repeals subparagraph 123UO(3)(b)(ii), to remove the requirement for the Secretary to terminate a voluntary income management agreement upon the person’s usual place of residence ceasing to be within a declared income management area. The Secretary may terminate the agreement for other reasons in this circumstance, such as it not being feasible for the Secretary to meet the person’s priority needs in the new location.

**Item 32** provides for the application of the amendment made by **item 31**. The amendment applies in relation to voluntary income management agreements that are in force on or after the commencement of that item, whether the agreements were entered into before, on or after that commencement. This ensures that this flexibility is immediately available to all people currently voluntarily income managed.

**Exemption for acceptable absences from school**

**Item 28** repeals subparagraph 123UGD(1)(b)(i), and substitutes new subparagraphs (i) and (ia). These new subparagraphs provide an element of when a person is an exempt welfare payment recipient related to their dependent child’s school attendance. Each new subparagraph is an alternative to the other. Each of the alternatives must be established to the satisfaction of the Secretary in order to apply.
Substituted subparagraph (i) provides that the criterion is met if, at the test time, the child is enrolled at a school and, in each of the two school terms ending immediately before that time, the child has had no more than five absences for reasons that are not satisfactory to a person responsible for the operation of the school. Alternatively, new subparagraph (ii) provides that the criterion is met if, at the test time, the child has had more than five unsatisfactory absences, but the person is taking reasonable steps to ensure that the child attends school as required by the law of the State or Territory concerned. This allows some leeway for a parent still potentially to be an exempt welfare payment recipient if, for example, they have an older teenage child who is not reliably attending school, but are taking all reasonable steps to address the non-attendance.

**Items 29 and 30** insert a definition of *person responsible* for the purposes of new subparagraphs 123UGD(1)(b)(i) and (ii). The person responsible for the operation of a school has the same meaning as in Part 3C – School requirements. **Item 29** generalises the heading to subsection 123UGD(7), which will now contain two definitions for the purposes of the section.
Schedule 2 – School attendance plans

Summary

This Schedule amends the provisions in the social security law that underpin the Government’s Improving School Enrolment and Attendance through Welfare Reform Measure (known as SEAM). It enables some local tailoring of this measure so the operation of SEAM can be integrated with the Northern Territory Government’s Every Child, Every Day initiative, to support greater improvement of school attendance. Under the amended arrangements, a parent may be required to attend a compulsory conference to discuss their child’s school attendance, to enter into a school attendance plan, and to comply with the plan. Failure to meet the compliance arrangements provided by this Schedule would lead to suspension of a parent’s income support payment, unless certain circumstances apply.

Background

This Schedule inserts new Division 3A into Part 3C of the Social Security Administration Act, which relates to SEAM. Division 3 is retained under the amendments made by this Schedule.

New Division 3A enables the Secretary or a person responsible for the operation of a school to require a person to attend a conference to discuss the school attendance of their child, to enter into a school attendance plan at the conference, and to comply with the plan.

New Division 3A makes provision for the Secretary or a person responsible for the operation of a school to give compliance notices where a person fails to attend a conference, fails to enter a plan, or fails to comply with a plan. The compliance notice would require the person to attend a conference, enter a plan, or comply with a plan, depending on what failure led to the giving of the notice.

New Division 3A provides that, if there is a failure to comply with a compliance notice, then payments will be suspended, subject to the following exceptions:

- suspension of payments could not occur if the Secretary were satisfied that there were ‘special circumstances’ to justify the failure to comply with the compliance notice; and

- the Secretary may determine, having regard to all the circumstances, that, if a person has been fined under a State or Territory law regarding a failure of the person’s child to attend school, payments may not be suspended despite non-compliance with the compliance notice, even if no special circumstances exist.
Explanation of the changes

Amendments to the Social Security Administration Act

**Item 1** updates paragraph 37AA(1)(b) of the Social Security Administration Act to include a reference to new subsection 124NE(1).

**Items 2** updates note 2 to section 37AA of the Social Security Administration Act to include a reference to new section 124NE.

**Item 3** updates note 3 to section 37AA of the Social Security Administration Act to include a reference to new section 124NF.

**Item 4** updates the note to paragraph 85(1)(a) of the Social Security Administration Act to include a reference to new section 124NG.

**Item 5** amends paragraph 123(1)(c) of the Social Security Administration Act to include a reference to new section 124NF.

**Item 6** repeals and substitutes subsection 124(2) of the Social Security Administration Act. The new subsection provides that, if Part 3C ceases to apply to a person while the person’s schooling requirement payment is suspended under Part 3C, then, despite that cessation, section 124J, 124N or 124NG, as the case requires, is taken to apply in relation to the person and, for this purpose, the reconsideration day for the purposes of that section is taken to be the day of that cessation.

The new subsection is simpler than the repealed subsection. It takes account of the new section 124NG and avoids the possibility of a person’s payment remaining suspended indefinitely, even though Part 3C no longer applies to them. In this circumstance, a person’s entitlement to arrears would be determined in accordance with section 124J, 124N or 124NG, as the case required.

A note to the new subsection states that sections 124J, 124N and 124NJ deal with when payments become payable after suspension.

**Item 7** amends section 124A of the Social Security Administration Act by including a reference to (1) before ‘In’. This reflects the addition of new subsection 124A(2) by this Schedule.

**Item 8** amends the definition of *person responsible* for the operation of a school in section 124A by adding a new paragraph (aa), which refers to a person included in a class of persons specified in an instrument under new subsection 124A(2).
Item 9 adds new subsection 124A(2), which provides that the Minister may, by legislative instrument, specify a class of persons for the purposes of paragraph (aa) of the definition of person responsible for the operation of a school. It is likely that a truancy officer at a school would be among the class of persons specified for the purpose of paragraph (aa) of the definition. This is to ensure that, if desired, persons in classes specified in the instrument can themselves provide notices for the purpose of new Division 3A of Part 3C of the Social Security Administration Act so that there is no need to involve other people responsible for the operation of a school in the giving of notices.

Item 10 repeals the heading to Division 3 of Part 3C, which referred to ‘school attendance’, and substitutes a new heading, ‘Division 3 – School attendance notices’. This takes account of new Division 3A of Part 3C, which also relates to school attendance.

Item 11 inserts new Division 3A into Part 3C of the Social Security Administration Act. New Division 3A will contain the substantive provisions relating to school attendance plans.

New section 124NA sets out when new Division 3A will apply to a person. The first criterion is that a schooling requirement person’s child is enrolled at a school in a State or Territory. The meaning of schooling requirement person and child is set out in section 124. The second criterion is that a person responsible for the operation of the school gives the Secretary written notice that the child is failing to attend school, as required by the law of that State or Territory, to the satisfaction of the person responsible. The meaning of person responsible for the operation of a school is as set out in section 124A, as amended by this Schedule.

Conference notices

New section 124NB provides that the Secretary or the person responsible for the operation of the school (the notifier) may give a ‘conference notice’ to a schooling requirement person which specifies the following:

- the person is required to attend a conference with a specified person at a specified place and time;
- the purpose of the conference is to discuss the child’s school attendance;
- the person is required, at the conference, to enter into a school attendance plan in accordance with new section 124NC;
- the consequences under new Division 3A of not complying with the notice.
The conference notice would be required to specify all of the above matters. If, after the notice was given, the schooling requirement person indicated to the notifier that they would have difficulty in attending the conference, the notifier might agree to give a new notice with a revised place or time. In practice, a notifier might discuss with the person a suitable place and time for the conference before giving the initial conference notice.

School attendance plans

New section 124NC deals with school attendance plans. Subsection 124NC(1) provides that the notifier, that is, the Secretary or the person responsible for the operation of the school, may require a schooling requirement person to enter into a school attendance plan if such a plan is not in force in relation to them. It is envisaged that, in practice, a person would not be required to enter a school attendance plan unless they had also been required to attend a conference under section 124NB. Similarly, in practice, a person would be unlikely to be required to attend such a conference without also being required to enter a school attendance plan. However, the notifier would retain a discretion under subsection 124NC(1) in this regard.

Subsection 124NC(2) provides that the notifier may require a schooling requirement person to enter into another plan instead of an existing plan.

Subsection 124NC(3) provides that the notifier is to give the schooling requirement person notice of the requirement to enter a plan, the place and time at which the plan is to be entered into, and the consequences of not complying with the requirement.

Subsection 124NC(4) provides that the notice of requirement to enter a school attendance plan may be included in a notice under new section 124NB or 124ND, without limitation to subsection 124NC(3).

Subsection 124NC(5) provides that a school attendance plan must be in a form approved by the notifier.

Subsection 124NC(6) provides that a school attendance plan must cover one or more child or children of the schooling requirement person.

Subsection 124NC(7) provides that a school attendance plan must contain requirements, which the schooling requirement person is required to comply with, that the notifier considers appropriate for the purpose of ensuring improved school attendance of the one or more children covered by the plan.
Compliance notices

New section 124ND deals with compliance notices. Subsection 124ND(1) provides that the notifier, that is, the Secretary or the person responsible for the operation of the school, may give a ‘compliance notice’ to a schooling requirement person, requiring the person to comply with one or more requirements specified in the notice. Subsection 124ND(1) provides that the notifier may issue a compliance notice if the person commits any of the following failures:

- if a conference notice is given to the person under new subsection 124NB(1) – the person fails to attend the conference at the place and time specified in the conference notice under paragraph 124NB(1)(a);
- the person fails to enter into a school attendance plan in accordance with new section 124NC;
- the person fails to comply with a school attendance plan in force in relation to them.

Subsection 124ND(2) provides that the compliance notice must give details of:

- how to comply with the notice; and
- the consequences of not complying with the notice.

Subsection 124ND(3) provides that a requirement specified in the compliance notice must be one that the notifier considers appropriate for the purpose of ensuring improved school attendance of the schooling requirement person’s child. This would include, for example, requirements to attend a conference, enter a school attendance plan, or comply with a school attendance plan.

Condition of schooling requirement payments

New subsection 124NE(1) provides that a schooling requirement payment is not payable to a schooling requirement person if the person fails to comply with a compliance notice given to the person under new section 124ND. New subsection 124NE(2) provides that subsection 124NE(1) does not apply to the person in relation to a compliance notice, as at a particular day, if the Secretary is satisfied that there are special circumstances as at that day that justify the failure to comply with the compliance notice. Whether there are special circumstances that justify the failure to comply is to be determined in accordance with the schooling requirement determination (if any). Examples of special circumstances may include significant sickness that would be likely to prevent a parent from complying with the compliance notice, or natural disaster.
New subsection 124NE(3) provides that subsection 124NE(1) does not apply to the person in relation to a compliance notice as at a particular day if, before that day, the person had been fined under a State or Territory law in relation to the failure of the person's child to attend school in that State or Territory, and if the Secretary determines that subsection 124NE(1) should not apply to the person as at that day, having regard to all the circumstances. The circumstances which the Secretary might consider would include but not be limited to the length of time since the fine was imposed, whether the fine had been paid, and the history of school attendance by the person's child, the parent's compliance with their attendance plan and their ongoing efforts to ensure their child goes to school.

New subsection 124NE(4) provides that a schooling requirement payment cannot be suspended, or cancelled, because of the application of subsection 124NE(1) except as provided by new section 124NF (which provides for suspension or cancellation for non-compliance with a compliance notice).

New subsection 124NE(5) provides that, for a schooling requirement payment under the Veterans' Entitlements Act, section 124NE applies in relation to the payment except in relation to the grant of the payment.

New subsection 124NE(6) provides that a determination under paragraph 124NE(3)(b) is not a legislative instrument. This provision is included to assist readers, because the determination would not be a legislative instrument under section 5 of the Legislative Instruments Act 2003 as it would not be legislative in character.

Suspension or cancellation for non-compliance with compliance notice

New section 124NF relates to suspension or cancellation of payments for non compliance with a compliance notice.

Subsection 124NF(1) provides that section 124NF applies if, as at a particular day:

- a schooling requirement person has been given a compliance notice; and
- a schooling requirement payment is not payable to the person because subsection 124NE(1) applies to the person as at that day.

A note to new section 124NE explains that a schooling requirement payment is not payable to a person if they fail to comply with a compliance notice.

Subsection 124NF(2) provides that:
- the Secretary must determine that the payment is to be suspended or cancelled if the payment has been suspended under subsection 124NF(2) for a total period of 13 weeks or more (which need not be a continuous period) in relation to compliance with the compliance notice; or

- in any other case – the Secretary must determine that the payment is to be suspended.

Subsection 124NF(3) provides that the Secretary may make more than one determination under subsection 124NF(2) in relation to compliance with a particular compliance notice.

A note to subsection 124NF(2) explains that, following suspension of a schooling requirement payment, the payment may become payable again under new section 124NG. Subsection 124NG(3) allows for a further suspension of the payment, even after the payment has become payable again.

Subsection 124NF(4) provides that the Secretary may suspend a schooling requirement person’s schooling requirement payment under the section even if the person has not started to receive the payment.

A note to subsection 124NF(4) explains that a compliance notice may be given to a claimant for a schooling requirement payment. The claim may be granted even if subsection 124NE(1) applies to the person. However, in that event, the Secretary must suspend the payment under section 124NF (before it has started).

**When payments become payable after suspension**

New section 124NG relates to when a person’s schooling requirement payment becomes payable following suspension. Subsection 124NG(1) provides that section 124NG applies if, on a particular day (the reconsideration day):

- a person’s schooling requirement payment has been, and remains, suspended under new section 124NF, where the compliance notice concerned required the person to enter into a school attendance plan; and

- the Secretary has reconsidered the decision to suspend the payment (whether on an application under section 129 or on his or her own initiative); and

- as a result of the reconsideration, the Secretary is satisfied that, as at the reconsideration day:
the person has entered a plan containing requirements that the Secretary considers appropriate for the purpose of ensuring improved school attendance of the child or children covered by the plan; or

- special circumstances apply, as determined in accordance with the schooling requirement determination (if any), that justify the person being unable to enter such a plan.

Subsection 124NG(2) provides that section 124NG also applies if, on a particular day (the reconsideration day):

- a person’s schooling requirement payment has been, and remains, suspended under new section 124NF, where the compliance notice concerned required the person to comply with a school attendance plan in force in relation to the person; and

- the Secretary has reconsidered the decision to suspend the payment (whether on an application under section 129 or on his or her own initiative); and

- as a result of the reconsideration, the Secretary is satisfied that, as at the reconsideration day:
  - the person is complying with the plan; or
  - special circumstances apply, as determined in accordance with the schooling requirement determination (if any), that justify the person being unable to enter such a plan.

The effect of subsection 124NG(3) is that, if section 124NG applies, the Secretary must determine:

- that the schooling requirement payment is payable to the schooling requirement person (subject to any other provision of the social security law or the Veterans’ Entitlements Act, as the case requires); and

- that any arrears resulting from the operation of the section are to be paid at a time, or times, stated in the determination (or worked out in accordance with that determination).

Subsection 124NG(4) provides that, if a person’s payment has been suspended under new section 124NF for a total period of less than 13 weeks (which need not be a continuous period) in relation to compliance with a particular compliance notice, the date of effect of the determination under subsection 124NG(3) is the day on which the latest suspension determination was made under new section 124NF.

A note to subsection 124NG(4) explains that a schooling requirement payment may be suspended more than once under new section 124NF.
Subsection 124NG(5) provides that, if subsection 124NG(4) does not apply, the date of effect of the determination under subsection 124NG(3) is:

- the reconsideration day; or
- an earlier day stated by the Secretary in that determination to be appropriate, in the special circumstances of the case applying as at the reconsideration day, as determined in accordance with the schooling requirement determination, if any.

Subsection 124NG(6) provides that, for the purposes of subsection 124NG(5), the Secretary may vary a determination under subsection 124NG(3) to state an earlier date of effect, if the determination:

- does not include such a statement; or
- includes such a statement in relation to a later day.

Subsection 124NG(7) provides that arrears resulting from the operation of this section may be paid to the person as a lump sum payment, a series of regular payments, or otherwise, in accordance with the determination under subsection 124NG(3).

Subsection 124NG(8) provides that the person is entitled to a payment, or payments, of arrears arising from the operation of section 124NG at the time, or times, provided by the determination under subsection 124NG(3).

Subsection 124NG(9) provides that Division 9 of Part 3 of the Social Security Administration Act (date of effect of determinations) does not apply in relation to a determination under subsection 124NG(3).

**Item 12** repeals and substitutes subsection 124NP(2). The revised subsection provides that, despite any law in force in a State Territory:

- a State or Territory; or
- a non-government school authority; or
- any other person who is responsible for the operation of one or more schools;

may, for the purposes of Part 3C, give the Secretary information about:

- the attendance, or non-attendance, of children at school; and/or
- a person’s compliance with a compliance notice given to the person.
Information about a person’s compliance with a compliance notice given to the person would include, but not be limited to, information about the content of an attendance plan in force in relation to the person, and information about the reasons for non-compliance.

This amendment is to ensure that information can be given to the Secretary about, not only an attendance notice under Division 3 of Part 3C, but also about compliance with a compliance notice given under new Division 3A of Part 3C.

**Item 13** inserts new Division 5 into Part 3C, which will contain general provisions. New section 124PA provides that no Division of Part 3C limits any other Division of Part 3C.

**Item 14** inserts new paragraph 195(2)(l) into the Social Security Administration Act to provide a new category of information that the Secretary may require a person to give for a purpose specified in subsection 195(1) (which relates to verification of claims). The new category includes, in relation to a person in respect of whom a compliance notice is in force, any information relevant to the person’s compliance with a compliance notice.

**Item 15** inserts new paragraph 202(7)(e) into the Social Security Administration Act, the effect of which is that, if protected information relates to a person’s compliance with a compliance notice given to the person, a person may do any of the things set out in subsection 202(6).

**Item 16** amends subclause 1(1) of Schedule 1 to the Social Security Administration Act by inserting a new definition of **compliance notice**. This provides that compliance notice has the meaning given by new section 124ND.

**Item 17** updates subparagraph 5(2)(f) of Schedule 2 to the Social Security Administration Act to include a reference to new section 124NF.

**Item 18** provides that new paragraph 124NA(b) of the Social Security Administration Act applies in relation to notices given on or after the day on which the item commences. **Item 18** also provides that new Division 3A of Part 3C of the Social Security Administration Act, as inserted by this Schedule, applies in relation to a schooling requirement payment, whether it is claimed or granted, before, on or after the day on which this item commences.