Explanatory Statement


Authority

Under section 146 of the Social Security (Administration) Act 1999 (the 1999 Act), the Minister, by legislative instrument, is to set guidelines for the exercise of the Secretary’s power to make a declaration under subsection 145(1) to continue social security payments (in this case Youth Allowance for full-time students and Austudy) to persons who are seeking review of a decision imposing a compliance penalty period.


Purpose


Explanation

The 2007 Guidelines deal with the continuation of certain social security payments (namely Youth Allowance for full-time students and Austudy) to persons who are subject to a compliance penalty period, a period during which payments would otherwise be withheld for breaches of their obligation to seek work or participate in other activities under the Act. These guidelines allow payments to continue during a review under Division 3 of Part 4 of the 1999 Act by the Social Security Administration Tribunal (SSAT) of the adverse decision that gave rise to the compliance penalty period.

Section 1 provides that the name of the 2007 Guidelines is the Social Security (Payment Pending-SSAT Application for Review) (DEST) Guidelines 2007.

Section 3 sets out various interpretative provisions relevant to the 2007 Guidelines and section 4 sets out the purpose of the 2007 Guidelines.

Subsection 5(1) of the 2007 Guidelines provides, subject to subsections 5(2) and (3), that, in the case of a person in receipt of Austudy payment or Youth Allowance, who

- has had an adverse decision made that results in a compliance penalty period of 8 weeks because of repeated or more serious failure, as set out in sections 551 or 576A of the 1991 Act; and

- makes an application for review to the SSAT under subsection 142(1) or (2) of the 1999 Act,

the Secretary must declare that the person is to continue to receive that payment or allowance pending the determination of the review, as if the adverse decision had not been made.

This ensures that all persons who have had the mandatory compliance penalty period of 8 weeks imposed because of repeated or more serious failure will receive their usual payment while seeking a SSAT review of the penalty.

Subsection 5(2) of the 2007 Guidelines provides that if the application for review is withdrawn under section 171 of the 1991 Act then subsection 5(1) ceases to apply (that is the compliance penalty period will be reinstated).

Subsection 5(3) of the 2007 Guidelines provides that subsection 5(1) of the 2007 Guidelines will not apply if the compliance penalty period has been completed before the application for review to the SSAT is made.

Section 6 of the 2007 Guidelines is a savings provision that is made necessary by savings provisions in the 2005 Act which preserve certain activity test non-payment periods (non payment periods are now subsumed under the term “compliance penalty period”). Section 6 provides that section 5 or 6 (as applicable) of the 2004 Guidelines continues to apply in relation to the Secretary’s power under section 145 of the Act as if section 6 of the 2004 Guidelines had not been repealed by the Social Security (Payment Pending-SSAT Application for Review) Guidelines 2004 – Revocation 2007.

The 2007 Guidelines are a legislative instrument.

Consultation
Consultation regarding this instrument was undertaken with the Department of Families, Community Services and Indigenous Affairs and the Department of Employment and Workplace Relations. The Guidelines do not affect business or competition, and they have been issued following extensive discussion of the amendments of the 1999 Act and the 1991 Act contained in the 2005 Act that have required their issue. The Guidelines are in accordance with the policy of those amendments.
Commencement