I, JULIE ISABEL BISHOP, Minister for Education, Science and Training, make the following determination under section 146 of the Social Security (Administration) Act 1999.¹

Dated 30 March 2007.

JULIE BISHOP
Minister for Education, Science and Training

¹ This determination has effect in relation to provisions of the Social Security Act 1991 in so far as they relate to matters for which the Department of Education, Science and Training has responsibility under the Administrative Arrangements Order.
Part 1 Preliminary

1 Name of Determination

This determination is the Social Security (Payment Pending—SSAT Application for Review) (DEST) Guidelines 2007.

2 Commencement


3 Interpretation

In this determination:

1991 Act means the Social Security Act 1991;


Act means the Social Security (Administration) Act 1999;

activity test non-payment period means a period worked out under section 745B as in force prior to the commencement of item 43 of Part 2 of Schedule 10 of the 2005 Act;

adverse decision has the meaning given by subsection 145(6) of the Act;

Austudy payment means the social security payment under Part 2.11A of the 1991 Act;

compliance penalty period, in relation to a person, means:

(a) a period during which austudy payment is not payable to the person because of section 576A of the 1991 Act; or

(b) a period during which youth allowance is not payable to the person because of section 551 of the 1991 Act;

Secretary means the Secretary of the Department of Education, Science and Training;

social security payment has the same meaning as in subsection 23(1) of the 1991 Act;

SSAT means the Social Security Appeals Tribunal established under Schedule 3 of the Act;
Youth Allowance means the social security payment under Part 2.11 of the 1991 Act;

4 Purpose

The purpose of this determination is to set out the guidelines for the exercise of the Secretary’s power to make declarations under subsection 145(1) of the Act in relation to Austudy or Youth Allowance payments to persons who are subject to a compliance penalty period.
Part 2 Guidelines

5 Application of a compliance penalty period

Continuation of Austudy payment or Youth Allowance during review

(1) If a person in receipt of Austudy payment or Youth Allowance:

(a) is subject to an adverse decision that results in the application of a compliance penalty period of 8 weeks in accordance with section 551 or 576A of the 1991 Act; and

(b) applies to the SSAT under subsection 142(1) or (2) of the Act for review of the adverse decision;

then, subject to subsection (2) or (3), the Secretary must declare under section 145 of the Act that:

(c) the Austudy payment or Youth Allowance, as the case may be, is payable to the person from the date that the compliance penalty period commenced or is to commence; and

(d) the Austudy payment or Youth Allowance is to continue to be payable to the person pending the determination of the review, as if the adverse decision had not been made.

Withdrawal of application for review

(2) Subsection (1) ceases to apply if the person in receipt of the Austudy payment or Youth Allowance withdraws the application for review under section 171 of the Act.

Compliance penalty period completed before application for review

(3) Subsection (1) does not apply if the compliance penalty period has been completed before the person in receipt of the Austudy payment or Youth Allowance has applied to the SSAT under subsection 142(1) or (2) of the Act for review of the adverse decision.

6 Saving provision relating to activity test non-payment periods

If:

(a) a saving provision in the 2005 Act saves an activity test non-payment period; and

(b) the person subject to the adverse decision giving rise to that activity test non-payment period applies to the SSAT under subsection 142(1) or (2) of the Act for review of the decision.
(whether before or after the commencement of these Guidelines);

then section 5 or 6 (as applicable) of the guidelines continues to apply in relation to the Secretary's power under section 145 of the Act as if that section of the 2004 guidelines had not been repealed by the Social Security (Payment Pending-SSAT Application for Review) (DEST) Guidelines 2004 (Revocation) 2007.