Social Security (Reasonable Excuse — Participation Payment Obligations) (FaHCSIA) Determination 2009 (No. 1)

Social Security Act 1991
Social Security (Administration) Act 1999

I, JEFF HARMER, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, make this Determination under subsections 740(2A), 742(2A) and 745A(1A) of the Social Security Act 1991 and subsection 42U(1) of the Social Security (Administration) Act 1999.

Dated 26th June 2009

J Harmer
Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs

1 Name of Determination
This Determination is the Social Security (Reasonable Excuse — Participation Payment Obligations) (FaHCSIA) Determination 2009 (No. 1).

2 Commencement
This Determination commences on 1 July 2009.

3 Revocation
The Social Security (Reasonable Excuse) (FaCSIA) Determination 2006 is revoked.

Federal Register of Legislative Instruments F2009L02627
4 Definitions
In this determination:


5 Matters to be taken into account in determining if a person had a reasonable excuse

(1) For:

(a) subsections 740(2A), 743(2A) and 745A(1A) of the 1991 Act; and
(b) subsection 42U(1) of the Administration Act;

the matters set out in subsection (2) are matters that the Secretary must take into account in determining whether a person has a reasonable excuse.

(2) The matters are:

(a) that the person did not have access to safe, secure and adequate housing, or was using emergency accommodation or a refuge, at the time of the failure; and
(b) the literacy and language skills of the person; and

Example for paragraph (b)
If the person is unable to comprehend a requirement or an instruction, despite the requirement or instruction being delivered in a form that the person is most likely to comprehend.

(c) an illness, impairment or condition of the person that requires frequent treatment, including an illness that is episodic or unpredictable in nature; and
(d) a cognitive or neurological impairment of the person; and
(e) a psychiatric or psychological impairment or mental illness of the person; and
(f) a drug or alcohol dependency of the person; and
(g) unforeseen family or caring responsibilities of the person; and
(h) the death of an immediate family member; and

(i) if:

(i) the person has been imprisoned for a continuous period of more than 14 days; and
(ii) the person has been released; and
(iii) the person was released not more than 28 days before the failure was committed;

the person’s imprisonment or release from imprisonment.

(3) However, the Secretary must not take into account a matter if the Secretary is not satisfied that the matter had a significant effect on the person’s capacity to comply with the requirement, or the provision of the 1991 Act or the Administration Act, to which the failure relates.
(4) Without limiting paragraph (2)(a), a person is taken not to have access to safe, secure and adequate housing if:

(a) the housing to which the person has access:
   (i) damages, or is likely to damage, the person’s health; or
   (ii) threatens or is likely to threaten the person’s safety; or
   (iii) does not provide the person with access to a reasonable level of personal amenities or the economic and social support that housing normally affords; or

(b) in the circumstances, the adequacy, safety, security or affordability of the housing to which the person has access is adversely affected or may be adversely affected; or

(c) the person does not have a right to remain, or a reasonable expectation of being able to remain, in the housing to which the person has access.