

## EXPLANATORY STATEMENT

### **Social Security (Administration) (Schooling Requirement) Determination 2009 (No. 1)**

#### **Summary**

The *Social Security (Administration) (Schooling Requirement) Determination 2009 (No. 1)* (the Determination) is made under section 124C of the *Social Security (Administration) Act 1999* (the Act). The Minister for Families, Housing, Community Services and Indigenous Affairs, as well as making the Determination in her own capacity, is also making the Determination on behalf of the Minister for Education and the Minister for Employment and Workplace Relations.

#### **Purpose**

The purpose of the Determination is to specify certain matters for the operation of Part 3C of the Act, which came into effect on 11 December 2008. Part 3C provides a mechanism to enable suspension of a person's 'schooling requirement payment' if a school-age child of the person is not enrolled in, or is not adequately attending, school. In particular, the Determination sets out what constitutes:

- a schooling requirement period;
- reasonable excuses for a person's failure to comply with a notice requiring them to provide evidence of their child's school enrolment (an enrolment notice);
- reasonable excuses for a person's failure to comply with a notice requiring them to take reasonable steps to ensure their child attends school (an attendance notice);
- special circumstances absolving a person from compliance with an enrolment notice or an attendance notice; and
- reasonable steps for inclusion in an attendance notice.

#### **Explanation of Provisions**

**Section 1** of the Determination states the name of the Determination.

**Section 2** states that the Determination commences on the day after it is registered.

**Section 3** provides definitions for the purposes of the Determination. In particular, the term *attendance plan* is defined as an arrangement entered into between a schooling requirement person and a person responsible for the school at which the schooling requirement child of the schooling requirement person is enrolled, that identifies actions to be taken or strategies to be employed in order to encourage adequate attendance at school by the child.

An attendance plan for a schooling requirement child can be made with the child's parent or guardian even if the child does not physically attend school but receives education through an alternative method that is permitted under the law of the State or Territory where the child resides: for example, where the child is home-schooled or receives the 'school of the air'.

Section 124 of the Act provides that Part 3C of that Act applies, *inter alia*, to a person who had a schooling requirement child at any time within a specified past period (see subparagraph 124(1)(b)(ii)).

**Section 4** specifies 13 weeks as the period for the purposes of subparagraph 124(1)(b)(ii). Accordingly, Part 3C applies to a person who had a schooling requirement child at any time in the past 13 weeks (if the person otherwise meets the conditions for the application of Part 3C).

**Section 5** specifies the schooling requirement period for which a schooling requirement child is required to be enrolled at and attend a school (or a place, in relation to alternative enrolment) under a law of a State or Territory.

**Subsection 6(1)** sets out the basis on which the Secretary may determine that a person has a reasonable excuse for subparagraph 124G(2)(b)(i) of the Act (in relation to an enrolment notice). The Secretary may determine that an excuse is a reasonable excuse if it is an excuse of the kind mentioned in Part 1 of Schedule 1 to the Determination, and the excuse is reasonable in the circumstances.

Similarly, **subsection 6(2)** sets out the basis on which the Secretary may determine that a person has a reasonable excuse for subparagraph 124L(2)(b)(i) of the Act (in relation to an attendance notice). The Secretary may determine that an excuse is a reasonable excuse if it is an excuse of the kind mentioned in Part 2 of Schedule 1 to the Determination, and the excuse is reasonable in the circumstances.

In all circumstances, the excuse must be reasonable. This is an objective test, determined by reference to the standards of a reasonable person, not by reference to the subjective views or opinions of the schooling requirement person.

**Subsection 6(3)** makes it clear that the Secretary is not constrained by the reasonable excuses listed in Schedule 1: that is, the list of the matters and circumstances specified in Part 1 and 2 of Schedule 1 to the Determination is not exhaustive.

**Subsections 7(1) and (2)** set out matters that the Secretary must have regard to in determining whether special circumstances apply to a schooling requirement person in relation to the person's failure to comply with an enrolment notice or an attendance notice respectively.

**Subsection 7(3)** provides that the Secretary may exercise discretion in determining whether special circumstances apply to a schooling requirement person in relation to the person's failure to comply with an enrolment and an attendance notice. That is, the matters specified in subsections 7(1) and (2) are not an exhaustive list of the matters and circumstances that the Secretary can have regard to in determining whether special circumstances exist for the relevant provisions.

**Subsection 8(1)** sets out, for the purposes of paragraphs 124J(4)(b) and 124N(5)(b) of the Act, matters that the Secretary must have regard to in determining whether special circumstances apply to a schooling requirement person in relation to payment of full arrears, and reconsideration of payments after suspension or cancellation.

**Subsection 8(2)** provides that, for the purposes of paragraph 124J(4)(b) or 124N(5)(b) of the Act, the Secretary may exercise discretion in determining whether special circumstances apply to a schooling requirement person in relation to payment of full arrears, and reconsideration of payments after suspension or cancellation. That is, the matters specified in subsection 8(1) are not an exhaustive list of the matters and circumstances that the Secretary can have regard to in determining whether special circumstances exist for the relevant provision.

**Subsection 9(1)** sets out, for the purposes of subsection 124K(2) of the Act, matters that the Secretary must take into account in deciding what reasonable steps to include in an attendance notice.

**Subsection 9(2)** sets out some (non-exhaustive) examples of the reasonable steps that may be included in an attendance notice.

## **Schedule 1**

Part 1 of Schedule 1 to the Determination sets out matters and circumstances that constitute an excuse for the purposes of paragraph 6(1)(a) of the Determination.

Part 2 of Schedule 1 to the Determination sets out matters and circumstances that constitute an excuse for the purposes of paragraph 6(2)(a) of the Determination.

## **Regulatory Impact Analysis and Consultation**

This Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of the Determination.

Consultation on the Determination was undertaken with the Department of Education, Employment and Workplace Relations, to ensure a co-ordinated and consistent approach for all income support payments under the Act.