



Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008

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Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008

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Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends the Social Security (Administration) Act 1999 (Cth) (SSAA), the A New Tax System (Family Assistance) Act 1999 (Cth) (FAA), the Student Assistance Act 1973 (Cth) (SAA) and the Veterans' Entitlements Act 1986 (Cth) (VEA), enabling the suspension or cancellation of income support payments to a parent whose child is either not enrolled in school or has unsatisfactory attendance at school. The legislation will also provide for the implementation of the School Attendance and Enrolment Pilot announced in the 2008–09 Budget.¹

Background

School attendance in Australia

It has been extremely difficult to determine how many children of school age are not attending school, either because of non-enrolment or non-attendance. The Deputy Prime Minister noted in her second reading speech on the Bill:

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1. Australian Government, Budget Paper No. 2: Budget Measures 2008–09, Commonwealth of Australia, Canberra, 2008, p. 174, <http://www.budget.gov.au/2008-09/content/bp2/html/expense-11.htm>, accessed on 30 August 2008.

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... it is estimated that up to 20,000 Australian children of compulsory school age may not be enrolled in school. Many more are not attending school regularly enough to meet any reasonable benchmark.²

School attendance has long been a concern because, as Graeme Withers noted in his paper for the Dusseldorp Skills Forum, it is not only a legal requirement but, more significantly, it impacts on educational and thereby future life outcomes, and thus society more broadly:

Failure to be in school long enough (early leaving) or often enough (truancy) to gain basic skills and knowledge has personal and social costs. Unemployment, poverty, homelessness and minor or gross criminal activity can often be linked to this basic failure. The community bears the social and economic costs, which escalate if any trends to increased non-compliance with the laws of compulsory school attendance are not noticed and action taken to remedy the situation.³

The states have always had responsibility for school attendance. The principle of compulsory education and the requirements that compulsory school aged children must be enrolled in and attending school, registered for home schooling or eligible for exemption, are enshrined in state and territory education legislation. These legislative requirements are supported by a range of attendance-related policies and programs, which are intertwined with more general programs—such as those targeting students at risk of becoming disengaged from school and students with behavioural problems, as well as Indigenous education strategies.

Generally, there are a number of features common to these legislative provisions and programs, including:

- systems of regulated exemptions for attendance—including home education, distance education, inability to attend because of illness or disability, and suspension or expulsion
- general prohibition of children of compulsory school age working during school hours
- mandatory daily attendance registers for each school and
- processes for pursuing and resolving the non-enrolment or non-attendance of compulsory school aged children. These processes may be initiated by a school or

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2. Julia Gillard, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, 'Second reading speech: Social Security and Veterans' Affairs Entitlements Legislation Amendment (School Requirements) Bill 2008', House of Representatives, *Debates*, 27 August 2008, p. 1, http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=hansardr&Criteria=DOC_DATE:2008-08-27%3BSEQ_NUM:5%3B, accessed on 31 August 2008.
 3. G. Withers, *Disenchantment, Disengagement, Disappearance: Some Recent Statistics and a Commentary on Non-attendance in School*, Dusseldorp Skills Forum, Glebe, NSW, 2004, p. 8, www.dsf.org.au/papers/157/Paper_20_June_0.doc, accessed on 2 September 2008.

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other concerned persons, or by authorised attendance officers (including police) who are empowered to approach any child of compulsory school age who is not in school during school hours. Mediation, counselling and support, usually involving interagency collaboration, are provided to families and children.

The final option is prosecution, which is viewed as a last resort—the preference is to try and resolve attendance problems. However, this appears to be changing. While most jurisdictions report few or no prosecutions (and even fewer that are successful),⁴ in NSW, as a result of legislative changes, 154 attendance prosecutions involving 191 children have been launched since April this year—‘approximately ten times the number heard over the same period in 2007.’⁵

State and territory school attendance strategies are generally in accord with the consensus amongst educators and community workers about what strategies work well. According to a US analysis of the research into effective truancy prevention and intervention, those approaches which have a ‘solid research evidence for their effectiveness’, are intensive ongoing interventions, involving well-defined attendance policies, parental engagement, family counselling, individualised plans, a team approach, trained school staff and ongoing evaluation.⁶

The same analysis singled out financial sanctions against families and tying benefits to children’s school attendance as not having an impact on truancy.⁷ Evaluations of US school attendance programs have found that case management, not sanctions, was the most important attribute of successful programs.⁸

However, research for the UK National Foundation for Educational Research did find some support for prosecutions—prosecution made parents aware of their responsibilities and made them realise the importance of school attendance, albeit more successful for

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4. Based on an informal survey conducted by one of the authors of this Bills Digest.
 5. M. Iemma (NSW Premier), *Tough action ensures parents send their children to school*, media release, 25 August 2008, http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressrel&Criteria=CITATION_ID:VDFR6%3B, accessed on 2 September 2008.
 6. M. Decker Gerrard, A. Burhans and J. Fair, *Effective Truancy Prevention and Intervention: A Review of Relevant Research for the Hennepin County School Success Project*, Wilder Research Center, Saint Paul, Minnesota, 2003, p. 2, <http://www.wilder.org/download.0.html?report=759>, accessed on 30 August 2008.
 7. *ibid*, p. 3.
 8. L. Behrendt and R. McCausland, *Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education*, Jumbunna Indigenous House of learning, University of Technology Sydney, 2008, p. 9, <http://www.aefederal.org.au/Publications/2008/LBehrendtpaper.pdf>, accessed on 1 September 2008.

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younger children.⁹ An evaluation of the UK school attendance strategy¹⁰ concluded that, for secondary school students, the effect of legal sanctions on the 'most disaffected students' was limited; however, the sanctions did 'send an important message' and were a deterrent to other students and their families.¹¹

National developments

The Bill comes in the wake of recent national developments targeting school attendance, which have all had a particular focus on Indigenous children. As the result of resolutions by the Council of Australian Governments (COAG) and the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), all states and territories are now providing to MCEETYA aggregated government and non-government school attendance data, which will be reported in the *National Report on Schooling in Australia*. This data will be provided for analysis to the newly established National Student Attendance Unit, which was also agreed to by COAG.¹²

With agreement from state and territory education officials, the Australian Government has commissioned research to develop a national picture of non-enrolments and non-attendance, with an additional focus on Indigenous school attendance. The research will:

- investigate the way data is collected and attendance is managed, to get a more consistent approach
- collect information on successful practice strategies and
- recommend complementary strategies for the Australian Government to implement.¹³

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9. S. Kendall, *School Attendance and the Prosecution of Parents: Effects and Effectiveness*, National Foundation for Educational Research, Berkshire, Eng. 2004, <http://www.nfer.ac.uk/research-areas/pims-data/summaries/school-attendance-and-the-prosecution-of-parents-effects-and-effectiveness-.cfm>, accessed on 30 August 2008.
 10. For information about school attendance in the UK, see the Department for Children, Schools and Families' *School Attendance* website, <http://www.dcsf.gov.uk/schoolattendance/>, accessed on 31 August 2008.
 11. Office for Standards in Education, Children's Services and Skills (Ofsted), *Attendance in Secondary Schools: Briefing Note*, Ofsted, Manchester, Eng., 2007, pp. 8–9, http://www.ofsted.gov.uk/assets/Internet_Content/Shared_Content/Files/2007/sept/attendance_bn.pdf, accessed on 31 August 2008.
 12. See 'Communique', Council of Australian Governments Meeting, 14 July 2006, p. 13, http://www.coag.gov.au/coag_meeting_outcomes/2006-07-14/docs/coag140706.pdf; and 'Information statement', 21st MCEETYA Meeting, 12–13 April 2007, http://www.mceetya.edu.au/mceetya/21st_mceetya_meeting.18933.html, accessed on 31 August 2008.
 13. As advised by the Department of Education, Employment and Workplace Relations, August 2008.

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School attendance of Indigenous children

It is well known that education outcomes for Indigenous children remain well below those for the general population. The 2007 national reading tests show, for instance, that 80.7 per cent of Year 3 Indigenous students met the national benchmark compared to 93.4 per cent for all students; in Year 7 the difference extended out to 64.7 per cent for Indigenous students compared to 89.3 per cent for all students.¹⁴ School retention rates for Indigenous students also continue to be well below those of non-Indigenous students—the 2007 Year 12 apparent retention rate for Indigenous students was 42.9 per cent compared to 75.6 per cent for non-Indigenous students.¹⁵

The recent national school attendance developments have therefore all had a particular focus on Indigenous children, including an agreement to address absenteeism in the Aboriginal homelands by sharing enrolment information between South Australia, Western Australia and the Northern Territory. In June 2008 the Department of Education, Employment and Workplace Relations signed a contract with the Western Australian Government to manage this project.

The School Attendance and Enrolment Pilot

The Australian Labor Party (ALP) flagged the issue of school attendance for Indigenous children in April 2007:

Special attention must be given to improving the outcomes for Indigenous students. The research supports the need not only for extra classroom support for 'at-risk' children, but diagnostic assessment to identify these children in the early years of their schooling. In Indigenous communities, where low school attendance is often a pressing problem, literacy and numeracy skills foster a continued engagement with formal schooling. Children feel that they can participate, understand and keep up with classroom and other activities at a basic level.¹⁶

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14. Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), *National Benchmark Results: Reading Writing and Numeracy*, MCEETYA, 2007, http://www.mceetya.edu.au/verve/resources/ANR2007Bmrks-Layout_FINAL.pdf, accessed on 30 August 2008.
 15. Australian Bureau of Statistics (ABS), *Schools Australia 2007*, ABS Cat. No. 4221.0, ABS, Canberra, 2008, p. 41, [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/91CC63D5C3277132CA2573FD0015D0EF/\\$File/42210_2007.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/91CC63D5C3277132CA2573FD0015D0EF/$File/42210_2007.pdf), accessed on 30 August 2008.
 16. K. Rudd and S. Smith, *New Directions for Our Schools: A National Action Plan on Literacy and Numeracy*, ALP, Canberra, 2007, p. 12, http://www.alp.org.au/download/now/new_directions_a_national_action_plan_on_literacy_and_numeracy.pdf, accessed on 30 August 2008.

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It later made an election commitment to 'support a trial linking family and welfare payments to school attendance'.¹⁷ The 2008–09 Budget measure, the School Attendance and Enrolment Pilot, gave effect to this commitment.¹⁸

The immediate effect of the Bill is the implementation of the School Attendance and Enrolment Pilot. The pilot, commencing from January 2009, will operate in six Northern Territory communities and two metropolitan locations—Cannington in Western Australia and one other site, yet to be announced.¹⁹ Under the pilot all parents, who are also income support recipients, will be required to notify Centrelink of their child's enrolment at school. State education authorities or schools will be able to notify Centrelink of a child's non-attendance at school. Centrelink can then advise the parent that taking steps to ensure school attendance is a condition of receiving income support.

School attendance and welfare payment trials

A number of recent trials and policies have linked school attendance to eligibility or access to welfare payments. Such a policy is an extension of the broader concept of mutual obligation in which eligibility for welfare payments is dependent upon recipients carrying out certain activities such as job-seeking or 'work for the dole' programs.

2005 Halls Creek trial

In 2005, the Halls Creek School in Western Australia, in partnership with the Remote Area Service Centre and Centrelink, commenced a trial 'no school, no welfare' program.²⁰ Around 16 Parenting Payment recipients, whose children had school attendance problems, were asked to attend an interview at Centrelink. Those who did not turn up to the interview risked having their payment suspended. A number of recipients had their payments suspended during the two-month period that the trial was running.

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17. K. Rudd, J. Macklin and S. Smith, *Federal Labor plan to get remote Aboriginal children to enrol in school*, media release, ALP, Canberra, 1 July 2007, <http://www.alp.org.au/media/0707/msedutfcslloo010.php>, accessed on 30 August 2008.
 18. Australian Government, Budget Paper No. 2: Budget Measures 2008–09, op. cit.
 19. Julia Gillard, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, 'Second reading speech: Social Security and Veterans' Affairs Entitlements Legislation Amendment (School Requirements) Bill 2008', op. cit., p. 2.
 20. Department of Employment and Workplace Relations, *Halls Creek Engaging Families Trial February–July 2006: Evaluation Report*, Canberra, 2006, <http://mediacentre.dewr.gov.au/NR/rdonlyres/2B10D46E-592B-4531-B149-A5B91E69A13E/0/KA265HallsCreekEngagingFamiliesReport4October.pdf>, accessed on 1 September 2008.

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The trial was stopped when concerns were raised that there were no provisions under the SSAA to suspend payments for failure to turn up to an interview when the interview was not regarding payment eligibility or participation related issues.²¹ The concerns, expressed in the trial's evaluation report, should not be a surprise. The powers in the SSAA (and also the FAA and the VEA) can only be used for the purposes of the Act, which is to ask questions only about qualification or the rate of payment. This realisation not only led to a second voluntary trial—the *Engaging Families* trial—but also the Income Management Regime (IMR) arrangements of 2007, in which payment could be diverted to a Centrelink-run account (see below).

2006 Engaging Families trial

The voluntary trial, *Engaging Families*, ran from February to July 2006, involving 30 Parenting Payment recipients who had 66 school aged children in their care. The trial involved parents signing an agreement with Centrelink to participate in job seeking, training and other activities whilst also encouraging their children to attend school. There was no threat of sanctions or payment suspension. These parents were previously exempt from activity test participation requirements under Remote Area Exemptions.

Trial results for school attendance

The initial 2005 Halls Creek trial, which suspended payments for those who failed to attend an interview, reportedly increased school attendance rates from 54 per cent to 80 per cent.²² However, the number involved in the trial was very limited. The subsequent *Engaging Families* trial saw no improvement in school attendance rates.²³

Income support payments

Income support payments are inalienable

Generally, welfare payments are inalienable—that is, where a person is qualified to receive a payment and entitled to an amount of payment, the payment is his or her legal right and cannot be refused or provided to someone else. This applies to the income support and income supplement payments provided under the *Social Security Act 1991* (Cth) (SSA), the family assistance payments provided under the FAA and payments provided under the VEA.

21. *ibid.*, p. 1.

22. Ben Ruse, 'Voluntary truancy trial fails', *West Australian*, 4 October 2006, http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressclp&Criteria=CI TATION_ID:0T1L6%3B, accessed on 1 September 2008.

23. Department of Employment and Workplace Relations, *op. cit.*, p. 3.

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Inalienability

There have been long-standing provisions in the SSA, the SSAA and the VEA providing for the inalienability of payments. The Bill will add another circumstance where, notwithstanding the current inalienability of payment provisions in the SSAA and the VEA, there will be circumstances where an individual qualified to receive a payment will not be paid that payment. This will be where the Bill's proposed suspension and cancellation of income support provisions for a child's non-enrolment or non-attendance at school will apply.

The inalienability provisions in the various Acts are set out below:

- section 60 of the SSAA provides for inalienability of payments under the SSA.²⁴ Section 61 of the SSAA allows the payment recipient to elect to pay some part of his or her payment (deductions) to another party, for example, to an energy or electricity provider. Section 238 of the SSAA allows deductions to be made to the Taxation Commissioner for tax owed or to the Child Support Agency for an enforceable (child) maintenance liability. Sections 1231 and 1234A of the SSAA allow deductions to recover debts; that is, section 1231 for debts arising under the SSAA and section 1234A for deductions for other debts with the person's consent. Other than these specific qualifications, the inalienability provisions in the SSAA mean that payments under the SSAA must be provided to the qualified person.
- section 66 of the FAA provides for the inalienability of its payments²⁵ and
- section 125 of the VEA provides for the inalienability of its payments.²⁶

24. SSAA, subsection 60(1): 'A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.'

25. FAA, subsection 66(1):

Payments of the following are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:

- (a) family tax benefit;
- (b) family tax benefit advances;
- (c) baby bonus;
- (d) maternity immunisation allowance;
- (e) child care benefit;
- (f) payments under section 219Q or subsection 219QA(2) in respect of fee reduction;
- (fa) payments of enrolment advances under section 219RA;
- (g) one-off payment to families.

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The main purpose of the inalienability provisions in the SSAA, the FAA and the VEA is to provide for the protection of payments. That is, to ensure that where a person is qualified to a payment and entitled to a rate of payment, he or she receives that payment. There would be no point in providing for payments in a welfare or payments assistance Act if another person or body, or other legislation, allowed for the diversion or non-payment of the payment to the individual. For example, the provisions protect payment from a Minister or a public official deciding that a payment should not be provided to an individual or to a group of persons.

Income Management Regime for payments under the national emergency response to protect Aboriginal children in the Northern Territory

The payment suspension and cancellation provisions in the Bill, which override the general inalienability provisions of the SSAA and the VEA, have parallels with the IMR arrangements that were introduced under the national emergency response to protect Aboriginal children in the Northern Territory.²⁷ Under the IMR arrangements, payments are diverted into a Centrelink-controlled account for the individual, from which purchases and payments can be made for approved items like rent, food, transport, etc.

Income Management Regime arrangements compared to the proposed schooling requirements

The main difference between the IMR provisions and the suspension and cancellation arrangements presented in the Bill is that under the IMR provisions payments are diverted into a Centrelink controlled account for the individual. Payments continue and are not suspended or cancelled.

The other main difference is that the provisions in the Bill refer only to income support payments and not to income supplement payments. Income support payments refer to the pension type payments under the SSA, such as the Age Pension, Disability Support Pension and Parenting Payment – Single.²⁸ Income support payments under the SSA also refer to the benefit and allowance payments such as Newstart Allowance,²⁹ Sickness

26. VEA, subsection 125(1): ‘Subject to this Act, a pension, allowance or other pecuniary benefit under this Act is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.’

27. Peter Yeend and Coral Dow, ‘Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007’, *Bills Digest*, no. 27, Parliamentary Library, Canberra, 2007–08, <http://www.aph.gov.au/library/pubs/SearchResults.asp>, accessed on 1 September 2008.

28. Parenting Payment–single is payable to a sole parent and is a pension rate payment and is more commonly referred to as the sole parent pension.

29. Newstart Allowance is payable to unemployed jobseekers aged 20 up to age pension age and who are actively seeking paid work—it is commonly referred to as the unemployment benefit.

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Allowance, Parenting Payment – Partnered,³⁰ Youth Allowance³¹ and Austudy Payment.³² The income support payments provided under the VEA refer to the Age Service Pension, Partner Service Pension, Invalidity Service Pension, Defence Force Income Support Allowance and Income Support Supplement.

The suspension and cancellation provisions in the Bill do not refer to the income supplement payments provided under the FAA—that is, Family Tax Benefit Part A, Family Tax Benefit Part B and Child Care Benefit. Therefore, where the income support payment is suspended or cancelled under the provisions in the Bill, the person would continue to receive any income supplement payments they are otherwise entitled, such as Family Tax Benefit Part A, Family Tax Benefit Part B and Child Care Benefit. This contrasts with the IMR arrangements where management of payments includes both income support pension and benefits payments and also income supplement payments like Family Tax Benefit Part A.

Had these schooling provisions extended to income supplement payments, they would have applied to a greater number of families with a ‘schooling requirement child’, being those on an income supplement but not on income support. Certainly the non-payment sanction would be more diluted being referenced to only the income supplement families, especially those on lower or minimum rate payments. In the 2006–07, a total of 1 769 453 families received Family Tax Benefit Part A in respect of 3 447 535 children. Of these, 437 632 families received Family Tax Benefit Part A in respect of 828 955 children and were also paid income support. This leaves 1 332 008 families paid in respect of 2 618 580 children who received Family Tax Benefit Part A not on income support.³³

Schooling requirements

The amendments proposed in the Bill will empower Centrelink to suspend for up to 13 weeks and then cancel income support payments where a child of the parent does not comply with the school enrolment or attendance requirements. If a suspension is lifted, because the school enrolment or attendance requirements of a parent are considered met, payment will be restored and arrears paid.

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30. Parenting payment–partnered is payable to a person who is partnered and has one child aged less than six years.
 31. Youth Allowance is payable to a full-time student aged 16 to 24 or an unemployed jobseeker aged 16 to 19.
 32. Austudy is payable to a full-time student aged 25 or more.
 33. Department of Families, Community Services and Indigenous Affairs, *Annual Report 2006–07*, Canberra, 2007, p. 167, <http://www.facs.gov.au/annualreport/2007/pdf.htm>, accessed on 1 September 2008.

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Where a parent has a reasonable excuse or is taking reasonable steps to ensure school attendance, they will be considered to have complied with their requirements. These are not described in the Bill, so that will be a matter for guidelines, which are yet to be developed.

The Minister in presenting the Bill announced:

Suspension of payments would only be used as a last resort following repeated attempts to engage a parent over a considerable period of time and would only be applied in those cases where a parent has not provided a reasonable excuse or there are some other special circumstances accounting for their inability to comply.

...

Only in the most extreme cases of parental noncooperation, where there is no evidence of a reasonable excuse or special circumstance, and only after a minimum of 13 weeks of suspended payments, it may be appropriate to cancel income support payments.³⁴

In an answer to a Question without Notice, Senator the Hon. Chris Evans advised that examples of reasonable excuses will include:

- no appropriate school places available in area
- reasonable belief that school cannot provide a safe environment (and no other appropriate school available)
- school or education authority rejects application (and no other appropriate school available) and
- school vacation period.³⁵

Provisions in the Bill insert schooling requirements into the SSAA and the VEA to be complied with in respect of certain income support payments. Schooling requirements would apply to a claimant, or a person receiving payment, where the person has a 'schooling requirement child'.

Schooling requirement child

A child is a 'schooling requirement child' of the person where the child is:

- a dependent child of the person

34. *ibid.*

35. Senator Chris Evans, 'Question without Notice: Indigenous communities', *Senate, Debates*, 1 September 2008, p. 21, <http://www.aph.gov.au/hansard/senate/dailys/ds010908.pdf>, accessed on 2 September 2008.

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- under a family law order or a parenting plan made under the *Family Law Act 1975* (Cth) (FLA), the child is supposed to live with or spend time with the person or
- assuming the family law order or a parenting plan made under the FLA is complied with during the period, the child is in the person's care for at least 14 per cent of the time.

Schooling requirements—suspension and cancellation of income support payments

The provisions in the Bill provide for the suspension and cancellation of income support payment where a person fails to comply with the school enrolment and attendance requirements of the Bill. Set out below are the principal elements of the suspension and cancellation provisions and some general comments and observations about these provisions:

- payment can be suspended for up to 13 weeks.
 Suspension of payment is commonly used in other circumstances in the SSA. For example, under the breach provisions attached to the Newstart Allowance in which payment can be suspended for eight weeks on the third breach in twelve months. Suspension means the payments are not cancelled and the person remains qualified for the payment—the payment is just suspended. Suspension of payment also means that where it is decided to recommence payment, the person does not need to reclaim as payment has not been cancelled.
- where payment is suspended but later restored, full arrears of payment are to be made. Arrears can be in the form of a lump sum or a series of payments.
 Payment may be suspended more than once arising from the one non-compliance with the schooling provisions. This provides for flexibility in the application of suspensions, as there may be a restoration where it is considered the schooling requirements are about to be complied with, but the compliance fails to eventuate.
- where suspension of payment exceeds 13 weeks, the relevant Secretary must make a decision as to whether to continue the suspension of payments or to cancel payments.
 This means there is provision for the continued suspension of payment for more than 13 weeks. This gives some flexibility on a case-by-case basis, where it is considered the decision to cancel payment (with the consequences that step entails) may not be appropriate, as the person is about to comply with the schooling provisions. Given suspension means the non-payment of income support to a welfare-dependent person, it is highly unlikely that any suspension will ever approach 13 weeks in duration.
- after 13 weeks' suspension of payments, the Secretary can cancel payments.
 This also means that cancellation of payment under the schooling requirements cannot be done until suspension exceeds 13 weeks. The 13-week period need not be a continuous period but can be an accumulation of 13 weeks' suspension of payment.

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The cancellation of payment has greater consequences than the suspension of payment. Cancellation requires the person to reclaim for payment to commence again. This would mean that if and when payment is subsequently made to the person, payment would commence from the date of reclaiming.

- where payment has been suspended for less than 13 weeks and is then later restored, full arrears of payment are to be made.

The vast majority of suspensions will probably be for less than 13 weeks, so in most cases full arrears will be made.

- where payment has been suspended for more than 13 weeks and then later restored, the restoration date is normally to be the date the decision to restore payment is made.

However, the restoration date can be earlier and can be determined by the Secretary. This will probably be a matter for guidelines and there is the power to provide full arrears. This provides some flexibility as to how much arrears are to be paid when suspension exceeds 13 weeks.

Financial implications

The measures provided by the Bill will cost \$17.6 million over three years: \$0.1 million in 2007–08, \$16.7 million in 2008–09 and \$0.8 million in 2009–10.³⁶ The high amount in 2008–09 is for the School Attendance and Enrolment Pilot, which will commence from January 2009.

Main provisions

Schedule 1 – Schooling requirements

Part 1 – Amendment of Acts

A New Tax System (Family Assistance) Act 1999

Item 1 amends the definition of ‘receiving’ in subsection 3(1) of the FAA to include references to an income support payment. **Item 2** inserts **proposed section 3AA** to provide the meaning of ‘receiving’ to be affected by suspension of certain schooling requirement payments. There are provisions in the FAA that refer to whether the claimant is receiving an income support payment. For example, where an income support payment is being received the person is entitled to the maximum rate of Family Tax Benefit Part A.

36. Explanatory Memorandum, Social Security and Veterans' Affairs Entitlements Legislation Amendment (School Requirements) Bill 2008, p. (2), http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=EMS&Criteria=BILL_ID:r3054%3BEM_TYPE:EM%3BSOURCE:House%3B, accessed on 30 August 2008.

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These amendments will ensure that a person continues to be considered as 'receiving' a payment during a schooling requirement suspension period. There are like provisions that apply where a Newstart Allowance recipient is serving an eight-week non-payment period for their third beach in twelve months. They are considered to be still receiving an income support payment and therefore continue to qualify for maximum rate Family Tax Benefit Part A.

Social Security (Administration) Act 1999

Item 3 inserts **proposed section 37AA** into the SSAA, to provide for the granting of a claim for an income support payment without payment commencing as the schooling requirement provisions apply at grant. The claim is still considered to have been granted and the date of grant is not altered. It is just that no payments are made.

Item 4 inserts **proposed paragraph 85(1)(a)**, providing for the regranting of a payment after cancellation. As with other decisions under the SSA and the SSAA, the appeal has to be made within 13 weeks of the cancellation decision for any restoration to take effect from the date of cancellation.

Item 6 inserts the substantive schooling requirement provisions (Part 3C – Schooling requirements).

Proposed section 124 sets out to whom the schooling requirement provisions are to apply, being to a person claiming an income support payment with a child in his or her care as required by the schooling provisions and the child is required by a state or territory law to be enrolled in and attend school.

Proposed section 124A sets out definitions of 'attendance', 'enrolment' and 'person responsible' at a school for the purposes of the schooling requirement provisions.

Proposed section 124B sets out more schooling definitions, being 'school requirement child' and 'schooling requirement period'. A child is a 'schooling requirement child' of the person where the child is:

- a dependent child of the person or
- under a family law order or a parenting plan made under the FLA, the child is supposed to live with or spend time with the person or
- assuming the family law order or a parenting plan made under the FLA is complied with during the period, the child is in the person's care for at least 14 per cent of the time.

Proposed subsection 124B(2) provides for the Minister, by way of a legislative instrument, to describe a school requirement period. Under the *Legislative Instruments Act*

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2003 (Cth) (LIA), legislative instruments are generally disallowable by the Parliament.³⁷ This makes sense as it provides for flexibility in deciding what periods the schooling requirements are to apply, being linked to school periods in different locations and in individual cases.

Proposed section 124C provides for the Minister, by way of a legislative instrument, to determine school enrolment and attendance. The Ministerial determinations would then be disallowable by the Parliament.³⁸ As described by the Minister in her second reading speech, Centrelink is to exercise discretion in applying suspensions and they are to be only used as a last resort.³⁹ Given that suspensions and cancellation of payments for a child's non-enrolment or non-attendance at school has not been previously done, it makes sense to have the actual detail of when suspensions and cancellations should occur in determinations issued by the Minister if it is not to appear in the Act itself.

Proposed section 124D sets out the definition of 'school requirement payment', being the income support payments provided under the SSA and the VEA. The income supplement payments like Family Tax Benefit Part A, Family Tax Benefit Part B and Child Care Benefit are not included, so during any school requirements suspension period they continue to be received. Both the income support and supplement payments are included with the IMR provisions of 2007,⁴⁰ which can include payments administered by Centrelink. There is no explanation as to why the income supplement payments are not included here.

Proposed section 124E provides for the treatment of income support payments under the VEA as if they were administered by Centrelink. It essentially gives powers to Centrelink in regard to payments under the VEA normally administered by the Department of Veterans' Affairs (DVA). Rather than have the schooling provisions for VEA payments administered by DVA, the provisions will enable Centrelink to apply the school requirement provisions to VEA income support payments. The Explanatory Memorandum explains that this is for reasons of 'effective and streamlined' delivery of the provisions.⁴¹

37. Moira Coombs, 'Acts Interpretation Amendment (Legislative Instruments) Bill 2005', *Bills Digest*, no. 11, Parliamentary Library, Canberra, 2005–06, <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd011.pdf>, accessed on 1 September 2008.

38. *ibid.*

39. Julia Gillard, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, 'Second reading speech: Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008', *op. cit.*

40. Peter Yeend and Coral Dow, Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007, *Bills Digest No. 27 2007-08*, *op. cit.*

41. Explanatory Memorandum, *op. cit.*, p. [9].

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Given the probable smaller number of schooling requirement cases for the income support payments provided under the VEA, compared to those applied under the SSA, it probably makes sense. It also makes sense (as a matter of consistency) if the application of the provisions, that is considerations about whether the suspension or cancellation is to apply to a case, should be made by one agency.

Division 2 – School enrolment

Proposed section 124F empowers the Secretary to require a ‘schooling required person’ to provide proof of school enrolment, either in writing or in an oral statement.

Proposed section 124G is the main section authorising the suspension or cancellation of an income support payment, where the school enrolment requirements are not met. For example, under **proposed subsection 124G(1)**, a schooling requirement payment is not payable where the person fails to provide proof of school enrolment. **Proposed subsection 124(2)** provides for the flexibility in the application of this provision, where the Secretary considers the person has a ‘reasonable excuse’ or ‘special circumstances’ apply. The details of such circumstances are to be set out in the schooling requirements determination (see **proposed section 124C** above).

Proposed section 124H sets out the provisions for the suspension and cancellation of payments for non-compliance with school enrolment after a school enrolment notice has been issued. **Proposed paragraph 124H(2)** details that the Secretary must suspend or cancel payment only after payment has been suspended for a total of at least 13 weeks. The 13-week suspension period can be made up of separate periods—it need not be 13 consecutive weeks. The Secretary can also suspend or cancel after 13 weeks suspension; it need not be a cancellation but, where it is not a cancellation, the Secretary must decide to suspend payment. **Proposed section 124H(3)** provides the Secretary with the power to make multiple decisions in relation to an enrolment notice.

Proposed section 124J sets out the provisions for the resumption of payment after it has been suspended. **Proposed subsection 124J(2)** states that the Secretary must restore payment where the enrolment notice provisions no longer apply. **Proposed subsection 124J(3)** provides that where payment has been suspended for less than 13 weeks, full arrears are to be paid. **Proposed subsection 124J(4)** details that where payment has been suspended for more than 13 weeks (be that one period or an accumulation of periods), either full arrears or only those incurred from the date of reconsideration may be payable. **Proposed subsection 124J(5)** gives the Secretary a discretion to pay full arrears in special circumstances. **Proposed subsection 124J(6)** allows for the arrears to be paid in a lump sum or a series of regular payments.

Division 3 – School attendance

Division 3 sets out proposed provisions similar to those in **Division 2**, but for school attendance requirements.

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Proposed section 124K sets out the school attendance provisions in regard to attendance notices. **Proposed subsection 124K(1)** states that **section 124** applies where a person has a school enrolment child and a person responsible for the operation of a school gives the Secretary written notice that the child is failing to attend school and that the schooling requirement person is failing to take reasonable steps to ensure the child attends school, as required by state or territory law. **Proposed subsection 124K(2)** empowers the Secretary to then issue the person a school attendance notice to take reasonable steps to comply with the schooling requirements.

Proposed section 124L states that a schooling requirement payment (income support payment) is not payable where a schooling requirement person fails to comply with a notice issued under subsection 124K. **Proposed subsection 124L(2)** states that **subsection 124L(1)** does not apply if the Secretary is satisfied the person has a reasonable excuse for failing or in other special circumstances of the case. Therefore it is appropriate the notice requirement provisions are not inflexible. What constitutes 'reasonable excuse' and also 'special circumstances' are to be spelt out in a Ministerial determination made under the proposed section 124C. **Proposed subsection 124L(3)** details that the school attendance requirement suspension and cancellation provisions can only be applied as set out in proposed **section 124M**. **Proposed subsection 124L(4)** states a school requirement payment under the VEA cannot be suspended or cancelled under **proposed subsection 124L(1)** except as provided by **proposed section 124M** (see below).

Proposed section 124M sets out the suspension and cancellation provisions for non-compliance with an attendance notice. They are identical to the proposed suspension and cancellation provisions for the non-compliance with an enrolment notice as set out in **section 124H**. Similarly, **proposed section 124N** sets out the circumstances where a schooling requirement payment, that has been suspended or cancelled under **proposed section 124L**, may be reconsidered. They are identical to the provisions in relation to the reconsideration of a payment that is suspended or cancelled for failure to comply with a school enrolment notice.

Division 4 – Information about schooling

The amendments in **Division 4** are about the information exchange between the department (including Centrelink) and schools, education departments and other portfolio departments.

Proposed section 124P allows school persons, authorities and the states and territories to give information to Centrelink about school enrolment and attendance.

Items 8 and 9 amend the information gathering powers in the SSAA (section 195) to include not just the immediate information about a child's school enrolment or attendance but also past or present enrolment or attendance. This information may be relevant if the Secretary is to exercise discretion about whether a schooling requirement person has a

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'reasonable excuse' or if 'special circumstances' exist for failing to comply with an enrolment or attendance notice.

Item 11 amends section 202 of the SSAA which concerns the protection of personal information. Section 202 of the SSAA allows protected information to be obtained and used for the purposes of the SSA and the SSAA. **Proposed subsections 202(6) and (7)** will extend the application of section 202 to allow information to be obtained, recorded and disclosed for the purposes of the schooling requirement provisions.

Items 12 to 20 insert new definitions and terms such as 'attendance' and 'enrolment' into Schedule 1 of the SSAA, which is the dictionary for that Act.

Student Assistance Act 1973

Items 22 to 28 amend the SAA. The SAA basically provides the legislative framework for the ABSTUDY scheme but payments are made by regulation, unlike the Youth Allowance and Austudy payment, which are the two main student assistance payments delivered under the SSA. The amendments to the SAA refer to the exchange of information regarding recipients of ABSTUDY payment for the purposes of the schooling requirements.

Schedule 2 – Veterans' entitlements amendments

Items 29 to 33 amend the VEA to provide that the income support payments provided under the VEA may not be payable where they have been suspended or cancelled under the schooling provisions of Part 3C of the SSAA. These income support payments are the Age Service Pension, Partner Service Pension, Invalidity Service Pension, Income Support Supplement and the Defence Force Income Support Allowance.

Concluding comments

The Minister has indicated that the suspension or cancellation of income support payments will be a measure of last resort and applied only if parents are not taking action to remedy their child's non-enrolment or non-attendance at school. The Bill does not address the non-enrolment or non-attendance of school-aged children whose parents are not income support recipients.

The Bill's schooling requirements for claimants and payment of income support payments has parallels with the IMR provisions introduced to the SSA, the FAA and the VEA in 2007 under the national emergency response to protect Aboriginal children in the Northern Territory.⁴² Similar to the IMR provisions, the schooling requirement provisions in the Bill present the power to not pay a person qualified to receive a welfare payment under the

42. Peter Yeend and Coral Dow, *op. cit.*

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SSAA or the VEA. However, these provisions go further—payment may be suspended and eventually cancelled. This is more radical than the IMR provisions, where payment is diverted to Centrelink to be managed and used for essential and reasonable expenditure of the person. The IMR provisions do not contain any suspension or cancellation arrangements.

Many governments and non-government organisations and individuals have attempted to improve the social and economic circumstances of Indigenous Australians for many years. For a long time, the capacity to influence their behaviour and change their circumstances has been limited by their inalienable access to income support payments—an individual's willingness to change his or her behaviour may be diluted when he or she knows that, whatever else happens, ultimately they will still be provided with financial support. Awareness of this welfare conundrum was reinforced by the social engagements and welfare trials conducted at places like Halls Creek. As Noel Pearson, Director of the Cape York Institute, has commented:

The predicament of Aboriginal people has thrown into sharp relief the problems with welfare. The safety net as a guarantee for those temporarily disengaged from the real economy and as long-term support for the disabled and the aged, is a measure and mark of our civil community and consensus. The safety net as a permanent solution for able-bodied people, is not just undesirable, it is destructive. The experience of Aboriginal Australians disengaged from the real economy tells us this plainly.⁴³

The need to address the welfare conundrum was at the heart of the national emergency response to protect Aboriginal children in the Northern Territory. The schooling requirement provisions in the Bill are motivated by the same imperative, but they are much tougher. They are also being proposed when the evidence about the effectiveness of income support withdrawal and legal sanctions to improve school attendance is mixed.

However, while the Bill's provisions are unprecedented in welfare legislation, the reality is that there will probably be very few situations where a suspension of payment ever approaches 13 weeks. A welfare-dependent family will not be able to tolerate that level of financial disadvantage even if they continue to receive income supplement payments such as Family Tax Benefit Part A.

43. N. Pearson, 'Beyond dependency', *Options*, vol. 12, December 2000, p. 10, http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=jmart&Criteria=CITATION_ID:3T136%3B, accessed on 1 September 2008.

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