



A New Tax System (Family Assistance) (Administration) Act 1999

No. 81, 1999



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**An Act to implement A New Tax System by
providing assistance to families, and for related
purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
Part 2—Interpretation	3
3 Definitions	3
4 Approval of use of electronic equipment etc. to do things for the purposes of the family assistance law	6
Part 3—Payment of family assistance	8
Division 1—Family tax benefit	8
Subdivision A—Making claims	8
5 Need for a claim	8
6 Who can claim	8
7 How to claim	8
8 Tax file number requirement to be satisfied for claim to be effective	9
9 Restrictions on claims for payment of family tax benefit by instalment	10
10 Restrictions on claims for payment of family tax benefit for a past period	11
11 Restrictions on bereavement claims	13
12 Claim may be withdrawn or varied	14
Subdivision B—Determination of claims etc.	14
13 Secretary must determine claim	14
14 Restriction on determining claim where income tax assessment not made	14
15 Restriction on determining claim where tax file number not provided etc.	15
16 Determination of instalment entitlement claim	16
17 Determination of past period entitlement claim	18
18 Determination of bereavement entitlement claim	18
19 Determination that no entitlement	19
20 Determination of rate may be based on estimate	19
21 When determination is in force	20
22 Notice of determination	21
23 Payment of family tax benefit by instalment	21
24 Other payments of family tax benefit	22
25 Obligation to notify change of circumstances	23

26	Secretary's power to request tax file numbers	24
Subdivision C—Variation of determinations		25
27	Variation of instalment and past period determinations where failure to provide tax file number	25
28	Variation of instalment and past period entitlement determinations where income tax return not lodged	27
29	Variation of instalment entitlement determination where failure to provide information	28
30	Variation of instalment entitlement determination where failure to notify change of address	29
31	Variation of instalment entitlement determination to reflect changes in eligibility	30
32	Notice of variation of determination	31
Division 2—Payment of family tax benefit advances		33
33	Determination of entitlement to family tax benefit advance	33
34	Amount of family tax benefit advance	34
35	Payment of family tax benefit advance	35
Division 3—Maternity allowance and maternity immunisation allowance		36
36	Need for a claim	36
37	Who can claim	36
38	How to claim	36
39	Restrictions on claiming	36
40	Claim may be withdrawn	38
41	Secretary must determine claim	38
42	Determination of “normal circumstances” entitlement claim	40
43	Determination of “bereavement” entitlement claim	41
44	Determination that no entitlement	41
45	When determination is in force	41
46	Notice of determination	42
47	Payment of maternity allowance or maternity immunisation allowance	42
Division 4—Child care benefit		43
Subdivision A—Regulations		43
48	Overview	43
49	Determinations about eligibility for child care benefit by instalment for care provided by approved child care services in normal circumstances	43
50	Determinations about eligibility for child care benefit for past periods for care provided by approved child care services in normal circumstances	44

51	Determinations about eligibility for child care benefit for care provided by approved child care services in special circumstances	44
52	Determinations about eligibility for child care benefit for past periods of care provided by registered carers	44
53	Claims and determinations about eligibility for amounts of child care benefit where death occurs	45
54	Estimates of adjusted taxable income	45
55	Making of payments	45
56	Variation etc. of determinations	45
57	Passing on child care benefit by way of reduced charges etc.	46
58	Record keeping obligations	47
59	Provision of information to Secretary	48
60	Provision of tax file numbers to Secretary in claims or in documents given together with claims	49
61	Secretary's power to request tax file numbers	50
62	Enforcement of information etc. requirements	51
63	Other matters	51
	Subdivision B—Offences	52
64	Provision of instalment statements where individual conditionally eligible for child care benefit by instalment	52
65	Provision of instalment statements where approved child care service conditionally eligible for child care benefit by instalment	52
	Division 5—Payment protection and garnishee orders	53
66	Protection of payments under this Part	53
67	Effect of garnishee etc. order	54
	Part 4—Overpayments and debt recovery	55
	Division 1—Preliminary	55
68	Meaning of <i>amount paid to person</i>	55
69	Special provisions relating to child care benefit	55
	Division 2—Amounts recoverable under this Act	56
70	Debts due to the Commonwealth	56
71	Debts arising under this Act	56
72	Circumstances in which maternity allowance or maternity immunisation allowance not recoverable	59
73	Debts arising from AAT stay orders	60
74	Person other than payee obtaining payment of a cheque	60
75	Debts arising from conviction of person for involvement in contravention of family assistance law by debtor	60
76	Data-matching Program (Assistance and Tax) Act debts	61

77	Interest payable on debt for failure to enter agreement to pay debt.....	61
78	Interest payable on debt for breach of agreement to pay debt.....	63
79	Penalty interest rate	65
80	Debt from failure to comply with garnishee notice	65
81	Overseas application of provisions	66
82	Recoverable debts.....	66
Division 3—Methods of recovery		68
83	Deductions from family assistance (general).....	68
84	Deductions from debtor’s family assistance	68
85	Deductions from group payments made to approved child care service	69
86	Time limits on recovery action under sections 84 and 85.....	70
87	Application of income tax refund owed to person.....	71
88	Legal proceedings.....	72
89	Garnishee notice	73
90	Time limits on recovery action under section 89.....	75
91	Secretary may allow payment of debt by instalments.....	76
92	Deductions by consent from family assistance of person who is not a debtor	76
93	Application of income tax refund owed to another person	77
Division 4—Non-recovery of debts		78
94	Meaning of <i>debt</i>	78
95	Secretary may write off debt.....	78
96	Power to waive Commonwealth’s right to recover debt.....	79
97	Waiver of debt arising from error.....	80
98	Waiver of debt relating to an offence	80
99	Waiver of small debt	81
100	Waiver in relation to settlements	81
101	Waiver in special circumstances.....	83
102	Secretary may waive debts of a particular class	84
103	Determination that penalty interest not payable in relation to particular periods.....	84
Part 5—Review of decisions		86
Division 1—Internal review		86
104	Review initiated by Secretary	86
105	Review initiated by applicant	87
106	Authorised review officers	88
107	Review applications—time limits and withdrawal	88

108	Secretary may continue payment pending outcome of application for review	89
109	Notification of further rights of review	90
Division 2—Review by the Social Security Appeals Tribunal		91
110	SSAT objective.....	91
111	Application for review by SSAT	91
112	Secretary may continue payment pending outcome of application for review	92
113	SSAT review powers	92
114	Powers of the SSAT	93
115	Date of effect of SSAT decisions	93
116	Application requirements	94
117	Variation of decision before review completed	94
118	Parties to SSAT review.....	95
Division 3—Procedures for review by the SSAT		97
Subdivision A—Preliminary procedures		97
119	Procedure on receipt of application for review by SSAT	97
120	Parties to be given a statement about the decision under review	98
121	Arrangements for hearing of application	99
122	Notice of application to person affected by decision	99
Subdivision B—How the SSAT informs itself about the decision under review		100
123	Submissions to SSAT by parties other than agency heads.....	100
124	Submissions to SSAT by agency heads	100
125	SSAT hearings on written submissions only	101
126	SSAT hearings without oral submissions by party	101
127	Evidence on oath or affirmation	102
128	Provision of further information by Secretary	102
129	Exercise by Secretary of powers under section 154.....	103
Subdivision C—The hearing		103
130	Hearing procedure	103
131	Hearing in private	103
132	New evidence	104
133	Restrictions on disclosure of information obtained at hearing.....	104
Subdivision D—Other procedural matters		104
134	Adjournment of SSAT hearings	104
135	Withdrawal of application for review	105
136	Dismissal of an application.....	106
137	Chairperson for each SSAT hearing	106

138	Decision of questions before SSAT	106
139	Directions as to procedure for hearings	107
140	Costs of review	107
	Subdivision E—Notification of decisions	108
141	Procedure following SSAT decision.....	108
	Division 4—Review by the Administrative Appeals Tribunal	110
	Subdivision A—Right to review by AAT	110
142	Review of decisions by AAT.....	110
143	Variation of decision under section 142 before AAT review completed	111
144	Review by AAT of other decisions.....	111
145	Variation of decision under section 144 before AAT review completed	113
146	Settlement of proceedings before the AAT	114
	Subdivision B—Modification of Administrative Appeals Tribunal	
	Act in relation to section 142 review applications	114
147	Notice of application for review	114
148	Parties to a review by the AAT.....	114
149	Lodgment of documents with the AAT	115
150	Power of AAT to obtain additional information.....	115
151	Operation and implementation of the decision under review.....	115
152	Failure of party to appear.....	116
	Part 6—Provisions relating to information	117
	Division 1—Information gathering	117
153	Application of Division	117
154	General power to obtain information.....	117
155	Power to obtain information from a person who owes a debt to the Commonwealth.....	118
156	Obtaining information about a person who owes a debt to the Commonwealth	118
157	Obtaining information to verify claims etc.....	118
158	Written notice of requirement.....	120
159	Offence: failure to comply with requirement.....	121
160	Obligations not affected by State or Territory laws	121
	Division 2—Confidentiality	122
161	Operation of Division	122
162	Protection of personal information	122
163	Offence: unauthorised access to protected information	122
164	Offence: unauthorised use of protected information.....	123

165	Offence: soliciting disclosure of protected information.....	123
166	Offence: offering to supply protected information	124
167	Protection of certain documents etc. from production to court etc.	124
168	Disclosure of information by Secretary	124
169	Guidelines for exercise of Secretary's disclosure powers.....	125
170	Officer's declaration.....	125
Division 3—False statements etc.		126
Subdivision A—Preliminary		126
171	Application of Division	126
Subdivision B—Offences		126
172	False statement in connection with claim	126
173	False statement to deceive	126
174	False statement or document	126
175	Knowingly obtaining payment where no entitlement	127
176	Payment knowingly obtained through fraud etc.	127
Subdivision C—Penalties		127
177	Penalty for contravention of Subdivision B.....	127
178	Repayment of family assistance	127
179	Penalty where person convicted of more than one offence.....	128
Subdivision D—Procedural matters		128
180	Joining of charges.....	128
181	Particulars of each offence	128
182	Trial of joined charges.....	129
183	Evidentiary effect of Secretary's certificate.....	129
184	Enforcement of court certificate as judgment.....	129
Part 7—Liability of corporations, employers and principals for offences		130
Division 1—Interpretation		130
185	State of mind of a person.....	130
186	Director of a corporation	130
187	Conduct	130
188	Offence	130
Division 2—Proceedings against corporations		131
189	State of mind of corporation.....	131
190	Conduct of officer of corporation	131
Division 3—Proceedings against non-corporations		132
191	State of mind of individual	132

192	Conduct of employee or agent	132
193	Exclusion of imprisonment as penalty for certain offences	132
Part 8—Approval of child care services and registered carers		133
Division 1—Approval of child care services		133
194	Application for approval.....	133
195	Approval of child care services	134
196	Conditions for continued approval—compliance with rules and laws.....	135
197	Conditions for continued approval—child care places limit not to be exceeded	135
198	Conditions for continued approval—compliance with conditions imposed by Minister.....	136
199	Conditions for continued approval—compliance with conditions imposed by Secretary	136
200	Consequences of breach of conditions for continued approval.....	136
201	Procedure for imposing a sanction.....	137
202	Cancellation.....	138
203	Procedure for cancellation	139
204	Notification of matters affecting eligibility for approval	139
205	Eligibility rules for child care services	140
206	Guidelines for allocation of child care places to approved child care services.....	141
207	Secretary to allocate child care places	141
208	Disallowable instruments	142
Division 2—Approval as registered carers		143
209	Application for approval as registered carer	143
210	Approval of registered carers.....	143
211	Statement that applicant has tax file number	144
212	When approval comes into force	145
213	Conditions of continued approval.....	145
214	Consequences of breach of conditions for continued approval.....	146
215	Procedure for imposing a sanction.....	147
216	Cancellation.....	147
217	Procedure for cancellation under subsection 216(3).....	148
218	Notification of matters affecting eligibility for approval	149
219	Disallowable instruments	149
Part 9—Other matters		150
220	General administration of family assistance law	150

221	Delegation	150
222	Decisions to be in writing	150
223	Decisions taken by computer	150
224	Notice of decisions	151
225	Payment of deductions to Commissioner of Taxation	151
226	Setting off family assistance entitlement against tax liability	152
227	Setting off arrears against debt owed	152
228	Setting off arrears of person who is not a debtor against a debt	152
229	Judicial notice of certain matters	153
230	Documentary evidence	153
231	Application of family assistance law to unincorporated bodies	154
232	Annual report	155
233	Appropriation	155
234	Agreements on administrative arrangements	155
235	Regulations	155



A New Tax System (Family Assistance) (Administration) Act 1999

No. 81, 1999

**An Act to implement A New Tax System by
providing assistance to families, and for related
purposes**

[Assented to 8 July 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Section 2

2 Commencement

- (1) Sections 1 and 2 and subsection 235(5) commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence immediately after the commencement of the *A New Tax System (Family Assistance) Act 1999*.

Part 2—Interpretation

3 Definitions

- (1) In this Act, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

agency means:

- (a) the Department; or
- (b) the Commonwealth Services Delivery Agency; or
- (c) the Australian Taxation Office; or
- (d) the Health Insurance Commission.

approved centre based long day care service means a centre based long day care service in respect of which an approval as a centre based long day care service is in force under Division 1 of Part 8.

approved child care service means:

- (a) an approved centre based long day care service; or
- (b) an approved family day care service; or
- (c) an approved occasional care service; or
- (d) an approved outside school hours care service.

approved family day care service means a family day care service in respect of which an approval as a family day care service is in force under Division 1 of Part 8.

approved occasional care service means an occasional care service in respect of which an approval as an occasional care service is in force under Division 1 of Part 8.

approved outside school hours care service means an outside school hours care service in respect of which an approval as an outside school hours care service is in force under Division 1 of Part 8.

Section 3

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

eligibility rules means rules made under subsection 205(1).

entitled to be paid family tax benefit by instalment: a person is so entitled at a particular time if a determination under section 16 in relation to the person is in force at that time under which the person is entitled to be paid family tax benefit at or after that time.

Executive Director means the Executive Director of the Social Security Appeals Tribunal.

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

family assistance law means any one or more of the following:

- (a) this Act;
- (b) the Family Assistance Act;
- (c) regulations under this Act.

family tax benefit advance means the advance mentioned in Division 2 of Part 3.

head of an agency means:

- (a) in the case of the Department—the Secretary; or
- (b) in the case of the Commonwealth Services Delivery Agency—the Chief Executive Officer of the Agency; or
- (c) in the case of the Australian Taxation Office—the Commissioner of Taxation; or
- (d) in the case of the Health Insurance Commission—the Managing Director of the Commission.

income tax refund means an amount payable to a person in respect of an overpayment of:

- (a) income tax imposed by the *Income Tax Act 1986*; or
- (b) Medicare levy payable in accordance with Part VIIB of the *Income Tax Assessment Act 1936*; or
- (c) an amount payable by the person by an assessment made under Part IV of the *Income Tax Assessment Act 1936* because of:

- (i) subsection 106U(1) of the *Higher Education Funding Act 1988*; or
- (ii) subsection 12ZN(1) of the *Student Assistance Act 1973*.

income tax return has the same meaning as in the *Income Tax Assessment Act 1997*.

instalment amount, in relation to family tax benefit, has the meaning given by subsection 23(2).

instalment period:

- (a) in relation to family tax benefit—has the meaning given by subsections 23(2) and (3); and
- (b) in relation to child care benefit—has the meaning given by subsection 42(4) or 47(2), as the case requires, of the Family Assistance Act.

officer means an officer of an agency and includes:

- (a) the head of the agency; and
- (b) an employee of the agency; and
- (c) any other person engaged by the agency, under contract or otherwise, to exercise powers, or perform duties or functions, of the agency.

primary tax means any amount due to the Commonwealth directly under a taxation law (within the meaning of the *Taxation Administration Act 1953*), including any such amount that is not yet payable.

protected information means:

- (a) information about a person that is or was held in the records of the Department or the Commonwealth Services Delivery Agency; or
- (b) information about a person obtained by an officer under the family assistance law that is or was held in the records of the Australian Taxation Office or the Health Insurance Commission; or
- (c) information to the effect that there is no information about a person held in the records of an agency.

Section 4

registered carer means an individual approved as a registered carer under Division 2 of Part 8.

Secretary means the Secretary to the Department.

SSAT means the Social Security Appeals Tribunal.

tax file number has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

TFN claim person, in relation to a claim under Subdivision A of Division 1 of Part 3, means:

- (a) the claimant; and
- (b) if the claim is for payment of family tax benefit by instalment—the claimant's partner (if any) at the time of the claim; and
- (c) if the claim is for payment of family tax benefit for a past period—any partner of the claimant during the past period.

TFN determination person means:

- (a) in relation to a determination under which the claimant is entitled to be paid family tax benefit by instalment—the claimant or any partner of the claimant at any time since the determination was made; or
- (b) in relation to a determination under which the claimant is entitled to be paid family tax benefit for a past period—the claimant or any partner of the claimant during the past period.

- (2) Expressions used in this Act that are defined in the Family Assistance Act have the same meaning as in that Act.

4 Approval of use of electronic equipment etc. to do things for the purposes of the family assistance law

If, under a provision of the family assistance law, the Secretary or another officer may approve the form, manner or way of:

- (a) making or withdrawing any application or claim; or
- (b) doing any other thing that is required or permitted to be done for the purposes of that law;

Section 4

then, without limiting that provision, the Secretary or other officer may approve the making or withdrawing of the application or claim, or the doing of the other thing, by the use of a telecommunications system or other electronic equipment.

Part 3—Payment of family assistance

Division 1—Family tax benefit

Subdivision A—Making claims

5 Need for a claim

The only way that a person can become entitled to be paid family tax benefit is to make a claim in accordance with this Subdivision.

6 Who can claim

The only persons who can make a claim in accordance with this Subdivision are individuals or approved care organisations.

7 How to claim

- (1) An individual or approved care organisation (a *claimant*) may make a claim:
 - (a) for payment of family tax benefit by instalment; or
 - (b) for payment of family tax benefit for a past period; or
 - (c) in the case only of a claimant who is an individual—for payment of family tax benefit by single payment/in substitution because of the death of another individual.

Form etc. of claim

- (2) To be effective:
 - (a) a claim must:
 - (i) be made in a form and manner; and
 - (ii) contain any information; and
 - (iii) be accompanied by any documents; required by the Secretary; and
 - (b) in the case of a claim by an individual for payment of family tax benefit by instalment or for a past period—the tax file

number requirement in section 8 must be satisfied in relation to the claim.

8 Tax file number requirement to be satisfied for claim to be effective

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(b) (which states what is required for certain claims to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person.

Statement of tax file number

- (3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

Statement that TFN claim person does not know what his or her tax file number is etc.

- (4) The second kind of statement that can be made is a statement by the TFN claim person that the person:
 - (a) has a tax file number but does not know what it is; and
 - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
 - (c) authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

- (5) The third kind of statement that can be made is a statement by the TFN claim person that the person:

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 9

- (a) has an application for a tax file number pending; and
- (b) authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the person—that number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

- (6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

Exemption from tax file number requirement

- (7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
 - (a) the person is the claimant's partner; and
 - (b) the claimant cannot obtain from the person:
 - (i) the person's tax file number; or
 - (ii) a statement by the person under subsection (4) or (5).

9 Restrictions on claims for payment of family tax benefit by instalment

A claim for payment of family tax benefit by instalment is not effective if, at the time (the *determination time*) when the claim would be determined:

- (a) the claimant has previously made a claim for payment of family tax benefit by instalment and that claim has not yet been determined; or
- (b) the claimant is already entitled to be paid family tax benefit by instalment; or
- (c) the following apply:

- (i) a determination under section 16 is in force under which the claimant is not, because of a variation of the determination under subsection 27(5), 29(2) or 30(2), entitled to be paid family tax benefit at the determination time or at any later time;
- (ii) the determination time is before the end of the income year following the one in which the variation mentioned in that subsection took effect.

10 Restrictions on claims for payment of family tax benefit for a past period

Restriction where previous claim or instalment determination

- (1) A claim for payment of family tax benefit for a past period is not effective if:
 - (a) the claimant has previously made a claim for payment of family tax benefit for any of the past period (whether or not the claim has yet been determined); or
 - (b) the claimant was entitled to be paid family tax benefit by instalment at any time in the past period; or
 - (c) the following apply:
 - (i) a determination under section 16 was in force at any time in the past period under which the claimant was not, because of a variation of the determination under subsection 27(5), 29(2) or 30(2), entitled to be paid family tax benefit;
 - (ii) the claim is made before the end of the income year following the one in which the variation mentioned in that subsection took effect.

Claim must relate to one income year and not be made after the end of the next income year

- (2) A claim for payment of family tax benefit for a past period is not effective if:
 - (a) the period does not fall wholly within one income year; or
 - (b) the period does fall wholly within one income year but the claim is made after the end of the next income year.

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 10

Claim must be accompanied by instalment claim in some circumstances

- (3) A claim for payment of family tax benefit for a past period is not effective if:
- (a) the period occurs in the income year in which the claim is made; and
 - (b) at the time the claim is made, the claimant is eligible for family tax benefit; and
 - (c) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and
 - (d) the claim is not accompanied by a claim for payment of family tax benefit by instalment.
- (4) A claim for payment of family tax benefit for a past period is not effective if:
- (a) the period occurs in the income year before the one in which the claim is made; and
 - (b) if the claimant is an individual—at any time during the past period, the claimant, or the claimant’s partner, received a social security benefit, social security pension or service pension; and
 - (c) at the time the claim is made, the claimant is eligible for family tax benefit; and
 - (d) if the claimant is an individual—at the time the claim is made, the claimant, or the claimant’s partner, is receiving a social security benefit, social security pension or service pension; and
 - (e) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and
 - (f) the claim is not accompanied by a claim for payment of family tax benefit by instalment.

Section 11

Claim cannot be made in same income year as tax instalment deduction reduced on account of family tax benefit

- (5) A claim for payment of family tax benefit for a past period is not effective if:
- (a) at any time before a determination is made on the claim, the Secretary becomes aware that, during some or all of the past period, an employment declaration:
 - (i) was in force under the Income Tax Regulations; and
 - (ii) stated that the claimant, or the claimant's partner, was eligible for family tax benefit and intended to make a claim, after the end of each income year in which the declaration is in force, for payment of family tax benefit for the period during which the declaration was in force; and
 - (b) the claim is made in the income year in which the past period occurs.

11 Restrictions on bereavement claims

Entitlement must not already have been determined, or be awaiting determination, on a previous claim

- (1) A claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is not effective if the claimant has previously made a claim for payment of family tax benefit because of the death of that individual (whether or not the claim has yet been determined).

Single payment/substitution claims must relate to current or previous income year

- (2) If a claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is based on eligibility for an amount of family tax benefit under subsection 32(2) or section 33 of the Family Assistance Act, the claim is not effective if it is made after the end of the income year following the one in which the death mentioned in that provision occurred.

Section 12

12 Claim may be withdrawn or varied

- (1) A claimant may withdraw or vary a claim before the claim is determined.
- (2) The claimant may only do so in a manner determined by the Secretary.
- (3) If a claim is withdrawn, it is taken never to have been made.

Subdivision B—Determination of claims etc.

13 Secretary must determine claim

- (1) If an effective claim is made, the Secretary must determine the claim in accordance with this section and sections 16 to 19. If a claim is not effective, it is taken not to have been made.

Information to be taken into account

- (2) The Secretary is to make the determination:
 - (a) having regard only to the information in the claim (and any accompanying documents or information required by the Secretary); or
 - (b) having regard to the things in paragraph (a) and also to any other information or documents (whether or not provided by the claimant).

14 Restriction on determining claim where income tax assessment not made

If:

- (a) the claim is one for payment of family tax benefit for a past period; and
- (b) the past period falls in the income year (the *past period income year*) before the one in which the claim is made; and
- (c) the claimant is required to lodge an income tax return for the past period income year; and
- (d) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax

payable on the claimant's taxable income for the past period income year;

the Secretary can only determine the claim if the assessment has been made.

15 Restriction on determining claim where tax file number not provided etc.

Statement that TFN claim person does not know what his or her tax file number is etc.

- (1) If a TFN claim person makes a statement of the kind set out in subsection 8(4), the Secretary can only determine the claim concerned if:
 - (a) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
 - (b) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

Statement that an application for a tax file number is pending

- (2) If a TFN claim person makes a statement of the kind set out in subsection 8(5), the Secretary can only determine the claim concerned if:
 - (a) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
 - (b) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:
 - (i) the person has not applied for a tax file number; or
 - (ii) an application by the person for a tax file number has been refused; or
 - (iii) the person has withdrawn an application for a tax file number.
- (3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

Section 16

16 Determination of instalment entitlement claim

- (1) This section applies if the claim is one for payment of family tax benefit by instalment.

Instalments where normal eligibility

- (2) If:
- (a) the Secretary is satisfied that the claimant is, at the time the Secretary makes the determination on the claim, eligible for family tax benefit in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act; and
 - (b) subsection (3) does not apply;
- the Secretary must determine that the claimant is entitled to be paid family tax benefit for each day on which the determination is in force, at the daily rate at which the Secretary considers the claimant to be eligible.

Instalments where pattern of care eligibility

- (3) If the Secretary is satisfied that, at the time of making the determination on the claim, a pattern of days on which an FTB child of the claimant is in the claimant's care exists and is likely to continue to exist in the future, such that the claimant will be eligible for family tax benefit in respect of the child in accordance with Subdivision A of Division 1 of Part 3 of the Family Assistance Act only on particular days, the Secretary must determine that the claimant is entitled to be paid family tax benefit for those particular days while the determination is in force, at the daily rate at which the Secretary considers the claimant will be eligible.

Additional entitlement in subsection (2) and (3) cases

- (4) If:
- (a) the Secretary is satisfied as mentioned in subsection (2) or (3); and
 - (b) the Secretary is also satisfied that the claimant was eligible for family tax benefit in accordance with Subdivision A or C

Section 16

of Division 1 of Part 3 of the Family Assistance Act during the whole or part of the period since the claim was made; the Secretary must determine that the claimant is entitled to be paid that amount of family tax benefit.

Instalments where bereavement eligibility—remaining FTB children

- (5) If the Secretary is satisfied that, at the time of making the determination on the claim:
- (a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and
 - (b) assuming subsection (4) of that section were disregarded, the claimant would be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;
- the Secretary must determine that:
- (c) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:
 - (i) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and
 - (ii) for each day, before the determination came into force, that occurred during that period; and
 - (d) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant would be eligible, on the assumption in paragraph (b) of this subsection, for each day while the determination is in force that occurs after the last day on which the claimant is entitled to be paid family tax benefit in accordance with paragraph (c) of this subsection.

Instalments where bereavement eligibility—no remaining FTB children

- (6) If the Secretary is satisfied that, at the time of making the determination on the claim:
- (a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 17

- (b) assuming subsection (4) of that section were disregarded, the claimant would not be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;

the Secretary must determine that the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:

- (c) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and
- (d) for each day, before the determination came into force, that occurred during that period.

17 Determination of past period entitlement claim

If:

- (a) the claim is one for payment of family tax benefit for a past period; and
- (b) the Secretary is satisfied that the claimant was eligible for family tax benefit:
 - (i) for the whole of the period in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act; or
 - (ii) for part of the period in accordance with Subdivision A of that Division and for the remainder of the period in accordance with section 31 of that Act;

the Secretary must determine that the claimant is entitled to be paid family tax benefit for the past period.

18 Determination of bereavement entitlement claim

If:

- (a) the claim is one for payment of family tax benefit by single payment/in substitution because of the death of another individual; and
- (b) the Secretary is satisfied that the claimant is eligible for family tax benefit under section 32 or 33 of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the family tax benefit.

19 Determination that no entitlement

If the Secretary is not satisfied as mentioned in section 16, 17 or 18, the Secretary must determine:

- (a) if the determination is on a claim for payment of family tax benefit by instalment—that the claimant is not entitled to be paid family tax benefit for each day on which the determination is in force; or
- (b) in any other case—that the claimant is not entitled to be paid family tax benefit for the past period or because of the death of the other individual, as the case requires.

20 Determination of rate may be based on estimate

- (1) If:
 - (a) an individual's rate of family tax benefit is required to be calculated for the purpose of making a determination under this Division; and
 - (b) information about an amount needed for the calculation of the rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and
 - (c) the individual gives the Secretary an estimate of the amount needed; and
 - (d) the Secretary considers the estimate to be reasonable;the Secretary may determine the individual's rate of family tax benefit on the basis of the estimate.
- (2) If the individual does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable, the rate cannot be calculated and section 19 applies.

Section 21

21 When determination is in force

- (1) Subject to this section, a determination under this Division comes into force when it is made and remains in force at all times afterwards.

Effect of later determination on certain instalment determinations

- (2) If, on a particular day, a determination is in force:
- (a) under section 16, where under the determination the claimant is not entitled to be paid family tax benefit on the particular day or any later day; or
 - (b) under paragraph 19(a);
- the determination ceases to be in force on the particular day if either:
- (c) another determination is made on the particular day on a claim by the claimant for payment of family tax benefit by instalment; or
 - (d) another determination is made after the particular day on a claim by the claimant for payment of family tax benefit for a past period, where the particular day occurs within the past period.

Request for cessation of instalment determination

- (3) A determination in force under section 16 on a particular day ceases to be in force if:
- (a) under the determination, the claimant is entitled to be paid family tax benefit on the particular day or any later day; and
 - (b) on the particular day, the claimant is not receiving a social security pension, social security benefit or service pension; and
 - (c) on the particular day, the claimant advises the Secretary, in the form and manner required by the Secretary, that the claimant wishes the determination:
 - (i) to cease to be in force from the particular day or from a specified later day; or
 - (ii) to have ceased to be in force at the end of the most recent instalment period before the particular day.

The determination ceases to be in force in accordance with the advice.

22 Notice of determination

- (1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:
 - (a) whether the claimant is entitled to be paid family tax benefit under the determination; and
 - (b) if the claimant is so entitled:
 - (i) if the claimant is entitled to be paid family tax benefit by instalment—the daily rate of the benefit, the days on which the entitlement arises and how it is to be paid; or
 - (ii) in any other case—the amount of the benefit and how it is to be paid; and
 - (c) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective to any extent if the requirements of subsection (1) are not complied with.

23 Payment of family tax benefit by instalment

- (1) Subject to this section, if the claimant is entitled to be paid family tax benefit by instalment, the Secretary must, after each instalment period ending after the determination is made, pay the instalment amount to the claimant, at such time and in such manner as the Secretary considers appropriate.

Instalment amount and instalment period

- (2) In subsection (1):

instalment amount means the amount accruing for the days in the instalment period for which an entitlement to be paid family tax benefit arose under the determination.

instalment period means, subject to subsection (3):

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 24

- (a) the period of 14 days beginning on such day as the Secretary considers appropriate in relation to the claimant, or class of claimants in which the claimant is included; and
- (b) each successive period of 14 days.

Changing the day on which later instalment periods begin

- (3) The Secretary may change the day on which successive instalment periods are to begin in relation to a claimant or class of claimants. If the Secretary does so, the last instalment period before the first day on which the new instalment periods are to begin is shortened so that it ends immediately before that day.

Making of payments to third parties

- (4) The Secretary may pay the whole or a part of an amount, that would otherwise be required by subsection (1) to be paid to the claimant, to someone other than the claimant, on behalf of the claimant.

Regulations may provide for timing and manner of making payments

- (5) The regulations may make provision for the time at which, and the manner in which, an amount is to be paid for the purposes of this section. If such regulations are made, the Secretary must pay the amount in accordance with the regulations.

Section subject to other provisions

- (6) This section is subject to Part 4 (Overpayments and debt recovery) and sections 225 to 228 (which deal with other debts etc.).

24 Other payments of family tax benefit

- (1) If the claimant is entitled to be paid family tax benefit under a determination on a claim for payment of family tax benefit:
 - (a) for a past period; or
 - (b) by single payment/in substitution because of the death of another individual;

the Secretary must pay the amount to the claimant, at such time and in such manner as the Secretary considers appropriate.

Making of payments to third parties

- (2) The Secretary may instead pay the whole or a part of the amount to someone other than the claimant, on behalf of the claimant.

Regulations may provide for timing and manner of making payments

- (3) The regulations may make provision for the time at which, and the manner in which, an amount is to be paid for the purposes of this section. If such regulations are made, the Secretary must pay the amount in accordance with the regulations.

Section subject to other provisions

- (4) This section is subject to Part 4 (Overpayments and debt recovery) and sections 225 to 228 (which deal with other debts etc.).

25 Obligation to notify change of circumstances

If, after a claimant becomes entitled to be paid family tax benefit by instalment:

- (a) anything happens that causes the claimant to cease to be eligible for family tax benefit on the days for which the claimant will become entitled to be paid the benefit under the determination concerned, or to become eligible for a daily rate of family tax benefit that is less than that specified in the determination; or
- (b) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in the regulations, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

Section 26

26 Secretary's power to request tax file numbers

- (1) If:
- (a) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; or
 - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit for a past period;
- the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsection (2), (3) or (4) the claimant chooses.

Statement of tax file number

- (2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

Statement that TFN person does not know what his or her tax file number is etc.

- (3) The second kind of statement that can be made is a statement by the TFN determination person that the person:
- (a) has a tax file number but does not know what it is; and
 - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
 - (c) authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

- (4) The third kind of statement that can be made is a statement by the TFN determination person that the person:
- (a) has an application for a tax file number pending; and
 - (b) authorises the Commissioner of Taxation to tell the Secretary:

- (i) if a tax file number is issued to the person—that number; or
- (ii) if the application is refused—that the application has been refused; or
- (iii) if the application is withdrawn—that the application has been withdrawn.

Subdivision C—Variation of determinations

27 Variation of instalment and past period determinations where failure to provide tax file number

Non-compliance with request

- (1) If:
 - (a) the Secretary makes a request under subsection 26(1); and
 - (b) the claimant does not comply with the request within 28 days of the request being made;then, subject to subsection (2), the consequence in subsection (5) applies.

Exemption from request under subsection 26(1)

- (2) The Secretary may determine that the consequence in subsection (5) does not apply if:
 - (a) the TFN determination person concerned is or was the claimant's partner; and
 - (b) the claimant cannot obtain from the person:
 - (i) the person's tax file number; or
 - (ii) a statement by the person under subsection 26(3) or (4).

Statement that TFN claim person does not know what his or her tax file number is etc.

- (3) If:
 - (a) the Secretary makes a request under subsection 26(1); and
 - (b) by the end of 28 days after the request is made:

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 27

- (i) the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(3); and
 - (ii) the Commissioner of Taxation tells the Secretary that the person has no tax file number;
- the consequence in subsection (5) applies.

Statement that an application for a tax file number is pending

- (4) If:
- (a) the Secretary makes a request under subsection 26(1); and
 - (b) by the end of 28 days after the request is made:
 - (i) the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(4); and
 - (ii) the Commissioner of Taxation tells the Secretary that the person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;
- the consequence in subsection (5) applies.

Variation of determination

- (5) For the purposes of subsection (1), (3) or (4), the consequence is that the Secretary may:
- (a) if the determination is one under which the claimant is entitled to be paid family tax benefit by instalment—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place; or
 - (b) if the determination is one under which the claimant is entitled to be paid family tax benefit for a past period—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day in the past period.

Consequence of Secretary later becoming aware of tax file number

- (6) If:
- (a) under subsection (5), the Secretary varies the determination; and
 - (b) the Secretary finds out the tax file number of the TFN determination person concerned:
 - (i) if paragraph (5)(a) applies—before the end of the income year following the one in which the variation took effect; or
 - (ii) if paragraph (5)(b) applies—at any time after the variation took place;
- the Secretary must vary the determination to undo the effect mentioned in subsection (5).

28 Variation of instalment and past period entitlement determinations where income tax return not lodged

- (1) This section applies if:
- (a) a determination under section 16 or 17 is in force at, or was in force before, a particular time; and
 - (b) there are one or more days (the *cancellation days*) before the particular time in respect of which the following conditions are satisfied:
 - (i) the cancellation days occur in the income year (the *cancellation income year*) that began 2 years before the beginning of the income year in which the particular time occurs;
 - (ii) the claimant is entitled to be paid family tax benefit under the determination for the cancellation days;
 - (iii) the claimant, or the claimant's partner at the particular time (if he or she was also the claimant's partner at some time in the cancellation income year), or both, are required to lodge an income tax return for the cancellation income year but have not done so by the particular time;
 - (iv) by the particular time, an assessment has not been made under the *Income Tax Assessment Act 1936* of the

Section 29

taxable income for the cancellation income year of everyone to whom subparagraph (iii) applies.

Consequence of section applying

- (2) If this section applies, the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

Consequence where income tax returns are later lodged

- (3) If:
- (a) after the Secretary varies the determination under subsection (2), an assessment is made under the *Income Tax Assessment Act 1936* for the cancellation income year for everyone:
 - (i) who was required to lodge an income tax return as mentioned in subparagraph (1)(b)(iii); and
 - (ii) in respect of whom an assessment had not been made before the determination was varied; and
 - (b) the Secretary is satisfied that the claimant was eligible for an amount of family tax benefit for the cancellation days;
- the Secretary must again vary the determination so that it has the effect that, for the cancellation days, the claimant is entitled to be paid the lesser of:
- (c) that amount of family tax benefit; and
 - (d) the amount that the claimant was entitled to be paid before the variation under subsection (2) was made.

29 Variation of instalment entitlement determination where failure to provide information

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
 - (b) the Secretary, in order to make a decision about the eligibility, or daily rate of eligibility, of the claimant for family tax benefit on either or both of the following:
 - (i) the particular day or any later day;

Section 30

- (ii) any day or days in the past when the determination was in force;
requires the claimant or the claimant's partner under Division 1 of Part 6 to give information or produce documents; and
- (c) the claimant or the claimant's partner refuses or fails to comply with the requirements.

Consequence of section applying

- (2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

Consequence of later provision of information or documents

- (3) If:
 - (a) under subsection (2), the Secretary varies the determination; and
 - (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;the Secretary must vary the determination to undo the effect mentioned in subsection (2).

30 Variation of instalment entitlement determination where failure to notify change of address

- (1) This section applies if:
 - (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
 - (b) the Secretary has reason to believe that the claimant's address has changed since it was last known to the Secretary but the Secretary does not know the claimant's new address; and

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 31

- (c) the Secretary, after taking reasonable steps, is not able to find out whether the claimant's address has changed or, if it has, what the claimant's new address is.

Consequence of section applying

- (2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

Consequence of Secretary later becoming aware of address etc.

- (3) If:
- (a) under subsection (2), the Secretary varies the determination; and
 - (b) before the end of the income year following the one in which the variation took effect, the Secretary finds out:
 - (i) that the claimant's address has not changed; or
 - (ii) what the claimant's new address is;
- the Secretary must vary the determination to undo the effect mentioned in subsection (2).

31 Variation of instalment entitlement determination to reflect changes in eligibility

- (1) If:
- (a) a determination is made under section 16; and
 - (b) after the determination is made, a change in the claimant's circumstances occurs; and
 - (c) the claimant is entitled to be paid family tax benefit under the determination at some time after the change; and
 - (d) when the Secretary becomes aware of the change, the Secretary considers that, if he or she were making the determination immediately after the change, he or she would make it with different effect than the actual determination would have from that time;

Section 32

the Secretary must, subject to subsection (2), vary the determination so that it had, and will have, that different effect at all times after the change.

Beneficial variations only to have limited effect

(2) If:

- (a) the Secretary does not become aware of the change in the claimant's circumstances until after the end of the income year (the *second income year*) following the one in which the change occurred; and
- (b) the claimant did not notify the Secretary of the change before the end of the second income year; and
- (c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's entitlement to family tax benefit under the determination;

the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the change.

Section 27, 28, 29 and 30 variations prevail

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 28, 29 or 30; and
- (b) the variation under that section has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section prevails over the variation under this section.

32 Notice of variation of determination

- (1) The Secretary must give notice of any variation of a determination under this Subdivision to the claimant, stating the effect of the variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.

Part 3 Payment of family assistance

Division 1 Family tax benefit

Section 32

- (2) The variation is not ineffective to any extent if the requirements of subsection (1) are not complied with.

Division 2—Payment of family tax benefit advances

33 Determination of entitlement to family tax benefit advance

- (1) The Secretary must determine that an individual is entitled to be paid a family tax benefit advance for a standard advance period if:
 - (a) on the advance assessment day (see subsection (2)):
 - (i) the individual is entitled to be paid family tax benefit by instalment; and
 - (ii) the individual's Part A rate is worked out using Part 2 of Schedule 1 to the Family Assistance Act; and
 - (iii) the individual's Part A rate is equal to or exceeds twice the individual's FTB advance rate; and
 - (b) the individual has made a request to the Secretary for the payment of a family tax benefit advance for that period; and
 - (c) the request is made before the end of that period.
- (2) An individual's *advance assessment day* for a standard advance period is:
 - (a) if paragraph (b) does not apply—the first day in the standard advance period; or
 - (b) the day on which the individual becomes entitled to be paid family tax benefit by instalment if:
 - (i) the individual is not entitled to be paid family tax benefit by instalment on the first day in the standard advance period; and
 - (ii) the individual becomes entitled to be paid family tax benefit by instalment during the standard advance period; and
 - (iii) the individual becomes so entitled because of the birth of a child.
- (3) An individual's request may operate:
 - (a) for a particular standard advance period; or
 - (b) for a particular standard advance period and all subsequent standard advance periods.

Part 3 Payment of family assistance

Division 2 Payment of family tax benefit advances

Section 34

- (4) If paragraph (3)(b) applies to an individual's request, the individual may withdraw the request at any time for standard advance periods for which the individual has not been paid a family tax benefit advance.
- (5) An individual cannot become entitled to be paid more than one family tax benefit advance for a standard advance period.

34 Amount of family tax benefit advance

- (1) The amount of the family tax benefit advance is worked out using the formula:

$$\text{Number of days} \times \frac{\text{FTB advance rate}}{365}$$

where:

number of days means the number of days in the individual's family tax benefit advance period.

- (2) Subject to subsections (3), (4) and (5), an individual's *family tax benefit advance period* is the standard advance period.
- (3) If:
 - (a) an individual makes a request under section 33; and
 - (b) it is not practicable on the first day in the standard advance period to adjust the individual's payments of family tax benefit to take account of the family tax benefit advance that will result from the request;the individual's family tax benefit advance period starts at the beginning of the first instalment period for which it is practicable to adjust the individual's payment of family tax benefit to take account of the family tax benefit advance.
- (4) The Secretary may determine that an individual's family tax benefit advance period is to end on a particular day that is earlier than the end of the standard advance period if the Secretary is satisfied that it is appropriate for the period to end on that day having regard to:

- (a) circumstances affecting the individual's eligibility for family tax benefit; and
 - (b) circumstances affecting the rate of the family tax benefit that the individual is entitled to be paid.
- (5) If a determination is made under subsection (4), the individual's family tax benefit advance period ends on the day determined by the Secretary.

35 Payment of family tax benefit advance

Subject to Part 4 (Overpayments and debt recovery) and sections 225 to 228 (which deal with other debts etc.), if an individual is entitled to be paid a family tax benefit advance, the Secretary must, at such time and in such manner as the Secretary considers appropriate, pay the individual the advance.

Division 3—Maternity allowance and maternity immunisation allowance

36 Need for a claim

The only way that a person can become entitled to be paid maternity allowance or maternity immunisation allowance is to make a claim in accordance with this Division.

37 Who can claim

The only persons who can make a claim in accordance with this Division are individuals.

38 How to claim

- (1) An individual (the *claimant*) may make a claim for payment of:
 - (a) maternity allowance or maternity immunisation allowance in normal circumstances; or
 - (b) maternity allowance or maternity immunisation allowance because of the death of another person.

Form etc. of claim

- (2) To be effective, a claim must:
 - (a) be made in a form and manner; and
 - (b) contain any information; and
 - (c) be accompanied by any documents; required by the Secretary.

39 Restrictions on claiming

“Normal circumstances” entitlement must not already have been determined, or be awaiting determination, on a previous claim

- (1) A claim for payment of maternity allowance or maternity immunisation allowance in normal circumstances is not effective if

the claimant has previously made such a claim based on the same circumstances (whether or not the claim has yet been determined).

“Normal circumstances” maternity allowance claim must be made within limited period after birth etc. of child

- (2) Subject to subsection (3), a claim for payment of maternity allowance in normal circumstances is not effective if it is made later than 26 weeks after:
- (a) if the circumstances covered by the claim involve eligibility under any of subsections 36(2) to (4) of the Family Assistance Act—the birth of the child mentioned in that subsection; or
 - (b) if the circumstances covered by the claim involve eligibility under subsection 36(5) of that Act—the time the child mentioned in that subsection is entrusted to the care of the claimant.

Extension of 26 week period in subsection (2)

- (3) If the Secretary is satisfied that the claimant was unable to make a claim for payment of maternity allowance in normal circumstances because of severe illness associated with the birth of the child concerned, the Secretary may extend the period of 26 weeks mentioned in subsection (2) to such longer period as the Secretary considers appropriate.

“Normal circumstances” maternity immunisation allowance claim must be made within limited period after birth etc. of child

- (4) A claim for payment of maternity immunisation allowance in normal circumstances is not effective if it is made after:
- (a) if the child mentioned in section 39 of the Family Assistance Act is not stillborn but dies before reaching the age of 2 years—the later of:
 - (i) 13 weeks after the death of the child; and
 - (ii) 2 years after the birth of the child; or
 - (b) in any other case—2 years after the birth of the child.

Part 3 Payment of family assistance

Division 3 Maternity allowance and maternity immunisation allowance

Section 40

“Bereavement” entitlement must not already have been determined, or be awaiting determination, on a previous claim

- (5) A claim for payment of maternity allowance or maternity immunisation allowance because of the death of another person is not effective if the claimant has previously made such a claim because of the death of that person (whether or not the claim has yet been determined).

40 Claim may be withdrawn

- (1) A claimant may withdraw or vary a claim before the claim is determined.
- (2) The claimant may only do so in a manner determined by the Secretary.
- (3) If a claim is withdrawn, it is taken never to have been made.

41 Secretary must determine claim

- (1) If a claim is effective, the Secretary must determine the claim in accordance with this section and sections 42 to 44. If the claim is not effective, it is taken not to have been made.

Information to be taken into account

- (2) The Secretary is to make the determination:
- (a) having regard only to the information in the claim (and any accompanying documents or information required by the Secretary); or
- (b) having regard to the things in paragraph (a) and also to any other information or documents (whether or not provided by the claimant).

Deferral of “normal circumstances” maternity allowance determination because of ineligibility

- (3) If:
- (a) the claim is one for payment of maternity allowance in normal circumstances; and

- (b) at the time the determination would otherwise be made, the claimant is not eligible for maternity allowance in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act; and
- (c) the reason the claimant is not eligible is not that there was no child born to whom the claim could relate; and
- (d) the time the determination would otherwise be made is not more than 13 weeks after:
 - (i) if the circumstances covered by the claim involve eligibility under any of subsections 36(2) to (4) of the Family Assistance Act—the birth of the child mentioned in that subsection; or
 - (ii) if the circumstances covered by the claim involve eligibility under subsection 36(5) of that Act—the time the child mentioned in that subsection is entrusted to the care of the claimant; and
- (e) the Secretary is satisfied, at the time the determination would otherwise be made, that the claimant is likely to become eligible for maternity allowance in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act by the end of the 13 weeks mentioned in paragraph (d);

the Secretary must not determine the claim until after the time mentioned in subsection (4).

- (4) The time for the purposes of subsection (3) is:
 - (a) if the claimant becomes eligible for maternity allowance in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act in respect of the child to whom the claim relates before the end of the 13 weeks mentioned in paragraph (3)(d)—the time when the claimant becomes so eligible; or
 - (b) in any other case—the end of the 13 weeks mentioned in paragraph (3)(d).

Deferral of “normal circumstances” maternity immunisation allowance determination because of ineligibility

- (5) If:

Part 3 Payment of family assistance

Division 3 Maternity allowance and maternity immunisation allowance

Section 42

- (a) the claim (the *immunisation allowance claim*) is one for payment of maternity immunisation allowance in normal circumstances; and
- (b) the immunisation allowance claim is accompanied by a claim for payment of maternity allowance in normal circumstances in respect of the child (the *subject child*) to whom the immunisation allowance claim relates; and
- (c) at the time the determination would otherwise be made on the immunisation allowance claim:
 - (i) the claimant is not eligible for maternity immunisation allowance in accordance with Subdivision A of Division 3 of Part 3 of the Family Assistance Act in respect of the subject child; and
 - (ii) the claimant is eligible for maternity allowance in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act in respect of the subject child; and
 - (iii) the claimant is eligible for family tax benefit in respect of the subject child and the claimant's Part A rate is greater than nil;

the Secretary must not determine the claim until after the time mentioned in subsection (6).

- (6) The time for the purposes of subsection (5) is:
 - (a) if the claimant becomes eligible for maternity immunisation allowance in accordance with Subdivision A of Division 3 of Part 3 of the Family Assistance Act in respect of the subject child before the end of 2 years after the subject child was born—the time when the claimant becomes so eligible; or
 - (b) in any other case—2 years after the subject child was born.

42 Determination of “normal circumstances” entitlement claim

If:

- (a) the claim is one for payment of maternity allowance or maternity immunisation allowance in normal circumstances; and
- (b) the Secretary is satisfied that the claimant is eligible for:

- (i) maternity allowance in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act; or
- (ii) maternity immunisation allowance in accordance with Subdivision A of Division 3 of that Act;

as the case requires, in respect of the child to whom the claim relates;

the Secretary must determine that the claimant is entitled to be paid the allowance.

43 Determination of “bereavement” entitlement claim

If:

- (a) the claim is one for payment of maternity allowance or maternity immunisation allowance because of the death of another person; and
- (b) the Secretary is satisfied that the claimant is, in the circumstances covered by the claim, eligible for:
 - (i) maternity allowance in accordance with Subdivision B of Division 2 of Part 3 of the Family Assistance Act; or
 - (ii) maternity immunisation allowance in accordance with Subdivision B of Division 3 of that Act;

as the case requires;

the Secretary must determine that the claimant is entitled to be paid the allowance.

44 Determination that no entitlement

If the Secretary is not satisfied as mentioned in section 42 or 43, the Secretary must determine that the claimant is not entitled to be paid maternity allowance or maternity immunisation allowance in respect of the child to whom the claim relates, or in the circumstances covered by the claim, as the case requires.

45 When determination is in force

A determination comes into force when it is made and remains in force at all times afterwards.

Section 46

46 Notice of determination

- (1) The Secretary must give notice of the determination to the claimant, stating:
 - (a) whether the claimant is entitled to be paid maternity allowance or maternity immunisation allowance under the determination; and
 - (b) if the claimant is entitled—the amount of the allowance and how it is to be paid; and
 - (c) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective to any extent if the requirements of subsection (1) are not complied with.

47 Payment of maternity allowance or maternity immunisation allowance

- (1) Subject to this section, if the claimant is entitled to be paid maternity allowance or maternity immunisation allowance, the Secretary must pay the allowance to the claimant, at such time and in such manner as the Secretary considers appropriate.

Making of payments to third parties

- (2) The Secretary may instead pay the whole or a part of the allowance to someone other than the claimant, on behalf of the claimant.

Regulations may provide for timing and manner of making payments

- (3) The regulations may make provision for the time at which, and the manner in which, an allowance is to be paid for the purposes of this section. If such regulations are made, the Secretary must pay the allowance in accordance with the regulations.

Section subject to other provisions

- (4) This section is subject to Part 4 (Overpayments and debt recovery) and sections 225 to 228 (which deal with other debts etc.).

Division 4—Child care benefit

Subdivision A—Regulations

48 Overview

Basically, this Division provides for the making of regulations about how individuals and approved child care services can become entitled to have payments of child care benefit made, and how such payments are to be made.

49 Determinations about eligibility for child care benefit by instalment for care provided by approved child care services in normal circumstances

- (1) The regulations may prescribe circumstances in which, and procedures (which may require the making of claims) by which:
 - (a) individuals who are conditionally eligible for child care benefit by instalment to an approved child care service in accordance with section 41 of the Family Assistance Act are to be determined by the Secretary to be so conditionally eligible; or
 - (b) individuals who are eligible for child care benefit by instalment to an approved child care service in accordance with section 42 of that Act are to be determined by the Secretary to be entitled to have child care benefit paid to the service.
- (2) If the regulations make provision in accordance with paragraph (1)(a), the regulations may make provision for the conditional eligibility to be removed if the child concerned does not, in specified circumstances, meet the immunisation requirements.

Section 50

50 Determinations about eligibility for child care benefit for past periods for care provided by approved child care services in normal circumstances

The regulations may prescribe circumstances in which, and procedures (which may require the making of claims) by which, individuals who are eligible for child care benefit in respect of a session of care provided to a child by an approved child care service in accordance with section 43 of the Family Assistance Act are to be determined by the Secretary to be entitled to be paid child care benefit.

51 Determinations about eligibility for child care benefit for care provided by approved child care services in special circumstances

The regulations may prescribe circumstances in which, and procedures (which may require the making of claims) by which:

- (a) approved child care services that are eligible for child care benefit for sessions of care provided by the service to a child in accordance with section 45 of the Family Assistance Act are to be determined by the Secretary to be entitled to be paid child care benefit; or
- (b) approved child care services that are conditionally eligible for child care benefit by instalment in accordance with section 46 of that Act are to be determined by the Secretary to be so conditionally eligible; or
- (c) approved child care services that are eligible for child care benefit by instalment in accordance with section 47 of that Act are to be determined by the Secretary to be entitled to be paid child care benefit.

52 Determinations about eligibility for child care benefit for past periods of care provided by registered carers

The regulations may prescribe circumstances in which, and procedures (which may require the making of claims) by which, individuals who are eligible for child care benefit in accordance

with section 49 of the Family Assistance Act are to be determined by the Secretary to be entitled to be paid child care benefit.

53 Claims and determinations about eligibility for amounts of child care benefit where death occurs

The regulations may:

- (a) prescribe circumstances in which, and procedures by which, individuals may make claims stating that they wish to become eligible for an amount of child care benefit in accordance with section 57 of the Family Assistance Act; and
- (b) prescribe circumstances in which, and procedures by which, individuals who make such claims and become so eligible are to be determined by the Secretary to be entitled to be paid the amount of the child care benefit.

54 Estimates of adjusted taxable income

The regulations may make provision for the use of estimates of adjusted taxable income in making determinations of entitlements relating to child care benefit.

55 Making of payments

- (1) If the regulations make provision in accordance with sections 49 to 53 for individuals or approved child care services to become entitled to be paid, or to have paid, child care benefit, the regulations may make provision for the amount, timing and manner of making of the payments.
- (2) Without limiting subsection (1), regulations under that subsection may provide for any individual who becomes entitled to be paid child care benefit to nominate another individual to whom the benefit is to be paid, with the consent of that other individual.

56 Variation etc. of determinations

- (1) The regulations may make provision for the variation, suspension or cancellation of determinations made under the regulations.

Section 57

Reconciliation process etc. changes to determinations

- (2) Without limiting subsection (1), if the regulations make provision in accordance with section 54 for the use of estimates of adjusted taxable income in making determinations of entitlements relating to child care benefit, the regulations may make provision for the variation, suspension or cancellation, as part of a process of reconciliation of amounts after the end of the income year concerned or in other situations, of the determinations once assessments have been made of the taxable income.

Exemptions from reconciliation process etc. changes in “special circumstances” rate cases

- (3) Without limiting subsection (2), regulations for the purposes of that subsection may provide, in specified circumstances, for exemptions in the case of entitlements of approved child care services to be paid child care benefit, or of individuals to have child care benefit paid to approved child care services, in situations where the approved child care services have given certificates under subsection 71(1) or (2), or the Secretary has made determinations under subsection 71(4), of the Family Assistance Act (which deal with child care benefit in special circumstances).

57 Passing on child care benefit by way of reduced charges etc.

- (1) The regulations may make provision for approved child care services, that have been or will be paid amounts of child care benefit for sessions of care that the services provide, to do either or both of the following:
- (a) reduce or not charge the amounts that the services would otherwise charge for the sessions;
 - (b) make payments to persons who have paid charges for the sessions;
- in order to pass the benefit of the child care benefit on to the persons who pay or would be liable to pay the charges.

Receipts etc.

- (2) If the regulations make provision in accordance with subsection (1), the regulations may also make provision for the approved child care services to give the person who pays or would otherwise pay the charges a receipt or other document stating the following:
- (a) the amount of the charges or that there were no charges;
 - (b) what the charges would have been if the reduction had not taken place;
 - (c) how much child care benefit was passed on in reducing the charges;
 - (d) any other information of a specified kind in relation to the sessions of care the services provided.

58 Record keeping obligations*Maintaining records*

- (1) The regulations may make provision for approved child care services to maintain records of a specified kind that are relevant to one or more of the following:
- (a) the services' eligibility for child care benefit under this Act;
 - (b) the payments received by the services under this Act;
 - (c) the services' compliance with the conditions for the continued approval of the services;
 - (d) any other matters of a specified kind in relation to the services.

Retaining records

- (2) The regulations may make provision for approved child care services to retain for a specified period any records that are required to be maintained by regulations for the purposes of subsection (1).

Producing records

- (3) The regulations may make provision for approved child care services to produce to the Secretary in specified circumstances any

Section 59

records that are required to be retained by regulations for the purposes of subsection (1) .

59 Provision of information to Secretary

Information about changes in circumstances

- (1) The regulations may make provision for the giving of information to the Secretary, by individuals or approved child care services who have become entitled to be paid child care benefit, or to have child care benefit paid, under the regulations, about changes in:
 - (a) circumstances that may be relevant to their entitlement; or
 - (b) their address.

Information about changes in service used

- (2) If the regulations make provision in accordance with paragraph 49(1)(a) for the Secretary to determine that individuals are conditionally eligible for child care benefit by instalment to an approved child care service, the regulations may make provision for the individuals to advise the Secretary of the name and address of any other approved child care service that begins to provide sessions of care for the child.

Information about children cared for by services

- (3) The regulations may make provision for approved child care services to give the Secretary the following information, in a specified form and manner and at a specified time:
 - (a) the names of all children to whom the services provided sessions of care during specified periods;
 - (b) the number of hours in those sessions of care;
 - (c) the amount of child care benefit that the services have been or will be paid in respect of those sessions of care and the children to whom the amounts relate;
 - (d) any other information of a specified kind in relation to the services.

60 Provision of tax file numbers to Secretary in claims or in documents given together with claims

- (1) If the regulations make provision in accordance with section 49, 50, 52 or 53 for the making of claims in relation to child care benefit, the regulations may make provision for individuals who are claimants, or partners of claimants, to include in the claim, or in a document in a specified form given to the Secretary together with the claim, a statement of any of the kinds set out in subsection (2), (3) or (4).

Statement of tax file number

- (2) The first kind of statement is a statement of the tax file number of the individual.

Statement that individual does not know what his or her tax file number is etc.

- (3) The second kind of statement is a statement that the individual:
- (a) has a tax file number but does not know what it is; and
 - (b) has asked the Commissioner of Taxation to inform the individual of his or her tax file number; and
 - (c) authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the individual has a tax file number; and
 - (ii) if the individual has a tax file number—that number.

Statement that an application for a tax file number is pending

- (4) The third kind of statement is a statement that the individual:
- (a) has an application for a tax file number pending; and
 - (b) authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the individual—that number; or
 - (ii) if the application is refused—that the application has been refused; or

Section 61

- (iii) if the application is withdrawn—that the application has been withdrawn.

Exemption from requirement under subsection (1)

- (5) If the regulations make provision in accordance with subsection (1), the regulations may also make provision for the Secretary to determine that the requirement mentioned in that subsection does not apply to partners of claimants if the claimants cannot obtain from their partners:
 - (a) the tax file number of their partners; or
 - (b) a statement by the partners under subsection (2), (3) or (4).

Consequences of failure to provide tax file number etc.

- (6) If the regulations make provision in accordance with subsection (1), the regulations may also make provision for determinations not to be made in relation to the claims in specified circumstances where statements of the kind mentioned in subsection (3) or (4) are made.

61 Secretary's power to request tax file numbers

- (1) If the regulations make provision for determinations to be made:
 - (a) in accordance with paragraph 49(1)(a), that individuals are conditionally eligible for child care benefit by instalment to an approved child care service; or
 - (b) in accordance with section 50, 52 or 53, that individuals are entitled to be paid child care benefit;the regulations may make provision for the Secretary to request, but not compel, the individuals to give the Secretary, within 28 days of the request being made, a statement by the individuals, or by other individuals who are or have been their partners, of any of the kinds mentioned in subsection 60(2), (3) or (4).
- (2) If the regulations make provision in accordance with subsection (1), the regulations may also make provision for:
 - (a) in a paragraph (1)(a) case—the conditional eligibility to be removed; or

- (b) in a paragraph (1)(b) case—variation of the determination to remove the entitlement;

in cases where the request is not complied with or other specified circumstances exist in relation to the request.

62 Enforcement of information etc. requirements

Without limiting the power under subsection 235(1) for the regulations to prescribe penalties for breaches of the regulations, the regulations may provide for the Secretary to vary determinations made in accordance with regulations under this Subdivision in specified circumstances where information is not provided, or other things are not done, in accordance with regulations under this Subdivision.

63 Other matters

Without limiting sections 49 to 59, the regulations may make provision for the following:

- (a) the giving of notice that determinations made under regulations for the purposes of this Subdivision have been made;
- (b) the content of such notice;
- (c) the period in which determinations made under regulations for the purposes of this Subdivision are to be in force;
- (d) the reduction of any entitlements to payments of child care benefit under such determinations on account of debts in respect of child care benefit owed by the individuals or approved child care services to the Commonwealth;
- (e) the making to approved child care services of advance payments to be set off against later entitlements in relation to payments of child care benefit;
- (f) any other matter incidental or otherwise related to anything about which regulations can be made under this Division.

Subdivision B—Offences

64 Provision of instalment statements where individual conditionally eligible for child care benefit by instalment

- (1) If, during the whole or part of an instalment period, a determination under regulations in accordance with paragraph 49(1)(a) is in force, the approved child care service concerned must give the Secretary, during the next instalment period, the statement, details and any other information mentioned in paragraph 42(1)(b) of the Family Assistance Act.
- (2) A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 60 penalty units.

65 Provision of instalment statements where approved child care service conditionally eligible for child care benefit by instalment

- (1) If, during the whole or part of an instalment period, a determination under regulations in accordance with paragraph 51(b) is in force, the approved child care service concerned must give the Secretary, during the next instalment period, the statement, details and any other information mentioned in paragraph 47(1)(b) of the Family Assistance Act.
- (2) A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

Division 5—Payment protection and garnishee orders

66 Protection of payments under this Part

- (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) maternity allowance;
 - (d) maternity immunisation allowance;
 - (e) child care benefit;
 - (f) if regulations in accordance with paragraph 63(e) provide for advance payments to be set off as mentioned in that paragraph—those advance payments.
- (2) Subsection (1) has effect subject to:
 - (a) subsections 23(4) and 47(2), and regulations in accordance with subsection 55(2) (about payment of a person's family assistance to someone else on behalf of the person); and
 - (b) section 84 (about deductions from a person's family assistance to repay a debt of the person); and
 - (c) section 92 (about a person consenting to deductions from the person's family assistance to repay the debt of someone else); and
 - (d) section 225 (about making of deductions from family assistance for payment to the Commissioner of Taxation); and
 - (e) section 226 (about setting off a family assistance entitlement against a tax liability); and
 - (f) section 227 (about setting off a person's entitlement to arrears of family assistance against a debt of the person); and
 - (g) section 228 (about a person consenting to deductions from the person's entitlement to arrears of family assistance to repay the debt of another person).

Section 67

67 Effect of garnishee etc. order

(1) If:

(a) a person has an account with a financial institution; and

(b) payments of any of the kinds mentioned in subsection 66(1) are being paid, or have been paid, to the credit of the account; and

(c) a court order in the nature of a garnishee order comes into force in respect of the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The saved amount is worked out as follows:

Method statement

Step 1. Work out the total amount of the payments mentioned in subsection (1) that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the *saved amount*.

Part 4—Overpayments and debt recovery

Division 1—Preliminary

68 Meaning of *amount paid to person*

- (1) For the purposes of this Part, if an amount of child care benefit is paid to an approved child care service pursuant to a claim by a person, the amount is taken to have been paid to either:
 - (a) the person who made the claim; or
 - (b) if, at the time the amount is paid, another person is, in accordance with the regulations, liable for repayment of debts under this Act in relation to the child care benefit—that other person.
- (2) For the purposes of this Part, an amount of family assistance is taken to be paid to a person if that amount is applied against a liability of that person or another person for:
 - (a) a primary tax; or
 - (b) a debt under this Act or the *Social Security Act 1991*.

69 Special provisions relating to child care benefit

For the purposes of this Part, a reference to an amount being paid to an approved child care service includes a reference to an amount that, at the time when it was paid, was paid to an approved child care service even if:

- (a) the service is no longer approved; or
- (b) the service no longer operates the service concerned.

Division 2—Amounts recoverable under this Act

70 Debts due to the Commonwealth

If an amount has been paid by way of family assistance, the amount is a debt due to the Commonwealth only to the extent to which a provision of:

- (a) this Act; or
- (b) the *Data-matching Program (Assistance and Tax) Act 1990*; expressly provides that it is.

71 Debts arising under this Act

No entitlement to amount—debt generally owed by person

- (1) Subject to subsection (2), if:
 - (a) an amount has been paid to a person by way of family assistance in respect of a period or event; and
 - (b) the person was not entitled to the family assistance in respect of that period or event;

the amount so paid is a debt due to the Commonwealth by the person.

Child care benefit (debts owed by approved child care service)

- (2) If:
 - (a) child care benefit is paid on behalf of a person to an approved child care service in relation to an FTB child of the person or the person's partner; and
 - (b) the payment is in respect of a period after the service is no longer providing care for the child;

the amount so paid:

- (c) is a debt due to the Commonwealth by the service; and
- (d) is not a debt due to the Commonwealth by the person under subsection (1).

Duplicate instalments—debt generally owed by person

- (3) Subject to subsection (4), if:
- (a) an amount has been paid to a person by way of an instalment of family assistance; and
 - (b) another amount (the **later amount**) is paid to the person in respect of the same instalment; and
 - (c) the later amount is not a payment of arrears; and
 - (d) the later amount would not otherwise be a debt due to the Commonwealth;
- the later amount is a debt due to the Commonwealth by the person.

Duplicate instalments—modified effect of subsection (3) taking into account payments to approved child care service

- (4) If the first amount and the later amount were both paid to the same approved child care service on a person's behalf, the later amount is a debt due to the Commonwealth by the service, not the person.

Overpayment

- (5) If:
- (a) an amount (the **received amount**) has been paid to a person by way of family assistance; and
 - (b) the received amount is greater than the amount (the **correct amount**) of family assistance that should have been paid to the person under the family assistance law;
- the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

Childcare benefit paid in special circumstances because of false statement or misrepresentation to service

- (6) If:
- (a) an individual knowingly makes a false statement or misrepresentation to:
 - (i) an approved child care service; or
 - (ii) an officer; and

Part 4 Overpayments and debt recovery

Division 2 Amounts recoverable under this Act

Section 71

- (b) an amount of child care benefit is paid for a session of care provided by the service to an FTB child of the individual or the individual's partner; and
- (c) because of the false statement or false representation:
 - (i) the service is eligible for child care benefit for the session of care; or
 - (ii) the rate of child care benefit for the session of care is an amount certified by the service under subsection 71(1) or (2) of the Family Assistance Act; or
 - (iii) the rate of child care benefit for the session of care is an amount determined under subsection 71(4) of the Family Assistance Act;

the difference between the amount paid and the amount that would have been paid if the individual had not made the statement or representation to the service is a debt due to the Commonwealth by the individual.

- (7) For the purposes of subsection (6), the amount that would have been paid if the individual had not made the statement or representation to the service may be nil.

Childcare benefit paid at special circumstances rate when service not satisfied that special circumstances exist

- (8) If:
 - (a) an approved child care service gives a certificate under subsection 71(1) of the Family Assistance Act in relation to sessions of care provided by the service to an FTB child of an individual on the basis that:
 - (i) the child is at risk of serious abuse or neglect; or
 - (ii) the individual is experiencing hardship of a kind specified in a determination in force under subsection 48(1) of that Act; and
 - (b) the service is not satisfied, at the time when it gives the certificate, that that basis exists;

the difference between the amounts paid to the individual and the amounts that would have been paid to the individual if the service had not given the certificate is a debt due to the Commonwealth by the service.

- (9) If:
- (a) an approved child care service knowingly makes a false statement or false representation to the Secretary or an officer; and
 - (b) a determination is made, in reliance on the statement or representation, under subsection 71(4) of the Family Assistance Act in relation to an FTB child of an individual; the difference between the amounts paid under the determination and the amounts that would have been paid if the service had not made the statement or representation is a debt due to the Commonwealth by the service.

72 Circumstances in which maternity allowance or maternity immunisation allowance not recoverable

Section 71 does not apply in relation to a payment to a person of maternity allowance or maternity immunisation allowance for which the person was not entitled if the person's lack of entitlement for the allowance resulted from the person's Part A rate of family tax benefit being nil and either:

- (a) the person's nil Part A rate resulted from an event or change in circumstances that occurred after the payment of maternity allowance or maternity immunisation allowance was made; or
- (b) the following subparagraphs apply:
 - (i) the person's nil Part A rate resulted from the amount of the person's adjusted taxable income for the relevant income year;
 - (ii) maternity allowance or maternity immunisation allowance was made on the basis of a determination of the person's Part A rate that was based on an incorrect estimate by the person of an income component of the person's adjusted taxable income;
 - (iii) at the time when the estimate was made the person did not know, and had no reason to suspect, that the estimate was incorrect.

Section 73

73 Debts arising from AAT stay orders

If:

- (a) a person applies to the AAT under section 142 for review of a decision; and
- (b) the AAT makes an order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*; and
- (c) as a result of the order, the amount that has in fact been paid to the person by way of family assistance is greater than the amount that should have been paid to the person under the family assistance law;

the difference between the amount that was in fact paid to the person and the amount that should have been paid is a debt due to the Commonwealth.

74 Person other than payee obtaining payment of a cheque

If:

- (a) an instalment of family assistance is paid by cheque; and
- (b) a person other than the payee obtains possession of the cheque from the payee; and
- (c) the cheque is not endorsed by the payee to the person; and
- (d) the person obtains value for the cheque;

the amount of the cheque is a debt due by the person to the Commonwealth.

75 Debts arising from conviction of person for involvement in contravention of family assistance law by debtor

If:

- (a) a person (the *recipient*) is liable to repay an amount paid to the recipient under the family assistance law; and
- (b) the amount was paid to the recipient because the recipient contravened a provision of the family assistance law; and
- (c) another person is convicted of an offence under section 5, 7A or 86 of the *Crimes Act 1914* in relation to that contravention;

the recipient and the other person are jointly and severally liable to pay the debt.

76 Data-matching Program (Assistance and Tax) Act debts

If:

- (a) an amount has been paid to a person by way of family assistance; and
- (b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

the amount so paid is recoverable by the Commonwealth.

77 Interest payable on debt for failure to enter agreement to pay debt

Notice may be given about interest becoming payable if person fails to enter agreement to pay debt

(1) If:

- (a) a person owes a debt to the Commonwealth under a provision of this Part; and
- (b) either:
 - (i) the person owing the debt is a person who is not receiving instalments of family assistance; or
 - (ii) the person owing the debt is an approved child care service who is not receiving group payments; and
- (c) the Secretary has given the person a notice asking the person to pay the debt; and
- (d) at the end of the period of 21 days after the notice is given, the person:
 - (i) has not entered into negotiations to pay the debt; or
 - (ii) has entered into negotiations to pay the debt, but has not entered into an agreement to pay the debt by reasonable instalments;

the Secretary may give the person a notice advising the person of the following:

- (e) the amount of the debt;

Section 77

- (f) that, unless the person, within 14 days after the notice is given:
 - (i) pays the whole of the debt; or
 - (ii) enters into an agreement to pay the debt by reasonable instalments;interest may become payable on the debt;
- (g) how any interest that becomes payable is to be calculated.

When interest becomes payable

- (2) Subject to subsection (3), if:
 - (a) the whole of the debt is not paid within 14 days after the person is given the notice; or
 - (b) the person does not enter into an agreement to pay the debt within the 14 day period;interest is payable by way of penalty on the debt by the person and the amount of the interest is to be worked out under subsection (4).

Secretary may determine interest is not payable

- (3) The Secretary may determine in writing that interest is not payable on the debt if the Secretary is satisfied that the person intends to pay the debt as soon as is reasonably practicable having regard to the circumstances of the person.

The interest payable

- (4) Interest is payable on the amount of the debt (excluding interest) as remains due from time to time:
 - (a) on and from the day after the 14 day period ends; and
 - (b) at the penalty interest rate.

Payments in satisfaction of debt and interest

- (5) If:
 - (a) interest is payable on the debt; and
 - (b) an amount is paid for the purpose of paying the debt and the interest;the amount so paid is to be applied as follows:

- (c) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;
- (d) after the debt (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the debt before the debt was fully paid.

Interest ceases to be payable if agreement entered into

- (6) If a person enters into an agreement to pay the debt by reasonable instalments, interest that would, apart from this subsection, become payable on the debt on and from the day on which the agreement is entered into is not payable.

Interest payable is a debt due to the Commonwealth

- (7) The interest that is payable on the debt is a debt due to the Commonwealth.

78 Interest payable on debt for breach of agreement to pay debt

Notice may be given about interest becoming payable if person breaches agreement to pay debt

- (1) If:
 - (a) a person owes a debt to the Commonwealth under a provision of this Part; and
 - (b) either:
 - (i) the person owing the debt is a person who is not receiving instalments of family assistance; or
 - (ii) the person owing the debt is an approved child care service who is not receiving group payments; and
 - (c) the person enters into an agreement to pay the debt by reasonable instalments; and
 - (d) the person does not pay an instalment;the Secretary may give the person a notice advising the person of the following:
 - (e) the amount of the debt;

Section 78

- (f) that, unless the person pays the instalment within 14 days after the notice is given, interest may become payable on the debt;
- (g) how any interest that becomes payable is to be calculated.

When interest becomes payable

- (2) Subject to subsections (3) and (4), if the instalment is not paid within 14 days after the person is given the notice, interest is payable by way of penalty on the debt by the person and the amount of interest is to be worked out under subsection (5).

Secretary may determine interest is not payable

- (3) The Secretary may determine in writing that interest is not payable on the debt if the Secretary is satisfied that the person intends to pay the instalment as soon as is reasonably practicable having regard to the person's circumstances.

Interest may cease to accrue

- (4) Interest payable under subsection (2) ceases to accrue on and from the day the person:
 - (a) next pays the instalment due under an agreement; or
 - (b) enters into a new agreement;whichever first occurs.

The interest payable

- (5) Interest is payable on the amount of the debt (excluding interest) as remains due from time to time:
 - (a) on and from the day after the 14 day period ends; and
 - (b) at the penalty interest rate set under section 79.

Payments in satisfaction of debt and interest

- (6) If:
 - (a) interest is payable on the debt; and
 - (b) an amount is paid for the purpose of paying the debt and interest;

the amount is to be applied as follows:

- (c) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;
- (d) after the debt (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the debt before it was fully paid.

Interest payable is a debt due to the Commonwealth

- (7) The interest payable on the debt is a debt due to the Commonwealth.

79 Penalty interest rate

- (1) The penalty interest rate is:
 - (a) 20% per year; or
 - (b) if a lower rate is determined under subsection (2)—that lower rate.
- (2) The Minister may determine, in writing, a rate of less than 20% per year that is to be the penalty interest rate for the purposes of sections 77 and 78.
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

80 Debt from failure to comply with garnishee notice

- (1) If:
 - (a) a person (the *garnishee debtor*) is given a notice under section 89 in respect of a debt due by another person (the *original debtor*) under this Act; and
 - (b) the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:
 - (c) legal proceedings; or
 - (d) garnishee notice.

Section 81

- (2) The amount of the debt outstanding is the amount equal to:
 - (a) as much of the amount required by the notice under section 89 to be paid by the garnishee debtor as the garnishee debtor was able to pay; or
 - (b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time; whichever is the lesser.
- (3) If the Commonwealth recovers:
 - (a) the whole or part of the debt due by the garnishee debtor under subsection (1); or
 - (b) the whole or part of the debt due by the original debtor;then:
 - (c) both debts are reduced by the amount that the Commonwealth has so recovered; and
 - (d) the amount specified in the notice under section 89 is to be taken to be reduced by the amount so recovered.
- (4) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.
- (5) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

81 Overseas application of provisions

Sections 71 to 75 extend to:

- (a) acts, omissions, matters and things outside Australia, whether in a foreign country or not; and
- (b) all persons (irrespective of nationality or citizenship).

82 Recoverable debts

- (1) A debt owed by a person, other than an approved child care service, is recoverable by the Commonwealth by means of:
 - (a) deductions from family assistance payable to the person; or

Section 82

- (b) if section 92 applies to another person to whom family assistance is payable—deductions from that other person's family assistance; or
- (c) the application of an income tax refund owed to the person; or
- (d) if section 93 applies to another person to whom an income tax refund is owed—the application of that refund; or
- (e) legal proceedings; or
- (f) garnishee notice.

However, a debt owed in relation to child care benefit is not recoverable by means of the application of an income tax refund under paragraph (c) or (d).

- (2) A debt owed by an approved child care service for child care benefit is recoverable by the Commonwealth by means of:
 - (a) if group payments are being made to the service—deductions from those payments; or
 - (b) legal proceedings; or
 - (c) garnishee notice.

- (3) In this section:

debt means:

- (a) a debt due to the Commonwealth under section 71, 73, 74, 76, 77 or 78; or
- (b) a debt due to the Commonwealth for which a person is liable because of section 75.

Division 3—Methods of recovery

83 Deductions from family assistance (general)

- (1) Sections 84, 85 and 92 provide for debt recovery by deductions from family assistance in the following situations:
 - (a) section 84—recovery of a debt owed by a person who is receiving family assistance;
 - (b) section 85—recovery of a debt owed by an approved child care service who is receiving group payments;
 - (c) section 92—recovery of a debt by consent from a person other than the debtor.
- (2) For the purposes of this Division, a person is taken to be receiving family assistance even if the person is only to be paid a single payment (for example, a lump sum payment paid pursuant to a retrospective claim or a payment of arrears to cover earlier underpayments). In such a case, a deduction from the single payment may be made under the relevant section.

84 Deductions from debtor's family assistance

- (1) This section applies to a debt if:
 - (a) under section 82, the debt is recoverable by the Commonwealth by means of deductions from family assistance being received by a person; or
 - (b) the debt is a debt due by a person to the Commonwealth under Chapter 5 of the *Social Security Act 1991*.
- (2) The debt is to be deducted from payments of family assistance to the person in the following way:
 - (a) the Secretary is to determine the amount by which each payment of family assistance to the person is to be reduced; and
 - (b) each payment of family assistance to the person is to be reduced by the amount determined by the Secretary until the sum of those amounts, and any amounts recovered under the *Social Security Act 1991*, is equal to the debt.

Section 85

The Secretary may from time to time vary the amount by which payments of family assistance are to be reduced.

- (3) The debt is recoverable by means of deductions from a payment of child care benefit to be received by a person only if:
- (a) the debt arose from a payment of child care benefit received by the person; and
 - (b) at the time the determination to recover the debt in that way is made:
 - (i) it is not possible to recover the debt under this Division by means of deductions from family assistance (other than child care benefit); and
 - (ii) it is not possible to recover the debts under Chapter 5 of the *Social Security Act 1991* from a social security payment.
- (4) Subject to section 86, the debt must be deducted unless:
- (a) the Secretary takes action under Division 4 in relation to the amount; or
 - (b) the amount is recovered by the Commonwealth under:
 - (i) another provision of this Division; or
 - (ii) under the *Social Security Act 1991*.

85 Deductions from group payments made to approved child care service

- (1) This section applies to a debt if, under section 82, the debt is recoverable by the Commonwealth by means of deductions from group payments being received by an approved child care service.
- (2) The debt is to be deducted from group payments being received by the service in the following way:
- (a) the Secretary is to determine the amount by which each group payment is to be reduced; and
 - (b) each group payment to the service is to be reduced by the amount determined by the Secretary until the sum of those amounts is equal to the debt.

The Secretary may from time to time vary the amount by which the group payments are to be reduced.

Part 4 Overpayments and debt recovery

Division 3 Methods of recovery

Section 86

- (3) Subject to section 86, the debt must be deducted unless:
 - (a) the Secretary takes action under Division 4 in relation to the amount; or
 - (b) the amount is recovered by the Commonwealth under another provision of this Division.

86 Time limits on recovery action under sections 84 and 85

- (1) Subject to subsections (2), (3), (4) and (5), action under this section, or section 84 or 85, for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the day on which the debt arose.
- (2) If the debt arose because the person owing the debt:
 - (a) made a false statement or false representation; or
 - (b) contravened a provision of the family assistance law;action under section 84 for the recovery of the debt may be commenced at any time within the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (3) If:
 - (a) subsection (1) or (2) applies so that action under section 84 or 85 for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period part of the amount owing is paid;action under that section for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.
- (4) If:
 - (a) subsection (1) or (2) applies so that action under section 84 or 85 for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period, the person who owes the amount acknowledges that he or she owes it;

action under that section for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.

- (5) If:
- (a) subsection (1) or (2) applies so that action under section 84 or 85 for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period:
 - (i) action is taken under this section, or section 88 or 89, for the recovery of the debt; or
 - (ii) a review of a file relating to action for the recovery of the debt occurs; or
 - (iii) other internal Departmental activity relating to action for the recovery of the debt occurs;
- action under section 84 or 85 for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

87 Application of income tax refund owed to person

- (1) If, under section 82, a debt owed by a person is recoverable by the Commonwealth by means of application of an income tax refund payable to the person, the Commissioner of Taxation may apply the whole or a part of the refund to the debt.
- (2) The amount of the refund and the amount of the debt are reduced accordingly.
- (3) Subject to subsection (4), action under this section for the recovery of a debt is not to be taken after the end of the period of 6 years starting on the day on which the debt arose.
- (4) If:
 - (a) action is taken under this section to recover a debt owed by a person from an income tax refund that relates to a particular income year; and
 - (b) the action is taken within 6 years starting on the day on which the debt arose; and

Section 88

(c) the amount of the refund is not sufficient to reduce the amount of the debt to nil;

action may be taken under this section to apply an income tax refund payable to the person for a later income year to the remainder of the debt.

88 Legal proceedings

- (1) If, under section 82, a debt is recoverable by the Commonwealth by means of legal proceedings, the debt is recoverable by the Commonwealth in a court of competent jurisdiction.
- (2) Subject to subsections (3), (4), (5) and (6), legal proceedings for the recovery of the debt are not to be commenced after the end of the period of 6 years starting on the day on which the debt arose.
- (3) If the debt arose because the person owing the debt:
 - (a) made a false statement or false representation; or
 - (b) contravened a provision of the family assistance law;legal proceedings for the recovery of the debt may be commenced at any time within the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances giving rise to the debt.
- (4) If:
 - (a) subsection (2) or (3) applies so that legal proceedings for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period part of the amount owing is paid;legal proceedings for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.
- (5) If:
 - (a) subsection (2) or (3) applies so that legal proceedings for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period, the person who owes the amount acknowledges that he or she owes it;

legal proceedings for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.

- (6) If:
- (a) subsection (2) or (3) applies so that action under this section for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period:
 - (i) action is taken under this section, or section 84, 85 or 89, for the recovery of the debt; or
 - (ii) a review of a file relating to action for the recovery of the debt occurs; or
 - (iii) other internal Departmental activity relating to action for the recovery of the debt occurs;
- action under this section for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

89 Garnishee notice

- (1) If, under section 82, a debt is recoverable from a person (the *debtor*) by the Commonwealth by means of a garnishee notice, the Secretary may by written notice given to another person:
- (a) by whom any money is due or accruing, or may become due, to the debtor; or
 - (b) who holds or may subsequently hold money for or on account of the debtor; or
 - (c) who holds or may subsequently hold money on account of some other person for payment to the debtor; or
 - (d) who has authority from some other person to pay money to the debtor;
- require the person to whom the notice is given to pay the Commonwealth:
- (e) an amount specified in the notice, not exceeding the amount of the debt or the amount of the money referred to in paragraph (a), (b), (c) or (d); or

Part 4 Overpayments and debt recovery

Division 3 Methods of recovery

Section 89

- (f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied; or
 - (g) such percentage as is specified in the notice of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied.
- (2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.
- (3) A person must not refuse or fail to comply with a notice under subsection (1) to the extent to which the person is capable of complying with the notice.
- Penalty: Imprisonment for 12 months.
- (4) If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.
- (5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to have made the payment under the authority of the debtor and of any other person concerned.
- (6) If:
- (a) a notice is given to a person under subsection (1) in respect of a debt; and
 - (b) an amount is paid by another person in reduction or in satisfaction of the debt;
- the Secretary must notify the first-mentioned person accordingly, and the amount specified in the notice is to be taken to be reduced by the amount so paid.
- (7) If, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money is to be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, even though the condition has not been fulfilled.

- (8) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.
- (9) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

90 Time limits on recovery action under section 89

- (1) Subject to subsections (2), (3), (4) and (5), action under section 89 for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the day on which the debt arose.
- (2) If the debt arose because the person owing the debt:
 - (a) made a false statement or false representation; or
 - (b) contravened a provision of the family assistance law;action under section 89 for the recovery of the debt may be commenced at any time within the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (3) If:
 - (a) subsection (1) or (2) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period part of the amount owing is paid;action under that section for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.
- (4) If:
 - (a) subsection (1) or (2) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and
 - (b) within that period, the person who owes the amount acknowledges that he or she owes it;

Part 4 Overpayments and debt recovery

Division 3 Methods of recovery

Section 91

action under that section for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.

(5) If:

(a) subsection (1) or (2) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and

(b) within that period:

(i) action is taken under this section, or section 84, 85 or 88, for the recovery of the debt; or

(ii) a review of a file relating to action for the recovery of the debt occurs; or

(iii) other internal Departmental activity relating to action for the recovery of the debt occurs;

action under section 89 for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

91 Secretary may allow payment of debt by instalments

(1) The Secretary may, on behalf of the Commonwealth, decide to allow a person to pay a debt in one or more instalments.

(2) A decision made under subsection (1) takes effect:

(a) if no day is specified in the decision—on the day on which the decision is made; or

(b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

(3) In subsection (1):

debt means a debt recoverable by the Commonwealth under Division 2.

92 Deductions by consent from family assistance of person who is not a debtor

(1) If:

- (a) a person (the *debtor*) incurs a debt under this Act; and
 - (b) another person (the *consenting person*) is receiving family assistance; and
 - (c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's family assistance;
- the Secretary may deduct the amount from the consenting person's family assistance.
- (2) A person may not consent under subsection (1) to deductions being made from the person's child care benefit.
 - (3) The debtor's debt is reduced by an amount equal to the amount deducted from the consenting person's family assistance.
 - (4) The consenting person may revoke the consent at any time.

93 Application of income tax refund owed to another person

- (1) If:
 - (a) a person (the *debtor*) incurs a debt under this Act; and
 - (b) another person (the *consenting person*) is entitled to an income tax refund; and
 - (c) for the purpose of the recovery of the debt, the consenting person consents to the application of an amount from the consenting person's refund to the debt;the Commissioner of Taxation may apply the whole or a part of the refund to the debt.
- (2) The amount of the refund and the amount of the debt are reduced accordingly.
- (3) The consenting person may revoke the consent at any time.

Division 4—Non-recovery of debts

94 Meaning of *debt*

In this Division:

debt means a debt recoverable by the Commonwealth under Division 2.

95 Secretary may write off debt

- (1) Subject to subsection (2), the Secretary may, on behalf of the Commonwealth, decide to write off a debt, for a stated period or otherwise.
- (2) The Secretary may decide to write off a debt under subsection (1) if, and only if:
 - (a) the debt is irrecoverable at law; or
 - (b) the debtor has no capacity to repay the debt; or
 - (c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or
 - (d) the debt cannot be recovered by deductions under this Act or the *Social Security Act 1991* and it is not cost effective for the Commonwealth to take action to recover the debt.
- (3) For the purposes of paragraph (2)(a), a debt is taken to be irrecoverable at law if, and only if:
 - (a) the debt cannot be recovered by means of:
 - (i) deductions under section 84 or 85; or
 - (ii) application of an income tax refund under section 87; or
 - (iii) legal proceedings under section 88; or
 - (iv) garnishee notice under section 89;because the relevant time limit for recovery action under that section has elapsed; or
 - (b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

Section 96

- (c) the debtor is discharged from bankruptcy and the debt was incurred before the discharge and was not incurred by fraud; or
 - (d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.
- (4) For the purposes of paragraph (2)(b):
- (a) if a debt is recoverable by means of:
 - (i) deductions under section 84; or
 - (ii) application of an income tax refund under section 87;the person is taken to have a capacity to repay the debt unless recovery by those means would cause the person severe financial hardship; and
 - (b) if a debt is recoverable by means of deductions under section 85, the person is taken to have the capacity to repay the debt.
- (5) A decision made under subsection (1) takes effect:
- (a) if no day is specified in the decision—on the day on which the decision is made; or
 - (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).
- (6) Nothing in this section prevents anything being done at any time to recover a debt that has been written off under this section.

96 Power to waive Commonwealth's right to recover debt

- (1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 97, 98, 99, 100, 101 or 102.
- (2) A waiver takes effect:
- (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
 - (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

Section 97

97 Waiver of debt arising from error

- (1) The Secretary must waive the right to recover the proportion (the *administrative error proportion*) of a debt that is attributable solely to an administrative error made by the Commonwealth if subsection (2) or (3) applies to that proportion of the debt.
- (2) The Secretary must waive the administrative error proportion of a debt if:
 - (a) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt; and
 - (b) the person would suffer severe financial hardship if it were not waived.
- (3) The Secretary must waive the administrative error proportion of a debt if:
 - (a) the payment or payments were made in respect of the debtor's eligibility for family assistance for a period or event (the *eligibility period or event*) that occurs in an income year; and
 - (b) the debt is raised after the end of:
 - (i) the debtor's next income year after the one in which the eligibility period or event occurs; or
 - (ii) the period of 13 weeks starting on the day on which the payment that gave rise to the debt was made; whichever ends last; and
 - (c) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt.
- (4) For the purposes of this section, the administrative error proportion of the debt may be 100% of the debt.

98 Waiver of debt relating to an offence

- (1) If:
 - (a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and
-

- (b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;
the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.
- (2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

99 Waiver of small debt

- (1) The Secretary must waive the right to recover a debt if:
- (a) the debt is, or is likely to be, less than \$200; and
 - (b) it is not cost effective for the Commonwealth to take action to recover the debt.
- (2) Subsection (1) does not apply if the debt is at least \$50 and could be recovered by deductions under:
- (a) section 84 or 85 of this Act; or
 - (b) section 1231 of the *Social Security Act 1991*.

100 Waiver in relation to settlements

Settlement of civil action

- (1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the AAT

- (2) If the Secretary has agreed to settle proceedings before the AAT relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Part 4 Overpayments and debt recovery

Division 4 Non-recovery of debts

Section 100

Waiver where at least 80% of debt recovered and debtor cannot pay more

- (3) If:
- (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and
 - (b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and
 - (c) the debtor cannot repay a greater proportion of the debt;
- the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

- (4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the **unpaid amount**), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

- (5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that:
- (a) the debtor cannot repay more of the debt than the agreed amount; and
 - (b) the agreed amount is at least the present value of the unpaid amount repaid in instalments whose amount and timing is determined by the Secretary; and
 - (c) it would take at least a year to recover the unpaid amount under Division 2 if subsection (4) did not apply.

Formula for working out present value of unpaid amount

- (6) For the purposes of subsection (5), the **present value of the unpaid amount** is the amount worked out in accordance with the following formula:

$$\frac{\text{Annual repayment}}{\text{Interest}} \times \left[1 - \frac{1}{\left(1 + \text{Interest}\right)^{rp}} \right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Division 2 in a year if subsection (4) did not apply in relation to the debt.

interest is the annual rate of interest specified by the Minister by determination in writing.

rp (repayment period) is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

Determination is a disallowable instrument

- (7) A determination for the purposes of the definition of **interest** in subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

101 Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or
 - (ii) failing or omitting to comply with a provision of the family assistance law; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

Section 102

102 Secretary may waive debts of a particular class

- (1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts arising under or as a result of this Act that are included in a class of debts specified by the Minister by determination in writing.
- (2) A decision under subsection (1) takes effect:
 - (a) if no day is specified in the decision—on the day on which the decision is made; or
 - (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).
- (3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

103 Determination that penalty interest not payable in relation to particular periods

- (1) This section deals with the making of determinations under subsections 77(3) and 78(3) (determinations that interest is not payable in certain circumstances).
- (2) The determination may relate to a period before the making of the determination.
- (3) The determination may be expressed to be subject to the person complying with specified conditions.
- (4) The Secretary must give a copy of the determination to the person as soon as practicable after making the determination.
- (5) A failure to comply with subsection (4) does not invalidate the determination.
- (6) If:
 - (a) the determination is expressed to be subject to the person complying with specified conditions; and
 - (b) the person contravenes a condition;the determination ceases to have effect.

- (7) The Secretary may cancel or vary the determination by written notice to the person.

Part 5—Review of decisions

Division 1—Internal review

104 Review initiated by Secretary

- (1) The Secretary may, if satisfied that there is sufficient reason to do so, review a decision of any officer under the family assistance law.
- (2) The Secretary may review the decision even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.
- (3) The Secretary must not review the decision under this section while any review of the decision is taking place under section 105.
- (4) The Secretary may:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) If the Secretary makes a decision to do one of the things in paragraph (4)(b) or (c), the Secretary must give notice of the decision to the person whose entitlement, or possible entitlement, to family assistance is affected by the decision. The notice must state the effect of the decision and that the person may apply for review of the decision involved in the manner set out in this Part.
- (6) A contravention of subsection (5) in relation to a decision does not affect the validity of the decision.
- (7) If:
 - (a) the Secretary makes a decision to do one of the things in paragraph (4)(b) or (c); and
 - (b) by the time the Secretary makes that decision, a person has applied to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision that was reviewed by the Secretary;

Section 105

the Secretary must give written notice of the Secretary's decision under that paragraph to the Executive Director or the Registrar of the Administrative Appeals Tribunal, as the case requires.

- (8) If:
- (a) the Secretary sets a decision aside under subsection (4); and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

105 Review initiated by applicant

- (1) A person affected by a decision of an officer under the family assistance law (other than a decision made by the Secretary personally) may apply to the Secretary for review of the decision.
- (2) If the person does so, the Secretary must either:
 - (a) review the decision and:
 - (i) affirm the decision; or
 - (ii) vary the decision; or
 - (iii) set the decision aside and substitute a new decision; or
 - (b) arrange for an authorised review officer (see section 106) to do so.
- (3) Whoever reviews the decision in accordance with subsection (2) (the *decision reviewer*) must, after conducting the review, give the applicant written notice of his or her decision to affirm or vary the decision reviewed, or to set it aside and substitute a new decision.
- (4) If:
 - (a) the decision reviewer sets the decision aside after reviewing the decision under subsection (2); and
 - (b) the decision reviewer is satisfied that an event that did not occur would have occurred if the decision had not been made;

Part 5 Review of decisions

Division 1 Internal review

Section 106

the decision reviewer may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

(5) If:

- (a) a person who may apply to the Secretary for a review of a decision under subsection (1) has not done so; and
 - (b) the person applies to the Social Security Appeals Tribunal for review of the decision (despite not being entitled to do so);
- the person is taken to have applied to the Secretary for review of the decision under subsection (1) on the day on which the person applied to the Social Security Appeals Tribunal.

106 Authorised review officers

- (1) The Secretary must authorise officers to be authorised review officers for the purposes of this Division.
- (2) The Secretary must not authorise an officer of an agency other than the Department unless the head of the agency has agreed to the authorisation.

107 Review applications—time limits and withdrawal

Application to be made within 52 weeks of notification of decision

- (1) Subject to subsections (2) and (3), an application for review under section 105 must be made no later than 52 weeks after the applicant is notified of the decision concerned.

Exception—Secretary determines special circumstances exist

- (2) The Secretary may determine special circumstances in which an application may be made after the 52 weeks mentioned in subsection (1). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 108

Exception—making of regulations

- (3) The regulations may prescribe circumstances in which an application may be made after the 52 weeks mentioned in subsection (1).

Withdrawal of application

- (4) An applicant for review under section 105 may, in writing or in any other manner approved by the Secretary, withdraw the application at any time before the decision reviewer does any of the things in subsection 105(2).
- (5) If an application is so withdrawn, it is taken never to have been made.

108 Secretary may continue payment pending outcome of application for review

- (1) If:
- (a) an adverse family assistance decision (see subsection (4)) is made; and
 - (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
 - (c) a person applies to the Secretary under section 105 for review of the adverse decision;
- the Secretary may declare that entitlement to the family assistance is to continue, pending the determination of the review, as if the adverse decision had not been made.
- (2) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.
- (3) The declaration:
- (a) starts to have effect on the day on which it is made or on the earlier day (if any) specified in the declaration; and
 - (b) stops having effect if:
 - (i) the application for review of the adverse decision is withdrawn; or

Part 5 Review of decisions

Division 1 Internal review

Section 109

- (ii) the review of the adverse decision is determined by the Secretary or an authorised review officer; or
 - (iii) the declaration is revoked by the Secretary.
- (4) In this section:

adverse family assistance decision means any decision having the effect that an entitlement to family assistance under a determination is reduced or ceases.

109 Notification of further rights of review

- (1) If the decision reviewer gives an applicant a notice under subsection 105(3), the notice must include:
- (a) a statement to the effect that the applicant may, subject to this Part, apply to the Social Security Appeals Tribunal for review of the decision reviewer's decision mentioned in the notice; and
 - (b) a statement about the decision reviewer's decision that:
 - (i) sets out the reasons for the decision; and
 - (ii) sets out the findings by the decision reviewer on material questions of fact; and
 - (iii) refers to the evidence or other material on which those findings were based; and
 - (c) a statement to the effect that, if the applicant is dissatisfied with the Social Security Appeals Tribunal's decision on any application for review as mentioned in paragraph (a), the applicant may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the Social Security Appeals Tribunal's decision.
- (2) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

Division 2—Review by the Social Security Appeals Tribunal

110 SSAT objective

In carrying out its functions under this Act, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

111 Application for review by SSAT

- (1) If the decision reviewer has affirmed, varied or set aside a decision under Division 1, a person affected by the decision may apply to the Social Security Appeals Tribunal for review of the decision as affirmed or varied or, if it has been set aside and another decision substituted, the decision so substituted.
- (2) However, a person cannot apply for review under subsection (1) in respect of any of the following decisions:
 - (a) a decision under subsection 7(2) or 38(2) (form and manner of claim);
 - (b) if regulations under Division 4 of Part 3 (Child care benefit) allow the Secretary to determine the form and manner of a claim of any kind for child care benefit—a decision of the Secretary to determine that form and manner;
 - (c) a decision under section 108 or 112 (continuation of payment pending review of adverse decision);
 - (d) a decision under section 154, 155, 156 or 157 (Secretary requiring information from person);
 - (e) a decision relating to the Secretary's power under section 146 to settle proceedings before the AAT;
 - (f) a decision under Part 8 (approval of child care services and approval of registered carers).

Section 112

112 Secretary may continue payment pending outcome of application for review

- (1) If:
- (a) an adverse family assistance decision (see subsection (4)) is made; and
 - (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
 - (c) a person applies to the SSAT under section 111 for review of the adverse decision;
- the Secretary may declare that entitlement to the family assistance is to continue, pending the determination of the review, as if the adverse decision had not been made.
- (2) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.
- (3) The declaration:
- (a) starts to have effect on the day on which it is made or on the earlier day (if any) specified in the declaration; and
 - (b) stops having effect if:
 - (i) the application to the SSAT for review of the adverse decision is withdrawn; or
 - (ii) the review of the adverse decision is determined by the SSAT; or
 - (iii) the declaration is revoked by the Secretary.
- (4) In this section:

adverse family assistance decision means any decision having the effect that an entitlement to family assistance under a determination is reduced or ceases.

113 SSAT review powers

- (1) If a person applies to the SSAT for review of a decision, the SSAT must:
- (a) affirm the decision; or

- (b) vary the decision; or
 - (c) set the decision aside and:
 - (i) substitute a new decision; or
 - (ii) send the matter back to the Secretary, for reconsideration in accordance with any directions or recommendations of the SSAT.
- (2) If the SSAT sets a decision aside and substitutes for it a decision that a person is entitled to have a payment made under this Act, the SSAT must:
- (a) assess the amount of the payment; or
 - (b) ask the Secretary to assess the amount.
- (3) If:
- (a) the SSAT sets a decision aside under subsection (1); and
 - (b) the Secretary or the SSAT, as the case may be, is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary or the SSAT, as the case requires, may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

114 Powers of the SSAT

The SSAT may, for the purpose of reviewing a decision under the family assistance law, exercise all the powers and discretions that are conferred by the family assistance law on the Secretary.

115 Date of effect of SSAT decisions

- (1) Subject to this section, a decision of the SSAT comes into operation immediately on the giving of the decision.
- (2) The SSAT may specify in a decision that the decision is not to come into operation until a later day specified in the decision and, if it does so, the decision comes into operation on that later day.
- (3) Subject to subsection (4) of this section and any regulations under subsection 235(4), if the SSAT:
 - (a) varies a decision (the *original decision*) under review; or

Section 116

- (b) sets aside a decision (also the *original decision*) under review and substitutes a new decision;
the decision as varied or the new decision, as the case may be, has effect, or is taken to have had effect, on and from the day on which the original decision has effect, or would have had effect, if the person who made the original decision had made the decision as varied or the new decision.
- (4) The SSAT may declare:
 - (a) that subsection (3) does not apply to a decision by the SSAT on a review; and
 - (b) that subsections (1) and (2) apply instead.

116 Application requirements

- (1) A person may apply to the SSAT for review of a decision by:
 - (a) sending or delivering a written application to:
 - (i) an office of the SSAT; or
 - (ii) an office of the Department; or
 - (iii) an office of another agency, where the Secretary has approved the office for the purposes of this subparagraph; or
 - (b) going to an office of the SSAT and making an oral application; or
 - (c) contacting an office of the SSAT by telephone and making an oral application.
- (2) If a person makes an oral application in accordance with paragraph (1)(b) or (c), the person receiving the oral application must make a written record of the details of the oral application and note on the record the day on which the application is made.
- (3) An application may include a statement of the reasons for seeking a review of the decision.

117 Variation of decision before review completed

- (1) If an officer varies a decision after an application has been made to the SSAT for review of the decision but before determination of

the review, the application for review is to be treated as if it were an application for review of the decision as varied.

- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made to the SSAT for review of the original decision but before the determination of the review, the application for review is to be treated as if it were an application for review of the new decision.
- (3) If:
 - (a) a person applies to the SSAT for review of a decision; and
 - (b) before determination of the review, an officer varies the decision or sets it aside and substitutes a new decision;the person may either:
 - (c) proceed with the application for review of the decision as varied or the new decision, as the case may be; or
 - (d) withdraw the application under section 135.

118 Parties to SSAT review

- (1) The parties to a review by the SSAT are:
 - (a) the applicant; and
 - (b) the Secretary; and
 - (c) if the relevant decision was made by an officer of the Commonwealth Services Delivery Agency—the Chief Executive Officer of the Agency; and
 - (d) if the relevant decision was made by an officer of the Australian Taxation Office—the Commissioner of Taxation; and
 - (e) if the relevant decision was made by an officer of the Health Insurance Commission—the Managing Director of the Commission; and
 - (f) any other person who has been made a party to the review under subsection (4).
- (2) If a person has applied under section 111 for review of a decision, any other person affected by the decision may apply to the Executive Director to be made a party to the review.

Part 5 Review of decisions

Division 2 Review by the Social Security Appeals Tribunal

Section 118

- (3) An application under subsection (2) must be in writing.
- (4) The Executive Director may order that a person who has applied under subsection (2) be made a party to the review.

Division 3—Procedures for review by the SSAT

Subdivision A—Preliminary procedures

119 Procedure on receipt of application for review by SSAT

- (1) If an application under section 111 is sent or delivered to an office of the Department or another agency, the Secretary must send the application to the Executive Director as soon as practicable and, in any case, not later than 7 days after the application is received at the office of the Department or other agency.
- (2) If:
 - (a) an application under section 111 is sent or delivered to an office of the SSAT; or
 - (b) the Secretary sends such an application to the Executive Director in accordance with subsection (1);the Executive Director must give the applicant and the Secretary written notice that the application has been received.
- (3) Within 28 days after receiving notice of the making of an application from the Executive Director, the Secretary must send to the Executive Director:
 - (a) a statement about the decision under review that:
 - (i) sets out the findings of fact made by the person who made the decision; and
 - (ii) refers to the evidence on which those findings were based; and
 - (iii) gives the reasons for the decision; and
 - (b) the original or a copy of every document or part of a document that:
 - (i) is in the possession, or under the control, of the Secretary or any other officer; and
 - (ii) relates to the applicant; and
 - (iii) is relevant to the review of the decision.

Section 120

- (4) If the Executive Director asks the Secretary to send the statement and documents referred to in subsection (3) by a day earlier than the day fixed by that subsection, the Secretary must take reasonable steps to comply with the Executive Director's request.
- (5) If:
 - (a) after the end of the period referred to in subsection (3) but before the determination of the review, the Secretary obtains possession of a document; and
 - (b) the Secretary considers that the document or a part of the document is relevant to the review; and
 - (c) a copy of the document or the part of the document has not been sent to the Executive Director in accordance with subsection (3);the Secretary must send a copy of the document or the part of the document to an office of the SSAT as soon as practicable after obtaining possession of the document.

120 Parties to be given a statement about the decision under review

- (1) The Executive Director must give each party (other than the Secretary) a copy of the statement referred to in paragraph 119(3)(a).
- (2) The Executive Director may make an order directing a person who has received a copy of a statement in accordance with subsection (1):
 - (a) not to disclose information in the statement; or
 - (b) not to disclose information in the statement except in the circumstances or for the purposes specified in the order.
- (3) An order under subsection (2) must be made by written notice given to the person to whom it is directed.
- (4) A person who contravenes an order under subsection (2) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

121 Arrangements for hearing of application

- (1) If an application is made to the SSAT for review of a decision, the Executive Director must fix a day, time and place for the hearing of the application.
- (2) If a declaration under section 112 is in force in relation to a decision, the Executive Director must take reasonable steps to ensure that the decision is reviewed as quickly as possible.
- (3) The Executive Director must give the applicant and any other parties to the review written notice of the day, time and place fixed for the hearing of the application.
- (4) The notice under subsection (3) must be given a reasonable time before the day fixed for the hearing.

122 Notice of application to person affected by decision

- (1) If:
 - (a) an application has been made to the SSAT for review of a decision; and
 - (b) the Executive Director is satisfied that the interests of a person who is not a party to the review are affected by the decision;the Executive Director must take reasonable steps to give the person written notice that an application has been made to the SSAT for review of the decision.
- (2) The notice under subsection (1):
 - (a) must be in writing; and
 - (b) must include notification of the person's right under section 118 to apply to the Executive Director to be added as a party to the review; and
 - (c) may be given at any time before the determination of the review.
- (3) The Executive Director must give each party to the review a copy of the notice.

Subdivision B—How the SSAT informs itself about the decision under review

123 Submissions to SSAT by parties other than agency heads

- (1) This section applies to a party to a review of a decision (other than the head of an agency).
- (2) Subject to section 125, the party may make oral or written submissions to the SSAT or both oral and written submissions.
- (3) The party may have another person make submissions to the SSAT on behalf of the party.
- (4) The Executive Director may determine that submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment.
- (5) Without limiting subsection (4), the Executive Director may make a determination under subsection (4) in relation to an application if:
 - (a) the application is urgent; or
 - (b) the party lives in a remote area and unreasonable expense would be incurred if the party or the party's representative had to travel to the place at which the hearing is to be held; or
 - (c) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing; or
 - (d) the applicant is unable to attend the hearing because of illness or infirmity.
- (6) If the party is not proficient in English, the Executive Director may give directions in relation to the use of an interpreter in connection with the hearing of the review.

124 Submissions to SSAT by agency heads

The head of an agency that is a party to a review of a decision may make written submissions, but not oral submissions, to the SSAT.

125 SSAT hearings on written submissions only

- (1) The Executive Director may direct that a hearing be conducted without oral submissions from those parties that may make oral submissions if:
 - (a) the Executive Director considers that the review hearing could be determined fairly on the basis of written submissions by all the parties to the review; and
 - (b) all parties to the review consent to the hearing being conducted without oral submissions.
- (2) If the Executive Director gives a direction under subsection (1), the Executive Director must give each of the parties to the review written notice:
 - (a) informing the party of the direction; and
 - (b) inviting the party to submit written submissions; and
 - (c) specifying the address to which the written submissions are to be delivered; and
 - (d) specifying the time within which the written submissions are to be delivered.
- (3) The time specified under paragraph (2)(d) must be such as to allow a reasonable period for the parties to make written submissions.
- (4) Despite subsection (1), the SSAT, as constituted for the hearing, may, if it thinks necessary after considering the written submissions made by the parties, make an order permitting the parties (other than the head of an agency) to make oral submissions to the SSAT at the hearing of the review.

126 SSAT hearings without oral submissions by party

- (1) This section applies to a party to a review of a decision (other than the head of an agency).
- (2) If the party has informed the Executive Director that the party does not intend to make oral submissions to the SSAT, the SSAT may proceed to hear the application for review without oral submissions from the party.
- (3) If:

Part 5 Review of decisions

Division 3 Procedures for review by the SSAT

Section 127

- (a) the Executive Director has determined that oral submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment; and
 - (b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party's representative, as the case may be, after taking reasonable steps to do so;
- the Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
- (4) If:
 - (a) the Executive Director has not determined that oral submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment; and
 - (b) the party or the party's representative, as the case may be, does not attend the hearing at the time fixed for the hearing;the Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
 - (5) If the Executive Director gives an authorisation under subsection (3) or (4), the SSAT may proceed to hear the application in accordance with the authorisation.
 - (6) The Executive Director may revoke an authorisation under subsection (3) or (4).

127 Evidence on oath or affirmation

The SSAT may take evidence on oath or affirmation for the purposes of a review of a decision.

128 Provision of further information by Secretary

- (1) The Executive Director may ask the Secretary to provide the SSAT with information or a document the Secretary has and that is relevant to the review of a decision.

- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, not later than 14 days after the request is made.

129 Exercise by Secretary of powers under section 154

- (1) The Executive Director may ask the Secretary to exercise the Secretary's powers under section 154 if the Executive Director is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of a decision.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, within 7 days after the request is made.

Subdivision C—The hearing

130 Hearing procedure

- (1) The SSAT, in reviewing a decision:
 - (a) is not bound by legal technicalities, legal forms or rules of evidence; and
 - (b) is to act as speedily as a proper consideration of the review allows; and
 - (c) in determining what a proper consideration of the review requires, must have regard to the objective laid down by section 110.
- (2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.

131 Hearing in private

- (1) The hearing of a review is to be in private.
- (2) The Executive Director may give directions, in writing or otherwise, as to the persons who may be present at any hearing of a review.

Section 132

- (3) In giving directions under subsection (2), the Executive Director must have regard to the wishes of the parties and the need to protect their privacy.

132 New evidence

- (1) If an applicant for review of a decision provides to the SSAT evidence that was not available to the original decision-maker or to a person who reviewed the decision, the SSAT may:
 - (a) refer the decision to the Secretary for review; and
 - (b) adjourn the hearing.
- (2) The SSAT may determine a review without referring the decision under subsection (1) if the SSAT is satisfied that the applicant had reasonable grounds for not providing the information to the original decision-maker or to a person who reviewed the decision.

133 Restrictions on disclosure of information obtained at hearing

- (1) The Executive Director may make an order directing a person who is present at the hearing of a review:
 - (a) not to disclose information obtained by the person in the course of the hearing; or
 - (b) not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the order.
- (2) A person who contravenes an order under subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Subdivision D—Other procedural matters

134 Adjournment of SSAT hearings

- (1) The SSAT may adjourn the hearing of a review of a decision from time to time.
- (2) Without limiting subsection (1), the SSAT may refuse to adjourn the hearing of a review if:

Section 135

- (a) the hearing has already been adjourned on 2 or more occasions; or
- (b) the SSAT is satisfied that to grant an adjournment would be inconsistent with the pursuit of the objective laid down by section 110; or
- (c) a declaration under section 112 is in force in relation to the decision under review.

135 Withdrawal of application for review

- (1) An applicant for review of a decision may withdraw the application at any time.
- (2) An applicant may withdraw an application by:
 - (a) sending by any means, or delivering, written notice of withdrawal of the application to:
 - (i) an office of the SSAT; or
 - (ii) an office of the Department; or
 - (iii) an office of another agency, where the Secretary has approved the office for the purposes of this subparagraph; or
 - (b) going to an office of the SSAT and orally withdrawing the application; or
 - (c) contacting an office of the SSAT by telephone and orally withdrawing the application.
- (3) If a person withdraws an application in accordance with paragraph (2)(b) or (c), the person who receives the oral withdrawal must make a written record of the day on which the withdrawal was made.
- (4) If a person withdraws an application by sending or delivering written notice of withdrawal to an office of an agency, the head of the agency must send notice of the withdrawal to the Executive Director as soon as practicable and, in any event, not later than 7 days after the notice of withdrawal is received at the office of the agency.

Section 136

136 Dismissal of an application

- (1) If:
 - (a) a person makes an application to the SSAT for review of a decision; and
 - (b) the Executive Director is satisfied:
 - (i) after having communicated with the person; or
 - (ii) after having made reasonable attempts to communicate with the person and having failed to do so;that the person does not intend to proceed with the application;the Executive Director may dismiss the application.
- (2) If the Executive Director dismisses an application under subsection (1), the application is taken to have been withdrawn at the time at which the application was dismissed.

137 Chairperson for each SSAT hearing

- (1) If the Executive Director is one of the members who constitute the SSAT for the purposes of the review of a decision, the Executive Director is to preside at the hearing of the review.
- (2) If:
 - (a) the members who constitute the SSAT for the purposes of the review of a decision include one Director; and
 - (b) the Executive Director is not one of those members;the Director is to preside at the hearing of the review.
- (3) In any other case in which the SSAT is constituted by 2 or more members for the purposes of the review of a decision, the Executive Director must designate one of those members as the member who is to preside at the hearing of the review.

138 Decision of questions before SSAT

- (1) Subject to subsection (2), a question arising before the SSAT on a review is to be decided according to the opinion of a majority of the members constituting the SSAT for the purposes of the review.

- (2) If, on a question arising on a review, the opinions of the members of the SSAT are equally divided, the question is to be decided according to the opinion of the member presiding.

139 Directions as to procedure for hearings

- (1) The Executive Director:
 - (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of decisions under the family assistance law; and
 - (b) may give directions as to the procedure to be followed by the SSAT in connection with a particular review.
- (2) A direction under subsection (1) must not be inconsistent with any provision of the family assistance law.
- (3) A direction under paragraph (1)(b) may be given before or after the hearing of the particular review has commenced.
- (4) The presiding member of the SSAT as constituted for the purposes of a particular review may give directions as to the procedure to be followed on the hearing of the review.
- (5) A direction under subsection (4) must not be inconsistent with:
 - (a) any provision of the family assistance law; or
 - (b) a direction under subsection (1) of this section.
- (6) A direction under subsection (4) may be given before or after the hearing of the particular review has commenced.
- (7) Directions under this section must have due regard to the objective laid down by section 110.

140 Costs of review

- (1) Subject to subsection (4), a party to a review must bear any expenses incurred by the party in connection with the review.
- (2) The SSAT may determine that the Commonwealth is to pay the reasonable costs that are:

Part 5 Review of decisions

Division 3 Procedures for review by the SSAT

Section 141

- (a) incurred by a party for travel and accommodation in connection with the review; and
 - (b) specified in the determination.
- (3) If the SSAT arranges for the provision of a medical service in relation to a party to a review, the SSAT may determine that the Commonwealth is to pay the costs of the provision of the service.
- (4) If the SSAT makes a determination under subsection (2) or (3), the costs to which the determination relates are payable by the Commonwealth.

Subdivision E—Notification of decisions

141 Procedure following SSAT decision

- (1) When the SSAT makes its decision on a review, the SSAT must:
- (a) prepare a written statement that:
 - (i) sets out the decision of the SSAT on the review; and
 - (ii) sets out the reasons for the decision; and
 - (iii) sets out the findings on any material questions of fact; and
 - (iv) refers to evidence or other material on which the findings of fact are based; and
 - (b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the making of the decision in relation to the review; and
 - (c) return to the Secretary any document that the Secretary has provided to the SSAT in connection with the review; and
 - (d) give the Secretary a copy of any document that contains evidence or material on which the findings of fact are based.
- (2) When the SSAT determines a review, the Executive Director must give each party to the review (other than a head of an agency) a written notice that includes a statement to the effect that, if the party is dissatisfied with the decision of the SSAT, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the AAT for review of the decision.

Section 141

- (3) A failure to comply with subsection (2) in relation to a decision of the SSAT does not affect the validity of the decision.

Division 4—Review by the Administrative Appeals Tribunal

Subdivision A—Right to review by AAT

142 Review of decisions by AAT

- (1) If:
 - (a) a decision has been reviewed by the SSAT; and
 - (b) the decision has been affirmed, varied or set aside by the SSAT;the Secretary or a person affected by the decision made by the SSAT may apply to the AAT for review of that decision.
- (2) For the purposes of subsection (1), the decision made by the SSAT is taken to be:
 - (a) where the SSAT affirms a decision—that decision as affirmed; and
 - (b) where the SSAT varies a decision—that decision as varied; and
 - (c) where the SSAT sets a decision aside and substitutes a new decision—the new decision; and
 - (d) where the SSAT sets a decision aside and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT—the directions or recommendations of the SSAT.
- (3) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.
- (4) If:
 - (a) the AAT sets aside a decision of the SSAT that it reviews under this section; and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

143 Variation of decision under section 142 before AAT review completed

- (1) If an officer varies a decision after an application has been made under section 142 to the AAT for review of that decision but before the determination of the application, the application is to be treated as if:
 - (a) the decision as varied had been affirmed by the SSAT; and
 - (b) the application were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made under section 142 to the AAT for review of the original decision but before the determination of the application, the application is to be treated as if:
 - (a) the SSAT had set aside the original decision and substituted the new decision; and
 - (b) the application were an application for review of the new decision.
- (3) If:
 - (a) a person applies to the AAT for review of a decision under section 142; and
 - (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

144 Review by AAT of other decisions

- (1) Application may also be made to the AAT for review of the following decisions:
 - (a) a decision under section 195 not to approve a child care service for the purposes of the family assistance law;

Part 5 Review of decisions

Division 4 Review by the Administrative Appeals Tribunal

Section 144

- (b) a decision under subsection 199(2) to impose another condition for the continued approval of an approved child care service;
- (c) a decision under subsection 200(1) to do one or more of the things mentioned in paragraphs (a) to (e) of that subsection in relation to an approved child care service;
- (d) a decision under subsection 200(3) to revoke the suspension of the approval of an approved child care service;
- (e) a decision under subsection 202(2) not to cancel an approved child care service's approval;
- (f) a decision under subsection 202(3) to cancel an approved child care service's approval;
- (g) a decision under subsection 202(4) to cancel an approved child care service's approval, but only if the service made submissions under paragraph 203(1)(e) in relation to the cancellation;
- (h) a decision under paragraph 205(3)(a) not to exempt a specified child care service from a specified eligibility rule;
- (i) a decision under section 207 to:
 - (i) refuse to allocate any child care places to an approved child care service; or
 - (ii) refuse to allocate the number of child care places an approved child care service has applied for under that section;unless the decision is based on guidelines of the Minister of the kind mentioned in paragraph 206(c);
- (j) a decision under subsection 210(1) not to approve an individual as a registered carer for the purposes of the family assistance law;
- (k) a decision under subsection 212(1) as to when the approval of an applicant as a registered carer is taken to have come into force;
- (l) a decision under subsection 212(3) as to when the approval of an applicant as a registered carer is taken not to have been in force;
- (m) a decision under subsection 213(2) to impose another condition for the continued approval of an individual as a registered carer;

- (n) a decision under subsection 214(1) to do one or more of the things mentioned in paragraphs (a) to (d) of that subsection in relation to a registered carer;
 - (o) a decision under subsection 216(3) to cancel a registered carer's approval;
 - (p) a decision under subsection 53(3) of the Family Assistance Act.
- (2) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.
- (3) If:
- (a) the AAT sets aside a decision that it reviews under this section; and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

145 Variation of decision under section 144 before AAT review completed

- (1) If an officer varies a decision after an application has been made under section 144 to the AAT for review of that decision but before the determination of the application, the application is to be treated as if the application were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made under section 144 to the AAT for review of the original decision but before the determination of the application, the application is to be treated as if the application were an application for review of the new decision.
- (3) If:
- (a) a person applies to the AAT for review of a decision under section 144; and

Part 5 Review of decisions

Division 4 Review by the Administrative Appeals Tribunal

Section 146

- (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;

the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

146 Settlement of proceedings before the AAT

- (1) The Secretary may agree with other parties to proceedings before the AAT that relate to the recovery of a debt that the proceedings be settled. The agreement must be in writing.
- (2) If proceedings are settled and the Secretary gives the AAT a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

Subdivision B—Modification of Administrative Appeals Tribunal Act in relation to section 142 review applications

147 Notice of application for review

The AAT Act applies to an application under section 142 for review of a decision as if the reference in subsection 29(11) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the party who made the application under section 142).

148 Parties to a review by the AAT

The AAT Act applies to an application under section 142 for review as if the reference in paragraph 30(1)(b) of the AAT Act to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

149 Lodgment of documents with the AAT

- (1) The AAT Act applies to an application under section 142 for review as if references in section 37 of the AAT Act to the person who made the decision the subject of the application were references to the officer who made the decision that was reviewed by the SSAT.
- (2) If a person applies to the AAT under section 142 of this Act for review of a decision, the Secretary is taken to have complied with the Secretary's obligations under paragraph 37(1)(a) of the AAT Act in relation to the decision if the Secretary gives the AAT the prescribed number of copies of the statement prepared by the SSAT under paragraph 141(1)(a) of this Act.
- (3) Subsection (2) does not limit the powers of the AAT under section 38 of the AAT Act.

150 Power of AAT to obtain additional information

The AAT Act applies to an application under section 142 for review as if references in section 38 of the AAT Act to the person who lodges a statement referred to in paragraph 37(1)(a) of that Act with the AAT were references to the Executive Director.

151 Operation and implementation of the decision under review

- (1) The AAT Act applies to an application under section 142 for review of a decision as if references in subsection 41(4) of the AAT Act to the person who made the decision were references to each party to the review by the SSAT.
- (2) The AAT Act applies to an application under section 142 for review of a decision as if references in section 41 of the AAT Act to the decision to which the relevant proceeding relates were references to:
 - (a) if the SSAT affirmed the original decision—the original decision; or
 - (b) if the SSAT varied the original decision:
 - (i) the original decision as varied by the SSAT; and

Part 5 Review of decisions

Division 4 Review by the Administrative Appeals Tribunal

Section 152

- (ii) the original decision; or
 - (c) if the SSAT set aside the original decision and substituted a new decision:
 - (i) the new decision; and
 - (ii) the original decision; or
 - (d) if the SSAT set aside the original decision and sent the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT:
 - (i) any decision made as a result of that reconsideration; and
 - (ii) the original decision.
- (3) For the purposes of subsection (2), the original decision is the decision that was reviewed by the SSAT.

152 Failure of party to appear

The AAT Act applies to the review of a decision on an application under section 142 as if the reference in subsection 42A(2) of the AAT Act to the person who made the decision were a reference to the Secretary.

Part 6—Provisions relating to information

Division 1—Information gathering

153 Application of Division

- (1) This Division:
 - (a) binds the Crown in all its capacities; and
 - (b) extends to:
 - (i) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
 - (ii) all persons, irrespective of their nationality or citizenship.
- (2) This Division does not require a person to give information or produce a document to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).
- (3) This Division does not make the Crown liable to be prosecuted for an offence.

154 General power to obtain information

The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to an officer if the Secretary considers that the information or document may be relevant to either or both of the following matters:

- (a) whether the person, or any other person, whom the Secretary has determined to be entitled to be paid family assistance is or was eligible for the family assistance, or for family assistance of the amount determined;
- (b) whether the person or any other person to whom a payment of family assistance has been made was entitled to the payment.

155 Power to obtain information from a person who owes a debt to the Commonwealth

The Secretary may require a person who owes a debt to the Commonwealth under or as a result of this Act:

- (a) to give to an officer information that is relevant to the person's financial situation; or
- (b) to produce to an officer a document that is in the person's custody or under the person's control and is relevant to the person's financial situation; or
- (c) if the person's address changes—to inform an officer of the new address within 14 days after the change.

156 Obtaining information about a person who owes a debt to the Commonwealth

If the Secretary believes that a person may have information or a document:

- (a) that would help the Secretary locate another person (the *debtor*) who owes a debt to the Commonwealth under or as a result of this Act; or
- (b) that is relevant to the debtor's financial situation;

the Secretary may require the person to give the information, or produce the document, to an officer.

157 Obtaining information to verify claims etc.

- (1) The Secretary may require a person to give information about a class of persons, to an officer for either or both of the following purposes:
 - (a) to detect cases in which amounts of family assistance have been paid to persons not entitled to them;
 - (b) to verify the eligibility of persons who have made claims for family assistance.
- (2) The information that the Secretary may require about each person in the class of persons is all or any of the following information (but no other information):
 - (a) full name and any previous name;

- (b) address;
- (c) sex;
- (d) marital status;
- (e) date of birth;
- (f) date of death;
- (g) dates of entries into and departures from Australia;
- (h) any payments received by the person from the person given the notice, within the period of 52 weeks before the giving of the notice, and the account number of the account into which any of those payments was paid;
- (i) in relation to a course of study being undertaken by the person:
 - (i) the name of the educational institution that the person is attending;
 - (ii) the name of any educational institution previously attended by the person;
 - (iii) the person's enrolment status;
 - (iv) the person's student identification number;
 - (v) the name of the course;
 - (vi) the course code;
 - (vii) the date on which the course started or starts;
 - (viii) the date on which the course ends;
 - (ix) the subject or unit code;
 - (x) the normal full-time study workload for the course;
 - (xi) indicators of the person's workload, including (but not limited to) effective full-time student units, credit points, contact hours, number of subjects undertaken and number of assignments completed;
 - (xii) the number of semesters required to complete the course;
 - (xiii) the date on which the person first attended, or will first attend, the course;
 - (xiv) the date on which the person last attended, or will last attend, the course;

Part 6 Provisions relating to information

Division 1 Information gathering

Section 158

- (xv) whether the person has discontinued the course and, if the person has discontinued the course, the date on which it happened;
- (xvi) details of any unapproved absences from the course;
- (xvii) the results or grade obtained by the person;
- (j) in relation to any employment of the person by the person given the notice:
 - (i) the date on which the person's employment started; and
 - (ii) the date on which the person's employment ended.
- (3) The Secretary may require information about a particular class of persons, whether or not the Secretary is able to identify any of the persons in that class as being persons:
 - (a) who have been paid; or
 - (b) who are entitled to; or
 - (c) who have made claims for;
family assistance.
- (4) Within 13 weeks after information is given in response to a requirement under subsection (1), the Secretary must decide which (if any) of the information is, or is likely to be, relevant to a matter referred to in subsection (1).
- (5) If the Secretary decides, within the 13 week period, that some or all of the information given in response to the requirement is not, or is not likely to be, relevant to a matter referred to in subsection (1), the Secretary must ensure that any record of the irrelevant information is destroyed.
- (6) If the Secretary has not made a decision under subsection (4) at the end of the 13 week period, the Secretary must ensure that any record of all or any part of the information is destroyed.

158 Written notice of requirement

- (1) A requirement under this Division must be made by written notice given to the person of whom the requirement is made.
- (2) The notice:

Section 159

- (a) may be given personally or by post or in any other manner approved by the Secretary; and
- (b) must specify:
 - (i) how the person is to give the information or produce the document to which the requirement relates; and
 - (ii) the period within which the person is to give the information or produce the document to an officer; and
 - (iii) the officer to whom the information is to be given or the document is to be produced; and
 - (iv) that the notice is given under this section.
- (3) The period specified under paragraph (2)(b) must not end earlier than 14 days after the notice is given.
- (4) The notice may require the person to give the information by appearing before a specified officer to answer questions.
- (5) If the notice requires the person so to appear, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the notice is given.

159 Offence: failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this Division to give information or produce a document, to the extent that the person is capable of complying with the requirement.

Penalty: Imprisonment for 12 months.

160 Obligations not affected by State or Territory laws

Nothing contained in a law of a State or a Territory operates to prevent a person from:

- (a) giving information; or
- (b) producing a document; or
- (c) giving evidence;

that the person is required to give or produce to an officer for the purposes of the family assistance law.

Division 2—Confidentiality

161 Operation of Division

- (1) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of the *Child Support (Assessment) Act 1989*.
- (2) The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

162 Protection of personal information

- (1) A person may obtain protected information if the information is obtained for the purposes of the family assistance law.
- (2) A person may:
 - (a) make a record of protected information; or
 - (b) disclose such information to any person; or
 - (c) otherwise use such information;if the record, disclosure or use made of the information by the person is made:
 - (d) for the purposes of the family assistance law; or
 - (e) for the purpose for which the information was disclosed to the person under section 167 or 168.

163 Offence: unauthorised access to protected information

If:

- (a) a person intentionally obtains information; and
- (b) the person:
 - (i) is not authorised under the family assistance law to obtain the information; and
 - (ii) has no other lawful authority to obtain the information; and

(c) the person knows or ought reasonably to know that the information is protected information;
the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

164 Offence: unauthorised use of protected information

If:

- (a) a person intentionally:
 - (i) makes a record of; or
 - (ii) discloses to any other person; or
 - (iii) otherwise makes use of; information; and
- (b) the person is not authorised or required under:
 - (i) the family assistance law; or
 - (ii) the *Social Security Act 1991*; or
 - (iii) the *Social Security (Administration) Act 1999*;
to make the record, disclosure or use of the information that is made by the person; and
- (c) the person knows or ought reasonably to know that the information is protected information;
the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

165 Offence: soliciting disclosure of protected information

If:

- (a) a person (the *first person*) solicits the disclosure of protected information from an officer or another person; and
- (b) the disclosure would be in contravention of this Division; and
- (c) the first person knows or ought reasonably to know that the information is protected information;
the first person is guilty of an offence (whether or not any protected information is actually disclosed) punishable on conviction by imprisonment for a term not exceeding 2 years.

Section 166

166 Offence: offering to supply protected information

- (1) A person must not offer to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

Penalty: Imprisonment for 2 years.

- (2) A person must not hold himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

Penalty: Imprisonment for 2 years.

- (3) Nothing in subsection (1) or (2) makes an officer acting in the performance or exercise of his or her powers, duties or functions under the family assistance law guilty of an offence.

167 Protection of certain documents etc. from production to court etc.

An officer must not, except for the purposes of the family assistance law, be required:

- (a) to produce any document in his or her possession; or
- (b) to disclose any matter or thing of which he or she had notice; because of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law, to:
 - (c) a court; or
 - (d) a tribunal; or
 - (e) an authority; or
 - (f) a person;

having power to require the production of documents or the answering of questions.

168 Disclosure of information by Secretary

- (1) Despite sections 164 and 167, the Secretary may:
 - (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—

Section 169

disclose information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law to such persons and for such purposes as the Secretary determines; or

- (b) disclose any such information:
 - (i) to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or
 - (ii) to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.
- (2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines from time to time in force under section 169.
- (3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines from time to time in force under section 169.

169 Guidelines for exercise of Secretary's disclosure powers

- (1) The Minister:
 - (a) is to determine guidelines for the exercise of:
 - (i) the Secretary's power to give certificates for the purposes of paragraph 168(1)(a); and
 - (ii) the Secretary's power under paragraph 168(1)(b); and
 - (b) may revoke or vary those guidelines.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

170 Officer's declaration

An officer must make a declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary for the purposes of the family assistance law.

Division 3—False statements etc.

Subdivision A—Preliminary

171 Application of Division

This Division extends to:

- (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
- (b) all persons, irrespective of their nationality, who are making, or have made, a claim for family assistance; and
- (c) all persons, irrespective of their nationality, who have become entitled to, or been paid, family assistance.

Subdivision B—Offences

172 False statement in connection with claim

A person must not knowingly or recklessly make a false or misleading statement in connection with, or in support of, the person's or any other person's claim for family assistance.

173 False statement to deceive

A person must not knowingly or recklessly make a false or misleading statement to:

- (a) deceive an officer exercising powers, or performing duties or functions, under the family assistance law; or
- (b) affect an entitlement to a payment of family assistance under the family assistance law; or
- (c) affect the rate of a payment of family assistance under the family assistance law.

174 False statement or document

A person must not knowingly or recklessly:

- (a) make to an officer exercising powers, or performing duties or functions, under the family assistance law a statement that is false in any particular; or
- (b) present to such an officer a document that is false in any particular.

175 Knowingly obtaining payment where no entitlement

A person must not knowingly or recklessly obtain a payment of family assistance to which the person is not entitled, or only entitled in part.

176 Payment knowingly obtained through fraud etc.

A person must not knowingly or recklessly obtain a payment of family assistance:

- (a) by means of a false or misleading statement made knowingly or recklessly; or
- (b) by means of impersonation; or
- (c) by fraudulent means.

Subdivision C—Penalties

177 Penalty for contravention of Subdivision B

A person who contravenes a provision of Subdivision B is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

178 Repayment of family assistance

- (1) If a person is convicted of an offence against section 177, the court may:
 - (a) impose a penalty in respect of the offence; and
 - (b) order the person to pay the Commonwealth an amount equal to any amount paid by way of family assistance because of the act, failure or omission that constituted the offence.

Section 179

- (2) In spite of anything in this Act or any other law, a person is not to be imprisoned for failing to pay an amount payable to the Commonwealth under paragraph (1)(b).
- (3) For the purposes of this section, an amount of family assistance is taken to be paid to a person if that amount is applied against a liability of that person or another person for:
 - (a) a primary tax; or
 - (b) a debt under this Act or the *Social Security Act 1991*.

179 Penalty where person convicted of more than one offence

- (1) Subject to subsection (2), if a person is convicted of more than one offence against section 177, the court may, if it thinks fit, impose one penalty for all the offences.
- (2) A single penalty imposed under subsection (1) must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed for each offence.

Subdivision D—Procedural matters

180 Joining of charges

Charges against the same person for a number of offences against section 177 may be joined in one complaint, information or declaration if those charges:

- (a) are founded on the same facts; or
- (b) form a series of offences of the same or a similar character;
or
- (c) are part of a series of offences of the same or a similar character.

181 Particulars of each offence

If 2 or more charges are included in the same complaint, information or declaration, particulars of each offence charged are to be set out in a separate paragraph.

182 Trial of joined charges

If charges are joined, the charges are to be tried together unless:

- (a) the court considers it just that any charge should be tried separately; and
- (b) the court makes an order to that effect.

183 Evidentiary effect of Secretary's certificate

- (1) For the purposes of paragraph 178(1)(b), a certificate signed by the Secretary is evidence of the matters specified in the certificate.
- (2) The certificate may specify:
 - (a) the person to whom an amount of family assistance has been paid because of an act, a failure or an omission for which the person or another person has been convicted of an offence against section 177; and
 - (b) the amount paid; and
 - (c) the act, failure or omission that caused the amount to be paid.

184 Enforcement of court certificate as judgment

If:

- (a) a court makes an order under paragraph 178(1)(b); and
- (b) the clerk or other appropriate officer of the court gives a certificate specifying:
 - (i) the amount ordered to be paid to the Commonwealth; and
 - (ii) the person by whom the amount is to be paid; and
- (c) the certificate is filed in a court (which may be the court that made the order) that has civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgment of the court in which the certificate is filed.

Part 7—Liability of corporations, employers and principals for offences

Division 1—Interpretation

185 State of mind of a person

A reference in this Part to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

186 Director of a corporation

A reference in this Part to a director of a corporation includes a reference to a constituent member of a corporation incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

187 Conduct

A reference in this Part to engaging in conduct includes a reference to failing or refusing to engage in conduct.

188 Offence

A reference in this Part to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* that relates to this Act.

Division 2—Proceedings against corporations

189 State of mind of corporation

If, in proceedings for an offence against this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:

- (a) a director, employee or agent of the corporation engaged in that conduct; and
- (b) the director, employee or agent was, in engaging in the conduct, acting within the scope of the director's, employee's or agent's actual or apparent authority; and
- (c) the director, employee or agent had that state of mind.

190 Conduct of officer of corporation

If:

- (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
- (b) the conduct is within the scope of his or her actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions, and exercises due diligence, to avoid the conduct.

Division 3—Proceedings against non-corporations

191 State of mind of individual

If, in proceedings for an offence against this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
- (b) the employee or agent had that state of mind.

192 Conduct of employee or agent

If:

- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
- (b) the conduct is within the scope of the employee's actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions, and exercised due diligence, to avoid the conduct.

193 Exclusion of imprisonment as penalty for certain offences

Despite any other provision of this Act, if:

- (a) a person is convicted of an offence; and
- (b) the person would not have been convicted if sections 191 and 192 had not been in force;

the person is not liable to be punished by imprisonment for that offence.

Part 8—Approval of child care services and registered carers

Division 1—Approval of child care services

194 Application for approval

Who may apply

- (1) A person who operates, or proposes to operate, any of the following kinds of child care service:
 - (a) a centre based long day care service;
 - (b) a family day care service;
 - (c) an occasional care service;
 - (d) an outside school hours care service;may apply to the Secretary to have the service approved for the purposes of the family assistance law.

Exception—person is a registered carer

- (2) However, a person cannot make an application under subsection (1) if the person is a registered carer.

Form of application

- (3) An application under subsection (1) must:
 - (a) be made in a form and manner required by the Secretary; and
 - (b) state which of the kinds of service mentioned in subsection (1) the service is; and
 - (c) contain any information required by the Secretary; and
 - (d) be accompanied by any documents required by the Secretary; and
 - (e) in the case where a determination under section 206 is in force—be accompanied by the fee (if any) prescribed by the regulations for the making of applications under subsection (1).

Section 195

195 Approval of child care services

Approval

- (1) The Secretary must approve a child care service for the purposes of the family assistance law if the Secretary is satisfied that:
 - (a) an application has been made in accordance with section 194 to have the service approved; and
 - (b) the service is of the kind stated in the application; and
 - (c) the service satisfies any eligibility rules applicable to the service under paragraph 205(1)(a); and
 - (d) in the case where a determination under section 206 is in force—if the service were to be approved, child care places would be allocated to the service under section 207.

Refusal

- (2) The Secretary may refuse to approve a child care service for the purposes of the family assistance law if:
 - (a) the service has previously been approved under section 195 for the purposes of the family assistance law; and
 - (b) while the approval mentioned in paragraph (a) was in force, either of the following applied:
 - (i) the Secretary did one or more of the things mentioned in paragraphs 200(1)(a) to (e) (which allow sanctions for breach of conditions for continued approval) in relation to the service;
 - (ii) the service was convicted of an offence under this Act.

Certificate of approval

- (3) If the Secretary approves the service, the Secretary must give the applicant a certificate of approval, stating the kind of approved child care service.

196 Conditions for continued approval—compliance with rules and laws

Eligibility requirements

- (1) It is a condition for the continued approval of an approved child care service that the service satisfies any eligibility rules that are from time to time applicable to the service under paragraph 205(1)(b).

Compliance with family assistance law

- (2) It is a condition for the continued approval of an approved child care service that the service not contravene an obligation imposed on the service by the family assistance law (whether or not such a contravention constitutes an offence).

Compliance with child care laws

- (3) It is a condition for the continued approval of an approved child care service that the provision of care by the service complies with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care.

197 Conditions for continued approval—child care places limit not to be exceeded

It is a condition for the continued approval of an approved child care service that, if a determination under section 206 is in force:

- (a) child care places are allocated to the service under section 207; and
- (b) the service does not provide child care places in excess of the number of any child care places allocated to the service under section 207.

Section 198

198 Conditions for continued approval—compliance with conditions imposed by Minister

- (1) It is a condition for the continued approval of an approved child care service that the service complies with any determination in force under this section.

Imposition of other conditions

- (2) The Minister may, by determination, impose conditions for the continued approval of a class of approved child care services.

199 Conditions for continued approval—compliance with conditions imposed by Secretary

- (1) It is a condition for the continued approval of an approved child care service that the service complies with any conditions imposed under subsection (2).

- (2) The Secretary may, by notice to a particular approved child care service, impose conditions for the continued approval of the service.

200 Consequences of breach of conditions for continued approval

Sanctions

- (1) If the Secretary is satisfied that an approved child care service has not complied, or is not complying, with a condition for the continued approval of the service, the Secretary may do one or more of the following:
 - (a) vary the conditions for the continued approval of the service imposed under subsection 199(2);
 - (b) impose additional conditions for the continued approval of the service under subsection 199(2);
 - (c) reduce the number of child care places allocated to the service under section 207;
 - (d) suspend the service's approval;
 - (e) cancel the service's approval.

Section 201*Notice of sanction*

- (2) If the Secretary does one or more of the things mentioned in paragraphs (1)(a) to (e), the Secretary must give notice to the service that the Secretary has done so.

Revocation of suspension

- (3) If the Secretary suspends the approval of an approved child service, the Secretary may at any time, by notice to the service, revoke the suspension with effect from the day specified in the notice.

Secretary to have regard to any Ministerial determination

- (4) The Secretary must have regard to any determination under subsection (5) in exercising a power under subsection (1) or (3).

Ministerial determination

- (5) The Minister may determine:
- (a) factors to be taken into account by the Secretary in applying subsection (1) to approved child care services; or
 - (b) factors to be taken into account by the Secretary in specifying the date of effect of a revocation of a suspension under subsection (3).

201 Procedure for imposing a sanction

- (1) Before doing a thing mentioned in paragraphs 200(1)(a) to (e), the Secretary must give a notice to the service concerned that:
- (a) states that the Secretary is considering doing the thing; and
 - (b) sets out the grounds for doing the thing; and
 - (c) summarises the evidence and other material on which those grounds are based; and
 - (d) summarises the effect of the doing of the thing (including the review process provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the service; and

Section 202

- (e) invites the service to make written submissions to the Secretary, within 28 days, stating why the thing should not be done.
- (2) The Secretary must have regard to any submissions made by the service as mentioned in paragraph (1)(e) in deciding whether to do the thing.

202 Cancellation

Scope of section

- (1) This section sets out circumstances, in addition to those in section 200, in which the Secretary may, or must, cancel the approval of an approved child care service.

Cancellation on request

- (2) The Secretary may cancel an approved child care service's approval if the service requests the Secretary in writing to do so.

Cancellation if service should not have been approved

- (3) The Secretary must cancel an approved child care service's approval if the Secretary is satisfied that the service should not have been approved.

Cancellation if service fails to provide child care for 3 continuous months

- (4) The Secretary must cancel an approved child care service's approval if the service fails to provide child care for a continuous period of 3 months, unless the Secretary is satisfied that, because of special circumstances affecting the service, the approval should not be cancelled.

Notice to service

- (5) If the Secretary cancels an approved child care service's approval under this section, the Secretary must give notice to the service that the Secretary has done so.

Section 203*Secretary to have regard to any Ministerial determination*

- (6) The Secretary must have regard to any determination under subsection (7) in exercising a power under subsection (2).

Ministerial determination

- (7) The Minister may determine factors to be taken into account by the Secretary in deciding whether to grant a request under subsection (2).

203 Procedure for cancellation

- (1) Before cancelling an approved child care service's approval under subsection 202(3) or (4), the Secretary must give a notice to the service that:
- (a) states that the Secretary is considering cancelling the service's approval; and
 - (b) sets out the grounds on which the cancellation is being considered; and
 - (c) summarises the evidence and other material on which those grounds are based; and
 - (d) summarises the effect of the notice (including the review processes provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the service; and
 - (e) invites the service to make written submissions to the Secretary, within 28 days, stating why the approval should not be cancelled.
- (2) The Secretary must have regard to any submissions made by the service as mentioned in paragraph (1)(e) in deciding whether to cancel the approval.

204 Notification of matters affecting eligibility for approval

If an approved child care service has:

- (a) after the service was approved, become aware of any matter existing when the service was approved as a result of which the service should not have been approved; or

Section 205

(b) become aware of any matter occurring after the service was approved as a result of which a condition for the continued approval of the service has not been complied with; the service must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

Penalty: 20 penalty units.

205 Eligibility rules for child care services

Eligibility rules

- (1) The Minister may determine:
- (a) rules relating to the eligibility of child care services to become approved for the purposes of the family assistance law; and
 - (b) rules relating to the eligibility of those services to continue to be so approved.

Eligibility rules may deal with who may operate a service and change of operator of a service

- (2) Without limiting subsection (1), rules made under that subsection may specify requirements:
- (a) to be met by the operators and staff of services, including requirements relating to individual suitability to provide child care; and
 - (b) to be met by the operator of a service if the operation of the service is proposed to be transferred from one operator to another.

Exemption from eligibility rules

- (3) The Secretary may also determine that one or more of the rules do not apply to:
- (a) specified child care services; or
 - (b) child care services of a specified class or of specified classes.

206 Guidelines for allocation of child care places to approved child care services

The Minister may determine guidelines about the following:

- (a) procedures relating to the allocation of child care places to approved child care services;
- (b) matters to be taken into account in working out the number (if any) of child care places to be allocated to approved child care services;
- (c) the maximum number of places that can be allocated to approved child care services in a specified class;
- (d) any other matters to be taken into account in making such an allocation.

207 Secretary to allocate child care places*Initial allocation of child care places*

- (1) The Secretary must allocate child care places to approved child care services in accordance with any determination under section 206.

Additional allocation of child care places

- (2) If an approved child care service is allocated child care places under subsection (1), the service may apply to the Secretary for an additional allocation of child care places.
 - (3) The application must:
 - (a) be made in a form and manner required by the Secretary; and
 - (b) contain any information required by the Secretary; and
 - (c) be accompanied by any documents required by the Secretary; and
 - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of applications under subsection (2).
 - (4) The Secretary must, in accordance with the determination under section 206, decide whether or not to grant the application.
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Part 8 Approval of child care services and registered carers

Division 1 Approval of child care services

Section 208

- (5) The Secretary must give the applicant notice of the decision under subsection (4). If the Secretary decides to grant the application, the Secretary must allocate the additional child care places to the applicant.

208 Disallowable instruments

A determination under subsection 198(2), 200(5), 202(7) or 205(1) or paragraph 205(3)(b) or section 206 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Approval as registered carers

209 Application for approval as registered carer

Who may apply

- (1) An individual who provides care, or proposes to provide care, for a child or children may apply to the Secretary to be approved as a registered carer for the purposes of the family assistance law.

Exception—individual operates child care service etc.

- (2) However, an individual cannot make an application under subsection (1) if the individual:
 - (a) operates an approved child care service; or
 - (b) operates a child care service that is receiving financial assistance from the Commonwealth in connection with its operational costs, where the provision of that assistance is administered by the Department; or
 - (c) provides child care under a contract with an approved family day care service.

Form of application

- (3) An application under subsection (1) must:
 - (a) be made in a form and manner; and
 - (b) contain any information; and
 - (c) be accompanied by any documents; required by the Secretary.

210 Approval of registered carers

Registration

- (1) The Secretary must approve an individual as a registered carer for the purposes of the family assistance law if:
 - (a) the individual has made an application in accordance with section 209; and

Section 211

- (b) the individual either:
 - (i) meets the age requirement in subsection (2); or
 - (ii) has a qualification of a kind specified in a determination under subsection (4); and
- (c) the Secretary is satisfied that the applicant meets the requirements of section 211.

Age requirement

- (2) For the purposes of subparagraph (1)(b)(i), an individual meets the age requirement if:
 - (a) in the case where a determination under subsection (3) is in force—the individual has turned the age specified in the determination; or
 - (b) in any other case—the individual has turned 18.
- (3) The Minister may determine that an individual must have turned the age specified in the determination for the individual to be eligible to be approved as a registered carer.

Qualification requirement

- (4) The Minister may determine that an individual who does not meet the age requirement in subsection (2) must have a qualification of a kind specified in the determination for the individual to be eligible to be approved as a registered carer.

Certificate of approval of registration

- (5) If the Secretary approves an applicant as a registered carer, the Secretary must give the applicant a certificate of approval.

211 Statement that applicant has tax file number

- (1) An applicant meets the requirements of this section if:
 - (a) the applicant has a tax file number; and
 - (b) the application contains a statement to that effect.

Section 212

- (2) The Secretary must accept a statement made under paragraph (1)(b) unless the Commissioner of Taxation has informed the Secretary that the applicant does not have a tax file number.
- (3) This section does not authorise the Secretary:
 - (a) to require or request a person to quote the person's tax file number; or
 - (b) to seek or obtain, in any way, a person's tax file number; or
 - (c) to record a person's tax file number.
- (4) The Secretary may ask the Commissioner of Taxation to provide information on whether an applicant has a tax file number.

212 When approval comes into force

- (1) An approval of an applicant as a registered carer is taken to have come into force on the later of the following days:
 - (a) the day on which, in the Secretary's opinion, the applicant was first eligible to be approved;
 - (b) the day occurring 12 months before the day on which the application for approval was made.
- (2) Subject to this Division, an approval remains in force at all times after it came into force.
- (3) If the Secretary is satisfied that the applicant was not eligible to be approved during a period occurring after the day the applicant's approval came into force but before the day on which the application was made, the Secretary may determine that the approval is taken not to have been in force during that period.

213 Conditions of continued approval*Compliance with child care laws*

- (1) It is a condition for the continued approval of an individual as a registered carer that the provision of care by the individual complies with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the care is provided, relating to child care.

Section 214

Conditions imposed by notice on individual

- (2) The Secretary may, by notice to a particular registered carer, impose other conditions for the continued approval of the carer.

Conditions imposed by Minister

- (3) The Minister may, by determination, impose other conditions for the continued approval of individuals as registered carers.

214 Consequences of breach of conditions for continued approval

Sanctions

- (1) If the Secretary is satisfied that a registered carer has not complied, or is not complying, with a condition for the continued approval of the carer, the Secretary may do one or more of the following:
- (a) vary the conditions for the continued approval of the carer imposed under subsection 213(2);
 - (b) impose additional conditions for the continued approval of the carer under subsection 213(2);
 - (c) suspend the carer's approval;
 - (d) cancel the carer's approval.

Notice of sanction

- (2) If the Secretary does one or more of the things mentioned in paragraphs (1)(a) to (d), the Secretary must give notice to the registered carer that the Secretary has done so.

Revocation of suspension

- (3) If the Secretary suspends the approval of a registered carer, the Secretary may at any time, by notice to the carer, revoke the suspension with effect from the day specified in the notice.

Secretary to have regard to any Ministerial determination

- (4) The Secretary must have regard to any determination under subsection (5) in exercising a power under subsection (1) or (3).

Ministerial determination

- (5) The Minister may determine:
- (a) factors to be taken into account by the Secretary in applying subsection (1) to registered carers; or
 - (b) factors to be taken into account by the Secretary in specifying the date of effect of a revocation of a suspension under subsection (3).

215 Procedure for imposing a sanction

- (1) Before doing a thing mentioned in paragraphs 214(1)(a) to (d), the Secretary must give a notice to the registered carer concerned that:
- (a) states that the Secretary is considering doing the thing; and
 - (b) sets out the grounds for doing the thing; and
 - (c) summarises the evidence and other material on which those grounds are based; and
 - (d) summarises the effect of the doing of the thing (including the review process provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the carer; and
 - (e) invites the carer to make written submissions to the Secretary, within 28 days, stating why the thing should not be done.
- (2) The Secretary must have regard to any submissions made by the carer as mentioned in paragraph (1)(e) in deciding whether to do the thing.

216 Cancellation

Scope of section

- (1) This section sets out circumstances, in addition to those in section 214, in which the Secretary must cancel the approval of a registered carer.

Section 217

Cancellation on request

- (2) The Secretary must cancel a registered carer's approval if the carer requests the Secretary in writing to do so.

Cancellation if carer should not have been approved

- (3) The Secretary must cancel a registered carer's approval if the Secretary is satisfied that the carer should not have been approved.

Notice to service

- (4) If the Secretary cancels a registered carer's approval under this section, the Secretary must give notice to the carer that the Secretary has done so.

217 Procedure for cancellation under subsection 216(3)

- (1) Before cancelling a registered carer's approval under subsection 216(3), the Secretary must give a notice to the carer that:
- (a) states that the Secretary is considering cancelling the carer's approval; and
 - (b) sets out the grounds on which the cancellation is being considered; and
 - (c) summarises the evidence and other material on which those grounds are based; and
 - (d) summarises the effect of the notice (including the review processes provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the carer; and
 - (e) invites the carer to make written submissions to the Secretary, within 28 days, stating why the approval should not be cancelled.
- (2) The Secretary must have regard to any submissions made by the carer as mentioned in paragraph (1)(e) in deciding whether to cancel the approval.

218 Notification of matters affecting eligibility for approval

If a registered carer has:

- (a) after the carer was approved, become aware of any matter existing when the carer was approved as a result of which the carer should not have been approved; or
- (b) become aware of any matter occurring after the carer was approved as a result of which a condition for the continued approval of the carer has not been complied with;

the carer must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

Penalty: 20 penalty units.

219 Disallowable instruments

A determination under subsection 210(3) or (4), 213(3) or 214(5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 9—Other matters

220 General administration of family assistance law

The Secretary is, subject to any direction of the Minister, to have the general administration of the family assistance law.

221 Delegation

- (1) Subject to this section, the Secretary may delegate to an officer all or any of the powers of the Secretary under the family assistance law.
- (2) The Secretary must not delegate such a power to an officer of an agency other than the Department, unless the head of the agency has agreed to the delegation.
- (3) The Secretary must not delegate to an officer, except the head of an agency, the Secretary's power under paragraph 168(1)(b) (disclosure of information).

222 Decisions to be in writing

- (1) A decision of the Minister or of an officer under the family assistance law must be in writing.
- (2) Such a decision is taken to be in writing if it is made, or recorded, by means of a computer.

223 Decisions taken by computer

If:

- (a) payment of family assistance is based upon data in a computer; and
- (b) the amount or rate of the payment is increased or reduced, or the payment is stopped, because of the operation of a computer program used under the control of the Secretary; and

(c) the program causes the change for a reason for which the Secretary could make the change;
the Secretary is taken to have made the change, in writing, at the time at which the computer program caused the change to be made.

224 Notice of decisions

- (1) If notice of a decision of an officer affecting a person's entitlement to be paid family assistance under the family assistance law is:
 - (a) delivered to a person personally; or
 - (b) left at the address of the place of residence or business of the person last known to the Secretary; or
 - (c) sent by prepaid post to the postal address of the person last known to the Secretary;notice of the decision is taken, for the purposes of the family assistance law, to have been given to the person.
- (2) Notice of a decision of an officer affecting a person's entitlement to be paid family assistance under the family assistance law may be given to a person by properly addressing, prepaying and posting the document as a letter.
- (3) If notice of a decision is given in accordance with subsection (2), notice of the decision is taken to have been given to the person at the time at which the notice would be delivered in the ordinary course of the post, unless the contrary is proved.

225 Payment of deductions to Commissioner of Taxation

The Secretary must, in accordance with section 218 of the *Income Tax Assessment Act 1936*, for the purpose of enabling the collection of tax that is, or may become, payable by a recipient of a payment under this Act:

- (a) make deductions from the instalments of, or make a deduction from, the payment; and
- (b) pay the amount deducted to the Commissioner of Taxation.

This section does not apply to a payment of child care benefit.

Section 226

226 Setting off family assistance entitlement against tax liability

- (1) If:
 - (a) a person is entitled to an amount of family assistance (other than child care benefit); and
 - (b) the person is liable for an amount of primary tax;the Commissioner of Taxation may determine that the whole or a part of the entitlement is to be set off against the liability.
- (2) If the Commissioner of Taxation does so:
 - (a) the amount of the entitlement and the amount of the liability are reduced accordingly; and
 - (b) the person is taken to have paid the amount credited by the Commissioner in payment of the tax at the time when the Commissioner credits the amount or at any earlier time that the Commissioner determines.
- (3) This section has effect in spite of anything in any other Act or any other law of the Commonwealth.

227 Setting off arrears against debt owed

- (1) If:
 - (a) a person is entitled to an amount by way of arrears of family assistance; and
 - (b) the person incurs a debt under this Act;the Secretary may determine that the whole or a part of the entitlement to arrears is to be set off against the debt.
- (2) Under subsection (1), the Secretary may set off a person's arrears of child care benefit only against a debt the person incurs in relation to child care benefit.
- (3) If the Secretary makes a determination under subsection (1), the amount of the entitlement to arrears and the amount of the debt are reduced accordingly.

228 Setting off arrears of person who is not a debtor against a debt

- (1) If:
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Section 229

- (a) a person (the *debtor*) incurs a debt under this Act; and
 - (b) another person (the *consenting person*) is entitled to an amount by way of arrears of family assistance; and
 - (c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's arrears;
- the Secretary may determine that the whole or a part of the entitlement to arrears is to be set off against the debt.
- (2) Subsection (1) does not apply to an entitlement to arrears of child care benefit.
 - (3) If the Secretary makes a determination under subsection (1), the amount of the entitlement to arrears and the amount of the debt are reduced accordingly.
 - (4) The consenting person may revoke the consent at any time.

229 Judicial notice of certain matters

- (1) All courts are to take judicial notice of a signature that purports to be attached or appended to any official document produced under the family assistance law, if the signature is of a person who is or has been an officer.
- (2) If the signature of a person referred to in subsection (1) purports to be attached or appended to any official document produced under the family assistance law, all courts are to take judicial notice of the fact that the person is, or has been, an officer.

230 Documentary evidence

- (1) If the signature of any person who is or has been an officer purports to be attached or appended to any official document, the document is to be received in all courts as prima facie evidence of the facts and statements contained in it.
- (2) A statement in writing signed by a person referred to in subsection (1) that another person is or was entitled to, or had received, a payment under this Act on a certain date and of a certain amount is to be received in all courts as prima facie evidence that the person

Section 231

is or was entitled to, or had received, the payment on the date, and of the amount, stated.

231 Application of family assistance law to unincorporated bodies

- (1) The family assistance law applies to an unincorporated body or association (the *body*) as if it were a person other than an individual, but it applies with the following 2 changes.

Imposition of obligations

- (2) The first change is that obligations that would be imposed on the body are imposed instead on:
- (a) if the body is a partnership—each partner; or
 - (b) in any other case—each member of the committee of management of the body;
- but they may be discharged by any of the partners or any of those members.

Commission of offences

- (3) The second change is that any offence against this Act that would otherwise be committed by the body is taken instead to have been committed by:
- (a) if the body is a partnership—any partner:
 - (i) who was knowingly concerned in, or party to, the relevant act or omission; or
 - (ii) who aided, abetted, counselled or procured the relevant act or omission; or
 - (b) in any other case—any member of the committee of management of the body:
 - (i) who was knowingly concerned in, or party to, the relevant act or omission; or
 - (ii) who aided, abetted, counselled or procured the relevant act or omission.

232 Annual report

- (1) As soon as practicable after 30 June in each year, the Secretary must give the Minister a written report on the administrative operation of the family assistance law during the financial year that ended on that 30 June.
- (2) The Minister is to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

233 Appropriation

Payments under this Act are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

234 Agreements on administrative arrangements

- (1) The Secretary and the Executive Director may agree on administrative arrangements to further the objectives of Division 2 of Part 5.
- (2) The Secretary and the Commissioner of Taxation may agree on administrative arrangements to further the objectives of this Act.
- (3) The Secretary and the Managing Director of the Health Insurance Commission may agree on administrative arrangements to further the objectives of this Act.

235 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient for carrying out or giving effect to this Act;and, in particular, may make regulations prescribing penalties of a fine not exceeding 10 penalty units for any breach of the regulations.

Section 235

Fees

- (2) Without limiting subsection (1), the regulations may prescribe fees for the making of applications under section 194 or 207. Any such fees must not be such as to amount to taxation.

Proof of making of claims etc.

- (3) Without limiting subsection (1), if a provision of the family assistance law provides that the Secretary or another officer may approve:
- (a) the form or manner of making or withdrawing any application or claim; or
 - (b) the way of doing any other thing that is required or permitted to be done for the purposes of that law;
- the regulations may make provision for the proof of the making or withdrawing of the application or claim, or the doing of the other thing, for the purposes of any legal proceedings.

Date of effect of review decisions

- (4) Without limiting subsection (1), the regulations may provide that specified decisions by:
- (a) the Secretary under any provision of this Act; or
 - (b) an authorised review officer, the Social Security Appeals Tribunal, or the Administrative Appeals Tribunal, under Part 5;
- that have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment, only have effect from a specified day before the making of the decisions.

Conditional eligibility determinations

- (5) If regulations providing for the making of determinations as mentioned in paragraph 49(1)(a) are made, in accordance with section 4 of the *Acts Interpretation Act 1901*, before the provisions under which the regulations are made come into operation, then, in spite of that section, the determinations may be made at any time after the regulations are made, but do not have effect before the

Section 235

provisions under which the regulations are made come into operation.

*[Minister's second reading speech made in—
House of Representatives on 9 June 1999
Senate on 22 June 1999]*

(103/99)