



# **Social Security (Administration) Act 1999**

**No. 191, 1999**

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This compilation is in 2 volumes

**Volume 1:** sections 1–123ZO  
Volume 2: sections 124–257  
Schedules  
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Social Security (Administration) Act 1999* that shows the text of the law as amended and in force on 1 January 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to provide for the administration of the social security law, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Social Security (Administration) Act 1999*.

### **2 Commencement**

- (1) Subject to subsections (2) and (3), this Act commences on 20 March 2000.
- (2) This Part and section 257 commence on the day on which this Act receives the Royal Assent.
- (3) Section 54 commences on 1 July 2000.

### **2A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

### **3 Interpretation**

- (1) Unless a contrary intention appears, an expression that is defined in Schedule 1 has in this Act the meaning given in that Schedule.
- (2) Unless a contrary intention appears, an expression that is used in the 1991 Act has the same meaning, when used in this Act, as in the 1991 Act.
- (5) To the extent that a provision of this Act relates to a double orphan pension, a reference in the provision to a person includes a reference to an approved care organisation.

## Section 5

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- (6) Unless a contrary intention appears, a reference in this Act (other than section 243) to this Act includes a reference to regulations made under section 243.

### 5 Manner of giving notice

- (1) If a provision of the social security law requires that a written notice be given to a person, it is sufficient compliance with that provision if the notice is given in a manner approved by the Secretary.
- (2) Nothing in subsection (1) prevents a notice being given in accordance with section 28A of the *Acts Interpretation Act 1901*.

### 6 Effect of certain determinations

If the social security law provides that a determination takes effect on a day (the *earlier day*) before the day on which the determination is made, the social security law has effect as if the determination had taken effect on the earlier day.

#### 6A Secretary may arrange for use of computer programs to make decisions

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary or any other officer may make decisions under the social security law.

Note: The definition of *decision* in the 1991 Act applies for the purposes of this section: see subsection 3(2) of this Act. That definition covers the doing of any act or thing. This means, for example, that the doing of things under subsection 202(1) or (2) of this Act are decisions for the purposes of this section.

- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

**6B Norfolk Island**

This Act extends to Norfolk Island.

## **Part 2—General administration of social security law**

### **7 General administration of social security law**

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

### **8 Principles of administration**

In administering the social security law, the Secretary is to have regard to:

- (a) the desirability of achieving the following results:
  - (i) the ready availability to members of the public of advice and information services relating to income support generally and to the social security payments that are available;
  - (ii) the ready availability of publications containing clear statements about income support entitlements and procedural requirements;
  - (iii) the delivery of services under the law in a fair, courteous, prompt and cost-efficient manner;
  - (iv) the development of a process of monitoring and evaluating delivery of programs with an emphasis on the impact of programs on social security recipients;
  - (v) the establishment of procedures to ensure that abuses of the social security system are minimised; and
- (b) the special needs of disadvantaged groups in the community; and
- (c) the need to be responsive to the interests of the Aboriginal and Torres Strait Islander communities and to cultural and linguistic diversity; and
- (d) the importance of the system of review of decisions under the social security law; and

- (e) the need to ensure that social security recipients have adequate information regarding the system of review of decisions under the social security law; and
- (f) the need to apply government policy in accordance with the law and with due regard to relevant decisions of the Administrative Appeals Tribunal.

### **10 Agreement on administrative arrangements**

- (2) The Secretary and the Employment Secretary may agree on administrative arrangements to further the objectives of Part 2.12 of the 1991 Act.
- (3) Administrative arrangements agreed on under subsection (2) may provide for officers of the Employment Department to perform functions or duties, or exercise powers, under Part 2.12 of the 1991 Act.

**Part 3** Provision of benefits

**Division 1** Claim for social security payment or concession card

Section 11

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**Part 3—Provision of benefits**

**Division 1—Claim for social security payment or concession card**

**Subdivision A—Need for claim**

**11 General rule**

- (1) Subject to subsections (2) and (3) and Subdivision B, a person who wants to be granted:
  - (a) a social security payment; or
  - (b) a concession card;must make a claim for the payment or card in accordance with this Division.
- (2) Subsection (1) does not apply to a concession card for which a person is qualified under Division 1 of Part 2A.1 of the 1991 Act or under Subdivision A of Division 3 of that Part.
- (3) Subsection (1) does not apply to a seniors health card that the Secretary must issue to a person under subsection 1061ZJA(3) or (4) of the 1991 Act.

**Subdivision B—Cases where claim not necessary**

**12 Deemed claim in certain cases**

- (1) The Secretary may determine that, for the purposes of the social security law, a person is taken to have made a claim for an income support payment (the *new payment*), if:
  - (a) the person became qualified for the new payment while receiving another income support payment; or
  - (b) the person became qualified for the new payment immediately after ceasing to receive another income support payment.

- (2) The person is taken to have made the claim for the new payment on the day specified in the Secretary's determination. That day must not be earlier than:
- (a) the day that is 13 weeks before the day on which the Secretary's determination is made; or
  - (b) if the person became qualified for the new payment after the day referred to in paragraph (a)—the day on which the person became qualified for the new payment.

### **12A One-off payment to the aged**

A claim is not required for one-off payment to the aged.

### **12AA One-off payments to carers**

A claim is not required for the following:

- (a) one-off payment to carers (carer allowance related);
- (b) one-off payment to carers (carer payment related);
- (c) 2005 one-off payment to carers (carer payment related);
- (d) 2005 one-off payment to carers (carer service pension related);
- (e) 2005 one-off payment to carers (carer allowance related);
- (f) 2006 one-off payment to carers (carer payment related);
- (g) 2006 one-off payment to carers (wife pension related);
- (h) 2006 one-off payment to carers (partner service pension related);
- (i) 2006 one-off payment to carers (carer service pension related);
- (j) 2006 one-off payment to carers (carer allowance related);
- (k) 2007 one-off payment to carers (carer payment related);
- (l) 2007 one-off payment to carers (wife pension related);
- (m) 2007 one-off payment to carers (partner service pension related);
- (n) 2007 one-off payment to carers (carer service pension related);
- (o) 2007 one-off payment to carers (carer allowance related);

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- (p) 2008 one-off payment to carers (carer payment related);
- (q) 2008 one-off payment to carers (wife pension related);
- (r) 2008 one-off payment to carers (partner service pension related);
- (s) 2008 one-off payment to carers (carer service pension related);
- (t) 2008 one-off payment to carers (carer allowance related).

**12AB Economic security strategy payment and training and learning bonus**

A claim is not required for an economic security strategy payment or training and learning bonus.

**12AC One-off energy assistance payment**

A claim is not required for a one-off energy assistance payment under Part 2.6 of the 1991 Act.

**12AD 2019 one-off energy assistance payment**

A claim is not required for a one-off energy assistance payment under Part 2.6A of the 1991 Act.

**12AE 2020 economic support payment**

A claim is not required for:

- (a) a first 2020 economic support payment under Division 1 of Part 2.6B of the 1991 Act; or
- (b) a second 2020 economic support payment under Division 2 of Part 2.6B of the 1991 Act.

**12AF Additional economic support payments**

A claim is not required for:

- (a) an additional economic support payment 2020 under Division 1 of Part 2.6C of the 1991 Act; or



(b) an additional economic support payment 2021 under Division 2 of Part 2.6C of the 1991 Act.

**12AG Remote engagement program payment**

A claim is not required for a remote engagement program payment.

**12AH 2022 cost of living payment**

A claim is not required for a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act.

**12B Language, literacy and numeracy supplement**

A claim is not required for language, literacy and numeracy supplement.

**12C Utilities allowance**

A claim is not required for utilities allowance.

**12D Energy supplement**

A claim is not required for energy supplement under Part 2.25B of the 1991 Act.

**12DA Quarterly pension supplement**

A claim is not required for quarterly pension supplement.

**12DB Quarterly energy supplement**

A claim is not required for quarterly energy supplement.

**12E Child disability assistance**

A claim is not required for child disability assistance.

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**12F Carer allowance**

A claim is not required for carer allowance if the person qualifies for the carer allowance under section 954B.

**12G Carer supplement**

A claim is not required for carer supplement.

**12H Relocation scholarship payment**

A claim is not required for a relocation scholarship payment.

**12K Clean energy advance**

A claim is not required for a clean energy advance.

**12L FHA supplement and relief payment**

A claim is not required for FHA supplement or relief payment.

**13 Deemed claim—person contacting Department about a claim for a social security payment**

- (1) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person in relation to a claim for a social security payment; and
  - (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the person is, on the day on which the Department is contacted, qualified for the social security payment; and
  - (d) the person lodges a claim for the social security payment within 14 days after the Department is contacted;
- the person is taken to have made a claim for the social security payment on the day on which the Department was contacted.

- (2) For the purposes of the social security law, if:

- (a) the Department is contacted by or on behalf of a person in relation to a claim for a social security payment, other than crisis payment or special employment advance; and
  - (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the person is, on the day on which the Department is contacted, qualified for the social security payment; and
  - (d) the person lodges a claim for the payment more than 14 days, but not more than 13 weeks, after the Department is contacted; and
  - (e) the Secretary is satisfied that:
    - (i) throughout the period starting on the day on which the Department was contacted and ending on the day on which the person lodged the claim, the person was suffering from a medical condition; and
    - (ii) that medical condition, or circumstances related to that medical condition, had a significant adverse effect on the person's ability to lodge the claim earlier;the person is taken to have made a claim for the social security payment on the day on which the Department was contacted.
- (3) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person (the ***claimant***) in relation to a claim for a social security payment, other than crisis payment or special employment advance; and
  - (aa) the claimant is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the claimant is, on the day on which the Department is contacted, qualified for the social security payment; and
  - (d) the claimant lodges a claim for the payment more than 14 days, but not more than 13 weeks, after the Department is contacted; and

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(e) the Secretary is satisfied that:

- (i) throughout the period starting on the day on which the Department was contacted and ending on the day on which the claimant lodged the claim, the claimant was caring for, or was the partner of, another person; and
- (ii) throughout that period, the other person suffered from a medical condition; and
- (iii) the medical condition, or circumstances related to the medical condition, from which the other person was suffering had a significant adverse effect on the claimant's ability to lodge the claim earlier;

the claimant is taken to have made a claim for the social security payment on the day on which the Department was contacted.

(3A) For the purposes of the social security law, if:

- (a) the Department is contacted by or on behalf of a person in relation to a claim for a social security payment; and
- (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
- (b) the person is, on the day on which the Department is contacted, qualified for the social security payment; and
- (d) the person lodges a claim for the social security payment more than 14 days, but not more than 13 weeks, after the Department is contacted; and
- (e) the Secretary is satisfied that, in the special circumstances of the case, it was not reasonably practicable for the person to lodge the claim earlier;

the person is taken to have made a claim for the social security payment on the day on which the Department was contacted.

(4) A reference in this section to the Department being contacted includes a reference to the Department being contacted by post or telephone or by the transmission of a message by the use of fax, computer equipment or other electronic means.

(5) This section has effect subject to section 18.

**14 Deemed claim—person contacting Department about a claim for a concession card**

- (1) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person in relation to a claim for a concession card; and
  - (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the person is, on the day on which the Department is contacted, qualified for the concession card; and
  - (d) the person lodges a claim for the concession card within 14 days after he or she contacts the Department;
- the person is taken to have made a claim for the concession card on the day on which the Department was contacted.
- (2) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person in relation to a claim for a concession card; and
  - (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the person is, on the day on which the Department is contacted, qualified for the concession card; and
  - (d) the person lodges a claim for the concession card more than 14 days, but not more than 13 weeks, after the Department is contacted; and
  - (e) the Secretary is satisfied that:
    - (i) throughout the period starting on the day on which the Department was contacted and ending on the day on which the person lodged the claim, the person was suffering from a medical condition; and
    - (ii) that medical condition, or circumstances related to that medical condition, had a significant adverse effect on the person's ability to lodge the claim earlier;

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the person is taken to have made a claim for the concession card on the day on which the Department was contacted.

- (3) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person (the ***claimant***) in relation to a claim for a concession card; and
  - (aa) the claimant is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the claimant is, on the day on which the Department is contacted, qualified for the concession card; and
  - (d) the claimant lodges a claim for the concession card more than 14 days, but not more than 13 weeks, after the Department is contacted; and
  - (e) the Secretary is satisfied that:
    - (i) throughout the period starting on the day on which the Department was contacted and ending on the day on which the claimant lodged the claim, the claimant was caring for, or was the partner of, another person; and
    - (ii) throughout that period, the other person suffered from a medical condition; and
    - (iii) the medical condition, or circumstances related to the medical condition, from which the other person was suffering had a significant adverse effect on the claimant's ability to lodge the claim earlier;

the claimant is taken to have made a claim for the concession card on the day on which the Department was contacted.

- (3A) For the purposes of the social security law, if:
- (a) the Department is contacted by or on behalf of a person in relation to a claim for a concession card; and
  - (aa) the person is, on the day on which the Department is contacted, included in a class of persons determined in an instrument under section 14A; and
  - (b) the person is, on the day on which the Department is contacted, qualified for the concession card; and

- (d) the person lodges a claim for the concession card more than 14 days, but not more than 13 weeks, after the Department is contacted; and
  - (e) the Secretary is satisfied that, in the special circumstances of the case, it was not reasonably practicable for the person to lodge the claim earlier;
- the person is taken to have made a claim for the concession card on the day on which the Department was contacted.
- (4) A reference in this section to the Department being contacted includes a reference to the Department being contacted by post or telephone or by the transmission of a message by the use of fax, computer equipment or other electronic means.

#### **14A Determination for purposes of sections 13 and 14**

The Minister may, by legislative instrument, determine a class of persons for the purposes of paragraphs 13(1)(aa), (2)(aa), (3)(aa) and (3A)(aa) and 14(1)(aa), (2)(aa), (3)(aa) and (3A)(aa).

#### **15 Deemed claim—incorrect or inappropriate claims**

- (1) For the purposes of the social security law, if:
- (a) a person makes an incorrect claim; and
  - (b) the person subsequently makes a claim for a social security payment for which the person is qualified; and
  - (c) the Secretary is satisfied that it is reasonable that this subsection be applied;
- the person is taken to have made a claim for that social security payment on the day on which he or she made the incorrect claim.
- (2) For the purposes of this section, a claim made by a person is an incorrect claim if:
- (a) the claim is for a social security payment, other than a supplementary payment; and
  - (b) when the claim was made, the person was not qualified for the payment claimed but was qualified for another social security payment, other than a supplementary payment.

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- (3) For the purposes of this section, a claim made by a person is an incorrect claim if:
- (a) the claim is for a supplementary payment; and
  - (b) when the claim was made, the person was not qualified for the payment claimed but was qualified for another supplementary payment.
- (4) For the purposes of the social security law, if:
- (a) a person makes a claim for a pension, allowance, benefit or other payment under a law of the Commonwealth, other than this Act or the 1991 Act, or under a program administered by the Commonwealth, that is similar in character to a social security payment, other than a supplementary payment (the **initial claim**); and
  - (b) when the claim was made, the person was qualified for a social security payment, other than a supplementary payment; and
  - (c) the person subsequently makes a claim for the social security payment referred to in paragraph (b) (the **later claim**); and
  - (d) the Secretary is satisfied that it is reasonable that this subsection be applied;
- the person is taken to have made the later claim on the day on which the initial claim was made.
- (4A) For the purposes of the social security law, if:
- (a) a person makes a claim for an income support payment (the **initial claim**); and
  - (b) on the day on which the initial claim is made, the person is qualified for another income support payment (the **other income support payment**); and
  - (c) the person subsequently makes a claim for the other income support payment (the **later claim**); and
  - (d) the Secretary is satisfied that it is reasonable that this subsection be applied;
- the person is taken to have made the later claim on the day on which the initial claim was made.



- (4B) For the purposes of the social security law, if:
- (a) a person makes a claim for a supplementary payment (the **initial claim**); and
  - (b) on the day on which the initial claim is made, the person is qualified for another supplementary payment (the **other supplementary payment**); and
  - (c) the person subsequently makes a claim for the other supplementary payment (the **later claim**); and
  - (d) the Secretary is satisfied that it is reasonable that this subsection be applied;
- the person is taken to have made the later claim on the day on which the initial claim was made.

- (5) In this section:

**supplementary payment** means:

- (a) carer allowance; or
- (b) double orphan pension; or
- (c) education entry payment; or
- (i) mobility allowance; or
- (j) pensioner education supplement.

### **15A Deemed claim—certain claims for carer allowance**

*Claim for carer payment rejected*

- (1) For the purposes of the social security law, if:
- (a) on or after 1 July 2009, a person (the **carer**) makes a claim for a carer payment for caring for a person because the carer is qualified for the payment other than under paragraph 198(2)(d); and
  - (b) the Secretary makes a determination rejecting the claim; and
  - (c) within 28 days of being notified of the determination, the carer makes a claim for carer allowance for caring for the person; and
  - (d) the carer is qualified under section 953 of the 1991 Act for carer allowance for the person; and

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- (e) the Secretary is satisfied that it is reasonable that this section be applied;

the carer is taken to have made a claim for carer allowance on the day on which the carer made the claim for a carer payment.

*Carer payment suspended or cancelled*

- (2) For the purposes of the social security law, if:
  - (a) on or after 1 July 2009, a person (the *carer*) is receiving the carer payment for caring for one or more persons because the carer is qualified for the payment other than under paragraph 198(2)(d); and
  - (b) the Secretary makes a determination cancelling or suspending the carer's carer payment; and
  - (c) within 28 days of being notified of the determination, the carer makes a claim for carer allowance for caring for the person; and
  - (d) the carer is qualified under section 953 of the 1991 Act for carer allowance for the person; and
  - (e) the Secretary is satisfied that it is reasonable that this section be applied;

the carer is taken to have made a claim for carer allowance on the day after the day on which the cancellation or suspension took effect.

**Subdivision C—Manner of making a claim**

**16 How to make a claim**

- (1) A person makes a claim for a social security payment or a concession card:
  - (a) by lodging a written claim for the payment or card; or
  - (b) by making the claim in accordance with subsection (7).
- (2) A written claim for the purpose of subsection (1) for one social security payment or for a concession card must be in accordance with a form approved by the Secretary.

- (3) Two or more written claims by the same person may be combined in one claim. Such a claim must be made in accordance with a form approved by the Secretary for the purposes of this subsection.
- (4) A written claim is lodged by being delivered:
  - (a) to a person apparently performing duties at a place approved for the purpose by the Secretary; or
  - (b) to a person approved for the purpose by the Secretary; or
  - (c) in a manner, and to a place, approved for the purpose by the Secretary.
- (5) Subject to subsection (6), a place or person approved for the purposes of subsection (4) must be a place or person in Australia.
- (6) The Secretary may approve a place or person outside Australia for the purposes of subsection (4) for the lodgment of:
  - (a) claims made under a scheduled international social security agreement; or
  - (b) claims for AGDRP in relation to a major disaster that occurred outside Australia; or
  - (c) claims for AVTOP.
- (7) A person may make a claim in a manner approved by the Secretary for the purposes of this subsection.
- (8) The power of the Secretary to make an approval under subsection (7) is not limited by any other provision of this section.

## **17 Special requirements regarding claims for pension bonus**

- (1) A claim for pension bonus must be:
  - (a) attached to a proper claim made by the person for age pension and lodged together with that claim for age pension; or
  - (b) made in accordance with an invitation under subsection (3); or
  - (c) the subject of a determination under subsection (5).

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(2) A claim for pension bonus may be made even though it is not certain whether the person will start to receive an age pension at or after the time when the person makes the claim. The claim has effect as a claim that is contingent on the person receiving an age pension.

(3) If:

- (a) a person makes a claim for an age pension; and
- (b) the claim is in accordance with a form that does not require the claimant to disclose whether the claimant is registered as a member of:
  - (i) the pension bonus scheme; or
  - (ii) the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and
- (c) the person is, to the knowledge of the Secretary, registered as a member of the pension bonus scheme; and
- (d) a claim by the person for pension bonus is not attached to the claim for age pension;

the Secretary must give the claimant a written notice inviting the claimant to lodge a claim for pension bonus:

- (e) within such period after the lodgment of the claim for age pension as is specified in the notice; and
  - (f) at such place as is specified in the notice.
- (4) If a claim for pension bonus is made in accordance with an invitation under subsection (3), the person is taken to have claimed the pension bonus at the same time as the person claimed age pension.
- (5) If:
- (a) a person who is a registered member of the pension bonus scheme lodges a claim for age pension; and
  - (b) a claim for pension bonus for the person is lodged after the claim for age pension; and
  - (c) the Secretary is satisfied that, having regard to guidelines (if any) made under subsection (6), special circumstances apply in relation to the lodgment of the claim for pension bonus;

the Secretary may determine that the claim for the pension bonus is taken to have been made at the time the person claimed age pension.

- (6) The Secretary may, by legislative instrument, make guidelines for the purposes of subsection (5).

### **18 Additional provisions regarding claim for special employment advance**

- (1) A claim for special employment advance must specify the amount of special employment advance sought.
- (2) Subject to subsection (3), if a claim based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement is lodged before the first day for which the entitlement is not payable or is reduced as a result of the claimant, or the claimant's partner, having earned the income, the claim is taken to have been made on that day.
- (3) If:
- (a) the claimant's special employment advance qualifying entitlement referred to in subsection (2) is an entitlement in respect of which the Secretary has determined that this subsection applies; and
  - (b) the claim is lodged before the day referred to in subsection (2);
- the Secretary may treat the claim as having been made on a day earlier than the day referred to in subsection (2) that the Secretary considers appropriate having regard to the kind of entitlement concerned.
- (4) A claim based on the need for financial assistance from the Commonwealth to take up offered employment must set out:
- (a) particulars (including the duration) of the employment; and
  - (b) the way in which the financial assistance is to be expended to enable the claimant to take up the employment.

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**19 Special requirements regarding claims for essential medical equipment payment**

- (1) A claim for an essential medical equipment payment must include a statement by the person making the claim that the medical equipment to which the claim relates is used in the relevant EMEP residence.
- (2) If:
  - (a) a person who provides care and attention for a person with medical needs makes a claim for an essential medical equipment payment; and
  - (b) the person with medical needs is not a dependent child of that or any other person;the claim must be signed by the person with medical needs.

**Subdivision E—Time limits for claims for pension bonus**

**20 Interpretation**

An expression used in this Subdivision has the same meaning as it has in Part 2.2A of the 1991 Act.

**21 General rule**

- (1) A claim for pension bonus must be made within the lodgment period fixed by this Subdivision.
- (2) However, the Secretary may in special circumstances allow a person a longer period to make a claim than the period fixed by this Subdivision. If the Secretary does so, the lodgment period for the person's claim is the period allowed by the Secretary.
- (3) Subsection (2) does not apply in relation to a claim for which the lodgment period is fixed by subsection 23(1).

## **22 Last bonus period a full-year period**

- (1) If a person's last bonus period is a full-year period, the lodgment period for a claim by the person for pension bonus is the period of 13 weeks immediately following that bonus period. However, this rule does not apply if:
- (a) the person is an exempt partnered person for the purposes of section 24 at the end of the person's last bonus period; or
  - (b) the person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period; or
  - (c) the person is a post-75 member of the pension bonus scheme and has a post-75 work period (see subsection 26(2)).
- (2) For the purposes of this section, if a person has accrued only one full-year bonus period, that period is the person's last bonus period.

## **23 Last bonus period a part-year period**

- (1) If a person's last bonus period is a part-year period, the lodgment period for a claim by the person for pension bonus is:
- (a) the period of 13 weeks beginning at the end of that bonus period; or
  - (b) if the Secretary allows a longer period—that longer period.
- However, this subsection does not apply if:
- (c) the person is an exempt partnered person (see subsection 24(2)) at the end of the person's last bonus period; or
  - (d) the person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period; or
  - (e) the person is a post-75 member of the pension bonus scheme and has a post-75 work period (see subsection 26(2)).
- (2) If:
- (a) subsection (1) applies to a person's claim for pension bonus; and

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- (b) the claim is lodged within a period allowed under paragraph (1)(b);

Division 6 of Part 2.2A of the 1991 Act has effect, in relation to the calculation of the amount of that pension bonus, as if the person had not accrued the part-year bonus period.

**24 Claim by exempt partnered person**

- (1) If a person is an exempt partnered person at the end of the person's last bonus period, the lodgment period applicable to the person's claim for pension bonus is the period:
- (a) beginning at the end of that bonus period; and
  - (b) ending at:
    - (i) the time of the last occasion on which the person's partner could have lodged a claim for a pension bonus; or
    - (ii) the end of the period of 13 weeks after the person ceases to be a member of the same couple (whether because of the death of the person's partner or for any other reason);whichever comes first.
- (2) For the purposes of this section, a person is an exempt partnered person at a particular time if, at that time, the person is a member of a couple and:
- (a) the person's partner is an accruing or non-accruing member of the pension bonus scheme; or
  - (b) the person's partner is an accruing or non-accruing member of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act.

**25 Claim where membership has become non-accruing**

If a person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period, the lodgment period applicable to the person's claim for pension bonus is the period:



- (a) beginning at the end of the person's last bonus period; and
- (b) ending 13 weeks after the time when the person's membership of the scheme ceases to be non-accruing.

## **26 Claim where person has post-75 work period**

- (1) If a post-75 member of the pension bonus scheme has a post-75 work period, the lodgment period for a claim by the person for pension bonus is the period of 13 weeks beginning at the end of the period nominated in the claim as the person's post-75 work period.
- (2) For the purposes of this section, a post-75 member of the pension bonus scheme has a post-75 work period if all of the following requirements are satisfied:
  - (a) the person's claim for pension bonus nominates a particular period as the person's post-75 work period;
  - (b) the nominated period begins immediately after the end of the person's last bonus period;
  - (c) if it were assumed that the person had been an accruing member of the pension bonus scheme throughout each test period that is applicable to the person, the person would have passed the work test for each test period.
- (3) For the purposes of subsection (2), the test period or test periods applicable to a person are worked out as follows:
  - (a) identify the *extended period*, which is that part of the nominated period when the person was neither:
    - (i) subject to a compensation preclusion period or a carer preclusion period; nor
    - (ii) covered by a declaration under section 92Q of the 1991 Act;
  - (b) if the extended period is 365 days or less—the extended period is the only test period;
  - (c) if the extended period is longer than 365 days—each of the following periods is a test period:
    - (i) the full-year period beginning at the start of the extended period;

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- (ii) if 2 or more succeeding full-year periods are included in the extended period—each of those full-year periods;
  - (iii) the period (if any) consisting of the remainder of the extended period.
- (4) In addition to its effect apart from this subsection, section 93B of the 1991 Act also has the effect it would have if each reference in paragraph 93B(1)(a), (2)(a), (3)(a) or (4)(a) to an accruing member of the pension bonus scheme were a reference to a post-75 member of the scheme.

**Subdivision EA—Time limits for claims for pension bonus bereavement payment**

**26A General rule**

A person's claim for pension bonus bereavement payment must be made within the period of 26 weeks beginning on the day of death of the partner in respect of whom the person is qualified for pension bonus bereavement payment.

**26B Extension**

The Secretary may in special circumstances allow a person a longer period to make a claim than the period under section 26A. If the Secretary does so, the person's claim must be made before the end of the period allowed by the Secretary.

**Subdivision EB—Time limits for claims for student start-up loans**

**26C Time limit for claim**

- (1) A person's claim for a student start-up loan for a qualification period must be made before the end of the qualification period.
- (2) Despite subsection (1), a person's claim for a student start-up loan for a qualification period in which the person is expected to

complete the relevant approved scholarship course must be made at least 35 days before the course end date.

### **Subdivision F—Time limit for claims for fares allowance**

#### **27 Time limit for claim**

- (1) Subject to this section, a claim for fares allowance must be lodged in the study year to which the claim relates or before 1 April next following the end of that year (the *final date*).
- (2) A claim for fares allowance may be lodged on or after the final date if the Secretary is satisfied that:
  - (a) the claimant took reasonable steps to lodge the claim, or have the claim lodged, before the final date; and
  - (b) circumstances beyond the claimant's control prevented the claim being lodged before the final date.
- (3) A claim for fares allowance may be lodged on or after the final date if the Secretary is satisfied that:
  - (a) circumstances beyond the claimant's control prevented the claimant taking reasonable steps to lodge the claim, or have the claim lodged, before the final date; and
  - (b) the claimant has sought to lodge the claim as soon as practicable after those circumstances ceased to exist.

### **Subdivision FAA—Time limit for claims for Disaster Recovery Allowance**

#### **27AA Time limit for claims for Disaster Recovery Allowance**

- (1) A claim for a Disaster Recovery Allowance relating to a Part 2.23B major disaster must be lodged within 6 months after the determination of the disaster under section 36A of the 1991 Act.
- (2) However, the claim may be lodged more than 6 months after the determination if the Secretary is satisfied that:

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- (a) there are special circumstances applying to the person's claim that justify a late lodgement; and
- (b) the claim is lodged within a reasonable period having regard to those circumstances.

**Subdivision FA—Time limit for claims for AGDRP**

**27A Time limit for claim**

- (1) A claim for an AGDRP relating to a major disaster must be lodged within 6 months after the determination of the disaster under section 36 of the 1991 Act.
- (2) However, the claim may be lodged more than 6 months after the declaration if the Secretary is satisfied that:
  - (a) there are special circumstances applying to the person's claim that justify a late lodgment; and
  - (b) the claim is lodged within a reasonable period having regard to those circumstances.

**Subdivision FB—Time limit for claims for AVTOP**

**27B Time limit for claims for AVTOP**

- (1) A claim for an AVTOP by a primary victim of a declared overseas terrorist act must be lodged within 2 years after the day the declaration is made under subsection 35B(1) of the 1991 Act.
- (2) A claim for an AVTOP by a secondary victim of a declared overseas terrorist act must be lodged within 12 months after the day the close family member to whom the claim relates died.
- (3) However, a claim may be lodged after the period referred to in subsection (1) or (2) if the Secretary is satisfied that:
  - (a) there are special circumstances applying to the person's claim that justify a late lodgment; and
  - (b) the claim is lodged within a reasonable period having regard to those circumstances.

## **Subdivision G—Age requirement for certain claims**

### **28 Claims for disability support pension**

A person cannot make a claim for a disability support pension unless the person is under the pension age on the day on which the claim is lodged.

## **Subdivision H—Residence requirements for claimants**

### **29 General rule**

- (1) Subject to sections 30, 30A, 31 and 31A, a claim for a social security payment or a concession card may only be made by a person who:
  - (a) is an Australian resident; and
  - (b) is in Australia.
- (2) Subject to sections 30, 30A, 31 and 31A, a claim made at a time when the claimant is not an Australian resident or is not in Australia is taken not to have been made.

### **30 Residence requirements for claimants for special benefit**

A claim for special benefit may only be made by a person who:

- (a) is in Australia; and
- (b) satisfies one of the following subparagraphs:
  - (i) the person is an Australian resident;
  - (iii) the person holds a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the 1991 Act.

### **30A Exclusion from section 29 residence requirement of crisis payment claimants holding certain visas**

Despite paragraph 29(1)(a), a person who is not an Australian resident may make a claim for a crisis payment if the person is

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qualified for special benefit because he or she is the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the 1991 Act.

**31 Exclusion of certain claims from requirements of section 29**

- (1) Section 29 does not apply to a claim for an AGDRP if the claim relates to a major disaster that occurred in Australia or outside Australia.
- (1A) Section 29 does not apply to a claim for an AVTOP.
- (1B) Section 29 does not apply to a claim for a Disaster Recovery Allowance.
- (2) Section 29 does not apply to a claim for parenting payment if:
  - (a) the claimant is an Australian resident; and
  - (b) the claimant, while outside Australia, has been receiving an income support payment; and
  - (c) the income support payment has been cancelled or has ceased to be payable; and
  - (d) the claim is made within 13 weeks after the income support payment was cancelled or ceased to be payable, as the case may be.
- (3) Section 29 does not apply to a claim for double orphan pension.

**31A Exclusion of certain claims by special category visa holders from section 29 residence requirement**

Despite paragraph 29(1)(a), a person who is not an Australian resident may make a claim for a social security payment or a concession card if:

- (a) the person is a special category visa holder residing in Australia; and
- (b) in order to qualify for the payment or concession card concerned, the person is not required to be an Australian

resident if the person is a special category visa holder  
residing in Australia.

### **Subdivision I—Withdrawal of claim**

#### **33 Right to withdraw**

- (1) A claimant for a social security payment or a concession card, or a person acting on behalf of such a claimant, may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken not to have been made.

#### **34 Manner of withdrawal**

- (1) A claim may be withdrawn orally or in writing or in any other manner approved by the Secretary.
- (2) If:
  - (a) a person claims both a pension bonus and an age pension;  
and
  - (b) the claim for an age pension is withdrawn;  
the claim for a pension bonus is taken to have been withdrawn.
- (3) If:
  - (a) a person claims both a pension bonus and an age pension;  
and
  - (b) the claim for an age pension is rejected as a direct or indirect result of the operation of:
    - (i) Division 2 of Part 3.12 of the 1991 Act; or
    - (ii) Part 3.14 of that Act;the claim for a pension bonus is taken to have been withdrawn.

**Subdivision J—Special provision for certain claims**

**35 Claims by persons in gaol etc.**

- (1) A person who is:
  - (a) in gaol; or
  - (b) undergoing psychiatric confinement because he or she has been charged with an offence;may make a claim for a social security pension or benefit or for a crisis payment not earlier than 3 weeks before the person's expected release day.
- (2) A day is a person's expected release day for the purpose of subsection (1) if there are reasonable grounds for believing that the person will be released from gaol or psychiatric confinement on that day.

**35A Claims for advance pharmaceutical allowance**

- (1) A person may only make a claim for advance pharmaceutical allowance if the claim is made in accordance with subsection (2), (3) or (4).
- (2) A person may make a claim for advance pharmaceutical allowance to be paid in a calendar year if:
  - (a) the person has received an instalment of a social security pension in relation to an instalment period that included 31 December in the previous calendar year; and
  - (b) the claim is lodged within 14 days after the end of that instalment period.
- (3) A person may make a claim for advance pharmaceutical allowance to be paid in a calendar year if:
  - (a) the person claims a social security pension in that year; and
  - (b) the claim for advance pharmaceutical allowance is lodged:
    - (i) when the claim for the pension is lodged; or



- (ii) after the claim for the pension is lodged but before that claim is determined.
- (4) A person may make a claim for advance pharmaceutical allowance to be paid in a calendar year if:
- (a) the person has been qualified for pharmaceutical allowance for a period (the **qualification period**) during the calendar year; and
  - (b) the amount spent by the person during the qualification period on the purchase of pharmaceutical benefits is equal to or greater than the total amount that has been paid to the person in the calendar year by way of:
    - (i) pharmaceutical allowance; and
    - (ii) advance pharmaceutical allowance.

### **35B Secondary victim claims for AVTOP**

- (1) If a person makes a claim for an AVTOP as a secondary victim in relation to a close family member who has died, the Secretary must make reasonable inquiries as to whether there are other persons (a **potential claimant**) who may also qualify for an AVTOP as a secondary victim in relation to the same close family member.
- (2) If the Secretary considers there are potential claimants, the Secretary must give each of them a written notice stating that:
  - (a) he or she may make a claim for an AVTOP as a secondary victim in relation to the close family member; and
  - (b) he or she must make a claim before the day (the **claim due day**) specified in the notice; and
  - (c) if he or she fails to make a claim by the claim due day, an AVTOP in relation to the close family member will not be payable to him or her.
- (3) The claim due day must be at least 30 days after the day the notice is given to the potential claimant.
- (4) If the Secretary is satisfied that it is appropriate to do so, the Secretary may change the claim due day to a later day.

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- (5) If the Secretary changes the claim due day under subsection (4), then:
- (a) the Secretary must change the claim due day for each of the potential claimants to the new claim day; and
  - (b) the Secretary must give each of the potential claimants a written notice of the new claim due day; and
  - (c) the new claim due day is taken to be the day specified in the notice under subsection (2) for the purposes of subparagraph 1061PAC(b)(ii) of the 1991 Act.

## **Division 2—Determination of claim**

### **36 Obligation of Secretary to determine claim**

- (1) Subject to this section, the Secretary must, in accordance with the social security law, determine a claim for a social security payment or a concession card, either granting or rejecting the claim.
- (2) If a person claims both a pension bonus and an age pension, the Secretary must not determine the claim for pension bonus until the claim for age pension has been granted.
- (3) If more than one person makes a claim for an AVTOP as a secondary victim of a declared overseas terrorist act in relation to the same close family member, the Secretary must determine the claims at the same time.
- (4) If a person claims a student start-up loan for a qualification period, the Secretary may determine the person's claim at a time the Secretary considers appropriate, having regard to the principle that, for a claim made before the start of the period of study concerned for the relevant approved scholarship course, the time should generally be close to the start of that period of study.

Note: For *approved scholarship course*, see section 592M of the 1991 Act.

- (5) Nothing in subsection (4) affects the operation of section 39.

### **37 Grant of claim**

- (1) Subject to this section and section 40, the Secretary must determine that a claim for a social security payment is to be granted if the Secretary is satisfied that:
  - (a) the claimant is qualified for the social security payment; and
  - (b) the social security payment is payable.
- (1A) The Secretary must determine that a claim for parenting payment is to be granted if the Secretary is satisfied that:

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- (a) the claimant is qualified, or is expected to be qualified, for the payment; and
  - (b) the payment would be payable apart from the application of a compliance penalty period.
- (2) The Secretary must determine that a claim for a jobseeker payment is to be granted if the Secretary is satisfied that:
- (a) the claimant is qualified, or is expected to be qualified, for the payment; and
  - (b) the payment would be payable apart from:
    - (i) the application of a waiting period; or
    - (ii) the application of a compliance penalty period; or
    - (v) the application of an income maintenance period where the rate of jobseeker payment payable to the person is nil; or
    - (vi) the operation of section 615 of the 1991 Act.
- (3) The Secretary must determine that a claim for a social security payment to which this subsection applies is to be granted if the Secretary is satisfied that:
- (a) the person is qualified, or is expected to be qualified, for the payment; and
  - (b) the payment would be payable if the person were not subject to a seasonal work preclusion period.
- (4) Subsection (3) applies to the following social security payments:
- (c) jobseeker payment;
  - (d) parenting payment;
  - (g) youth allowance;
  - (ga) special benefit;
  - (h) disability support pension;
  - (j) carer payment;
  - (k) austudy payment.
- (5) If:

- (a) a determination has been made under subsection (1) granting a claim for a jobseeker payment to a person who was qualified for the payment under subsection 593(1B) of the 1991 Act; and
  - (b) the person ceases to be qualified for the payment under subsection 593(1B) of the 1991 Act but becomes qualified for the payment under subsection 593(1) of that Act within 14 days after the person ceased to be qualified under subsection 593(1B);
- the Secretary may make a determination varying the first-mentioned determination to give effect to any change in the person's start day.
- (6) The Secretary must determine that a claim for youth allowance or austudy payment is to be granted if the Secretary is satisfied that:
    - (a) the person is qualified, or is expected to be qualified, for the allowance or payment; and
    - (b) the allowance or payment would be payable, apart from:
      - (i) the application of a waiting period; or
      - (ii) the application of a compliance penalty period; or
      - (v) the application of an income maintenance period where the rate of allowance or payment payable to the person is nil; or
      - (vi) if the claim is a claim for youth allowance—the operation of section 547AA of the 1991 Act.
  - (7) The Secretary must determine that a claim made in accordance with section 35 for a social security pension or benefit or for a crisis payment is to be granted if the Secretary is satisfied that:
    - (a) the claimant:
      - (i) is in gaol; or
      - (ii) is undergoing psychiatric confinement because he or she has been charged with an offence; and
    - (b) the claimant is expected to be in gaol or undergoing psychiatric confinement for at least 14 days; and
    - (c) there are reasonable grounds for believing that the claimant will be released from gaol or psychiatric confinement on or

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before the day that is the claimant's expected release day for the purposes of subsection 35(1); and

- (d) either:
- (i) in the case of a claim for a social security pension or benefit, the claimant is qualified for the pension or benefit; or
  - (ii) in any case, the claimant is expected to be qualified for the pension, benefit or payment immediately after the claimant is released from gaol or psychiatric confinement; and
- (e) the pension, benefit or payment is expected to be payable to the claimant immediately after the claimant is released from gaol or psychiatric confinement.
- (8) The Secretary must make a determination granting a claim for a concession card if the Secretary is satisfied that the claimant is qualified for the card.
- Note: In some cases, the Secretary must not make a determination granting a claim for a seniors health card or an income-tested health care card if the Secretary makes a request under subsection 75(2) or (3) of the claimant (about providing tax file numbers): see subsection 77(1).
- (9) A determination under subsection (8) granting a claim for a seniors health card:
- (a) must specify the period at the end of which the determination ceases to have effect; and
  - (b) unless it has already been cancelled, ceases to have effect at the end of that period.
- (10) A determination under subsection (8) granting a claim for a health care card under Subdivision B of Division 3 of Part 2A.1 of the 1991 Act:
- (a) must specify the period at the end of which the determination ceases to have effect; and
  - (b) unless it has already been cancelled, ceases to have effect at the end of that period.

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- (11) The Minister may, by legislative instrument, determine the periods that are to be specified in determinations for the purposes of subsections (9) and (10).

**37AA Grant of claim—schooling requirements**

- (1) Without limiting subsection 37(1), the Secretary must determine that a claim for a schooling requirement payment is to be granted if the Secretary is satisfied that:
- (a) the person is qualified, or is expected to be qualified, for the payment; and
  - (b) the payment would be payable if it were not for the application of subsection 124G(1), 124L(1) or 124NE(1).
- (2) Subsection (1) does not apply to a schooling requirement payment under the Veterans' Entitlements Act.

Note 1: **Schooling requirement payments** are social security benefits, social security pensions and certain payments under the Veterans' Entitlements Act (see section 124D of this Act).

Note 2: Section 124G and 124L provide that a schooling requirement payment is not payable to a person if he or she fails to comply with an enrolment notice or an attendance notice after the end of an initial compliance period (unless he or she has a reasonable excuse or special circumstances apply). Section 124NE provides that a schooling requirement payment is not payable to a person if he or she fails to comply with a compliance notice (subject to exceptions in that section).

Note 3: If the payment is suspended under section 124H, 124M or 124NF (because of the application of subsection 124G(1), 124L(1) or 124NE(1)) on the day the claim is granted, the start day for the payment is deferred until the suspension ends (at the earliest) (see clause 5 of Schedule 2).

**37A Duration of certain health care cards**

- (1) A seniors health card expires at the end of the period specified, for the purposes of subsection 37(9), in the determination granting the claim for the card.

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- (1A) However, subsection (1) does not apply to a seniors health card issued under subsection 1061ZJA(3) or (4) of the 1991 Act.
- (2) A health care card granted to a person qualified for the card under Subdivision B of Division 3 of Part 2A.1 of the 1991 Act expires at the end of the period specified, for the purposes of subsection 37(10), in the determination granting the claim for the card.
- (3) A person to whom a concession card referred to in subsection (1) or (2) has been granted may make a claim for a further concession card before the first-mentioned card expires.

**38 Refusal of claim for special employment advance**

- (1) Subject to subsection (2), the Secretary must refuse a claim for special employment advance if:
  - (a) the claim is based on the effect of unreceived income on the claimant's special employment advance qualifying entitlement; and
  - (b) the Secretary is satisfied that the income will be received within 2 days after the claim is made.
- (2) Subsection (1) does not apply if the Secretary considers that the claimant's financial needs are such that the claim should be granted.
- (3) In this section:

*unreceived income* has the same meaning as in subsection 1061EM(1) of the 1991 Act.

**39 Deemed refusal of claim**

- (1) Subject to subsections (3) and (9), if the Secretary does not make a determination regarding a claim within the period of 13 weeks after the day on which the claim was made, the Secretary is taken to have made, at the end of that period, a determination rejecting the claim.



- (3) If:
- (a) a person makes a claim for a social security payment that is a relevant social security payment for the purposes of subclause 4(1) of Schedule 2; and
  - (b) the person is not, on the day on which the claim is made, qualified for the payment; and
  - (c) assuming the person does not sooner die, the person will, because of the passage of time or the occurrence of an event, become qualified for the payment within the period of 13 weeks after the day on which the claim is made; and
  - (d) the person becomes so qualified within that period;
- the claim is taken, for the purposes of subsection (1), to be made on the day on which the person becomes qualified.
- (4) If the Secretary asks a person who has made a claim for a social security payment or a concession card or another person for information in relation to the claim, the period that:
- (a) begins on the day on which the Secretary asks for the information; and
  - (b) ends on the day on which the information is given to the Secretary;
- is not counted for the purpose of subsection (1).
- (5) If:
- (a) a person makes a claim (the **actual claim**); and
  - (b) apart from this subsection, the person would, by virtue of section 13 or 14, be taken to have made the claim on a particular day;
- then, in spite of section 13 or 14, as the case may be, a reference in subsection (1) of this section to the day on which the claim was made is a reference to the day on which the actual claim was made.
- (6) The Secretary may determine that a specified period, being a period that is longer than 13 weeks, applies for the purposes of claims for an AVTOP in relation to a declared overseas terrorist act.

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- (7) If, under subsection (6), there is a determination of a period in force for the purposes of claims for an AVTOP in relation to a declared overseas terrorist act, then this Act applies to those claims as if references in subsections (1) and (3) to the period of 13 weeks were references to the period referred to in the determination.
- (8) A determination under subsection (6) is not a legislative instrument.
- (9) A claim for a student start-up loan for a qualification period made before the start of the qualification period is taken to have been made on the first day of the qualification period.

**40 Rejection of claim for failure to obtain foreign payment**

- (1) The Secretary may make a determination rejecting a claim for a social security payment if:
  - (a) the claimant has been given a notice under subsection 66(2); and
  - (b) the Secretary is not satisfied that the claimant has taken reasonable action to obtain a comparable foreign payment at the highest rate applicable to the claimant within the period specified in the notice.
- (2) The Secretary may make a determination rejecting a claim for a social security payment if:
  - (a) the claimant has been given a notice under subsection 66(3); and
  - (b) the Secretary is not satisfied that the claimant's partner has taken reasonable action to obtain a comparable foreign payment at the highest rate applicable to the partner within the period specified in the notice.

## **Division 2A—Employment pathway plans**

**Note:** The powers of the Employment Secretary under this Division may be delegated under section 234 (including to a person engaged by an organisation that performs services for the Commonwealth).

### **Subdivision A—Entry into employment pathway plans**

#### **40A Requirement to enter into employment pathway plans**

*No existing employment pathway plan in force*

- (1) The Employment Secretary may require a person to enter into an employment pathway plan if an employment pathway plan is not in force in relation to the person and one of the following applies:
  - (a) either:
    - (i) the person is receiving, or has made a claim for, a jobseeker payment or a youth allowance; or
    - (ii) the Department is contacted by or on behalf of the person in relation to a claim for a jobseeker payment or a youth allowance;
  - (b) the person is someone to whom paragraph 500(1)(c) or (ca) of the 1991 Act applies and either:
    - (i) the person is receiving, or has made a claim for, parenting payment; or
    - (ii) the Department is contacted by or on behalf of the person in relation to a claim for parenting payment;
  - (c) the person is a nominated visa holder and either:
    - (i) the person is receiving, or has made a claim for, a special benefit; or
    - (ii) the Department is contacted by or on behalf of the person in relation to a claim for special benefit.

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**Division 2A** Employment pathway plans

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*Existing employment pathway plan already in force*

- (2) If an employment pathway plan is in force in relation to a person, the Employment Secretary may require the person to enter into another plan instead of the existing one.

*Notification of requirement*

- (3) The Employment Secretary must notify a person who is required to enter into an employment pathway plan of the requirement. The notification:
- (a) must give the person the option of entering into the plan under section 40D; and
  - (b) may also give the person the option of entering into the plan under section 40E, taking into account the person's circumstances.

**40B Use of technological processes**

- (1) The Employment Secretary may arrange for the use of technological processes in relation to the following:
- (a) persons entering into employment pathway plans under section 40D or 40E;
  - (b) the variation of such plans.

Note: A person does not enter into an employment pathway plan unless the person accepts such a plan: see paragraphs 40D(1)(a) and 40E(1)(c).

*Arrangement not a legislative instrument*

- (2) If an arrangement under this section is made in writing, the arrangement is not a legislative instrument.

**40C Use of questionnaire**

- (1) The Employment Secretary may arrange for the completion of a questionnaire in relation to the following:
- (a) persons entering into employment pathway plans under section 40D or 40E;

- (b) the variation of such plans.
- (2) A questionnaire may relate to, but is not limited to, one or more of the employment pathway plan matters in relation to a person.
- Note: For *employment pathway plan matters*, see section 40F.
- (3) A purpose of the questionnaire is to obtain information for the purposes of working out under which section the person is able to enter into an employment pathway plan.

*Arrangement not a legislative instrument*

- (4) If an arrangement under this section is made in writing, the arrangement is not a legislative instrument.

**40D Employment pathway plans—plans developed by the Employment Secretary**

- (1) A person enters into an employment pathway plan under this section if:
- (a) the person notifies the Employment Secretary that the person accepts the employment pathway plan developed by the Employment Secretary; and
  - (b) that acceptance occurs after one or more communications between the person and the Employment Secretary in relation to that plan.

Note: For variation of employment pathway plans, see section 40V.

*Plan requirements*

- (2) The employment pathway plan developed by the Employment Secretary must contain one or more requirements that the person is required to comply with.

Note: See Subdivision B for limitations on the kind of requirements that can be contained in employment pathway plans.

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*Optional terms*

- (3) The employment pathway plan may also contain one or more terms that the person may, but is not required to, comply with.

*Approval of requirements*

- (4) The requirements in the employment pathway plan are to be approved by the Employment Secretary. Those requirements must not be approved by the processes referred to in subsection 40B(1).
- (5) The Employment Secretary must not approve requirements that are not suitable for the person. For this purpose, the Employment Secretary must take into account the following matters:
- (a) the employment pathway plan matters in relation to the person;
  - (b) the person's capacity to comply with the requirements;
  - (c) the person's needs;
  - (d) any other matters that the Employment Secretary or the person considers relevant in the circumstances.

Note: For *employment pathway plan matters*, see section 40F.

**40E Employment pathway plans—streamlined processes**

- (1) A person enters into an employment pathway plan under this section if:
- (a) the person is given information as part of the processes referred to in subsection 40B(1) informing the person of the matters the person should consider in deciding whether to accept an employment pathway plan under this section; and
  - (b) a proposed employment pathway plan is produced as part of those processes that:
    - (i) contains one or more requirements that the person is required to comply with; and
    - (ii) may contain one or more terms that the person may, but is not required to, comply with; and

- (c) after deciding the person is satisfied with that proposed employment pathway plan, the person accepts that plan as part of those processes.

- Note 1: If the person does not want to accept the proposed employment pathway plan that is produced as part of those processes, the person can still enter into an employment pathway plan under section 40D.
- Note 2: See Subdivision B for limitations on the kind of requirements that can be contained in employment pathway plans.
- Note 3: For variation of employment pathway plans, see section 40V.

- (2) This section does not prevent the person from entering into an employment pathway plan under section 40D after the person has entered into an employment pathway plan under this section.

#### **40F Employment pathway plan matters**

The *employment pathway plan matters* in relation to a person are the following:

- (a) the person's education, experience, skills and age;
- (b) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;
- (c) the state of the labour market and the transport or other options available to the person in accessing that market;
- (d) the participation opportunities available to the person;
- (e) the family and caring responsibilities of the person;
- (f) the length of travel time required to comply with requirements in an employment pathway plan;
- (g) the financial costs (such as travel costs) of complying with requirements in an employment pathway plan, and the person's capacity to pay for such costs.

### **40G Employment pathway plans—examples of requirements**

#### *Seeking, accepting and undertaking paid work*

- (1) An employment pathway plan under this Subdivision in relation to a person may contain requirements relating to one or more of the following:
- (a) the person actively seeking paid work in Australia;
  - (b) the person accepting, and being willing to accept, offers of paid work in Australia;
  - (c) the person undertaking, and being willing to undertake, paid work in Australia;

except particular paid work that is unsuitable to be done by the person.

Note: See Division 2B for the circumstances in which paid work is unsuitable to be done by a person.

#### *Undertaking of other activities*

- (2) An employment pathway plan under this Subdivision in relation to a person may contain requirements relating to one or more of the following:
- (a) the person undertaking training or study;
  - (b) the person undertaking voluntary work;
  - (c) the person participating in an approved program of work for income support payment (subject to section 40J) or in an employment program;
  - (d) the person attending an interview with a person engaged by an organisation that performs services for the Commonwealth;
  - (e) the person completing, updating or improving the person's résumé.



*Reporting on compliance*

- (3) An employment pathway plan under this Subdivision in relation to a person may contain requirements relating to the person's reporting of compliance with the plan.

*Parenting payment—health and education*

- (4) In relation to parenting payment and a person to whom paragraph 500(1)(ca) of the 1991 Act applies, an employment pathway plan under this Subdivision may contain requirements relating to one or more of the following:
- (a) the person's education;
  - (b) the health of a PP child of the person;
  - (c) the education of a PP child of the person.

*No limit on requirements in plans*

- (5) Subsections (1) to (4) do not limit the requirements that an employment pathway plan may contain.

Note: See Subdivision B for limitations on the kind of requirements that can be contained in employment pathway plans.

**Subdivision B—What employment pathway plans must not contain**

**40H Employment pathway plans not to contain requirements about undertaking unsuitable paid work**

An employment pathway plan under Subdivision A in relation to a person must not contain a requirement relating to one or more of the following:

- (a) the person seeking paid work in Australia;
  - (b) the person accepting offers of paid work in Australia;
  - (c) the person undertaking paid work in Australia;
- that is particular paid work that is unsuitable to be done by the person.

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Note: See Division 2B for the circumstances in which paid work is unsuitable to be done by a person.

**40J Employment pathway plans not to contain requirements to participate in an approved program of work**

*Parenting payment*

- (1) An employment pathway plan under Subdivision A, that is in force in relation to a person who is receiving parenting payment, must not require the person to participate in an approved program of work for income support payment if:
  - (a) either:
    - (i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A of the 1991 Act—because of the application of Module E of that rate calculator, the person is receiving parenting payment at a rate that has been reduced; or
    - (ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B of the 1991 Act—because of the application of Module D of that rate calculator, the person is receiving parenting payment at a rate that has been reduced; or
  - (b) the person is at least 50 years of age and is not a person to whom subsection 28(4) of the 1991 Act applies.

*Youth allowance*

- (2) An employment pathway plan under Subdivision A, that is in force in relation to a person who is receiving a youth allowance, must not require the person to participate in an approved program of work for income support payment if:
  - (a) the person is under 18 years of age; or
  - (b) the person is undertaking full-time study (see section 541B of the 1991 Act); or

- (c) because of the application of one or more Modules of the Youth Allowance Rate Calculator in section 1067G of the 1991 Act, the person is receiving the youth allowance at a rate that has been reduced; or
- (d) the program of work requires the person to move from a home in one place to a home in another place.

*Jobseeker payment*

- (3) An employment pathway plan under Subdivision A, that is in force in relation to a person who is receiving a jobseeker payment, must not require the person to participate in an approved program of work for income support payment if:
  - (a) because of the application of Module G of Benefit Rate Calculator B in section 1068 of the 1991 Act, the person is receiving the jobseeker payment at a rate that has been reduced; or
  - (b) the person is at least 50 years of age and is not a person to whom subsection 28(4) of the 1991 Act applies.

*Special benefit*

- (4) An employment pathway plan under Subdivision A, that is in force in relation to a person who is receiving a special benefit, must not require the person to participate in an approved program of work for income support payment if:
  - (a) the person is under 18 years of age; or
  - (b) the person or the person's partner has income; or
  - (c) the person is at least 50 years of age and is not a person to whom subsection 28(4) of the 1991 Act applies.

**40K Employment pathway plans not to contain certain other requirements**

- (1) An employment pathway plan under Subdivision A must not contain a requirement of a kind that the Employment Secretary determines under subsection (2).

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- (2) The Employment Secretary must, by legislative instrument, determine the kinds of requirements that employment pathway plans must not contain.

**Subdivision C—Exemptions from employment pathway plan requirements**

**40L Circumstances making it unreasonable etc. to comply with requirements**

- (1) A person is not required to satisfy the employment pathway plan requirements if a determination under this section is in effect in relation to the person.

*Circumstances beyond a person's control*

- (2) The Employment Secretary may make a determination under this section in relation to the person if:
- (a) the Employment Secretary is satisfied that circumstances exist that are beyond the person's control; and
  - (b) the Employment Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the employment pathway plan requirements.

Note: See also section 40U (general rules about determinations under this Subdivision).

*Other circumstances*

- (3) The Employment Secretary may make a determination under this section in relation to the person if the Employment Secretary is satisfied in all the circumstances that the person should not be required to satisfy the employment pathway plan requirements.

Note: See also section 40U (general rules about determinations under this Subdivision).

*Exception—misuse of alcohol or another drug*

- (4) Subsection (2) or (3) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

*Examples of relevant circumstances*

- (5) The Employment Secretary may make a determination under subsection (2) or (3) in relation to a person in circumstances that relate to, but are not limited to, the following:
- (a) the person having a temporary incapacity resulting in the person being unable to undertake work for at least 8 hours per week, where the person has given the Employment Secretary a certificate of a medical practitioner, in the form (if any) approved by the Employment Secretary, that supports the incapacity being caused by a medical condition arising from sickness or an accident;
  - (b) the person experiencing a marriage or relationship breakdown;
  - (c) the death of an immediate family member of the person;
  - (d) the person having suffered a significant personal crisis;
  - (e) the person having been affected by an emergency, disaster or public health crisis.

*Revocation of determination*

- (6) The Employment Secretary may revoke a determination under this section in relation to a person if the Employment Secretary is satisfied in all the circumstances that it is no longer appropriate for the determination to remain in effect.

*Later exemptions do not limit this section*

- (7) Sections 40M to 40T do not limit this section.

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**40M Death of person's partner**

*Claimants*

- (1) A person is not required to satisfy the employment pathway plan requirements in respect of a period (the *applicable period*) if:
- (a) the person makes a claim for a jobseeker payment, parenting payment, a youth allowance or a special benefit; and
  - (b) the person makes the claim after the death of the person's partner; and
  - (c) if the person was not pregnant when the person's partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and
  - (d) if the person was pregnant when the person's partner died—the person makes the claim:
    - (i) in the period of 14 weeks starting on the day of the death of the partner; or
    - (ii) in the period starting on the day of the death of the partner and ending when the child is born or the person otherwise stops being pregnant;whichever ends later.

The applicable period is the period applicable under paragraph (c) or (d).

*Recipients*

- (2) A person is not required to satisfy the employment pathway plan requirements in respect of a period (the *applicable period*) if:
- (a) the person is receiving a jobseeker payment, parenting payment, a youth allowance or a special benefit; and
  - (b) while the person is receiving the payment, allowance or benefit the person's partner dies; and
  - (c) if the person was not pregnant when the person's partner died—the person notifies the Employment Secretary of the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and

- (d) if the person was pregnant when the person's partner died—the person notifies the Employment Secretary of the person's partner's death:
  - (i) in the period of 14 weeks starting on the day of the death of the partner; or
  - (ii) in the period starting on the day of the death of the partner and ending when the child is born or the person otherwise stops being pregnant;whichever ends later; and
- (e) the person is receiving the payment, allowance or benefit on the day of the notification.

The applicable period is the period applicable under paragraph (c) or (d).

#### **40N Domestic violence**

- (1) A person is not required to satisfy the employment pathway plan requirements if a determination under this section is in effect in relation to the person.
- (2) The Employment Secretary must make a determination under this section in relation to the person if the Employment Secretary is satisfied that the person was subjected to domestic violence in the last 26 weeks.

Note: See also section 40U (general rules about determinations under this Subdivision).

- (3) The Employment Secretary may revoke a determination under this section in relation to a person if the Employment Secretary is satisfied in all the circumstances that it is no longer appropriate for the determination to remain in effect.

#### **40P Caring responsibilities**

- (1) A person is not required to satisfy the employment pathway plan requirements if a determination under this section is in effect in relation to the person.

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*Mandatory determination*

- (2) The Employment Secretary must make a determination under this section in relation to the person if the Employment Secretary is satisfied that:
- (a) the person is the principal carer of one or more children and that one or more of the following apply:
    - (i) the person is a registered and active foster carer;
    - (ii) the person is a home educator of one or more of those children;
    - (iii) the person is a distance educator of one or more of those children;
    - (iv) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person; or
  - (b) the following apply:
    - (i) the person is the principal carer of a child;
    - (ii) the person is the principal carer of one or more other children or the main supporter of one or more secondary pupil children or both;
    - (iii) there are 4 or more of the children of whom the person is the principal carer or main supporter; or
  - (c) the following apply:
    - (i) the person is not the principal carer of one or more children;
    - (ii) the person is a registered and active foster carer;
    - (iii) the person is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child; or
  - (d) the following apply:
    - (i) the person is the main supporter of one or more secondary pupil children;
    - (ii) the person is a home educator or distance educator of one or more of those children; or
  - (e) the following apply:



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- (i) the person is the principal carer of one or more children;
- (ii) the person is a relative (other than a parent) of a child (the *kin child*);
- (iii) there is a document that provides for the kin child to live with the person for the care and wellbeing of the kin child and that is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children;
- (iv) the person is acting in accordance with the document.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *registered and active foster carer* see section 5B of the 1991 Act.

Note 3: For *home educator* see section 5C of the 1991 Act.

Note 4: For *distance educator* see section 5D of the 1991 Act.

Note 5: For *family law order* see subsection 23(1) of the 1991 Act.

Note 6: For *relative (other than a parent)* see section 5E of the 1991 Act.

Note 7: For *main supporter* see section 5G of the 1991 Act.

Note 8: For *secondary pupil child* see section 5F of the 1991 Act.

Note 9: See also section 40U (general rules about determinations under this Subdivision).

*Discretionary determination*

- (3) The Employment Secretary may make a determination under this section in relation to the person if the Employment Secretary is satisfied that the person is the principal carer of one or more children:
  - (a) who suffer from a physical, intellectual or psychiatric disability or illness; and
  - (b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the employment pathway plan requirements.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: See also section 40U (general rules about determinations under this Subdivision).

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*Revocation*

- (4) The Employment Secretary may revoke a determination under this section in relation to a person if the Employment Secretary is satisfied in all the circumstances that it is no longer appropriate for the determination to remain in effect.

**40Q Pre-natal and post-natal relief**

- (1) A pregnant woman is not required to satisfy the employment pathway plan requirements for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the employment pathway plan requirements for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

**40R Persons engaged in work**

*Persons 55 and over*

- (1) A person who has reached 55 years of age is not required to satisfy the employment pathway plan requirements in respect of a period of 2 weeks if:
- (a) unless paragraph (b) applies—the person:
- (i) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in that 2-week period; or
  - (ii) is engaged, for at least 30 hours in that 2-week period, in a combination of approved unpaid voluntary work for an approved organisation and of paid work that the Secretary regards as suitable; or
  - (iii) is engaged for at least 30 hours in that 2-week period in paid work that the Secretary regards as suitable; or

- (b) if the person is under 60 years of age and that 2-week period begins before the end of 12 months starting on the day the person starts to receive jobseeker payment or special benefit—the person:
- (i) is engaged, for at least 30 hours in that 2-week period, in work consisting of a combination of approved unpaid voluntary work for an approved organisation and of at least 15 hours of paid work that the Secretary regards as suitable; or
  - (ii) is engaged for at least 30 hours in that 2-week period in paid work that the Secretary regards as suitable.
- (2) For the purposes of this section:
- (a) approved unpaid voluntary work is work, either full-time or otherwise, that has been approved by the Employment Secretary for the purposes of this section; and
  - (b) an approved organisation is an organisation that has been approved by the Employment Secretary for the purposes of this section.

*Principal carers and people with partial capacity to work*

- (3) A person is not required to satisfy the employment pathway plan requirements in respect of a period of 2 weeks if the person:
- (a) is the principal carer of at least one child or has a partial capacity to work; and
  - (b) is engaged for at least 30 hours in that 2-week period in paid work that the Secretary regards as suitable.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

## **40S Jobseeker payment rules only**

*Rehabilitation program*

- (1) A person is not required to satisfy the employment pathway plan requirements in respect of a period (the *applicable period*) if:

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- (a) subparagraph 593(1)(a)(ii) of the 1991 Act applies in relation to the person; and
- (b) the person is undertaking a rehabilitation program; and
- (c) the program is intended to enhance the person's ability to work; and
- (d) the length of the person's participation in the program is, or is likely to be, at least 6 weeks; and
- (e) the person's participation in the program will, or is likely to, end within the period of 208 weeks after the jobseeker payment commenced to be payable to the person.

The applicable period is the period the person is undertaking the rehabilitation program or such shorter or longer period determined by the Employment Secretary.

### *Interaction with the ABSTUDY Scheme*

- (2) A person is not required to satisfy the employment pathway plan requirements in respect of a period (the ***applicable period***) if:
  - (a) jobseeker payment is payable to the person because of subsection 614(6) of the 1991 Act; and
  - (b) the person has commenced the full-time course of education referred to in paragraph 614(6)(a) of the 1991 Act.

The applicable period is the period during which the payment is payable to the person because of that subsection.

## **40T Exceptional circumstances**

- (1) A person is not required to satisfy the employment pathway plan requirements if the person is included in a class of persons specified in a determination under this section that is in effect.
- (2) The Employment Secretary may make a determination under this section specifying a class of persons for the purposes of subsection (1).

Note: See also section 40U (general rules about determinations under this Subdivision).

- (3) The Employment Secretary may make the determination only if the Employment Secretary is satisfied that exceptional circumstances exist to justify making the determination.
- (4) Without limiting subsection (3), the exceptional circumstances may be that there is an emergency, disaster or public health crisis affecting Australia or one or more parts of Australia.

*Publication*

- (5) The Employment Secretary must cause details of the class of persons and of the exceptional circumstances to be published on the Employment Department's website.

*Revocation of determination*

- (6) The Employment Secretary may revoke a determination under this section if the Employment Secretary is satisfied in all the circumstances that it is no longer appropriate for the determination to remain in effect.
- (7) The Employment Secretary must cause details of the revocation to be published on the Employment Department's website.

#### **40U General rules**

- (1) A determination under this Subdivision may specify the period during which the determination has effect.
- (2) A determination under this Subdivision may be expressed to take effect on a day that is earlier than the day on which the determination is made.
- (3) A revocation of a determination under this Subdivision takes effect on the day specified in the revocation, which must not be earlier than the day the revocation is made.
- (4) A determination under this Subdivision, or a revocation of such a determination, is not a legislative instrument.

**Subdivision D—Variation, cancellation and review of  
employment pathway plans**

**40V Variation, cancellation and review of employment pathway  
plans**

*Variation*

- (1) The Employment Secretary may vary an employment pathway plan that is in force under Subdivision A in relation to a person after discussion with the person and after taking into account the matters mentioned in paragraphs 40D(5)(a), (b), (c) and (d).
- (2) The Employment Secretary may vary the plan on the Employment Secretary's own initiative or on request of the person.
- (3) If the person requests a variation of the plan, the Employment Secretary must:
  - (a) make a decision under subsection (1) to vary the plan; or
  - (b) make a decision to refuse to vary the plan.
- (4) The Employment Secretary must notify the person of the variation or of the decision to refuse to vary the plan.
- (5) If an employment pathway plan is in force under Subdivision A in relation to a person, the person may vary the plan in accordance with the processes referred to in subsection 40B(1).

*Cancellation*

- (6) The Employment Secretary must cancel an employment pathway plan that is in force under Subdivision A in relation to a person if the person enters into another employment pathway plan.

*Review*

- (7) The Employment Secretary may review an employment pathway plan that is in force under Subdivision A in relation to a person.

- (8) The Employment Secretary may review the plan on the Employment Secretary's own initiative or on request of the person.

**Subdivision E—Notification of circumstances preventing or affecting compliance with employment pathway plans**

**40W Notification of circumstances preventing or affecting compliance with employment pathway plans**

If an employment pathway plan is in force under Subdivision A in relation to a person, the person must notify the Employment Secretary of any circumstances preventing the person from complying, or reducing the person's capacity to comply, with the requirements in the plan.

## **Division 2B—Circumstances in which paid work is unsuitable**

### **40X Circumstances in which paid work is unsuitable**

- (1) For the purposes of the social security law, particular paid work is *unsuitable* to be done by a person if and only if:
- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no relevant training will be provided to the person; or
  - (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
  - (c) the person is the principal carer of one or more children, and does not have access to appropriate care and supervision for the children during:
    - (i) the times when the person would be required to undertake the work; or
    - (ii) reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home; or
  - (d) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or
  - (f) commuting between the person's home and the place of work would be unreasonably difficult; or
  - (g) the work would require enlistment in the Defence Force or the Reserves; or



- (h) the work requires the person to move from a home in a place to a home in another place; or
- (i) for any other reason, the work is unsuitable to be done by the person.

Note: For the purposes of paragraph (i), see also subsections (4) and (5).

*Work outside the area in which the person's home is situated*

(2) If:

(a) a person seeks work in an area (the **new area**) that is outside the area (the **old area**) in which the person's home is situated; and

(b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (1)(f) or (h) unless:

(c) the person is under the age of 18; or

(d) the person or the person's partner is pregnant; or

(e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or

(f) the acceptance of the offer would jeopardise the current paid work, or the paid work prospects, of the person's partner; or

(g) the person or the person's partner has a child under the age of 16 who is living with them or is living somewhere else in the old area; or

(h) the person or the person's partner has significant caring responsibilities in the old area; or

(i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or

(j) it is more appropriate for the person to participate in education or training than to accept the offer; or

(k) the person would suffer severe financial hardship if the person were to accept the offer.

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- (3) Without limiting subsection (2), if a person, when seeking paid work through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken to have sought work outside that area.

*Legislative instrument*

- (4) The Employment Secretary must, by legislative instrument, determine matters to be taken into account in working out whether particular paid work is unsuitable to be done by a person for the purposes of paragraph (1)(i).
- (5) Subsection (4) does not limit the matters that may be taken into account in working out whether particular paid work is unsuitable to be done by a person for the purposes of paragraph (1)(i).

*Interpretation*

- (6) To avoid doubt, for the purposes of this section, paid work is not unsuitable to be done by a person merely because:
- (a) the work is not the person's preferred type of work; or
  - (b) the work is not commensurate with the person's highest level of educational attainment or qualification; or
  - (c) the level of remuneration for the work is not the person's preferred level of remuneration.

## **Division 2C—Guidelines**

### **40Y Guidelines**

The Employment Secretary must, by legislative instrument, determine guidelines about:

- (a) how a person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; and
- (b) the following:
  - (i) the kind of information to be provided by the Employment Secretary to a person who has made a claim for a participation payment about the person entering into an employment pathway plan under section 40D or 40E;
  - (ii) the processes (including any technological requirements) for entering into such a plan;
  - (iii) the processes for reporting compliance with the requirements in such a plan; and
- (c) the circumstances in which performing paid work in Australia may constitute a risk to health or safety and how a person satisfies the Employment Secretary that particular paid work constitutes such a risk.

## **Division 3—Commencement of social security payment**

### **41 Commencement**

- (1) Unless another provision of the social security law provides otherwise, a social security payment becomes payable to a person on the person's start day in relation to the social security payment.
- (2) Unless another provision of the social security law provides otherwise, a concession card takes effect on the person's start day in relation to the card.

### **42 Start day**

For the purposes of the social security law, a person's start day in relation to a social security payment or a concession card is the day worked out in accordance with Schedule 2.

## **Division 3AA—Compliance with participation payment obligations: persons other than declared program participants**

### **Subdivision A—Introduction**

#### **42AA Simplified outline of this Division**

This Division is about the Secretary taking action to ensure that people (other than declared program participants) meet their obligations in relation to participation payments. The participation payments are jobseeker payment and, for some people, youth allowance, parenting payment and special benefit.

A person commits a mutual obligation failure for failing to comply with obligations relating to participation payments, such as attending appointments, undertaking activities, or taking action to gain paid work. A person commits a work refusal failure for failing to accept an offer of paid work (except paid work that is unsuitable to be done by the person). A person commits an unemployment failure for becoming unemployed because of a voluntary act (except a reasonable act) or misconduct.

For a mutual obligation failure or a work refusal failure, the participation payment may not be payable until the person complies with a reconnection requirement. The person may then receive back pay. The participation payment must be cancelled if the person fails to comply with the reconnection requirement within 4 weeks.

If a person who commits a mutual obligation failure has persistently committed mutual obligation failures and does not have a reasonable excuse then, depending on the circumstances, the person's participation payment may be reduced by either 50% or 100% for a period (in addition to not being payable) or be

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cancelled. In addition, a participation payment may be cancelled if a person does not have a reasonable excuse for a work refusal failure. No participation payments are payable to a person for 4 weeks if a participation payment is cancelled for a mutual obligation failure or a work refusal failure.

If a person commits an unemployment failure, participation payments may not be payable to the person for either 4 or 6 weeks, depending on whether relocation assistance had been paid to help the person take up the employment concerned. Also, the person's participation payment may be cancelled if he or she was receiving a participation payment when the unemployment failure was committed.

**42AB Division not to apply to declared program participants**

This Division applies in relation to a person if the person is not a declared program participant.

**Subdivision B—Failures for which compliance action must be taken**

**42AC Mutual obligation failures**

- (1) A person commits a **mutual obligation failure** if the person is receiving a participation payment and any of the following applies:
  - (a) the person fails to comply with a requirement that was notified to the person under subsection 63(2) or (4);
  - (b) the person fails to comply with a requirement, under section 40A, to enter into an employment pathway plan;
  - (c) the person fails to attend, or to be punctual for, an appointment that the person is required to attend by:
    - (i) a notice under subsection 63(2); or
    - (ii) an employment pathway plan that is in force in relation to the person;

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- (d) the person fails to attend, to be punctual for, or to participate in, an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person;
- (e) an employment pathway plan is in force in relation to the person and the person fails to satisfy the Secretary that the person has undertaken adequate job search efforts in relation to a period worked out in accordance with the plan (see subsection (2));
- (f) an employment pathway plan is in force in relation to the person and the person fails to comply with any other requirement of the plan that applies to the person;
- (g) the Secretary is satisfied that the person acted in an inappropriate manner:
  - (i) during an appointment to which paragraph (c) applies that the person attended; or
  - (ii) while participating in an activity referred to in paragraph (d);
- (h) the person intentionally acts in a manner and it is reasonably foreseeable that acting in that manner could result in an offer of paid work in Australia (except particular paid work that is unsuitable to be done by the person) not being made to the person;
- (i) the person fails to:
  - (i) attend a job interview; or
  - (ii) act on a job opportunity when requested to do so by an employment services provider.

Note: In certain circumstances a person is taken to be receiving a participation payment even if it is not payable to the person: see section 42AQ.

(1A) However, a person does not commit a ***mutual obligation failure*** in relation to the person's failure to:

- (a) accept an offer of paid work in Australia of more than 15 hours per week; or

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(b) undertake paid work in Australia of more than 15 hours per week;

if the person is the principal carer of at least one child or has a partial capacity to work.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

- (2) For the purposes of paragraph (1)(e), the question whether a person has undertaken adequate job search efforts in relation to a particular period is to be worked out in accordance with a determination in force under subsection (3).
- (3) The Secretary must, by legislative instrument, make a determination for the purposes of subsection (2).
- (4) Paragraph (1)(c) does not limit paragraph (1)(a), and paragraph (1)(i) does not limit paragraph (1)(h).

**42AD Work refusal failures**

- (1) A person commits a *work refusal failure* if:
- (a) the person is receiving a participation payment; and
  - (aa) in the case where the participation payment is parenting payment—the person is not someone to whom paragraph 500(1)(ca) of the 1991 Act applies; and
  - (b) the person refuses or fails to accept an offer of paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: In certain circumstances a person is taken to be receiving a participation payment even if it is not payable to the person: see section 42AQ.

Note 2: See Division 2B for the circumstances in which paid work is unsuitable to be done by a person.

- (2) However, a person does not commit a *work refusal failure* if:
- (a) the person is the principal carer of at least one child or has a partial capacity to work; and



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- (b) the person refuses or fails to accept an offer of paid work in Australia that is more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

#### **42AE Unemployment failures**

- (1) A person commits an *unemployment failure* if:
- (a) the person is receiving a participation payment; and
  - (aa) in the case where the participation payment is parenting payment—the person is not someone to whom paragraph 500(1)(ca) of the 1991 Act applies; and
  - (b) the person becomes unemployed:
    - (i) as a direct or indirect result of a voluntary act of the person; or
    - (ii) as a result of the person’s misconduct as an employee.

Note: In certain circumstances a person is taken to be receiving a participation payment even if it is not payable to the person: see section 42AQ.

- (2) A person also commits an *unemployment failure* if:
- (a) the person is not receiving, but has made a claim for, a participation payment; and
  - (aa) in the case where the participation payment is parenting payment—the person is not someone to whom paragraph 500(1)(ca) of the 1991 Act applies; and
  - (b) the person becomes unemployed (whether before or after making the claim):
    - (i) as a direct or indirect result of a voluntary act of the person; or
    - (ii) as a result of the person’s misconduct as an employee.

- (3) However, a person does not commit an *unemployment failure* because of subparagraph (1)(b)(i) or (2)(b)(i) if the person satisfies the Secretary that the voluntary act was reasonable.

- (4) A person also does not commit an *unemployment failure* if:
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- (a) the person is the principal carer of at least one child or has a partial capacity to work; and
- (b) the work in relation to which the person became unemployed was work of more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

**Subdivision C—Compliance action that must be taken for particular failures**

**42AF Compliance action for mutual obligation failures**

*Usual rule*

- (1) If a person commits a mutual obligation failure (the **relevant failure**), the Secretary may:
  - (a) determine that the person’s participation payment is not payable to the person for a period (see section 42AL); and
  - (b) take action under subsection (2) (if applicable).

Note: The person may be eligible for back pay once the payment suspension period ends (see subsection 42AL(4)).

*Special rule—persistent mutual obligation failures and no reasonable excuse*

- (2) If:
  - (a) the Secretary is satisfied in accordance with an instrument made under subsection 42AR(1) that the person has persistently committed mutual obligation failures; and
  - (b) the person does not satisfy the Secretary that the person has a reasonable excuse for the relevant failure (see sections 42AI and 42AJ);the Secretary may determine:
  - (c) that an instalment of the person’s participation payment for an instalment period is to be reduced (see section 42AN), in

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addition to making a determination under paragraph (1)(a) of this section; or

- (d) that the person's participation payment is cancelled (see section 42AP).

Note 1: For paragraph (c), the person may be eligible for back pay once the person's payment suspension period ends (see subsection 42AL(4)). However, the back pay may be reduced (including to nil) if the instalment period for which an instalment is to be reduced under paragraph (c) overlaps with the payment suspension period.

Note 2: For paragraph (d), a further consequence is that participation payments will not be payable to the person for the person's post-cancellation non-payment period (see subsection 42AP(5)).

- (3) A determination made under paragraph (2)(d) for the relevant failure has effect despite any determination made under paragraph (1)(a) for the relevant failure.

*Action not to be taken—instalment already reduced to nil for instalment period when failure committed*

- (4) Despite subsections (1) and (2), the Secretary must not make a determination under this section for the relevant failure if:
- (a) the Secretary has previously determined under paragraph (2)(c) that an instalment of the person's participation payment for an instalment period is to be reduced; and
  - (b) the instalment for the instalment period is reduced by the whole of the amount of the instalment (see paragraph 42AN(3)(b)); and
  - (c) the person commits the relevant failure during that instalment period.

### **42AG Compliance action for work refusal failures**

- (1) If a person commits a work refusal failure, the Secretary may:
- (a) determine that the person's participation payment is not payable to the person for a period (see section 42AL); or

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- (b) determine that the person's participation payment is cancelled (see section 42AP) if the person does not satisfy the Secretary that the person has a reasonable excuse for the work refusal failure (see section 42AI).

*Action not to be taken—instalment already reduced to nil for instalment period when failure committed*

- (4) Despite subsection (1), the Secretary must not take action under this section for a work refusal failure (the **relevant failure**) if:
  - (a) the Secretary has previously determined under paragraph 42AF(2)(c) that the amount of an instalment of the person's participation payment for an instalment period is to be reduced; and
  - (b) the instalment for the instalment period is reduced by the whole of the amount of the instalment (see paragraph 42AN(3)(b)); and
  - (c) the person commits the relevant failure during that instalment period.

**42AH Compliance action for unemployment failures**

*Unemployment failures committed by persons receiving a participation payment*

- (1) If a person receiving a participation payment commits an unemployment failure, the Secretary may determine that the participation payment is cancelled (see section 42AP).

Note: Participation payments will not be payable to the person for the person's post-cancellation non-payment period (see subsection 42AP(5)).

*Unemployment failures committed by persons claiming a participation payment*

- (2) If a person who has made a claim for (but is not receiving) a participation payment has committed an unemployment failure, the Secretary may determine that participation payments (whether or

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not the same as the participation payment that was claimed) are not payable to the person for a period (see section 42AO).

**42AI Reasonable excuses—matters that must or must not be taken into account**

*Matters to be taken into account*

- (1) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing:
  - (a) a mutual obligation failure (see paragraph 42AF(2)(b)); or
  - (b) a work refusal failure (see paragraph 42AG(1)(b)).
- (2) To avoid doubt, a determination under subsection (1) does not limit the matters that the Secretary may take into account in deciding whether the person has a reasonable excuse.

*Matters not to be taken into account*

- (3) The Secretary may, by legislative instrument, determine matters that the Secretary must not take into account in deciding whether a person has a reasonable excuse for committing:
  - (a) a mutual obligation failure (see paragraph 42AF(2)(b)); or
  - (b) a work refusal failure (see paragraph 42AG(1)(b)).

**42AJ Reasonable excuses for mutual obligation failures—prior notification required for certain failures**

- (1) For the purposes of paragraph 42AF(2)(b), an excuse cannot be a reasonable excuse for a mutual obligation failure mentioned in subsection (2) of this section that is committed by a person unless:
  - (a) the person notifies the excuse as mentioned in subsection (3) of this section; or
  - (b) the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification.

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Note: The Secretary may also decide for other reasons that the excuse is not a reasonable excuse.

- (2) The failures are as follows:
- (a) a failure to comply with a requirement that was notified to the person under subsection 63(2) to attend an office of the Department, to contact the Department, or to attend a particular place;
  - (b) without limiting paragraph (a), a failure to attend, or to be punctual for, an appointment that the person is required to attend by a notice under subsection 63(2);
  - (c) a failure to attend, to be punctual for, or to participate in, an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person;
  - (d) a failure to attend, or to be punctual for, an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person.
- (3) The person must notify the excuse:
- (a) for a failure mentioned in paragraph (2)(a) or (b):
    - (i) before the end of the time specified under subsection 63(2); and
    - (ii) to the person or body specified by the Secretary as the person or body to whom prior notice should be given if the person is unable to comply with the notice under subsection 63(2); and
  - (b) for a failure mentioned in paragraph (2)(c) or (d):
    - (i) before the start of the activity on the day concerned, or before the time of the appointment; and
    - (ii) to the person or body specified in the employment pathway plan as the person or body to whom prior notice should be given if the person is unable to undertake the activity or attend the appointment.

**42AK Relationship between provisions of this Subdivision**

Sections 42AF, 42AG and 42AH do not limit each other.

**Subdivision D—Effect of taking particular compliance action**

**42AL Payment suspension periods for mutual obligation failures  
and work refusal failures**

- (1) If the Secretary determines under section 42AF or 42AG that a participation payment is not payable to a person for a period, the participation payment is not payable for the period (the *payment suspension period*) worked out under this section.
- (2) The payment suspension period begins at the start of:
  - (a) the instalment period in which the person commits the mutual obligation failure or the work refusal failure (unless paragraph (b) applies); or
  - (b) if the Secretary determines that a later instalment period is more appropriate—that later instalment period.
- (3) The payment suspension period ends immediately before:
  - (a) the day the person complies with the reconnection requirement imposed under subsection 42AM(1) (unless paragraph (b) of this subsection applies); or
  - (b) if the Secretary determines that an earlier day is more appropriate—that earlier day.
- (4) If the payment suspension period ends under subsection (3) for a person, then, for the purposes of the social security law after the end of that period:
  - (a) the participation payment is taken to be payable to the person from the start of that period (subject to the social security law); and
  - (b) the Secretary is taken to have made a determination to the effect mentioned in paragraph (a).

Note: The effect of this subsection is that the person may receive back pay for the payment suspension period. However, the back pay may be

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reduced (including to nil) if the instalment period for which an instalment is to be reduced under section 42AN overlaps with the payment suspension period.

**42AM Reconnection requirements for mutual obligation failures and work refusal failures**

- (1) The Secretary must impose a requirement (the *reconnection requirement*) on a person if the Secretary determines under section 42AF or 42AG that a participation payment is not payable to the person for a period.
- (2) The Secretary must notify the person, in any way the Secretary considers appropriate, of:
  - (a) the reconnection requirement; and
  - (b) the effect of not complying with the reconnection requirement.
- (3) The Secretary must determine that the person's participation payment is cancelled if:
  - (a) the Secretary does not determine an earlier day for the purposes of ending the person's payment suspension period under paragraph 42AL(3)(b); and
  - (b) the person fails to comply with the reconnection requirement within 4 weeks after it is notified under subsection (2) of this section.
- (4) If the Secretary makes a determination under subsection (3), the participation payment is cancelled at the end of the 4 weeks mentioned in paragraph (3)(b).

**42AN Reducing instalments of participation payments for mutual obligation failures**

- (1) This section applies if:
  - (a) a person commits a mutual obligation failure; and
  - (b) the Secretary makes a determination (the *reduction determination*) under paragraph 42AF(2)(c) that an



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instalment of a participation payment for an instalment period (the **reduction period**) is to be reduced.

- (2) The reduction period must be:
  - (a) the instalment period in which the person commits the mutual obligation failure (unless paragraph (b) applies); or
  - (b) if the Secretary determines that a later instalment period is more appropriate—that later instalment period.
- (3) The instalment payable to the person is reduced by an amount included in the reduction determination that is equal to:
  - (a) half of the instalment that would otherwise have been payable for the reduction period; or
  - (b) the whole of the instalment that would otherwise have been payable for the reduction period.

Note: Paragraph (b) may have the effect of reducing the amount of the instalment to nil. However, the participation payment remains payable (see subsection (6)).
- (4) The Secretary must determine which of paragraph (3)(a) or (b) applies in relation to the reduction in accordance with an instrument made under subsection 42AR(1).
- (5) The Secretary may make the reduction determination in accordance with paragraph (3)(b) for the reduction period even if the Secretary has already made a determination for the person in accordance with paragraph (3)(a) for the same instalment period for a different mutual obligation failure.
- (6) The participation payment remains payable for the reduction period even if the amount of an instalment is reduced to nil in accordance with this section.

**42AO Unemployment preclusion periods for unemployment failures by persons claiming participation payments**

- (1) If the Secretary determines under subsection 42AH(2) that participation payments are not payable to a person who has made a claim for a participation payment, then participation payments are

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not payable to the person for the period (the ***unemployment preclusion period***) of:

- (a) 4 weeks beginning on the day the person becomes unemployed as a result of the person's voluntary act or misconduct (unless paragraph (b) applies); or
- (b) 6 weeks beginning on that day, if, during the 6 months ending on the day immediately before that day, relocation assistance, for the employment to which the voluntary act or misconduct related, has been paid to or for the benefit of the person.

Note 1: The unemployment preclusion period may affect the person's start day for a claim (see clauses 5 and 5A of Schedule 2).

Note 2: For the purposes of this subsection, it is irrelevant which participation payment the person claimed (see subsection 42AH(2)).

- (2) For the purposes of this Act, ***relocation assistance*** for employment means a payment:
  - (a) that is made by or on behalf of the Commonwealth to or for the benefit of a person for the purpose of assisting the person to take up the employment; and
  - (b) that is specified under subsection (3).
- (3) The Secretary may, by legislative instrument, specify one or more payments for the purposes of paragraph (2)(b).

**42AP Cancelling participation payments**

- (1) This section applies if the Secretary determines under Subdivision C that the participation payment of a person who has committed a mutual obligation failure, a work refusal failure or an unemployment failure is cancelled.

*When payments are cancelled*

- (2) For a mutual obligation failure or a work refusal failure, the participation payment is cancelled at the start of the following day (the ***cancellation day***):

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- (a) the first day of the instalment period in which the person commits the failure (unless paragraph (b) applies);
  - (b) if the Secretary determines that a later instalment period is more appropriate—the first day of that later instalment period.
- (3) For an unemployment failure committed by a person who was receiving the participation payment when he or she became unemployed, the participation payment is cancelled at the start of the following day (the *cancellation day*):
- (a) the day that the person becomes unemployed as a result of the person's voluntary act or misconduct (unless paragraph (b) applies);
  - (b) the first day of the first instalment period for the person that begins after the day the Secretary makes the determination under subsection 42AH(1), if the Secretary considers it more appropriate.
- (4) For the purposes of paragraph (3)(b), the day the Secretary makes the determination is the day the Secretary originally makes the determination (even if another decision in relation to the determination is later made on review).

*Participation payments not payable for post-cancellation non-payment period*

- (5) A participation payment (whether or not the same as the participation payment that was cancelled) is not payable to the person for the period (the *post-cancellation non-payment period*) of:
- (a) 4 weeks beginning on the cancellation day (unless paragraph (b) applies); or
  - (b) 6 weeks beginning on the cancellation day, if:
    - (i) the cancellation is for an unemployment failure; and
    - (ii) during the 6 months ending on the day immediately before the person becomes unemployed, relocation assistance, for the employment to which the voluntary

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act or misconduct related, has been paid to or for the benefit of the person.

Note 1: If the person makes a claim for a participation payment, the post-cancellation non-payment period may affect the person's start day for the claim (see clauses 5 and 5A of Schedule 2).

Note 2: For *relocation assistance*, see subsection 42AO(2).

*Participation payment taken to not be cancelled for certain purposes during post-cancellation non-payment period*

- (6) Despite subsections (2) and (3), the participation payment is taken to not be cancelled for the purposes of the following provisions until the end of the post-cancellation non-payment period:
- (a) a provision of the social security law, or the Family Assistance Act, that refers to a post-cancellation non-payment period or a compliance penalty period, other than a provision that is determined by the Minister under subsection 42AR(2) of this Act for the purposes of this paragraph;
  - (b) section 106B of this Act (automatic cancellation of certain concession cards);
  - (c) a provision of the social security law that is determined by the Minister under subsection 42AR(2) of this Act for the purposes of this paragraph.

**Subdivision E—Miscellaneous**

**42AQ Persons for whom participation payments not payable taken to still be receiving payment for certain purposes**

If, under this Division, a participation payment is not payable to a person for a period, then, for the purposes of the following provisions, the person is taken to be receiving that participation payment for that period:

- (a) Subdivision B (except if the participation payment is not payable because of subsections 42AH(2) and 42AO(1) (unemployment preclusion periods));

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- (b) sections 63 and 64;
- (c) any other provision of the social security law, or the Family Assistance Act, that is determined by the Minister under subsection 42AR(2) of this Act for the purposes of this paragraph.

**42AR Minister to make determinations for purposes of this Division**

- (1) The Minister must, by legislative instrument, determine the following:
  - (a) for the purposes of paragraph 42AF(2)(a)—circumstances in which the Secretary must, or must not, be satisfied that a person has persistently committed mutual obligation failures;
  - (c) for the purposes of subsection 42AN(4):
    - (i) circumstances in which paragraph 42AN(3)(a) applies in relation to the reduction of an instalment for an instalment period; and
    - (ii) circumstances in which paragraph 42AN(3)(b) applies in relation to the reduction of an instalment for an instalment period.
- (2) In addition, the Minister may, by legislative instrument, determine provisions of the social security law or the Family Assistance Act for the purposes of paragraph 42AP(6)(a) or (c) or 42AQ(c) of this Act.

**42AS Relationship with section 80**

Nothing in this Division affects the power of the Secretary to cancel or suspend a participation payment under section 80.

Note: However, the Secretary cannot suspend or cancel a participation payment under that section on the basis that the participation payment is not, or was not, payable because of the operation of this Division (see paragraph 80(1)(b)).

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**Division 3A—Compliance with participation payment obligations: declared program participants**

**Subdivision A—Introduction**

**42A Simplified outline of this Division**

The Secretary may determine that a declared program participant commits a no show no pay failure, a connection failure, a reconnection failure or a serious failure.

A declared program participant commits such a failure by failing to comply with his or her obligations in relation to a participation payment. The participation payments are jobseeker payment and, for some people, youth allowance, parenting payment and special benefit.

For a no show no pay failure, a penalty amount is deducted from the participant's participation payment.

For a connection failure, a requirement may be imposed on the participant (and if the participant fails to comply with the requirement, the participant commits a reconnection failure).

For a reconnection failure, generally a penalty amount is deducted from the participant's participation payment until the participant complies with a requirement imposed on the participant.

For a serious failure, a participation payment is not payable to the participant for 8 weeks. The 8 week period may be ended in certain circumstances.

The Secretary may also determine that a declared program participant is unemployed as a result of a voluntary act or misconduct. If the Secretary does so, a participation payment is not

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payable to the participant for either 8 or 12 weeks, depending on the circumstances.

The Secretary may also determine that a participation payment is not payable to a declared program participant for a period because of certain failures. Once that period ends, the participant may be able to receive back pay. For a failure to attend an appointment, a penalty amount may be deducted from the participant's participation payment.

**42B Application of this Division only to declared program participants**

This Division applies in relation to a person if the person is a declared program participant.

**Subdivision B—No show no pay failures**

**42C No show no pay failures**

- (1) The Secretary may determine that a person commits a *no show no pay failure* on a day if:
  - (a) the person commits any of the following failures:
    - (i) the person fails to participate, on the day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person;
    - (ii) the person fails to comply, on the day, with a serious failure requirement imposed on the person;
    - (iii) the person commits misconduct, on the day, while participating in an activity referred to in subparagraph (i) or while purporting to comply with a serious failure requirement imposed on the person;
    - (iv) the person intentionally acts in a manner on the day (including by failing to attend a job interview), and it is reasonably foreseeable that acting in that manner could result in an offer of paid work in Australia (except

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particular paid work that is unsuitable to be done by the person) not being made to the person; and

- (b) the person receives an instalment of a participation payment for the instalment period in which the day occurs.

Note: A penalty amount is deducted from the person's participation payment for a no show no pay failure (see section 42D).

- (2) Without limiting subparagraph (1)(a)(i), a person fails to participate in an activity if:

- (a) the person fails to attend the activity at all; or
- (b) the person is not punctual in attending the activity.

*Limitations on determining no show no pay failures*

- (3) If:

- (a) more than one subparagraph of paragraph (1)(a) applies to a person on a day; or
- (b) a subparagraph of paragraph (1)(a) applies more than once to a person on a day;

then the Secretary may only determine that the person commits one no show no pay failure on the day.

Note: However, the Secretary may determine that a person commits no show no pay failures on 2 or more days.

- (4) Despite subsection (1), the Secretary must not determine that a person commits a no show no pay failure on a day if:

- (a) both of the following apply:
  - (i) subparagraph (1)(a)(i), (ii) or (iv) applies;
  - (ii) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or
- (b) the person is a new apprentice; or
- (ba) the person is someone to whom section 42SB applies; or
- (c) the day is in a reconnection failure period for the person.

Note: The Secretary must take certain matters into account for the purposes of paragraph (4)(a) and may be prohibited from taking other matters into account for those purposes (see section 42U). For the purposes of



paragraph (4)(a), see also section 42UA (about prior notification of excuses).

*Determining an instalment period*

- (5) The Secretary must include in a determination under this section the instalment period in which a penalty amount (see section 42T) for the no show no pay failure is to be deducted from the person's instalment of a participation payment, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the no show no pay failure.

**42D Deducting the penalty amount**

If the Secretary determines that a person commits a no show no pay failure, the person's penalty amount (see section 42T) for the no show no pay failure is to be deducted from the person's instalment of a participation payment for the instalment period determined under subsection 42C(5).

Note: The balance of the penalty amount is to be deducted from instalments of the participation payment for any later instalment periods, or from any instalments of any other participation payment paid to the person (see section 42V).

**Subdivision C—Connection and reconnection failures**

**42E Connection failures**

- (1) The Secretary may determine that a person commits a **connection failure** if:
- (a) the person commits any of the failures mentioned in subsection (2); and
  - (b) the person receives an instalment of a participation payment for the instalment period in which the person commits the failure.

Note: A reconnection requirement may be imposed for a connection failure (see section 42G).

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- (2) For the purposes of subsection (1), the failures are the following:
- (a) the person fails to comply with a requirement that was notified to the person under subsection 63(2) or (4);
  - (b) the person fails to comply with a requirement, under section 40A, to enter into an employment pathway plan;
  - (c) the person fails to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person;
  - (d) the person is issued with a notice under subsection 42F(1) and fails to comply with it within the period specified in the notice;
  - (e) the person fails to comply with subsection 42F(2);
  - (f) the person fails to comply with a requirement included in an employment pathway plan that is in force in relation to the person to undertake a certain number of job searches per fortnight;
  - (g) the person fails to comply with a requirement included in an employment pathway plan that is in force in relation to the person:
    - (i) to keep a record of the person's job searches in a document referred to in the plan as a job seeker diary; and
    - (ii) to return the job seeker diary to the Department at the end of the period specified in the plan.
- (3) The Secretary may determine that a person commits 2 or more connection failures on a day.

*Limitations on determining connection failures*

- (4) Despite subsection (1), the Secretary must not determine that a person commits a connection failure if:
- (a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or
  - (b) both of the following apply:

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- (i) the person's failure is a failure to comply with a requirement under section 40A to enter into an employment pathway plan;
- (ii) a youth allowance is not payable to the person for the instalment period in which the person commits the failure because of section 547AA of the 1991 Act; or
- (c) both of the following apply:
  - (i) the person's failure is a failure to comply with a requirement under section 40A to enter into an employment pathway plan;
  - (ii) a jobseeker payment is not payable to the person for the instalment period in which the person commits the failure because of section 615 of the 1991 Act; or
- (d) the person is a new apprentice; or
- (da) the person is someone to whom section 42SB applies; or
- (e) in the case of a failure under paragraphs (2)(d) to (g)—the person is receiving parenting payment.

Note: The Secretary must take certain matters into account for the purposes of paragraph (4)(a) and may be prohibited from taking other matters into account for those purposes (see section 42U). For the purposes of paragraph (4)(a), see also section 42UA (about prior notification of excuses).

**42F Requiring a person to apply for job vacancies**

- (1) The Secretary may notify a person that the person must apply for a particular number of advertised job vacancies in the period specified in the notice if:
  - (a) the person is required to satisfy the employment pathway plan requirements; and
  - (b) the person is receiving a participation payment other than a parenting payment.
- (2) For each such job vacancy the person (the *job applicant*) applies for during that period, the job applicant must give the Secretary a written statement from the person or body offering the job vacancy that confirms that the job applicant applied for the job vacancy.

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- (3) The statement from the person or body offering the job vacancy must be in a form approved by the Secretary.
- (4) Subsection (2) does not apply to a person if the Secretary is satisfied that there are special circumstances in which it is not reasonable to expect the person to give the statement referred to in that subsection.

**42G Reconnection requirements**

If:

- (a) the Secretary determines that a person commits a connection failure; or
- (b) a person fails to participate, on a day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person; or
- (c) a person fails to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person; or
- (ca) a person fails to attend an appointment that the person is required to attend by a notice under subsection 63(2); or
- (d) a person fails to comply with any other requirement that was notified to the person under subsection 63(2) or (4);

then:

- (e) if, in relation to a failure referred to in paragraph (b), (c) or (ca), the Secretary determines, under subsection 42SA(1), that a participation payment is not payable to the person—the Secretary must require the person to comply with a requirement (the **reconnection requirement**); or
- (f) in any other case—the Secretary may require the person to comply with a requirement (the **reconnection requirement**).

Note: The Secretary must notify the person of the effect of not complying with the reconnection requirement (see section 42K).

## **42H Reconnection failures**

- (1) The Secretary may determine that a person commits a **reconnection failure** if:
- (a) the person is required to comply with:
    - (i) a reconnection requirement; or
    - (ii) a further reconnection requirement; and
  - (b) the person fails to comply with the requirement.

Note: A further reconnection requirement may be imposed, and a penalty amount is deducted from the person's participation payment, for a reconnection failure (see sections 42J and 42L).

- (2) The Secretary may determine that a person commits 2 or more reconnection failures on a day.

### *Limitation on determining reconnection failures*

- (3) Despite subsection (1), the Secretary must not determine that a person commits a reconnection failure if:
- (a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or
  - (b) the person is someone to whom section 42SB applies.

Note: The Secretary must take certain matters into account for the purposes of paragraph (a) and may be prohibited from taking other matters into account for those purposes (see section 42U). For the purposes of paragraph (a), see also section 42UA (about prior notification of excuses).

### *Reconnection failure period*

- (4) If the Secretary determines that a person commits a reconnection failure, the person commits the failure during the period (the **reconnection failure period**) that:
- (a) begins on the day the person commits the failure; and
  - (b) ends on:
    - (i) the day before the person complies with any further reconnection requirement imposed on the person in relation to the reconnection failure; or

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- (ii) if the person fails to comply with a further reconnection requirement imposed on the person in relation to the reconnection failure, and the person satisfies the Secretary that the person has a reasonable excuse for the failure—the day before the person fails to comply with the requirement.

*Determining an instalment period*

- (5) The Secretary must include in a determination under this section the instalment period in which a penalty amount (see section 42T) for the reconnection failure is to be deducted from the person's instalment of a participation payment.

**42J Further reconnection requirements**

- (1) The Secretary may require a person to comply with a further requirement (the **further reconnection requirement**) if the Secretary determines that:
  - (a) the person fails to comply with a reconnection requirement imposed on the person; or
  - (b) the person fails to comply with an earlier further reconnection requirement imposed on the person.

Note: The Secretary must notify the person of the effect of not complying with the further reconnection requirement (see section 42K).

- (2) The Secretary may impose a further reconnection requirement on a person under subsection (1) even if the person satisfies the Secretary that the person has a reasonable excuse for failing to comply with the reconnection requirement or earlier further reconnection requirement.

**42K Notification requirements**

- (1) The Secretary must notify the person that a failure to comply with a reconnection requirement or a further reconnection requirement imposed on the person might result in either or both of the following:

- (a) a penalty amount being deducted from the person's participation payment;
  - (b) the person's participation payment not being payable to the person for a period.
- (2) The notification does not have to be in writing, but must occur before the person is required to comply with the reconnection requirement or the further reconnection requirement.

#### **42L Deduction of penalty amount**

If the Secretary determines that a person commits a reconnection failure, the person's penalty amount (see section 42T) for the reconnection failure is to be deducted from the person's instalment of a participation payment for the instalment period determined under subsection 42H(5).

Note: The balance of the penalty amount is to be deducted from instalments of the participation payment for any later instalment periods, or from any instalments of any other participation payment paid to the person (see section 42V).

#### **Subdivision D—Serious failures**

##### **42M Serious failure for persistent non-compliance**

- (1) The Secretary may determine that a person commits a *serious failure* if:
- (a) the Secretary is satisfied that the person has, up to the day the Secretary makes the determination, persistently failed to comply with his or her obligations in relation to a participation payment (including by committing no show no pay failures, connection failures or reconnection failures); and
  - (b) the person receives a participation payment for the instalment period in which the Secretary makes the determination.

Note 1: A participation payment is not payable for 8 weeks for a serious failure (see section 42P).

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Note 2: For the day the Secretary makes the determination, see section 42Y.

- (2) In determining whether a person commits a serious failure under subsection (1):
- (a) the Secretary must not take into account failures that were outside the person's control; and
  - (b) the Secretary may only take into account any other failures that occurred intentionally, recklessly or negligently.

*Limitations on determining persistent non-compliance serious failures*

- (3) The Secretary must not determine that a person commits a serious failure under subsection (1):
- (a) while the person is in a serious failure period for another serious failure determined under subsection (1); or
  - (b) if the person is a new apprentice; or
  - (c) if the person is someone to whom section 42SB applies.

*Legislative instrument*

- (4) The Minister must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether a person persistently failed to comply with his or her obligations in relation to a participation payment.
- (5) In deciding whether a person persistently failed to comply with his or her obligations in relation to a participation payment, the Secretary must take the matters determined under subsection (4) into account.
- (6) To avoid doubt, subsection (5) does not limit the matters that the Secretary may take into account in deciding whether the person failed to comply with his or her obligations.



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**42N Serious failure for refusing or failing to accept an offer of paid work**

- (1) The Secretary may determine that a person commits a *serious failure* if:
- (a) the person is receiving a participation payment; and
  - (b) the person refuses or fails to accept an offer of paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: A participation payment is not payable for 8 weeks for a serious failure (see section 42P).

Note 2: See Division 2B for the circumstances in which paid work is unsuitable to be done by a person.

- (2) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if:
- (a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or
  - (b) the person is someone to whom section 42SB applies.

Note: The Secretary must take certain matters into account for the purposes of paragraph (a) and may be prohibited from taking other matters into account for those purposes (see section 42U).

- (3) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if:
- (a) the person is the principal carer of at least one child or has a partial capacity to work; and
  - (b) the person refuses or fails to accept an offer of paid work in Australia that is more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

**42NA Comprehensive compliance assessment**

- (1) Before the Secretary determines that a person has committed a serious failure under section 42M, the Secretary must conduct a comprehensive compliance assessment in relation to the person.

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- (2) The *comprehensive compliance assessment* must assess the following:
- (a) the reasons why the person may have committed failures under this Division;
  - (b) the reasons why the person may have failed to meet other requirements under the social security law;
  - (c) whether the person has any barriers to employment;
  - (d) whether the person's participation requirements are appropriate.

**42NC Determination about serious failure requirements and severe financial hardship**

If the Secretary determines that a person commits a serious failure, the Secretary must also determine that this section applies unless the Secretary is satisfied that:

- (a) the person does not have the capacity to undertake any serious failure requirement; and
- (b) serving the serious failure period would cause the person to be in severe financial hardship.

**42P Consequences of serious failure**

*Participation payment not payable during serious failure period*

- (1) If the Secretary determines that a person commits a serious failure and has determined that section 42NC applies, a participation payment is not payable to the person during the person's serious failure period.

Note 1: The Secretary may end a serious failure period under section 42Q or determine that a participation payment is payable, despite this section, under section 42R.

Note 2: The Secretary may continue the participation payment pending the outcome of an application for review (see sections 131 and 145 of the Administration Act).

- (2) The person's *serious failure period* is the period:

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- (a) beginning on the first day of the first instalment period that begins after the day the Secretary makes the determination; and
- (b) ending:
  - (i) if the Secretary ends the person's serious failure period under section 42Q—on the day mentioned in that section; or
  - (ii) otherwise—8 weeks after the period begins.

Note: For the day the Secretary makes the determination, see section 42Y.

*Serious failure requirements*

- (3) If the Secretary determines that a person commits a serious failure, then the Secretary may require the person to comply with a requirement (the ***serious failure requirement***).

Note: A person who complies with a serious failure requirement may have his or her serious failure period end under section 42Q. A person who fails to comply with a serious failure requirement may commit a no show no pay failure under section 42C.

#### **42Q Ending serious failure periods**

- (1) The Secretary may end a person's serious failure period if:
  - (a) the person begins to comply with a serious failure requirement imposed on the person; or
  - (b) the Secretary determines that:
    - (i) the person does not have the capacity to undertake any serious failure requirement; and
    - (ii) serving the serious failure period would cause the person to be in severe financial hardship.

Note: For ***in severe financial hardship*** see subsection 14A(7) of the 1991 Act.

- (1A) The Secretary may make a determination under paragraph (1)(b) on request or on his or her own initiative.

- (2) The person's serious failure period ends on:

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- (a) if paragraph (1)(a) applies—the day before the person begins to comply with the requirement; or
- (b) if the Secretary makes a determination under paragraph (1)(b) on request—the day before the request was made; or
- (c) if the Secretary makes a determination under paragraph (1)(b) on his or her own initiative—the day before the Secretary makes the determination.

Note: For the day the Secretary makes the determination, see section 42Y.

- (3) Section 42NC does not affect the operation of this section.

**42R Determining that participation payments payable**

- (1) The Secretary may determine that, despite a person's serious failure period, a participation payment is payable to the person during the period mentioned in subsection (2) if the person informs the Secretary that the person intends to comply with a serious failure requirement imposed on the person.
- (2) The participation payment is payable during the period that:
  - (a) begins on the day that the person informs the Secretary; and
  - (b) ends on:
    - (i) the day before the person begins to comply with the serious failure requirement; or
    - (ii) if the person does not begin to comply with the serious failure requirement on the day the person is required to begin—the day before that day.
- (3) If a period ends under subparagraph (2)(b)(ii), the period (the **payability period**) mentioned in subsection (2) does not count towards the 8 weeks of the person's serious failure period.

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**Subdivision E—Unemployment resulting from a voluntary act or misconduct**

**42S Unemployment resulting from a voluntary act or misconduct**

- (1) A participation payment is not payable to a person for the period mentioned in subsection (3) if the Secretary determines that:
- (a) the person is unemployed as a result (whether direct or indirect) of a voluntary act of the person; or
  - (b) the person is unemployed as a result of the person's misconduct as an employee.

Note: The Secretary may continue the participation payment pending the outcome of an application for review (see sections 131 and 145 of the Administration Act).

- (2) Despite paragraph (1)(a), the Secretary must not make a determination under that paragraph in relation to a person if:
- (a) the Secretary is satisfied that the voluntary act was reasonable; or
  - (b) the person is someone to whom section 42SB applies.
- (2A) Despite subsection (1), the Secretary must not make a determination under that subsection in relation to a person if:
- (a) the person is the principal carer of at least one child or has a partial capacity to work; and
  - (b) the work in relation to which the person became unemployed was work of more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

*Period of non-payment*

- (3) The participation payment is not payable to the person for the period (the *unemployment non-payment period*) of:
- (a) 8 weeks beginning on the initial day; or
  - (b) 12 weeks beginning on the initial day if, during the 6 months ending on the day immediately before the person becomes

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unemployed, relocation assistance, in relation to the employment to which the voluntary act or misconduct related, has been paid to or for the benefit of the person.

Note: The Secretary may end an unemployment non-payment period under subsection (4).

(3A) For the purposes of subsection (3), the *initial day* is:

- (a) the day that the person becomes unemployed as a result of the person's voluntary act or misconduct; or
- (b) the first day of the first instalment period that begins after the day the Secretary makes the determination if:
  - (i) the Secretary considers that first day is more appropriate than the day mentioned in paragraph (a); and
  - (ii) the person is receiving a participation payment at the time of the voluntary act or misconduct.

Note: For the day the Secretary makes the determination, see section 42Y.

*Ending unemployment non-payment periods*

- (4) The Secretary may end a person's unemployment non-payment period if:
- (a) the Secretary determines that serving the unemployment non-payment period would cause the person to be in severe financial hardship; and
  - (b) the person is in a class of persons specified by legislative instrument under subsection (5).

Note: For *in severe financial hardship* see subsection 14A(7) of the 1991 Act.

- (5) For the purposes of subsection (4), the Secretary may, by legislative instrument, specify a class of persons.

**Subdivision EA—Immediate non-payment of participation payments for certain failures**

**42SA Immediate non-payment of participation payments for certain failures**

- (1) The Secretary may determine that a participation payment is not payable to a person if:
- (a) the person fails to participate, on a day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person; or
  - (b) the person fails to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person; or
  - (ba) the person fails to attend an appointment that the person is required to attend by a notice under subsection 63(2); or
  - (c) the person fails to comply with a reconnection requirement or a further reconnection requirement.

Note: If paragraph (1)(a), (b) or (ba) applies, a reconnection requirement must be imposed for that failure (see section 42G).

- (1A) Despite subsection (1), the Secretary must not make a determination under that subsection that a participation payment is not payable to a person if the person is someone to whom section 42SB applies.
- (2) The participation payment is not payable to the person for the period beginning on the day the person first commits the failure and ending at the end of:
- (a) for a failure referred to in paragraph (1)(a), (b) or (ba):
    - (i) if the person complies with the reconnection requirement imposed on the person under paragraph 42G(e) because of that failure—the day before the day on which the person so complies; or
    - (ii) if the person fails to comply with the reconnection requirement imposed on the person under paragraph 42G(e) because of that failure—the day

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before the day on which the person first commits the failure to comply with that reconnection requirement; or

- (aa) for a failure referred to in paragraph (1)(c)—the day before the day on which the person complies with a reconnection requirement or further reconnection requirement; or
- (b) if the Secretary determines that an earlier day is more appropriate than the day that would otherwise apply under paragraph (a) or (aa)—that earlier day.

(2AA) If:

- (a) a participation payment is not payable to a person for a period (the *non-payability period*) under subsection (2) because of the person's failure to attend an appointment with the person's employment provider; and
- (b) on a day (the *relevant day*), the Secretary requires the person to attend a rescheduled appointment with the person's employment provider; and
- (c) the rescheduled appointment is on a day that is more than 2 business days after the relevant day;

then, despite subsection (2), the non-payability period is taken to end under that subsection at the end of the relevant day.

Note 1: The requirement to attend the rescheduled appointment will be a reconnection requirement or further reconnection requirement.

Note 2: For *business day*, see section 2B of the *Acts Interpretation Act 1901*.

(2A) If:

- (a) a participation payment is not payable to a person for a period under subsection (2); and
- (b) the participation payment is payable to the person for any days occurring before that period begins;

then, despite any other provision of the social security law, the Secretary may withhold payment of the participation payment to the person for those days until that period ends.

- (3) If a period ends under subsection (2) in relation to a person, then, subject to the social security law, the participation payment becomes payable to the person for that period.



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Note: For a failure referred to in paragraph (1)(b) or (ba), a penalty amount may be deducted from the person's participation payment: see Subdivision EC.

- (4) The Secretary must notify the person of a determination under subsection (1). The Secretary may do so in any way that the Secretary considers appropriate.

**Subdivision EB—Failures by certain recipients of parenting payments**

**42SB Suspension of payments for certain failures**

- (1) This section applies in relation to a person who:
- (a) is receiving a participation payment that is a parenting payment; and
  - (b) is someone to whom paragraph 500(1)(ca) of the 1991 Act applies.
- (2) The Secretary may determine that the parenting payment is not payable to the person if:
- (a) the person fails to comply with a requirement that was notified to the person under subsection 63(2) or (4); or
  - (b) the person fails to comply with a requirement under section 40A to enter into an employment pathway plan; or
  - (c) the person fails to participate, on a day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person; or
  - (d) the person fails to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person.
- (3) The parenting payment is not payable to the person for the period beginning on the day the person first commits the failure and ending at the end of:
- (a) the day before the day on which the person notifies the Secretary that the person intends to comply with the requirement; or

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- (b) if the Secretary determines that an earlier day is more appropriate than the day that would otherwise apply under paragraph (a)—that earlier day.
- (4) If a period ends under subsection (3) in relation to the person, then, subject to the social security law, the parenting payment becomes payable to the person for that period.

**Subdivision EC—Non-attendance failures**

**42SC Non-attendance failures**

- (1) The Secretary may determine that a person commits a *non-attendance failure* if the Secretary makes a determination under subsection 42SA(1) because of the person's failure referred to in paragraph 42SA(1)(b) or (ba).
- (2) Despite subsection (1), the Secretary must not determine that a person commits a non-attendance failure if the person satisfies the Secretary that the person has a reasonable excuse for the person's failure referred to in paragraph 42SA(1)(b) or (ba).

Note: The Secretary must take certain matters into account for the purposes of subsection (2) and may be prohibited from taking other matters into account for those purposes (see section 42U). See also section 42UA (about prior notification of excuses).

*Determining an instalment period*

- (3) The Secretary must include in a determination under this section the instalment period in which a penalty amount (see section 42T) for the non-attendance failure is to be deducted from the person's instalment of a participation payment.

**42SD Deduction of penalty amount**

If the Secretary determines that a person commits a non-attendance failure, the person's penalty amount (see section 42T) for the non-attendance failure is to be deducted from the person's

instalment of a participation payment for the instalment period determined under subsection 42SC(3).

Note: The balance of the penalty amount is to be deducted from instalments of the participation payment for any later instalment periods, or from any instalments of any other participation payment paid to the person (see section 42V).

## **Subdivision F—General provisions**

### **42T Legislative instrument determining method for working out penalty amount**

- (1) The Minister must, by legislative instrument, determine a method for working out a person's penalty amount for a no show no pay failure, a reconnection failure or a non-attendance failure.
- (2) The method determined for a no show no pay failure that a person commits on a day must not provide for a penalty amount for the person that is more than the following:

$$1.4 \times \frac{\text{Amount of the person's instalment of participation payment for the instalment period in which the day occurs}}{\text{Number of days in the person's instalment period}}$$

- (3) The method determined for a reconnection failure that a person commits must not provide for a penalty amount in respect of a day in the reconnection failure period that is more than the following:

$$1.4 \times \frac{\text{Amount of the person's instalment of participation payment for the instalment period in which the day occurs}}{\text{Number of days in the person's instalment period}}$$

- (3A) The method determined for a non-attendance failure that a person commits must not provide for a penalty amount, in respect of a day in the non-attendance failure penalty period, that is more than the following:

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$$1.4 \times \frac{\text{Amount of the person's instalment of participation payment that would, apart from subsection 42SA(2), be payable to the person for the instalment period in which the day occurs}}{\text{Number of days in the person's instalment period}}$$

Note: Any amount withheld under subsection 42SA(2A) for days in the instalment period remains an amount payable to the person for the instalment period.

- (3B) For the purposes of subsection (3A), the ***non-attendance failure penalty period*** is the period:
- (a) beginning on the day the person is notified by the Secretary of the determination under subsection 42SA(1); and
  - (b) ending on the day the period under subsection 42SA(2) ends.
- (4) In addition, the method determined for a no show no pay failure or a reconnection failure must relate to:
- (a) for a person's no show no pay failure—the amount of the participation payment paid to the person on the day on which the person commits the no show no pay failure; or
  - (b) for a person's reconnection failure—the amount of the participation payment paid to the person during the reconnection failure period.
- (5) The method determined by the Minister for working out a person's penalty amount must not affect any rent assistance, pharmaceutical allowance or youth disability supplement payable to the person.
- (6) The method determined may provide for a penalty amount that is nil.
- (7) The legislative instrument may also deal with the amount of a penalty amount to be deducted from an instalment of a participation payment.

## **42U Legislative instruments relating to reasonable excuse**

### *Matters to be taken into account*

- (1) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing:
  - (a) a no show no pay failure (see paragraph 42C(4)(a)); or
  - (b) a connection failure (see paragraph 42E(4)(a)); or
  - (c) a reconnection failure (see paragraph 42H(3)(a)); or
  - (d) a serious failure (see paragraph 42N(2)(a)); or
  - (e) a non-attendance failure (see subsection 42SC(2)).
- (2) To avoid doubt, a determination under subsection (1) does not limit the matters that the Secretary may take into account in deciding whether the person has a reasonable excuse.

### *Matters not to be taken into account*

- (3) The Secretary may, by legislative instrument, determine matters that the Secretary must not take into account in deciding whether a person has a reasonable excuse for committing:
  - (a) a no show no pay failure (see paragraph 42C(4)(a)); or
  - (b) a connection failure (see paragraph 42E(4)(a)); or
  - (c) a reconnection failure (see paragraph 42H(3)(a)); or
  - (d) a serious failure (see paragraph 42N(2)(a)); or
  - (e) a non-attendance failure (see subsection 42SC(2)).

## **42UA Prior notification of excuse**

- (1) This section applies in relation to the following failures of a person:
  - (a) a failure to participate, on a day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person;
  - (b) a failure to comply with a serious failure requirement imposed on the person, where the requirement was to

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undertake an activity on a day or to attend an appointment, or contact a person, at a particular time;

- (c) a failure to comply with a requirement notified to the person under subsection 63(2), where the requirement was to attend an office of the Department, to contact the Department or to attend a particular place for a particular purpose;
  - (d) a failure to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person;
  - (e) a failure to comply with a reconnection requirement or a further reconnection requirement, where the requirement was to undertake an activity on a day or to attend an appointment, or contact a person, at a particular time.
- (2) For the purposes of subparagraph 42C(4)(a)(ii), paragraph 42E(4)(a) or 42H(3)(a) or subsection 42SC(2), in deciding whether the person has a reasonable excuse for the failure, the following table has effect:

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<b>Prior notification of excuse</b>	
<b>For this failure:</b>	<b>An excuse cannot be a reasonable excuse unless:</b>
1 A failure referred to in paragraph (1)(a) or (d)	(a) before the start of the activity on the day concerned or before the time of the appointment, the person notified the excuse to the person or body specified in the employment pathway plan as the person or body to whom prior notice should be given if the person is unable to undertake the activity or attend the appointment; or (b) the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification
2 A failure referred to in paragraph (1)(b) or (e)	(a) before the start of the activity on the day concerned or before the time of the appointment or contact, the person notified the excuse to the person or body notified by the Secretary as the person or body to whom prior notice should be

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**Prior notification of excuse**

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<b>For this failure:</b>	<b>An excuse cannot be a reasonable excuse unless:</b>
	given if the person is unable to undertake the activity, attend the appointment or make the contact; or (b) the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification
3 A failure referred to in paragraph (1)(c)	(a) before the end of the time specified under subsection 63(2), the person notified the excuse to the person or body notified by the Secretary as the person or body to whom prior notice should be given if the person is unable to attend the office, contact the Department or attend the place; or (b) the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification

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Note: Despite subsection (2), the Secretary may decide for other reasons that the excuse is not a reasonable excuse.

#### **42V Deduction from any participation payment**

The balance of a person's penalty amount for a no show no pay failure, a reconnection failure or a non-attendance failure that is not reduced to nil under section 42D, 42L or 42SD is to be deducted from:

- (a) the instalments of the participation payment referred to in that section for any later instalment periods (until the balance is reduced to nil); and
- (b) if the balance is not reduced to nil under paragraph (a)—the instalments of any other participation payment paid to the person (until the balance is reduced to nil).

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**42W Penalty amount not a debt**

To avoid doubt, a penalty amount is not a debt owed to the Commonwealth under Part 5.2 of the 1991 Act.

**42X Payability**

A participation payment remains payable even if it is reduced to nil as a result of deducting a penalty amount, or the balance of a penalty amount, for a no show no pay failure, a reconnection failure or a non-attendance failure.

**42Y Day of determination**

For the purposes of paragraph 42M(1)(a), 42P(2)(a), 42Q(2)(c) or 42S(3A)(b), the day the Secretary makes the determination is the day the Secretary originally makes the determination (even if another decision in relation to the determination is later made on review).

**42YA Relationship between Subdivisions of this Division**

No Subdivision of this Division limits any other Subdivision of this Division.

**42Z Relationship with section 80**

Nothing in this Division affects the power of the Secretary to cancel or suspend a participation payment under section 80 of this Act.



## **Division 4—Payment of social security payment**

### **43 Payment by instalments**

#### *Payment in arrears in relation to periods*

- (1) A social security periodic payment is to be paid:
  - (a) in arrears; and
  - (b) by instalments relating to such periods (not exceeding 14 days) as the Secretary determines.

#### *Timing of payments of instalments*

- (2) Subject to sections 52 and 53, instalments of a social security periodic payment are to be paid at such times as the Secretary determines.

#### *Total instalment relating to a period*

- (3) Subject to subsection (4), the amount that is to be paid to a person as an instalment of a social security periodic payment in relation to a period is the total of the amounts of the social security periodic payment (calculated by reference to the daily rate of payment applicable to each day) payable to the person for days in that period on which the social security periodic payment was payable to the person.

#### *Weekly payments of a social security periodic payment*

- (3A) The Secretary may determine that a person is to be paid the total amount of the social security periodic payment relating to an instalment period of 14 days determined under subsection (1) in 2 payments (the **part payments**) if the person is a member of a class specified under subsection (3B).
- (3B) The Minister may by legislative instrument specify a class of persons for the purposes of subsection (3A).

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- (3C) The first of the part payments:
- (a) is not to exceed the total of the amounts of the social security periodic payment (calculated by reference to the daily rate of payment applicable to each day, subject to subsections (4) and (5A)) payable to the person for days that:
    - (i) are days on which the social security periodic payment was payable to the person; and
    - (ii) are included in the first 7 days of the instalment period; and
  - (b) is to be paid at a time determined by the Secretary that is after the first 7 days of the instalment period.
- (3D) The other of the part payments:
- (a) is the excess of the amount that is to be paid to a person as the instalment of the social security periodic payment in relation to the instalment period (see subsection (3)) over the first of the part payments; and
  - (b) is to be paid at a time determined by the Secretary that is after the end of the instalment period.
- (3E) If the person is, or is to be, paid the total amount of the social security periodic payment relating to the instalment period in part payments, then it is taken for the purposes of the social security law that:
- (a) a single instalment of the social security periodic payment is, or is to be, paid in relation to the period; and
  - (b) that instalment is, or is to be, paid when the last of the part payments is, or is to be, made; and
  - (c) that instalment is equal to the total of the part payments.
- Note: The total of the part payments equals the amount worked out under subsection (3) (as affected by subsection (4), if relevant) as the amount to be paid to the person as the instalment of the social security periodic payment in relation to the instalment period.
- (3F) However, the following provisions of this Act (about deductions from instalments) apply as if each of the part payments were a separate instalment:
- (a) section 61;

- (b) Division 5 of Part 3B;
- (c) subsection 238(2).

*Minimum daily rate*

- (4) If:
- (a) either or both of the following amounts (the **added amounts**) are added to a person's maximum basic rate for a particular day in working out the amount of an instalment of a social security payment:
    - (i) an amount of pharmaceutical allowance;
    - (ii) a pension supplement amount; and
  - (aa) the social security payment:
    - (i) is not a social security pension; or
    - (ii) is a disability support pension to which subsection 1066A(1) or 1066B(1) of the 1991 Act applies; or
    - (iii) if the person has not reached pension age on the day—is a pension PP (single); and
  - (b) if an added amount is a pension supplement amount used by the Rate Calculator to produce an annual rate—the total of the added amounts is more than the person's pension supplement basic amount; and
  - (c) there is no election by the person under subsection 1061VA(1) of the 1991 Act in force on that day; and
  - (d) apart from this subsection, the portion of the instalment corresponding to that day would be less than the person's minimum daily rate, but more than a nil amount;
- the amount of that portion of the instalment is to be increased to the person's minimum daily rate.

- (5) In subsection (4):

***minimum daily rate***, for a person, means:

- (a) if an amount of pharmaceutical allowance is an added amount:

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- (i) if the Rate Calculator for the social security payment produces a fortnightly rate— $^{1/14}$  of that amount; or
- (ii) if the Rate Calculator for the social security payment produces an annual rate— $^{1/364}$  of that amount; or
- (b) if a pension supplement amount is the only added amount— $^{1/364}$  of the person's minimum pension supplement amount.

(5AA) If:

- (a) either or both of the following amounts (the **added amounts**) are added to a person's maximum basic rate for a particular day in working out the amount of an instalment of a social security pension:
    - (i) a pension supplement amount;
    - (ii) energy supplement; and
  - (aa) the social security pension:
    - (i) is not a disability support pension to which subsection 1066A(1) or 1066B(1) of the 1991 Act applies; and
    - (ii) if the person has not reached pension age on the day—is not a pension PP (single); and
  - (b) if one of the added amounts is a pension supplement amount used by the Rate Calculator to produce an annual rate—the pension supplement amount is more than the person's pension supplement basic amount; and
  - (c) there is no election by the person under subsection 915A(1) or 1061VA(1) of the 1991 Act in force on that day; and
  - (d) apart from this subsection, the portion of the instalment corresponding to that day would be less than the person's minimum daily rate, but more than a nil amount;
- the amount of that portion of the instalment is to be increased to the person's minimum daily rate.

(5AB) For the purposes of subsection (5AA), a person's **minimum daily rate** is  $^{1/364}$  of the total of:

- (a) the person's minimum pension supplement amount, if a pension supplement amount is an added amount; and

- (b) the person's energy supplement, if energy supplement is an added amount.

*No reduction of portion of quarterly pension supplement relating to a day*

(5A) If:

- (a) an election by the person under subsection 1061VA(1) of the 1991 Act is in force on a particular day; and
- (b) apart from this subsection, the portion of the instalment of the person's quarterly pension supplement that corresponds to that day would be reduced under subsection 1210(3) of the 1991 Act, but not reduced to a nil amount;

the amount of that portion of the instalment is not to be reduced under subsection 1210(3) of the 1991 Act.

*No reduction of portion of quarterly energy supplement relating to a day*

(5B) If:

- (a) quarterly energy supplement is payable to a person for a particular day; and
- (b) the social security payment to which the quarterly energy supplement relates:
  - (i) is a social security pension; and
  - (ii) is not a disability support pension to which subsection 1066A(1) or 1066B(1) of the 1991 Act applies; and
  - (iii) if the person has not reached pension age on the day—is not a pension PP (single); and
- (c) apart from this subsection, the portion of the instalment of the person's quarterly energy supplement that corresponds to that day would be reduced under subsection 1210(3A) of the 1991 Act; and
- (d) the reduction of the main rate mentioned in subparagraph 1210(3A)(b)(ii) would not be to a nil amount;

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the amount of that portion of the instalment is not to be reduced under subsection 1210(3A) of the 1991 Act.

*Instalment periods*

- (6) Each of the periods determined by the Secretary under subsection (1) is an instalment period in relation to the social security periodic payment.

**44 Payment of instalments to person or nominee**

- (1) Subject to section 45, instalments of a person's social security periodic payment are to be paid to that person.
- (2) If, by virtue of a determination under subsection 46(2), a person's special employment advance is to be paid by instalments, the instalments are to be paid to that person.
- (3) This section has effect subject to Part 3A.

**45 Payment of youth allowance—person under 18 and not independent**

- (1) Subject to subsection (2), instalments of youth allowance of a person who is under 18 years of age and is not independent are to be paid on behalf of the person:
  - (a) if the person has only one living parent—to that parent; or
  - (b) if the person has more than one living parent—to the parent nominated in writing by the person to the Secretary.
- (2) The Secretary may direct that the whole or a part of the instalments of youth allowance of a person referred to in subsection (1) is to be paid to the person.
- (3) If the Secretary gives a direction under subsection (2), the instalments are to be paid in accordance with the direction.
- (4) This section has effect subject to Part 3A.

#### **46 Payment of special employment advance**

- (1) Unless the Secretary makes a determination under subsection (2), a person's special employment advance is to be paid in accordance with section 47.
- (2) If the Secretary considers that it is appropriate for a person's special employment advance to be paid by instalments, the Secretary may determine that the person's special employment advance is to be so paid.

#### **46A Payment of AGDRP**

- (1) Unless the Secretary makes a determination under subsection (2), a person's AGDRP is to be paid in accordance with section 47.
- (2) If the Secretary considers that it is appropriate for a person's AGDRP to be paid by instalments, the Secretary may determine that the person's AGDRP is to be so paid.

#### **46B Payment of AVTOP**

- (1) Unless the Secretary makes a determination under subsection (2), a person's AVTOP is to be paid:
  - (a) in accordance with section 47; and
  - (b) on the date that is determined by the Secretary to be the earliest date on which it is reasonably practicable for the payment to be made to the person.
- (2) If the Secretary considers that it is appropriate for a person's AVTOP to be paid by instalments, the Secretary may determine that the person's AVTOP is to be so paid.

#### **47 Payment of lump sum benefits**

- (1) In this section:

*lump sum benefit* means:

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- (a) an advance payment under section 864A, Part 2.22 or section 1134A of the 1991 Act; or
- (aa) AGDRP, except where the Secretary has made a determination under subsection 46A(2); or
- (aaa) AVTOP, except where the Secretary has made a determination under subsection 46B(2); or
- (ab) child disability assistance; or
- (b) crisis payment; or
- (bb) relocation scholarship payment; or
- (d) education entry payment; or
- (f) fares allowance; or
- (g) one-off payment to the aged; or
- (gd) carer supplement; or
- (ge) one-off energy assistance payment under Part 2.6 of the 1991 Act; or
- (gf) one-off energy assistance payment under Part 2.6A of the 1991 Act; or
- (gg) first 2020 economic support payment under Division 1 of Part 2.6B of the 1991 Act; or
- (gh) second 2020 economic support payment under Division 2 of Part 2.6B of the 1991 Act; or
- (gi) additional economic support payment 2020 under Division 1 of Part 2.6C of the 1991 Act; or
- (gj) additional economic support payment 2021 under Division 2 of Part 2.6C of the 1991 Act; or
- (gk) 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act; or
- (h) one-off payment to carers (carer allowance related); or
- (ha) one-off payment to carers (carer payment related); or
- (hb) 2005 one-off payment to carers (carer payment related); or
- (hc) 2005 one-off payment to carers (carer service pension related); or
- (hd) 2005 one-off payment to carers (carer allowance related); or
- (he) 2006 one-off payment to carers (carer payment related); or



- (hf) 2006 one-off payment to carers (wife pension related); or
  - (hg) 2006 one-off payment to carers (partner service pension related); or
  - (hh) 2006 one-off payment to carers (carer service pension related); or
  - (hi) 2006 one-off payment to carers (carer allowance related); or
  - (hj) 2007 one-off payment to carers (carer payment related); or
  - (hk) 2007 one-off payment to carers (wife pension related); or
  - (hl) 2007 one-off payment to carers (partner service pension related); or
  - (hm) 2007 one-off payment to carers (carer service pension related); or
  - (hn) 2007 one-off payment to carers (carer allowance related); or
  - (ho) 2008 one-off payment to carers (carer payment related); or
  - (hp) 2008 one-off payment to carers (wife pension related); or
  - (hq) 2008 one-off payment to carers (partner service pension related); or
  - (hr) 2008 one-off payment to carers (carer service pension related); or
  - (hs) 2008 one-off payment to carers (carer allowance related); or
  - (ht) economic security strategy payment; or
  - (hu) training and learning bonus; or
  - (hv) activity supplement; or
  - (hw) farm financial assessment supplement; or
  - (hx) FHA supplement; or
  - (hy) relief payment; or
    - (i) pension bonus; or
    - (ia) pension bonus bereavement payment; or
    - (j) special employment advance, except where the Secretary has made a determination under subsection 46(2); or
    - (k) clean energy advance; or
    - (l) essential medical equipment payment.
- (2) If a claim for crisis payment is granted because of subsection 37(7), the Secretary may pay an amount equal to the

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amount of the crisis payment to the claimant before the claimant is released from gaol or psychiatric confinement if the Secretary thinks it is necessary to do so in order to ensure that the claimant, on release, will not suffer severe financial hardship.

- (3) If an amount is paid to a person under subsection (2), the amount is taken, after the person's release from gaol or psychiatric confinement, to be a payment of crisis payment made in relation to the claim referred to in subsection (2).
- (4) Subject to subsections 47C(3) and (4), section 47DA and Part 3A, a person's lump sum benefit is to be paid to the person.

**47A Payment of one-off payment to the aged**

One-off payment to the aged is to be paid to a person on the date that is determined by the Secretary to be the earliest date on which it is reasonably practicable for the payment to be made to the person.

**47AB Payment of carer supplement**

If an individual is qualified for carer supplement for a year, the Secretary must pay the supplement to the individual:

- (a) on the date or dates that the Secretary considers to be the earliest date or dates on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

**47AC Payment of one-off energy assistance payment**

If a person is qualified for a one-off energy assistance payment under Part 2.6 of the 1991 Act, the Secretary must pay the payment to the person in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

#### **47AD Payment of 2019 one-off energy assistance payment**

If a person is qualified for a one-off energy assistance payment under Part 2.6A of the 1991 Act, the Secretary must pay the payment to the person in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

#### **47AE Payment of first 2020 economic support payment**

- (1) If a person is qualified for a first 2020 economic support payment under Division 1 of Part 2.6B of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:
  - (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The Secretary must not pay the payment on or after 1 July 2022.

#### **47AF Payment of second 2020 economic support payment**

- (1) If a person is qualified for a second 2020 economic support payment under Division 2 of Part 2.6B of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:
  - (a) on the date, occurring on or after 10 July 2020, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The Secretary must not pay the payment on or after 1 July 2023.

Section 47AG

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**47AG Payment of additional economic support payment 2020**

- (1) If a person is qualified for an additional economic support payment 2020 under Division 1 of Part 2.6C of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:
  - (a) on the date, occurring on or after 27 November 2020, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The Secretary must not pay the payment on or after 1 July 2023.

**47AH Payment of additional economic support payment 2021**

- (1) If a person is qualified for an additional economic support payment 2021 under Division 2 of Part 2.6C of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:
  - (a) on the date, occurring on or after 26 February 2021, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The Secretary must not pay the payment on or after 1 July 2023.

**47AI Payment of 2022 cost of living payment**

- (1) If a person is qualified for a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:
  - (a) on the date, occurring on or after 29 March 2022, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The Secretary must not pay the payment on or after 1 July 2023.

#### **47B Payment of one-off payments to carers**

- (1) If an individual is qualified for one of the payments mentioned in subsection (2), the Secretary must pay the payment to the individual in a single lump sum:
- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) The payments are the following:
- (a) one-off payment to carers (carer allowance related);
  - (b) one-off payment to carers (carer payment related);
  - (c) 2005 one-off payment to carers (carer payment related);
  - (d) 2005 one-off payment to carers (carer service pension related);
  - (e) 2005 one-off payment to carers (carer allowance related);
  - (f) 2006 one-off payment to carers (carer payment related);
  - (g) 2006 one-off payment to carers (wife pension related);
  - (h) 2006 one-off payment to carers (partner service pension related);
  - (i) 2006 one-off payment to carers (carer service pension related);
  - (j) 2006 one-off payment to carers (carer allowance related);
  - (k) 2007 one-off payment to carers (carer payment related);
  - (l) 2007 one-off payment to carers (wife pension related);
  - (m) 2007 one-off payment to carers (partner service pension related);
  - (n) 2007 one-off payment to carers (carer service pension related);
  - (o) 2007 one-off payment to carers (carer allowance related);
  - (p) 2008 one-off payment to carers (carer payment related);
  - (q) 2008 one-off payment to carers (wife pension related);
  - (r) 2008 one-off payment to carers (partner service pension related);

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- (s) 2008 one-off payment to carers (carer service pension related);
- (t) 2008 one-off payment to carers (carer allowance related).

**47C Payment of economic security strategy payments and training and learning bonuses**

- (1) If an individual is qualified for an economic security strategy payment, the Secretary must pay the payment to the individual in a single lump sum:
  - (a) on 8 December 2008, or on such later date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
  - (b) in such manner as the Secretary considers appropriate.
- (2) If an individual is qualified for a training and learning bonus, the Secretary must pay the bonus in a single lump sum:
  - (a) to the individual; and
  - (b) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
  - (c) in such manner as the Secretary considers appropriate.
- (3) Despite paragraph (2)(a) of this section, if:
  - (a) the individual is qualified for a training and learning bonus under paragraph 910(2)(a) of the 1991 Act because the individual was receiving youth allowance in respect of 3 February 2009; and
  - (b) the whole or a part of the individual's instalment of youth allowance in respect of a period that included that day was paid to a parent of the individual under section 45 of this Act;the Secretary may pay the whole, or the same proportion, of the individual's training and learning bonus to that parent or to any other person.

- (4) Despite paragraph (2)(a) of this section, if:
- (a) the individual is qualified for a training and learning bonus:
    - (i) under paragraph 910(2)(e) of the 1991 Act because the individual was receiving a payment under the ABSTUDY Scheme in respect of 3 February 2009; or
    - (ii) under paragraph 910(2)(f) or (g) of the 1991 Act because the individual was receiving an education allowance referred to in that paragraph in respect of that day; and
  - (b) the whole or a part of the individual's instalment of the payment or allowance in respect of a period that included that day was paid to a person (the *recipient*) other than the individual;
- the Secretary may pay the whole, or the same proportion, of the individual's training and learning bonus to the recipient or to any other person.

#### **47CA Payment of activity supplement or farm financial assessment supplement**

The following payments are to be paid to a person on the date the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made to the person:

- (a) activity supplement;
- (b) farm financial assessment supplement.

#### **47CB Payment of FHA supplement or relief payment**

If a person is qualified for FHA supplement for a qualifying period (within the meaning of the *Farm Household Support Act 2014*), or relief payment, the Secretary must pay the supplement or payment to the person:

- (a) on the day the Secretary determines; and
- (b) in such manner as the Secretary considers appropriate.

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Section 47D

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**47D Payment of clean energy advance**

- (1) If an individual is qualified for a clean energy advance, the Secretary must pay the advance to the individual in a single lump sum:
  - (a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the advance to be made; and
  - (b) in such manner as the Secretary considers appropriate.

Note: This section applies to a qualification under Subdivision A or C of Division 1 of Part 2.18A of the 1991 Act.

- (2) However, the Secretary must not pay the advance if the Secretary is aware that the individual has died.

**47DAA Payment of essential medical equipment payment**

If an individual is qualified for an essential medical equipment payment, the Secretary must pay the payment to the individual in a single lump sum in such manner as the Secretary considers appropriate.

**47DA Relocation scholarship payments**

If:

- (a) a person is qualified for a relocation scholarship payment on a particular day because the person is receiving youth allowance; and
- (b) the whole or a part of the person's instalment of youth allowance in respect of a period that included that day is paid to a parent of the person under section 45 of this Act;

the Secretary may pay the whole, or the same proportion, of the person's scholarship payment to that parent or to any other person.

**47DB Student start-up loans**

- (1) If a person is qualified for a student start-up loan for a qualification period:



- (a) the loan becomes payable to the person on the day the Secretary determines the person's claim for the loan; and
  - (b) the Secretary must pay the amount of the loan to the person as soon as reasonably practicable after that day.
- (2) Despite subsection (1), if:
- (a) a person is qualified for a student start-up loan for a qualification period because the person is receiving youth allowance; and
  - (b) the whole or a part of the person's instalment of youth allowance is paid to a parent of the person, under section 45 of this Act, in respect of a period that includes the day the Secretary determines the person's claim for the loan;
- the Secretary may pay the whole, or the same proportion, of the person's loan to that parent or to any other person.

#### **48 Payment of telephone allowance**

- (1) Telephone allowance is to be paid by instalments.
- (2) An instalment of telephone allowance is to be paid to a person on each telephone allowance payday on which telephone allowance is payable to the person.
- (3) The amount of an instalment of telephone allowance is worked out by dividing the amount of the annual rate of telephone allowance by 4.
- (4) In this section:

***telephone allowance payday*** means the first day on which an instalment of a social security periodic payment would normally be paid to the person on or after any of the following:

- (a) 1 January;
- (b) 20 March;
- (c) 1 July;
- (d) 20 September.

Section 48A

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**48A Payment of utilities allowance**

- (1) Utilities allowance is to be paid by instalments.
- (2) If utilities allowance is payable to a person in relation to a utilities allowance test day, then an instalment of the allowance is to be paid to the person on the person's first payday on or after that test day.
- (3) The amount of an instalment of utilities allowance is worked out by dividing the amount of the annual rate of utilities allowance by 4.
- (4) In this section:

*utilities allowance test day* means:

- (a) 20 March; and
- (b) 20 June; and
- (c) 20 September; and
- (d) 20 December.

**48B Payment of energy supplement**

- (1) Energy supplement under Part 2.25B of the 1991 Act is to be paid by instalments.
- (2) An instalment of energy supplement is to be paid to a person as soon as is reasonably practicable after the end of an instalment period.
- (3) The amount of the instalment is worked out by:
  - (a) working out the amount of the person's energy supplement for each day in the instalment period; and
  - (b) adding up the amounts resulting from paragraph (a).
- (4) In this section:

*instalment period* means a period:

- (a) in relation to each day of which energy supplement is payable to the person; and

Note: For when energy supplement is payable to the person, see section 1061UA of the 1991 Act.

- (b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and
- (c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and
- (d) that is not included in a longer instalment period.

#### **48C Payment of quarterly pension supplement**

- (1) Quarterly pension supplement is to be paid by instalments.
- (2) An instalment of quarterly pension supplement is to be paid to a person as soon as is reasonably practicable after the end of an instalment period.
- (3) The amount of the instalment is worked out by multiplying the person's daily rate of quarterly pension supplement by the number of days in the instalment period.
- (4) In this section:

*instalment period* means a period:

- (a) in relation to each day of which quarterly pension supplement is payable to the person; and

Note: For when quarterly pension supplement is payable to the person, see section 1061VA of the 1991 Act.

- (b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and
- (c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and
- (d) that is not included in a longer instalment period.

#### **48D Payment of quarterly energy supplement**

- (1) Quarterly energy supplement is to be paid by instalments.

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- (2) An instalment of quarterly energy supplement is to be paid to a person as soon as is reasonably practicable after the end of an instalment period.

Note: For when quarterly energy supplement is payable to the person, see section 915 of the 1991 Act.

- (3) The amount of the instalment is worked out by:
- (a) working out the amount of the person's quarterly energy supplement for each day in the instalment period; and
  - (b) adding up the amounts resulting from paragraph (a).

- (4) In this section:

*instalment period* means a period:

- (a) for each day of which quarterly energy supplement is payable to the person; and

Note: For when quarterly energy supplement is payable to the person, see section 915 of the 1991 Act.

- (b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and
- (c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and
- (d) that is not included in a longer instalment period.

**49 Timing of payment of fares allowance**

- (1) Subject to subsection (2), fares allowance for a journey by a person is to be paid as a reimbursement after the journey is made.
- (2) If the journey has not been made, the fares allowance for the journey is to be paid before the journey is made.

**50 To whom fares allowance is to be paid**

- (1) Subject to subsection (4), if the person is or was receiving youth allowance at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the youth allowance are or were being paid under section 44 or 45.

- (2) Subject to subsection (4), if the person is or was receiving austudy payment at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the austudy payment are or were being paid under section 44.
- (3) Subject to subsection (4), if the person is or was receiving pensioner education supplement at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the pensioner education supplement are or were being paid under section 44.
- (4) If the fares allowance is to be paid as referred to in subsection 49(2), it is to be paid, on behalf of the person, to the commercial operator who provides the person's means of travel.
- (5) This section has effect subject to section 58.

### **50A Payment of child disability assistance**

If an individual is qualified for child disability assistance in respect of a particular 1 July, the Secretary must pay the assistance to the individual in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

### **51 Advance in case of severe financial hardship**

- (1) If:
  - (a) the Secretary determines:
    - (i) that a claim by a person who is in Australia for a social security benefit or pension is to be granted; or
    - (ii) that a social security benefit or pension is payable to a person under section 85; and
  - (b) the Secretary is satisfied that, if the person is required to wait until the end of:

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- (i) the first instalment period in relation to the benefit or pension; or
  - (ii) the first instalment period in relation to the benefit or pension after the resumption of payment of the benefit or pension;
- for payment of an instalment, the person will suffer severe financial hardship;
- the Secretary may determine that a specified amount is to be paid to the person in advance.
- (2) If:
- (a) a claim for a social security pension or benefit is granted because of subsection 37(7); and
  - (b) the Secretary makes a determination under subsection (1);
- the amount payable by virtue of that determination may be paid before the claimant is released from gaol or psychiatric confinement if the Secretary thinks it is necessary to do so in order to ensure that the claimant, on release, will not suffer severe financial hardship.
- (3) The operation of subsection (2) is not affected by section 1158, 1162 or 1162A of the 1991 Act.
- (4) The amount paid under a determination under subsection (1) is not to exceed the amount that, in the opinion of the Secretary, would be the total of the amounts payable to the person for the first 14 days on which the benefit or pension is payable to the person.
- (5) An amount paid to a person under subsection (1) is taken to be an advance payment of the instalment or instalments, or of that part of the instalment or instalments, that relate to the days referred to in subsection (4).

**52 Payment of certain amounts outside Australia**

- (1) This section applies to the following social security payments:
- (a) age pension;
  - (c) carer payment;

- (d) disability support pension;
  - (g) pension PP (single) to which clause 105A of Schedule 1A to the 1991 Act applies;
  - (h) pensioner education supplement;
  - (k) special benefit.
- (2) If a person who is receiving a social security payment to which this section applies is outside Australia, instalments of the payment are to be paid to the person at such times as the Secretary determines for the purposes of this section.

### **53 Payment of instalments where pension received under other legislation**

- (1) If:
- (a) an age pension or a disability support pension is payable to a person; and
  - (b) the person is receiving a veteran's disability pension; and
  - (c) the Secretary has made a determination, for the purposes of this subsection, that instalments of age pension or disability support pension, as the case may be, are to be paid to the person on the days on which instalments of the veteran's disability pension are paid to the person; and
  - (d) the determination has not been revoked;
- instalments of age pension or disability support pension are to be paid to the person in accordance with the determination.
- (2) If:
- (a) an age pension or a disability support pension is payable to a person; and
  - (b) the person's partner is receiving:
    - (i) an age pension and a veteran's disability pension; or
    - (ii) a disability support pension and a veteran's disability pension; and
  - (c) the Secretary has made a determination, for the purposes of this subsection, that instalments of age pension or disability support pension, as the case may be, are to be paid to the

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person on the days on which instalments of the veteran's disability pension are paid to the person's partner; and  
(d) the determination has not been revoked;  
instalments of age pension or disability support pension are to be paid to the person in accordance with the determination.

**54 Rounding off instalments of social security payments**

(1) In this section:

*instalment* means an instalment of a social security payment.

Note: Subsection 43(3E) affects what is an instalment of a social security periodic payment if the Secretary has determined under subsection 43(3A) that a person is to be paid the total amount of a social security periodic payment relating to an instalment period in 2 payments.

- (2) If the amount of an instalment would be:
- (a) one or more whole dollars and a part of a cent; or
  - (b) one or more whole dollars and cents and a part of a cent;
- the amount is to be increased or decreased to the nearest whole cent.
- (3) If the amount of an instalment would be:
- (a) one or more whole dollars and 0.5 cent; or
  - (b) one or more whole dollars and cents and 0.5 cent;
- the amount is to be increased by 0.5 cent.
- (4) If, apart from this subsection, the amount of an instalment would be less than \$1.00, the amount is to be increased to \$1.00.

**55 Payment into bank account etc.**

- (1) Subject to Part 3A, an amount (the *relevant amount*) that is to be paid to a person under section 44, 45, 47, 47DA, 47DB, 48, 48A, 48B, 48C, 48D or 50 is to be paid in the manner set out in this section.



- (2) Subject to subsections (4) and (4A), the relevant amount is to be paid to the credit of a bank account nominated and maintained by the person.
- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.
- (4) The Secretary may direct that the whole or a part of the relevant amount be paid to the person in a different way from that provided for by subsection (2). If the Secretary gives a direction, the relevant amount is to be paid in accordance with the direction.
- (4A) Fares allowance is to be paid to a person as follows:
  - (a) fares allowance is to be paid to the credit of the bank account to the credit of which payments of youth allowance, austudy payment or pensioner education supplement payable to the person are or were made;
  - (b) if, because of a direction under subsection (4), youth allowance, austudy payment or pensioner education supplement is not paid to the credit of a bank account, fares allowance is to be paid in the same way as the youth allowance, austudy payment or pensioner education supplement, as the case may be.
- (5) If, at the end of the period of 28 days starting on the day on which the Secretary requested the person to nominate an account for the purposes of subsection (2) (the **28 day period**):
  - (a) the person has not nominated an account for the purposes of subsection (2); and
  - (b) the Secretary has not given, or has revoked, a direction under subsection (4) in relation to the payment of the relevant amount to the person;the relevant amount ceases to be payable to the person.
- (6) If the person nominates an account for the purposes of subsection (2) after the end of the 28 day period, the relevant amount again becomes payable to the person and is so payable:

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- (a) if the nomination is made within 13 weeks after the end of the 28 day period—on and from the first day after the end of that period; or
  - (b) if the nomination is not so made—on and from the day on which the nomination is made.
- (7) Subsection (6) does not apply at a time when, because of the operation of another provision of the social security law, the relevant amount is not payable to the person.

**56 Youth allowance—failure to nominate parent**

- (1) This section applies to a person if:
- (a) the person is under 18 years of age and is not independent; and
  - (b) youth allowance has become payable to the person; and
  - (c) the person has more than one living parent; and
  - (d) at the end of the period of 28 days starting on the day on which youth allowance became payable to the person:
    - (i) the person has not nominated a parent for the purposes of subsection 45(1); and
    - (ii) the Secretary has not given a direction under subsection 45(2) in relation to payment of instalments of the person's youth allowance.
- (2) Youth allowance is not payable to a person while this section applies to the person.
- (3) If a person to whom this section applies nominates a parent for the purposes of subsection 45(1), this section ceases to apply to the person.

**57 Change of particular payday**

If the Secretary is satisfied that an amount that would, apart from this section, be paid on a particular day cannot reasonably be paid on that day, the Secretary may direct that the amount be paid on an earlier day.

### **58 Payment of social security payment after death**

- (1) If:
- (a) an amount representing a social security payment (other than pension bonus, pension bonus bereavement payment or a student start-up loan) is payable to a person; and
  - (b) the person dies; and
  - (c) another person applies to receive the amount; and
  - (d) the application is made:
    - (i) within 26 weeks after the death; or
    - (ii) within such further period as is allowed by the Secretary in the special circumstances of the case;
- the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.
- (2) If the Secretary pays an amount of a social security payment under subsection (1), the Commonwealth has no further liability to any person in respect of that amount.

### **59 Payment of pension bonus or pension bonus bereavement payment after death**

- (1) This section sets out the only circumstances in which a pension bonus or a pension bonus bereavement payment will be payable after the death of the person concerned.
- (1A) If:
- (a) a person claims a pension bonus; and
  - (b) the person dies; and
  - (c) at the time of the person's death, the person had received the bonus; and
  - (d) after the person's death, the Secretary determines that the person's bonus is to be increased under section 93K or 93L;
- the increase is payable to the legal personal representative of the person.

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(2) If:

- (a) a person claims a pension bonus or a pension bonus bereavement payment; and
  - (b) the person dies; and
  - (c) at the time of the person's death, the claim had been granted, but the person had not received the bonus or payment;
- the bonus or payment is payable to the legal personal representative of the person.

(3) If:

- (a) a person claims a pension bonus or a pension bonus bereavement payment; and
- (b) the person dies; and
- (c) at the time of the person's death, the claim had not been determined;

then:

- (d) the Secretary must determine the claim after the person's death as if the person had not died; and
- (e) if the claim is granted—the bonus or payment is payable to the legal personal representative of the person.

(4) If:

- (a) under paragraph (3)(d), the Secretary is required to determine a claim for pension bonus after a person's death; and
- (b) at the time of the person's death, the person's claim for age pension had not been determined;

then, for the purposes of the determination of the claim for pension bonus, the following provisions have effect:

- (c) the requirements of paragraph 92C(a) of the 1991 Act are taken to be satisfied if:
  - (i) the person would have started to receive an age pension if he or she had not died; and
  - (ii) that age pension would have been received otherwise than because of a scheduled international social security agreement;
- (d) Division 6 of Part 2.2A of the 1991 Act has effect as if:

- (i) a reference in that Division to a particular rate were a reference to the rate that would have been applicable to the person if the person had not died; and
  - (ii) a reference in that Division to the date of grant of the age pension were a reference to the date on which the age pension would have been granted if the person had not died;
- (e) this Act has effect as if subsections 17(2) and 34(2) were omitted.
- (4A) If a pension bonus is payable to the legal personal representative of a person under subsection (2) or (3), any increase in that bonus determined by the Secretary under section 93K or 93L is also payable to that legal personal representative.
- (5) If a pension bonus or pension bonus bereavement payment is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus or payment.

## **Division 5—Protection of social security payments**

### **60 Protection of social security payment**

- (1) A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.
- (2) This section has effect subject to:
  - (a) sections 61 and 238 of this Act; and
  - (aaa) Part 3AA of this Act; and
  - (aa) Parts 3B and 3D of this Act; and
  - (b) sections 1231 and 1234A of the 1991 Act.

### **61 Deduction at request of recipient—payments to Commissioner of Taxation**

- (1) This section applies if a person asks the Secretary:
  - (a) to make deductions from instalments of a social security payment payable to the person; and
  - (b) to pay the amounts deducted to the Commissioner of Taxation.
- (2) The Secretary may make the deductions requested by the person, and if the Secretary does so, the Secretary must pay the amounts deducted to the Commissioner of Taxation.

### **61A Deduction at request of recipient—other payments**

- (1) This section applies if a person asks the Secretary:
  - (a) to make deductions from instalments of a social security payment payable to the person; and
  - (b) to pay the amounts deducted to a business or organisation nominated by the person.

- (2) The Secretary may make the deductions requested by the person, and if the Secretary does so, the Secretary must pay the amounts deducted to the business or organisation nominated by the person.

## **62 Effect of garnishee or attachment order**

- (1) If:
- (a) a person has an account with a financial institution; and
  - (b) either or both of the following subparagraphs apply:
    - (i) instalments of a social security payment payable to the person (whether on the person's own behalf or not) are being paid to the credit of the account;
    - (ii) an advance payment of a social security payment payable to the person (whether on the person's own behalf or not) has 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 payable to the person in respect of the social security payment that has 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 that amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

- (3) This section applies to an account whether it is maintained by a person:
- (a) alone; or

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- (b) jointly with another person; or
- (c) in common with another person.



## **Division 6—Requirement to provide information, undergo medical examination etc.**

### **Subdivision A—General**

#### **63 Requirement to attend Department etc.**

*Secretary may require person to attend Department etc.*

- (1) Subsection (2) applies to a person if:
  - (a) the person is receiving, or has made a claim for, a social security payment; or
  - (b) the person is the holder of, or has made a claim for, a concession card; or
  - (c) the Department is contacted by or on behalf of the person in relation to a claim for:
    - (i) if the person is not undertaking full-time study and is not a new apprentice—youth allowance; or
    - (ii) in any case—jobseeker payment; to be paid to the person.
- (2) If the Secretary is of the opinion that a person to whom this subsection applies should:
  - (a) attend an office of the Department; or
  - (b) contact the Department; or
  - (c) attend a particular place for a particular purpose; or
  - (d) give information to the Secretary;the Secretary may notify the person that he or she is required, within a specified time, to do that act or thing. However, the Secretary may not, under this subsection, notify a person that he or she is required to do an act or thing referred to in paragraph (4)(a) or (b).

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**Section 63**

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*Secretary may require person to provide proof of life certificate etc.*

- (2AA) Subsections (2AB) and (2AC) apply to a person if:
- (a) the person has reached 80 years of age; and
  - (b) the person is receiving any of the following social security payments:
    - (i) age pension;
    - (ii) carer payment;
    - (iii) disability support pension; and
  - (c) the person was continuously absent from Australia throughout the previous 2 years.
- (2AB) The Secretary may notify a person to whom this subsection applies that:
- (a) the person is required, within the 13-week period beginning when the notice is given, to give the Secretary a proof of life certificate that:
    - (i) relates to the person; and
    - (ii) was completed within that 13-week period; and
  - (b) the requirement does not apply if the person enters Australia within that 13-week period.
- (2AC) If this subsection applies to a person, the Secretary must notify the person under subsection (2AB) at least once every 2 years.

*Secretary may require person to undergo medical examination etc.*

- (3) Subsection (4) applies to a person if:
- (a) the person is receiving, or has claimed, any of the following social security payments:
    - (i) disability support pension;
    - (ii) parenting payment;
    - (iii) youth allowance;
    - (iv) jobseeker payment;
    - (vi) special benefit;
    - (vii) mobility allowance; or

- (b) the Department is contacted by or on behalf of the person in relation to a claim for youth allowance or jobseeker payment to be paid to the person.
- (4) If the Secretary is of the opinion that a person to whom this subsection applies should:
- (a) complete a questionnaire; or
  - (b) undergo a medical, psychiatric or psychological examination (whether or not at a particular place), and provide to the Secretary the report, in the approved form, of the person who conducts the examination;
- the Secretary may notify the person that he or she is required, within a specified time, to do that act or thing.

*Method for giving notice*

- (5) The Secretary may notify a person under subsection (2), (2AB) or (4):
- (a) by sending the notice by prepaid post addressed to the person at his or her postal address last known to the Secretary; or
  - (b) in any other way the Secretary considers appropriate.

*Validity of notice not affected in certain circumstances*

- (6) A failure to specify the particular purpose in a notice given to a person for the purposes of paragraph (2)(c) does not affect the validity of the notice.

*Consequence of not informing person of effect of failure to comply with requirement in notice*

- (7) If a person is notified under subsection (2), (2AB) or (4) and the notice does not inform the person of the effect of section 64, subsection 64(1) or (5) (as the case requires) does not apply to the person in relation to the requirement in the notice.

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**63A Proof of life certificate**

- (1) For the purposes of this Act, a *proof of life certificate* that relates to a person is a certificate that:
  - (a) is expressed to relate to the person; and
  - (b) complies with the requirements of subsections (2), (3), (4), (5) and (6); and
  - (c) is in a form approved by the Secretary; and
  - (d) contains such other information (if any) as required by the approved form.
- (2) A proof of life certificate that relates to a person must include a statement to the effect that the person is alive.
- (3) The statement mentioned in subsection (2) must be:
  - (a) signed and dated by the person; or
  - (b) if:
    - (i) the approved form allows another person to sign the statement on behalf of the person if one or more specified requirements are met; and
    - (ii) those requirements are met;  
signed and dated by the other person.
- (4) A proof of life certificate that relates to a person must include a statement by an authorised certifier to the effect that:
  - (a) the authorised certifier has sighted the person while in the physical presence of the person; and
  - (b) the authorised certifier has verified the identity of the person using the method, or one of the methods, set out in the approved form; and
  - (c) the authorised certifier is satisfied that the person is alive.
- (5) The statement mentioned in subsection (4) must be signed and dated by the authorised certifier.
- (6) Both:
  - (a) the statement mentioned in subsection (2); and

(b) the statement mentioned in subsection (4);  
must be signed and dated within a 7-day period.

*Compliance with form*

(7) Section 25C of the *Acts Interpretation Act 1901* does not apply to a proof of life certificate.

*Authorised certifier*

(8) For the purposes of this section, an **authorised certifier** is a person included in a class of persons specified in a determination under subsection (9).

(9) The Secretary may, by legislative instrument, determine one or more classes of persons for the purposes of subsection (8).

(10) To avoid doubt, it is immaterial whether any or all of the persons included in such a class are in or outside Australia.

**64 Effect of failing to comply with requirement to attend  
Department etc.**

*Person receiving, or claiming, social security payment*

- (1) If:
- (a) a person is receiving, or has made a claim for, a social security payment; and
  - (b) the Secretary notifies the person under subsection 63(2), (2AB) or (4); and
  - (c) the requirement in the notice is reasonable; and
  - (d) the person does not comply with the requirement; and
  - (e) except if the person is receiving, or has made a claim for, a participation payment—the Secretary is not satisfied that the person had a reasonable excuse for not complying with the requirement; and
  - (f) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

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the payment that the person is receiving or has claimed is not payable.

(1A) Subsection (1) does not apply if:

- (a) the person is receiving a participation payment; and
- (b) the person fails to attend an appointment that the person is required to attend by a notice under subsection 63(2); and
- (c) the Secretary makes a determination under section 42AF or subsection 42SA(1) in relation to the person and the failure.

(2) Subsection (1) does not apply if:

- (a) the person is receiving, or has made a claim for, youth allowance; and
- (b) the notice included a statement to the effect that a failure to comply with the requirement in the notice could constitute a youth allowance participation failure.

Note: If a recipient of, or claimant for, youth allowance does not comply with a requirement notified under subsection 63(2) or (4), this may result in the payment not being payable to the person: see sections 550B and 551 of the 1991 Act.

(3) Subsection (1) does not apply if:

- (a) the person is receiving, or has made a claim for, an austudy payment; and
- (b) the notice included a statement to the effect that a failure to comply with the requirement in the notice could constitute an austudy participation failure.

Note: If a recipient of, or claimant for, an austudy payment does not comply with a requirement notified under subsection 63(2), this may result in the payment not being payable to the person: see sections 576A and 577 of the 1991 Act.

(4) If:

- (a) a social security payment is not payable to a person because of subsection (1); and
- (b) the Secretary is satisfied that it is no longer reasonable for that subsection to apply to the person in relation to the

requirement in the notice given to the person under subsection 63(2), (2AB) or (4);  
the Secretary may determine that, on and after a day specified by the Secretary, subsection (1) ceases to apply to the person in relation to that requirement.

*Person holding, or claiming, concession card*

- (5) If:
- (a) a person is the holder of, or has made a claim for, a concession card; and
  - (b) the Secretary notifies the person under subsection 63(2); and
  - (c) the requirement in the notice is reasonable; and
  - (d) the person does not comply with the requirement; and
  - (e) the Secretary is not satisfied that the person had a reasonable excuse for not complying with the requirement; and
  - (f) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;
- the person ceases to be, or is not, qualified for the concession card.
- (6) If:
- (a) a person has ceased to be, or is not, qualified for a concession card because of subsection (5); and
  - (b) the Secretary is satisfied that it is no longer reasonable for that subsection to apply to the person in relation to the requirement in the notice given to the person under subsection 63(2);
- the Secretary may determine that, on and after a day specified by the Secretary, subsection (5) ceases to apply to the person in relation to that requirement.

## **66 Notice to obtain foreign payment**

- (1) This section applies to the following social security payments:
- (a) age pension;
  - (c) carer payment;
  - (d) disability support pension;

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- (e) parenting payment;
  - (f) special needs age pension;
  - (g) special needs disability support pension;
  - (i) special needs wife pension;
  - (m) farm household allowance in relation to a person who has reached pension age.
- (2) If:
- (a) a person claims, or is receiving, a social security payment to which this section applies; and
  - (b) the Secretary is satisfied that the person may be entitled to a comparable foreign payment from a foreign country if the person applied for the payment;
- the Secretary may give the person a notice that requires the person to take reasonable action to obtain the payment at the highest rate applicable to the person.
- (3) If:
- (a) a person claims, or is receiving, a social security payment to which this section applies; and
  - (b) the Secretary is satisfied that the person's partner may be entitled to a comparable foreign payment from a foreign country if the partner applied for the payment;
- the Secretary may give the person a notice that requires the partner to take reasonable action to obtain the payment at the highest rate applicable to the partner.
- (4) A notice under subsection (2) or (3):
- (a) must be given in writing; and
  - (b) may be given personally or by post or in any manner approved by the Secretary; and
  - (c) must specify the period within which the reasonable action is to be taken.
- (5) The period specified under paragraph (4)(c) must not end earlier than 14 days after the day on which the notice is given.



**Subdivision B—Requirement to give information about change of circumstances etc.**

**66A General requirement to inform of a change of circumstances etc.**

*Person who has made a claim*

- (1) If:
- (a) a person has made a claim for:
    - (i) a social security payment; or
    - (ii) a concession card; and
  - (b) the claim has been granted or has not been determined; and
  - (c) an event or change of circumstances occurs that might affect the payment of that social security payment or the person's qualification for the concession card;
- the person must, within 14 days after the day on which the event or change occurs, inform the Department of the occurrence of the event or change.

*Person receiving a social security payment or holding a concession card*

- (2) If:
- (a) either:
    - (i) a social security payment (other than utilities allowance or energy supplement under Part 2.25B of the 1991 Act) is being paid to a person; or
    - (ii) a person holds a concession card; and
  - (b) an event or change of circumstances occurs that might affect the payment of that social security payment or the person's qualification for the concession card;
- the person must, within 14 days after the day on which the event or change occurs, inform the Department of the occurrence of the event or change.

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*Person who has received a social security payment or held a concession card*

- (3) If:
- (a) either:
    - (i) a person is not receiving a social security payment but a social security payment (other than utilities allowance or energy supplement under Part 2.25B of the 1991 Act) has at any time been paid to the person; or
    - (ii) a person does not hold a concession card but has at any time held such a card; and
  - (b) an event or change of circumstances occurs that might have affected the payment of that social security payment or the person's qualification for the concession card;
- the person must, within 14 days after the day on which the event or change occurs, inform the Department of the occurrence of the event or change.

*Interaction with notices under this Subdivision*

- (4) If:
- (a) a person is subject to a requirement under subsection (1), (2) or (3) in relation to an event or change of circumstances; and
  - (b) the person is given, or purportedly given, a notice under this Subdivision in relation to the same event or change of circumstances; and
  - (c) the person complies with the notice to the extent that it relates to that event or change;
- the person is taken to have also complied with that requirement within the period referred to in that subsection.
- (5) Subsection (4) does not apply if the notice is given after the end of the period referred to in subsection (1), (2) or (3).
- (6) This section does not limit the power of the Secretary to give a person a notice under this Subdivision.

## **67 Person who has made a claim**

- (1) Subsection (2) applies to a person if:
  - (a) the person has made a claim for a social security payment;  
and
  - (b) either:
    - (i) the claim has been granted; or
    - (ii) the claim has not been determined.
- (2) The Secretary may give a person to whom this subsection applies a notice in writing that requires the person to do any or all of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department a statement about a matter that might affect the payment to the person of the social security payment;
  - (c) give the Department a statement about a matter that might affect the operation, or prospective operation, of Part 3B in relation to the person.
- (3) Subsection (4) applies to a person if:
  - (a) the person has made a claim for a concession card; and
  - (b) either:
    - (i) the claim has been granted; or
    - (ii) the claim has not been determined.
- (4) The Secretary may give a person to whom this subsection applies a notice in writing that requires the person to do either or both of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;

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- (b) give the Department a statement about a matter that might affect the person's qualification for the concession card.
- (5) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might:
  - (a) affect the payment of the social security payment or the person's qualification for the concession card, as the case requires; or
  - (b) affect the operation, or prospective operation, of Part 3B in relation to the person.

**68 Person receiving social security payment or holding concession card**

- (1) Subsection (2) applies to a person to whom a social security payment (other than utilities allowance or energy supplement under Part 2.25B of the 1991 Act) is being paid.
- (2) The Secretary may give a person to whom this subsection applies a notice that requires the person to do any or all of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department one or more statements about a matter that might affect the payment to the person of the social security payment;
  - (c) give the Department one or more statements about a matter that might affect the operation, or prospective operation, of Part 3B in relation to the person.
- (3) Subsection (4) applies to a person who is the holder of a concession card.
- (4) The Secretary may give a person to whom this subsection applies a notice that requires the person to do either or both of the following:
  - (a) inform the Department if:

- (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department a statement about a matter that might affect the person's qualification for the concession card.
- (5) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might:
- (a) affect the payment of the social security payment or the person's qualification for the concession card, as the case requires; or
  - (b) affect the operation, or prospective operation, of Part 3B in relation to the person.

**69 Person who has received a social security payment or who has held a concession card**

- (1) Subsection (2) applies to a person who is not receiving a social security payment but to whom a social security payment (other than utilities allowance or energy supplement under Part 2.25B of the 1991 Act) has at any time been paid.
- (2) The Secretary may give a person to whom this subsection applies a notice that requires the person to do either or both of the following:
  - (a) inform the Department whether a specified event or change of circumstances has occurred;
  - (b) give the Department a statement about a matter that might have affected the payment to the person of the social security payment.
- (3) Subsection (4) applies to a person who is not the holder of a concession card but has at any time held such a card.
- (4) The Secretary may give a person to whom this subsection applies a notice that requires the person to do either or both of the following:
  - (a) inform the Department whether a specified event or change of circumstances has occurred;

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- (b) give the Department a statement about a matter that might have affected the person's qualification for the concession card.
- (5) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might have affected the payment of the social security payment or the person's qualification for the concession card, as the case requires.
- (6) A person is not required to comply with a notice under this section if the notice requires the person to give information or a statement about an event or change of circumstances that occurred, or a matter that arose, more than 13 weeks before the giving of the notice.

**70 Care receiver in respect of whom carer payment being made**

- (1) If a person is being paid a carer payment because he or she is providing constant care (or, if section 197F of the 1991 Act applies to the person, care) for a care receiver (other than one to whom subsection 198(7) of the 1991 Act applies) or care receivers, the Secretary may give a notice to:
  - (a) any care receiver who is 16 or more; or
  - (b) a parent of any care receiver who is under 16;that requires the care receiver or parent, as the case may be, to inform the Department if:
  - (c) a specified event or change of circumstances occurs; or
  - (d) he or she becomes aware that a specified event or change of circumstances is likely to occur.
- (2) The notice may describe the event or change of circumstances specified in the notice as a notifiable event for the purposes of section 198C of the 1991 Act.

**70AA Person who is subject to the enhanced income management regime etc.**

*Scope*

- (1) This section applies to a person if:
  - (a) the person is subject to the enhanced income management regime (within the meaning of Part 3AA); or
  - (b) the Secretary is satisfied that it is likely that the person will become subject to the enhanced income management regime (within the meaning of Part 3AA).

*Requirement*

- (2) The Secretary may give the person a notice that requires the person to do either or both of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department one or more statements about a matter that might affect the operation, or prospective operation, of Part 3AA in relation to the person.
- (3) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might affect the operation, or prospective operation, of Part 3AA in relation to the person.

**70A Person who is subject to the income management regime etc.**

*Scope*

- (1) This section applies to a person if:
  - (a) the person is subject to the income management regime (within the meaning of Part 3B); or

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- (b) the Secretary is satisfied that it is likely that the person will become subject to the income management regime (within the meaning of Part 3B).

*Requirement*

- (2) The Secretary may give the person a notice that requires the person to do either or both of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or
    - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department one or more statements about a matter that might affect the operation, or prospective operation, of Part 3B in relation to the person.
- (3) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might affect the operation, or prospective operation, of Part 3B in relation to the person.

**70B Person who is subject to cashless welfare arrangements etc.**

*Scope*

- (1) This section applies to a person if:
  - (a) the person is a program participant (within the meaning of Part 3D) for the purposes of cashless welfare arrangements; or
  - (b) the person is a voluntary participant (within the meaning of that Part) for the purposes of cashless welfare arrangements.

*Requirement*

- (2) The Secretary may give the person a notice that requires the person to do either or both of the following:
  - (a) inform the Department if:
    - (i) a specified event or change of circumstances occurs; or



- (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
  - (b) give the Department one or more statements about a matter that might affect the operation, or prospective operation, of Part 3D in relation to the person.
- (3) An event or change of circumstances is not to be specified in a notice under this section unless the occurrence of the event or change of circumstances might affect the operation, or prospective operation, of Part 3D in relation to the person.

## **72 Provisions relating to notice**

- (1) A notice under this Subdivision:
  - (a) must be given in writing; and
  - (b) may be given personally or by post or in any other manner approved by the Secretary; and
  - (c) must specify how the person is to give the information or statement to the Department; and
  - (d) must specify:
    - (i) in the case of a notice under section 68 that requires the giving of more than one statement, each relating to the payment of the social security payment in respect of a period—the date by which the person is to give each statement to the Department; or
    - (ii) in any other case—the period within which the person is to give the information or statement to the Department; and
  - (e) must specify that the notice is an information notice given under the social security law.
- (2) A notice under this Subdivision is not invalid merely because it fails to comply with paragraph (1)(c) or (e).
- (2A) A date specified for the purposes of subparagraph (1)(d)(i) must be no earlier than 7 days after:
  - (i) the day on which the notice under section 68 is given; or

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(ii) the day on which the period specified in the notice in relation to that first mentioned date begins; whichever is the later.

- (3) Subject to subsections (4), (6) and (7), the period specified for the purpose of subparagraph (1)(d)(ii) must:
- (a) in the case of a notice under section 67, 68 or 69 that requires the giving of information about an event or change of circumstances consisting of the receipt by the person of a compensation payment—be the period of 7 days after the day on which the person becomes aware that he or she has received, or is to receive, a compensation payment; or
  - (b) in the case of a notice under section 67, 68 or 69 that requires the giving of any other information, or a notice under section 70—be the period of 14 days after:
    - (i) the day on which the event or change of circumstances occurs; or
    - (ii) the day on which the person becomes aware that the event or change of circumstances is likely to occur; as the case may be; or
  - (c) in the case of a notice under section 67 or 68 that requires the giving of a statement that relates to the payment of the social security payment in respect of a period specified in the notice—end not earlier than 7 days after the day on which the notice is given; or
  - (d) in the case of a notice under section 67, 68 or 69 that requires the giving of a statement, not being a notice to which paragraph (c) applies—end not earlier than 14 days after the day on which the notice is given; or
  - (da) in the case of a notice under section 70AA that requires the giving of information mentioned in paragraph 70AA(2)(a)—be the period of 14 days after:
    - (i) the day on which the event or change of circumstances occurs; or
    - (ii) the day on which the person becomes aware that the event or change of circumstances is likely to occur;

- as the case may be; or
- (db) in the case of a notice under section 70AA that requires the giving of a statement mentioned in paragraph 70AA(2)(b)—end not earlier than 14 days after the day on which the notice is given; or
- (e) in the case of a notice under section 70A that requires the giving of information mentioned in paragraph 70A(2)(a)—be the period of 14 days after:
- (i) the day on which the event or change of circumstances occurs; or
  - (ii) the day on which the person becomes aware that the event or change of circumstances is likely to occur;
- as the case may be; or
- (f) in the case of a notice under section 70A that requires the giving of a statement mentioned in paragraph 70A(2)(b)—end not earlier than 14 days after the day on which the notice is given.
- (4) If the Secretary is satisfied that there are special circumstances related to a person who is to be given a notice under this Subdivision that requires the giving of information about an event or change of circumstances, the period to be specified for the purpose of subparagraph (1)(d)(ii) is such period as the Secretary directs in writing, being a period that ends not less than 15 days, and not more than 28 days, after:
- (a) in the case of a notice under section 67, 68, 70AA or 70A:
    - (i) the day on which the event or change of circumstances occurs; or
    - (ii) the day on which the person becomes aware that the event or change of circumstances is likely to occur; or
  - (b) in the case of a notice under section 69—the day on which the notice is given.
- (6) If a notice under section 67, 68, 70AA or 70A specifies an event consisting of the death of a person, the period to be specified under subparagraph (1)(d)(ii) is a period of 28 days after the day on which the event occurs.

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- (7) To the extent that a notice under section 67, 68, 70AA or 70A requires a person to inform the Department of any proposal by the person to leave Australia, subsection (3) does not apply to the notice.
- (8) For the purposes of any provision of this Act, other than section 74 or a provision of Part 6, a person is taken to have failed to comply with a notice under this Subdivision if, in response to the notice:
  - (a) the person gives information or a statement; and
  - (b) the information or statement is false or misleading; and
  - (c) the person is reckless as to whether the information or statement is false or misleading.
- (9) Nothing in this section prevents the giving of more than one notice under this Subdivision to the same person in relation to:
  - (a) a claim by the person for the same social security payment or concession card; or
  - (b) the receipt by the person of the same social security payment; or
  - (c) the holding by the person of the same concession card.

**73 Application of provisions**

Sections 66A to 72 extend to:

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

**74 Offence—failure to comply with notice**

- (1) A person must not refuse or fail to comply with a notice under section 67, 68, 69, 70, 70AA or 70A.  
  
Penalty: Imprisonment for 6 months.
- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Subsection (1) is an offence of strict liability.

### **Subdivision C—Provision of tax file numbers**

#### **75 Requesting tax file numbers**

*Persons who may be requested to provide tax file numbers*

- (1) The Secretary may make a request under subsection (2), (3) or (4) of a person (the **request recipient**) in Australia who:
  - (a) is making, or has made, a claim for a social security payment; or
  - (b) is receiving a social security payment (other than utilities allowance or energy supplement under Part 2.25B of the 1991 Act); or
  - (c) is making, or has made, a claim for a seniors health card, or a health care card that is income-tested for the request recipient; or
  - (d) is the holder of a seniors health card, or a health care card that is income-tested for the request recipient.

*Requesting tax file number of request recipient*

- (2) The Secretary may request, but not compel, the request recipient:
  - (a) if the request recipient has a tax file number—to give the Secretary a written statement of the request recipient's tax file number; or
  - (b) if the request recipient does not have a tax file number:
    - (i) to apply to the Commissioner of Taxation for a tax file number; and
    - (ii) to give the Secretary a written statement of the request recipient's tax file number after the Commissioner of Taxation has issued it.

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*Requesting tax file number of request recipient's partner*

- (3) The Secretary may request, but not compel, the request recipient to give the Secretary a written statement of the tax file number of the request recipient's partner if:
- (a) the request recipient is a member of a couple; and
  - (b) the request recipient's partner is in Australia.

*Requesting tax file number of other person whose income is relevant to request recipient's rate of payment*

- (4) If:
- (a) the request recipient:
    - (i) is making, or has made, a claim for a social security payment; or
    - (ii) is receiving a social security payment; and
  - (b) the income of one or more other persons who are in Australia is required to be taken into account for the purpose of working out the rate of the social security payment;
- the Secretary may request, but not compel, the request recipient to give the Secretary a written statement of the tax file number of any one or more of those other persons.

**76 How request for tax file number is satisfied**

*Satisfying request for tax file number*

- (1) If the Secretary requests a person (the **request recipient**) under section 75 to give the Secretary a written statement of the tax file number of a person (the **relevant person**), the request recipient satisfies the request by giving the Secretary, within the period mentioned in subsection (2) of this section (if applicable):
- (a) the written statement of the relevant person's tax file number; or
  - (b) both of the following:

- (i) a declaration that meets the requirements of subsection (3) and contains the statement required by subsection (4);
- (ii) a document in which the relevant person authorises the Commissioner of Taxation to tell the Secretary the matters mentioned in subsection (5).

Note: The relevant person may be the request recipient or another person whose tax file number has been requested under subsection 75(3) or (4).

*Period within which request must be satisfied*

- (2) Unless the request recipient was making a claim described in paragraph 75(1)(a) or (c) when the request under section 75 was made, the material mentioned in paragraph (1)(a) or (b) of this section must be given within 28 days after the making of the request.

*Requirements for declarations*

- (3) A declaration mentioned in paragraph (1)(b) must be:
  - (a) for a request under subsection 75(2)—a TFN declaration; or
  - (b) for a request under subsection 75(3) or (4)—in accordance with a form approved by the Secretary.
- (4) A declaration mentioned in paragraph (1)(b) must contain:
  - (a) a statement that the relevant person:
    - (i) has a tax file number but does not know what it is; and
    - (ii) has asked the Commissioner of Taxation to inform the relevant person of his or her tax file number; or
  - (b) a statement that an application by the relevant person for a tax file number is pending.

*Requirements for authorisation documents*

- (5) For the purposes of subparagraph (1)(b)(ii), the matters are as follows:

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- (a) in a case where the declaration contains a statement mentioned in paragraph (4)(a):
  - (i) whether the relevant person has a tax file number; and
  - (ii) if the relevant person has a tax file number—that number; and
- (b) in a case where the declaration contains a statement mentioned in paragraph (4)(b):
  - (i) if a tax file number is issued to the relevant person—that number; or
  - (ii) if the application for a tax file number is refused or is withdrawn—that fact.

**77 Consequences of not giving tax file number**

*Consequences of not satisfying request for tax file number*

- (1) If the Secretary makes a request of a person under section 75, the consequences set out in the following table apply unless the person satisfies the request in accordance with section 76.

Note: The Secretary may exempt a person from the operation of this subsection (see subsection (4)).

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**Consequences of not satisfying request for tax file number**

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<b>Item</b>	<b>If the request under section 75 was given to ...</b>	<b>the consequence is ...</b>
1	a person who was making a claim for a social security payment	the social security payment is not payable
2	a person who was making a claim for a seniors health card, or a health care card that is income-tested for the person	the Secretary must not determine the claim
3	a person who had made a claim for, or was receiving, a social security payment	at the end of 28 days after the Secretary made the request, the social security payment ceases to be payable to the person
4	a person who had made a claim for,	at the end of 28 days after the

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**Consequences of not satisfying request for tax file number**

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<b>Item</b>	<b>If the request under section 75 was given to ...</b>	<b>the consequence is ...</b>
	or was the holder of, a seniors health card, or a health care card that is income-tested for the person	Secretary made the request, the Secretary must determine that the card is to be cancelled

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*Consequences of relevant person not having tax file number after giving declaration*

- (2) The consequences set out in subsection (3) apply if:
- (a) the Secretary makes a request under section 75 of a person (the **request recipient**); and
  - (b) the request recipient satisfies the request by giving:
    - (i) a declaration mentioned in subparagraph 76(1)(b)(i) that contains a statement as required by subsection 76(4); and
    - (ii) a document in which the Commissioner of Taxation is authorised to tell the Secretary certain matters mentioned in subsection 76(5); and
  - (c) the Commissioner of Taxation tells the Secretary that the relevant person mentioned in paragraph 76(4)(a) (if applicable) does not have a tax file number or that any of the following apply in relation to the relevant person mentioned in paragraph 76(4)(b) (if applicable):
    - (i) the relevant person has not applied for a tax file number;
    - (ii) an application by the relevant person for a tax file number has been refused;
    - (iii) the relevant person has withdrawn an application for a tax file number.

Note 1: The relevant person may be the request recipient or another person whose tax file number has been requested under subsection 75(3) or (4).

Note 2: The Secretary may exempt a person from the operation of this subsection and subsection (3) (see subsection (4)).

- (3) The consequences are that:

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- (a) if the request recipient is receiving a social security payment—the social security payment ceases to be payable to the recipient; and
- (b) if the request recipient is the holder of a seniors health card, or a health care card that is income-tested for the request recipient—the Secretary must determine that the card is to be cancelled.

*Exemptions*

- (4) The Secretary may exempt a person who has been given a request under section 75 from the operation of either or both the following:
  - (a) subsection (1) of this section;
  - (b) subsections (2) and (3) of this section.
- (5) Without limiting subsection (4), if the Secretary requests the request recipient under section 75 to give a written statement of another person's tax file number, the Secretary may exempt the request recipient under subsection (4) if the Secretary is satisfied that:
  - (a) the request recipient does not know the other person's tax file number; and
  - (b) the request recipient cannot satisfy the request in accordance with section 76.

## **Division 7—Various determinations**

### **Subdivision A—Provisions relating to social security payments**

#### **78A When this Subdivision does not apply**

This Subdivision does not apply in relation to utilities allowance and energy supplement under Part 2.25B of the 1991 Act.

#### **78 Rate increase determination**

If the Secretary is satisfied that the rate at which a social security payment is being, or has been, paid is less than the rate provided for by the social security law, the Secretary must:

- (a) determine that the rate is to be increased to the rate provided for by the social security law; and
- (b) specify the last-mentioned rate in the determination.

#### **79 Rate reduction determination**

- (1) If the Secretary is satisfied that the rate at which a social security payment is being, or has been, paid is more than the rate provided for by the social security law, the Secretary is to:
  - (a) determine that the rate is to be reduced to the rate provided for by the social security law; and
  - (b) specify the last-mentioned rate in the determination.
- (2) Subsection (1) does not authorise the Secretary to make a determination if:
  - (a) the rate at which a social security payment is payable to a person is reduced by the operation of another provision of the social security law; and
  - (b) the determination would take effect at or after the time at which the reduction referred to in paragraph (a) would take effect.

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**80 Cancellation or suspension determination**

- (1) If the Secretary is satisfied that a social security payment is being, or has been, paid to a person:
- (a) who is not, or was not, qualified for the payment; or
  - (b) to whom the payment is not, or was not, payable (other than because of the operation of Division 3AA);
- the Secretary is to determine that the payment is to be cancelled or suspended.

Note: Division 3AA is about compliance with participation payment obligations for persons who are not declared program participants.

- (2) Subsection (1) does not authorise the Secretary to make a determination if:
- (a) the payment of a social security payment to a person has been cancelled or suspended by the operation of another provision of the social security law; and
  - (b) the determination would take effect at or after the time at which the cancellation or suspension referred to in paragraph (a) would take effect.
- (3) However, subsection (1) authorises the Secretary to make a determination that:
- (a) cancels a social security payment that has been suspended under subsection 81(3); and
  - (b) takes effect at or after the time the suspension took effect.
- (3A) Subsection (1) does not authorise the Secretary to make a determination that cancels the payment of a parenting payment, youth allowance, austudy payment, jobseeker payment or special benefit to a declared program participant if:
- (a) paragraph (1)(a) does not apply to the declared program participant; and
  - (b) paragraph (1)(b) applies only because of the application of a compliance penalty period.
- (4) A reference in this section to a social security payment being, or having been, paid includes a reference to:

- (a) if the social security payment is a youth allowance—the youth allowance being payable but for the operation of section 547AA; or
- (b) if the social security payment is a jobseeker payment—the jobseeker payment being payable but for the operation of section 615.

### **81 Cancellation or suspension for non-compliance with certain notices**

(1) If:

- (a) a person who is receiving a social security payment (other than a jobseeker payment) has been given:
  - (i) a notice under section 67 or 68 that requires the person to give the Department a statement; or
  - (ii) a notice embodying a requirement under Division 1 of Part 5; and
- (b) the person does not comply with the requirement of the notice;

the Secretary may determine that the social security payment is to be cancelled or suspended.

(2) If:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner has been given:
  - (i) a notice under section 67 or 68 that requires the partner to give the Department a statement; or
  - (ii) a notice embodying a requirement under Division 1 of Part 5; and
- (c) the notice relates to matters that might also affect the payment of the person's social security payment; and
- (d) the partner does not comply with the requirement of the notice;

the Secretary may determine that the person's payment is to be cancelled or suspended.

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- (3) If:
- (a) a person who is receiving a social security payment has been given a notice under section 67 or 68 that requires the person to inform the Department of a proposal by the person to leave Australia; and
  - (b) the person does not comply with the requirement; and
  - (c) the person leaves Australia; and
  - (d) the person's portability period (see section 1217 of the 1991 Act) for the payment has not ended;
- the Secretary may determine that the payment is to be cancelled or suspended.

Note: Subsection (3) lets the Secretary make one determination suspending the payment and later make another determination cancelling the payment. See subsection 33(1) of the *Acts Interpretation Act 1901*.

**81A Rate reduction determination for non-compliance with notice relating to rent assistance**

- (1) Without limiting section 81, if:
- (a) an amount of rent assistance is being added to a person's maximum basic rate of social security payment; and
  - (b) the person has been given:
    - (i) a notice under section 67 or 68 that requires the person to give the Department a statement; or
    - (ii) a notice embodying a requirement under Division 1 of Part 5; and
  - (c) any statement, information or document required by the notice relates to:
    - (i) whether the person qualifies for rent assistance; or
    - (ii) the amount of the person's rent assistance; and
  - (d) the person does not comply with the requirement of the notice;
- the Secretary may determine that the person's rate of social security payment is to be reduced by not adding the amount of rent assistance to the person's maximum basic rate.

- (2) The determination must also specify the new rate of social security payment.
- (3) Subsection (1) does not authorise the Secretary to make a determination if:
  - (a) another provision of the social security law provides that the rate at which the social security payment is payable to the person is to be reduced by not adding the amount of rent assistance to the person's maximum basic rate; and
  - (b) the determination would take effect at or after the time at which the reduction referred to in paragraph (a) would take effect.

## **82 Cancellation or suspension for failure to take action to obtain foreign payment**

- (1) If:
  - (a) a person who is receiving a social security payment has been given a notice under subsection 66(2); and
  - (b) the Secretary is satisfied that the person has not complied with the requirement of the notice;the Secretary may determine that the social security payment is to be cancelled or suspended.
- (2) If:
  - (a) a person who is receiving a social security payment has been given a notice under subsection 66(3); and
  - (b) the Secretary is satisfied that the person's partner has not complied with the requirement of the notice;the Secretary may determine that the social security payment is to be cancelled or suspended.

## **83 Changes to payments by computer**

- (1) If:
  - (a) payment of a social security payment is based upon data in a computer; and

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- (b) the rate of the payment is increased or reduced, or the payment is cancelled or suspended, 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 by determination;  
the change is taken to have been made by the Secretary by determination for that reason.
- (2) A determination that is taken, by virtue of subsection (1), to have been made is taken to have been made on the day on which the computer program caused the change to be made.

**84 Automatic transfer by computer**

- (1) If:
- (a) payment of a social security payment to a person is based upon data in a computer; and
  - (b) because of the operation of a computer program used under the control of the Secretary, a social security payment of a different kind becomes payable to the person;
- the Secretary is taken to have made a determination:
- (c) that the payment referred to in paragraph (b) is to be payable to the person; and
  - (d) that the payment referred to in paragraph (a) is to cease to be payable to the person immediately before the day on which the payment referred to in paragraph (b) is to become payable to the person.
- (2) A determination that is taken, by virtue of subsection (1), to have been made is taken to have been made on the day on which the payment referred to in paragraph (1)(b) became payable because of the operation of the computer program.

**85 Resumption of payment after cancellation or suspension—  
general**

- (1) If:
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- (a) a person's social security payment is:
  - (i) cancelled by force of section 93 or 94 or subsection 95C(2); or
  - (ii) cancelled or suspended under section 80, 81 or 82; or
  - (ia) suspended under subsection 95C(1); or
  - (iii) cancelled under Part 3C (schooling requirements); and

Note: For reconsideration of the suspension of a schooling requirement payment, see sections 124J, 124N and 124NG.

- (b) the Secretary reconsiders the decision; and
- (c) as a result of the reconsideration, the Secretary is satisfied that, because of the decision:
  - (i) the person did not receive a social security payment that was payable to the person; or
  - (ii) the person is not receiving a social security payment that is payable to the person;

the Secretary is to determine that the social security payment was or is payable to the person, as the case requires.

- (2) The reconsideration referred to in paragraph (1)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.

### **85AA Resumption of payment after cancellation or suspension— provision of proof of life certificate**

#### *Resumption of payment after suspension*

- (1) If:
  - (a) a person's social security payment is suspended under section 80; and
  - (b) the suspension is attributable to the person's failure to give the Secretary a proof of life certificate in compliance with a notice under subsection 63(2AB); and
  - (c) either:
    - (i) a proof of life certificate relating to the person is given to the Secretary; or

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- (ii) the person enters Australia; and
  - (d) if subparagraph (c)(i) applies—the proof of life certificate was completed during the 26-week period ending when the certificate was given to the Secretary;
- the Secretary must:
- (e) under section 126, review the suspension of the person’s social security payment; and
  - (f) as a result of the review, determine that the social security payment is payable to the person as if the payment had never been suspended.

*Resumption of payment after cancellation*

- (2) If:
- (a) a person’s social security payment is cancelled under section 80; and
  - (b) the cancellation is attributable to the person’s failure to give the Secretary a proof of life certificate in compliance with a notice under subsection 63(2AB); and
  - (c) a proof of life certificate relating to the person is given to the Secretary; and
  - (d) the proof of life certificate was completed during the 12-month period ending when the certificate was given to the Secretary;
- the Secretary may:
- (e) under section 126, review the cancellation of the person’s social security payment; and
  - (f) as a result of the review, determine that the social security payment is payable to the person as if the payment had never been cancelled.

**85A Rate increase determination following rate reduction for non-compliance with notice relating to rent assistance**

- (1) If:

- (a) the Secretary reduces a person's rate of social security payment under section 81A by not adding an amount of rent assistance to the person's maximum basic rate; and
  - (b) the Secretary reconsiders the decision; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that, because of the decision, the rate at which social security payment is being, or has been, paid is less than the rate provided for by the social security law;
- the Secretary must determine that the rate is to be increased to the rate provided for by the social security law.
- (2) The determination must also specify the new rate of social security payment.
  - (3) The reconsideration referred to in paragraph (1)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.

### **Subdivision B—Provisions relating to concession cards**

#### **86 Cancellation—person not qualified**

- (1) If the Secretary is satisfied that a person to whom a concession card has been granted is not qualified for the card, the Secretary is to determine that the card is to be cancelled.

Note: In some cases, the Secretary must cancel a seniors health card or an income-tested health care card if the Secretary makes a request under subsection 75(2) or (3) of the holder (about providing tax file numbers): see subsections 77(1) and (3).

- (2) Subsection (1) does not authorise the Secretary to make a determination if:
  - (a) the card has been cancelled by the operation of another provision of the social security law; and
  - (b) the determination would take effect at or after the time at which the cancellation referred to in paragraph (a) would take effect.

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**87 Cancellation—non-compliance with certain notices**

If:

- (a) a person who is the holder of a concession card has been given:
  - (i) a notice under section 68 that requires the person to give the Department a statement; or
  - (ii) a notice embodying a requirement under Division 1 of Part 5; and
- (b) the person does not comply with the requirement of the notice;

the Secretary may determine that the person is to cease to be qualified for the card.

**88 Changes to qualification by computer**

If:

- (a) a person is qualified for a concession card; and
- (b) the person ceases to be qualified for the card 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 by determination under section 87;

the change is taken to have been made by the Secretary by a determination under section 87 made for that reason.

**89 Resumption of qualification**

(1) If:

- (a) the Secretary makes a determination under section 87 that a person is to cease to be qualified for a concession card; and
- (b) the Secretary reconsiders the decision; and
- (c) as a result of the reconsideration, the Secretary is satisfied that, because of the decision, the person was deprived of the concession card when he or she was qualified for the card;

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the Secretary is to determine that the person is qualified for the card.

- (2) The reconsideration referred to in paragraph (1)(b) may be a reconsideration on an application under section 129 or a reconsideration without any such application having been made.

## **Division 8—Automatic cancellations and variations**

### **Subdivision A—Social security payments**

#### **90A When this Subdivision does not apply**

This Subdivision does not apply in relation to utilities allowance and energy supplement under Part 2.25B of the 1991 Act.

#### **90 Automatic cancellation—transfer to new payment type**

(1) If:

(a) a person is receiving a social security pension or benefit (the *old payment*); and

(b) either:

(i) a different kind of social security pension or benefit (the *new pension or benefit*) becomes payable to the person; or

(ii) a service pension, income support supplement or a veteran payment becomes payable to the person;

the old payment is cancelled, by force of this section, immediately before the day on which the new pension or benefit or the service pension, income support supplement or veteran payment, as the case may be, becomes payable to the person.

(2) In this section:

*social security benefit* does not include parenting payment.

#### **91 Automatic cancellation of parenting payment on transfer to new payment type—member of couple**

(1) If:

(a) a person who is a member of a couple is receiving parenting payment; and

(b) a social security benefit (other than benefit (PP) partnered) becomes payable to the person;  
parenting payment is cancelled, by force of this section, immediately before the day that is the person's start day in relation to the benefit referred to in paragraph (b).

(2) If:

- (a) a person who is a member of a couple is receiving parenting payment; and
- (b) as a result of a social security pension, a service pension, income support supplement or a veteran payment becoming payable to the person, the rate at which parenting payment is payable to the person becomes nil;

parenting payment is cancelled by force of this section immediately before the day on which the social security pension, the service pension, the income support supplement or the veteran payment, as the case may be, becomes payable to the person.

### **93 Automatic cancellation—recipient complying with subsection 68(2) notice**

(1) Subject to subsection (2), if:

- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
- (c) the event or change of circumstances occurs; and
- (d) the person informs the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change of circumstances:
  - (i) the person ceases to be qualified for the social security payment; or
  - (ii) the payment would, but for this section, cease to be payable to the person; and

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- (f) the social security payment is not cancelled before the end of the instalment period for the person that is current when the event or change of circumstances occurs;
- the following paragraphs have effect:
- (g) if the social security payment is cancelled during the instalment period (the **first period**) following the instalment period in which the event or change of circumstances occurs, the payment is payable to the person until the end of the instalment period in which the event or change occurs, and is then cancelled by force of this subsection;
- (h) if the payment is not cancelled during the first period, the payment is payable to the person until the end of the notification period, and is then cancelled by force of this subsection.
- (2) If:
- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the **notification period**); and
- (c) the event or change of circumstances occurs; and
- (d) the person informs the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
- (e) because of the event or change of circumstances, the person's working credit balance or student income bank balance is reduced to nil in an instalment period (the **nil instalment period**) of the person that is the same as, or later than, the instalment period in which the event or change of circumstances occurs (the **event instalment period**); and
- (f) either because of the reduction of the balance to nil or because of the balance having already been reduced to nil—the social security payment would, but for this subsection, cease to be payable to the person; and



- (g) the social security payment is not cancelled before the end of the nil instalment period;
- the social security payment continues to be payable to the person until a day determined in accordance with subsection (3) and is then cancelled by force of this subsection.
- (3) For the purposes of subsection (2), the day until which the social security payment continues to be payable to the person is:
- (a) if the cancellation is attributable to the reduction of the balance referred to in paragraph (2)(e) to nil and the payment is so cancelled during the instalment period (the ***next instalment period***) following the nil instalment period—the later of:
    - (i) the day before the day on which the balance was reduced to nil; or
    - (ii) the end of the event instalment period; and
  - (b) if the cancellation is attributable to the balance having already been reduced to nil and the payment is so cancelled during the next instalment period—the later of:
    - (i) the day before the first day on which the opening balance was nil; or
    - (ii) the end of the event instalment period; and
  - (c) if the cancellation is attributable to the reduction of the balance to nil but the payment is not so cancelled during the next instalment period—the later of:
    - (i) the day before the day on which the balance was reduced to nil; or
    - (ii) the end of the notification period; and
  - (d) if the cancellation is attributable to the balance having already been reduced to nil but the payment is not so cancelled during the next instalment period—the later of:
    - (i) the day before the first day on which the opening balance was nil; or
    - (ii) the end of the notification period.

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**94 Automatic cancellation—recipient not complying with subsection 68(2) notice**

- (1) Subject to subsection (2), if:
- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
  - (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
  - (c) the event or change of circumstances occurs; and
  - (d) the person does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the occurrence of the event or change of circumstances:
    - (i) the person ceases to be qualified for the social security payment; or
    - (ii) the social security payment ceases to be payable to the person;

the social security payment is cancelled, by force of this subsection, on the day on which the event or change of circumstances occurs.

- (2) If:
- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
  - (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
  - (c) the event or change of circumstance occurs; and
  - (d) the person does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the event or change of circumstances, the person's working credit balance or student income bank balance is reduced to nil in an instalment period of the person that is the

same as, or later than, the instalment period in which the event or change of circumstances occurs; and

- (f) either because of the reduction of the balance to nil or because of the balance having already been reduced to nil—the social security payment ceases to be payable to the person;

the social security payment is cancelled, by force of this subsection, on:

- (g) if the cancellation is attributable to the reduction of the balance to nil—the day on which the balance was so reduced; and
- (h) if the cancellation is attributable to the balance having already been reduced to nil—the first day on which the opening balance was nil.

### **95 Automatic cancellation—failure to provide statement under subsection 68(2)**

(1) If:

- (a) a person who is receiving a social security payment is given a notice under subsection 68(2) requiring the person to give the Department a statement or a number of statements; and
- (b) the notice relates to the payment of the social security payment in respect of a period or a number of periods specified in the notice; and
- (c) the person does not comply with the notice so far as it relates to a particular period;

then, subject to subsection (2), the social security payment is cancelled, by force of this section, on the first day in that period.

- (2) If the Secretary is satisfied that, in the special circumstances of the case, it is appropriate to do so, the Secretary may determine in writing that subsection (1) does not apply to the person on and from a day specified in the determination.
- (3) The day specified under subsection (2) may be before or after the making of the determination.

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**95A Automatic cancellation of carer payment for non-compliance with section 70 notice**

If:

- (a) a care receiver or parent of a care receiver is given a notice under section 70; and
  - (b) the notice requires the care receiver or parent to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
  - (c) the event or change of circumstances occurs; and
  - (d) the care receiver or parent does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the occurrence of the event or change of circumstances:
    - (i) the person receiving the carer payment ceases to be qualified for the payment; or
    - (ii) the carer payment ceases to be payable to the person;
- the carer payment is cancelled, by force of this section, on the day on which the event or change of circumstances occurs.

**95B Automatic suspension or cancellation—carer allowance**

If:

- (a) a person is receiving a carer allowance because the person is qualified for that allowance under section 954B of the 1991 Act (receiving carer payment); and
  - (b) the person's carer payment is suspended or cancelled;
- the carer allowance is by force of this section, suspended or cancelled, as the case may be, on the same day that the person's carer payment is suspended or cancelled.

**95C Social security payment—suspension instead of cancellation  
under section 93 or 94**

- (1) If:
- (a) a person ceases to be qualified for a social security payment or a social security payment ceases to be payable to a person; and
  - (b) the Secretary is satisfied that the cessation is because the person is employed by a Youth Bonus wage subsidy employer;
- then the Secretary may determine:
- (c) that the person's social security payment is suspended and that the suspension takes effect on the day of the cessation; and
  - (d) that section 93 or 94 is taken not to apply or not to have applied, as the case requires, to the person's social security payment in relation to the cessation.

Note: For *Youth Bonus wage subsidy employer*, see subsection (4).

- (2) Subject to subsection (3), if:
- (a) the suspension is in effect at the end of the period of 26 weeks beginning on the day the suspension takes effect; and
  - (b) at the end of that 26-week period, the person is not qualified for the social security payment or the social security payment is not payable to the person;
- then the person's social security payment is cancelled, by force of this subsection, on the day after the end of that 26-week period.
- (3) If:
- (a) before the end of the period of 26 weeks beginning on the day the suspension takes effect and while the suspension is in effect, the person ceases to be employed by a Youth Bonus wage subsidy employer; and
  - (b) the Secretary determines that the cessation is:
    - (i) as a result (whether direct or indirect) of a voluntary act of the person that was not reasonable; or
    - (ii) as a result of the person's misconduct as an employee;

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then the person's social security payment is taken to have been cancelled, by force of this subsection, on the day of the cessation.

Note: If the Secretary does not make a determination as mentioned in paragraph (b), then the social security payment may again become payable to the person (without the need for a further claim) if the requirements in section 85 are satisfied.

(4) In this section:

**Youth Bonus wage subsidy employer**, in relation to a person, means an employer that is eligible to receive a Youth Bonus wage subsidy in respect of the person under the program established by the Commonwealth and known as "Youth Jobs PaTH".

**95D Age pension—suspension instead of cancellation under section 93 or 94**

*Application*

(1) This section applies if:

- (a) age pension ceases to be payable to a person because the rate of the person's pension is nil; and
- (b) the rate of the person's pension is nil because of the occurrence of an event or change of circumstances (the **income-related event**) that results in the person's income reduced rate (see subsection (2)) being nil; and
- (c) the person is required to inform the Department of the income-related event within a specified period (the **notification period**) because of a notice given to the person under subsection 68(2); and
- (d) but for the person's income reduced rate being nil, age pension would have continued to be payable to the person; and
- (e) the person's pension is to be, or has been, cancelled under section 93 or 94 because the pension ceased to be payable for the reason mentioned in paragraph (b); and
- (f) at the time of the cessation, the person's ordinary income (as used to work out the person's income reduced rate) includes

income for remunerative work performed by the person in Australia as an employee in an employer/employee relationship.

- (2) For the purposes of subsection (1), a person's *income reduced rate* is the rate worked out at step 8 of the method statement in point 1064-A1 in Module A of Pension Rate Calculator A.

*Suspension determination—event notified within notification period*

- (3) If:

- (a) the person informs the Department of the income-related event within the notification period; and
- (b) the person's pension has not yet been cancelled under section 93;

the Secretary may determine that:

- (c) section 93 does not apply to cancel the person's pension; and
- (d) the person's pension is suspended for a period of 2 years with effect from the day the pension would otherwise have ceased to be payable under section 93.

- (4) If:

- (a) the person informs the Department of the income-related event within the notification period; and
- (b) the person's pension has been cancelled under section 93; and
- (c) within the period of 2 years after the cancellation, the ordinary income of the person is of an amount that would not preclude the person from receiving age pension;

the Secretary may determine that:

- (d) the person is to be treated as if section 93 had not applied to cancel the person's pension; and
- (e) the person's pension is suspended for a period of 2 years with effect from the day the pension had ceased to be payable under section 93.

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*Suspension determination—event not notified within notification period*

- (5) If:
- (a) the person does not inform the Department of the income-related event within the notification period; and
  - (b) the person's pension has been cancelled under section 94; and
  - (c) the Department subsequently becomes aware of the income-related event; and
  - (d) within the period of 2 years and 14 days after the cancellation, the ordinary income of the person is of an amount that would not preclude the person from receiving age pension;
- the Secretary may determine that:
- (e) the person is to be treated as if section 94 had not applied to cancel the person's pension; and
  - (f) the person's pension is suspended for a period of 2 years and 14 days with effect from the day the pension had ceased to be payable under section 94.

*Residency requirement*

- (6) The Secretary must not make a determination under subsection (3), (4) or (5) unless the Secretary is satisfied that the person is residing in Australia.

*Resumption of age pension after suspension*

- (7) If:
- (a) the Secretary suspends a person's age pension under subsection (3), (4) or (5); and
  - (b) within the period the suspension is in effect, the Secretary reconsiders the decision to suspend; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that:



- (i) the person did not receive age pension that was payable to the person; or
  - (ii) the person is not receiving age pension that is payable to the person;
- the Secretary is to determine that age pension was or is payable to the person, as the case requires.
- (8) The reconsideration referred to in paragraph (7)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.
- (9) A determination that age pension was or is payable to the person under subsection (7) takes effect:
- (a) if the person applied for reconsideration under section 129—on the day the application was made; or
  - (b) in any other case—on the day the Secretary starts to reconsider the decision to suspend.

*Cancellation of age pension after period of suspension*

- (10) If:
- (a) the Secretary suspends a person's age pension for a period under subsection (3), (4) or (5); and
  - (b) the suspension continues in effect throughout the period;
- then, at the end of the period, the determination granting the person age pension is, by force of this subsection, revoked.

**96 Disability support pension—suspension instead of cancellation under section 93**

- (1) If:
- (a) a person ceases to be qualified for disability support pension because the person obtains paid work that is for at least 30 hours per week; and
  - (b) the person has, within the notification period referred to in section 93, informed the Secretary that the person has obtained that work;

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the Secretary may determine:

- (c) that section 93 does not apply to the person's disability support pension; and
  - (d) that the person's disability support pension is to be suspended with effect from the day the pension would otherwise have ceased to be payable under section 93.
- (2) Subsection (1) does not apply to a person if:
- (a) the Secretary gives written notice to the person that the person is no longer qualified for disability support pension; and
  - (b) the Secretary's notice is given before the person informs the Secretary that the person has obtained work.
- (3) If:
- (a) disability support pension ceases to be payable to a person because the rate of the pension is nil as a result of employment income of the person; and
  - (b) the person has informed the Secretary about the employment income within the notification period referred to in section 93;

the Secretary may determine:

- (c) that section 93 does not apply to the person's disability support pension; and
  - (d) that the person's disability support pension is to be suspended with effect from the day the pension would otherwise have ceased to be payable under section 93.
- (3A) If:
- (a) the Secretary makes a determination under subsection (1) or (3) suspending a person's disability support pension; and
  - (b) within 2 years from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that:
    - (i) the person did not receive disability support pension that was payable to the person; or

- (ii) the person is not receiving disability support pension that is payable to the person;  
the Secretary is to determine that the disability support pension was or is payable to the person, as the case requires.
- (3B) The reconsideration referred to in paragraph (3A)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.
- (3C) A determination that disability support pension was or is payable to the person under subsection (3A) takes effect:
- (a) if the person applied for reconsideration under section 129—on the day the application was made; or
  - (b) in any other case—on the day the Secretary starts to reconsider the decision to suspend.
- (4) If:
- (a) the Secretary suspends a person's disability support pension under subsection (1) or (3); and
  - (b) the determination suspending the disability support pension continues in effect throughout the period of 2 years from the date of effect of the determination;
- then, at the end of that period of 2 years, the determination granting the person disability support pension is, by force of this section, revoked.
- (5) If:
- (a) the Secretary suspends a person's disability support pension under subsection (1) or (3); and
  - (b) the person has a partner who is receiving:
    - (i) age pension; or
    - (ii) disability support pension; or
    - (iii) service pension, income support supplement or veteran payment;
- then, for the period of the suspension, the partner is taken to be partnered (partner getting neither pension nor benefit).
- (6) If:
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- (a) the Secretary suspends a person's disability support pension under subsection (1) or (3); and
  - (b) the person has a partner who was, immediately before the suspension, receiving carer payment for the period of the suspension of the person's disability support pension;
- the Secretary must determine that the partner's carer payment is not to be cancelled but is to be suspended.

**97 Disability support pension—suspension taken to have been under section 96**

(1) If:

- (a) a person ceases to be qualified for disability support pension because the person obtains paid work that is for at least 30 hours per week; and
- (b) disability support pension ceases to be payable to the person under section 93; and
- (c) within the period of 2 years after the pension ceases to be payable, the person ceases to do work of the kind referred to in paragraph (a);

the Secretary may determine that the person is to be treated as if:

- (d) section 93 had not applied to the person's disability support pension; and
- (e) the disability support pension had been suspended under section 96 with effect from the day the pension had ceased to be payable under section 93.

(2) If:

- (a) the Secretary makes a determination under subsection (1) in respect of a person; and
- (b) the person's partner had ceased to be qualified for carer payment when the person ceased to be qualified for disability support pension because the person obtained paid work;

the Secretary may determine that the partner is to be treated as if the partner's carer payment had not been cancelled but had been suspended under section 96 for the period of the suspension of the person's disability support pension.

(3) If:

- (a) disability support pension ceased to be payable to a person under section 93 because the rate of the pension was nil as a result of employment income of the person; and
- (b) within the period of 2 years after the pension ceased to be payable, the employment income of the person is reduced to a rate that would not preclude the person from receiving disability support pension;

the Secretary may determine that the person is to be treated as if:

- (c) section 93 had not applied to the person's disability support pension; and
- (d) the disability support pension had been suspended under section 96 with effect from the day the pension had ceased to be payable under section 93.

(4) If:

- (a) the Secretary makes a determination under subsection (3) in respect of a person; and
- (b) the person's partner had ceased to be qualified for carer payment when disability support pension ceased to be payable to the person for the reason mentioned in paragraph (3)(a);

the Secretary may determine that the partner is to be treated as if the partner's carer payment had not been cancelled but had been suspended under section 96 for the period of the suspension of the person's disability support pension.

### **97A Disability support pension—suspension instead of cancellation under section 94 (person obtains work)**

(1) If:

- (a) a person was receiving disability support pension as a result of a claim made before 1 July 2006; and
- (b) the person ceased to be qualified for disability support pension because he or she obtained paid work that was for at least 30 hours per week; and

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- (c) the person subsequently informs the Secretary that he or she has obtained that work; and
- (d) the person's disability support pension was cancelled under section 94 because of that work; and
- (e) within the period of 2 years and 14 days after the person ceased to be qualified for the disability support pension, the person ceases to do work of the kind referred to in paragraph (b);

the Secretary may determine that:

- (f) the person is to be treated as if section 94 had not applied to the person's disability support pension; and
- (g) the person's disability support pension is suspended from the day on which the person ceased to be qualified for the pension.

However, this subsection ceases to apply to a transitional DSP applicant from the date of effect of the first decision about the person's capacity to perform work made on or after 1 July 2006 following a review of the person's capacity to perform work.

(2) If:

- (a) subsection (1) does not apply, or has ceased to apply, to a person; and
- (b) the person ceased to be qualified for disability support pension because he or she obtained paid work that is for at least 30 hours per week; and
- (c) the person subsequently informs the Secretary that he or she has obtained that work; and
- (d) the person's disability support pension was cancelled under section 94 because of that work; and
- (e) within the period of 2 years and 14 days after the person ceased to be qualified for the disability support pension, the person ceases to do work of the kind referred to in paragraph (b);

the Secretary may determine that:

- (f) the person is to be treated as if section 94 had not applied to the person's disability support pension; and

- (g) the person's disability support pension is suspended from the day on which the person ceased to be qualified for the pension.
- (3) Neither subsection (1) nor (2) applies to a person if:
- (a) the Secretary gives written notice to the person that the person is no longer qualified for disability support pension; and
  - (b) the Secretary's notice is given before the person informs the Secretary that the person has obtained work.
- (4) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and
  - (b) the determination continues in force throughout the period (or the balance of the period) of 2 years and 14 days after its date of effect;
- then, at the end of that period (or the balance of that period), the determination granting the person disability support pension is, by force of this subsection, revoked.
- (5) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and
  - (b) the person's partner had ceased to be qualified for carer payment when the person ceased to be qualified for disability support pension for the reason mentioned in paragraph (1)(b) or (2)(b);
- the Secretary may determine that the partner is to be treated as if the partner's carer payment had not been cancelled but had been suspended for the period of the suspension of the person's disability support pension.
- (6) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and

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- (b) within 2 years and 14 days from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and
- (c) as a result of the reconsideration, the Secretary is satisfied that:
  - (i) the person did not receive disability support pension that was payable to the person; or
  - (ii) the person is not receiving disability support pension that is payable to the person;the Secretary is to determine that the disability support pension was or is payable to the person, as the case requires.
- (7) The reconsideration referred to in paragraph (6)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.
- (8) A determination that disability support pension was or is payable to the person under subsection (6) takes effect:
  - (a) if the person applied for reconsideration under section 129—on the day the application was made; or
  - (b) in any other case—on the day the Secretary starts to reconsider the decision to suspend.

**97B Disability support pension—suspension instead of cancellation under section 94 (person's income)**

- (1) If:
  - (a) disability support pension ceased to be payable to a person because the rate of the pension was nil as a result of employment income of the person; and
  - (b) the person subsequently informs the Secretary of that employment income; and
  - (c) the person's disability support pension was cancelled under section 94 because the pension ceased to be payable to the person for the reason mentioned in paragraph (a); and
  - (d) within the period of 2 years and 14 days after the pension ceased to be payable, the employment income of the person



is reduced to a rate that would not preclude the person from receiving disability support pension;

the Secretary may determine that:

- (e) the person is to be treated as if section 94 had not applied to the person's disability support pension; and
  - (f) the person's disability support pension is suspended from the day on which the pension ceased to be payable to the person.
- (2) Subsection (1) does not apply to a person if:
- (a) the Secretary gives written notice to the person that the person is no longer qualified for disability support pension; and
  - (b) the Secretary's notice is given before the person informs the Secretary of the person's income or increased income.
- (3) If:
- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
  - (b) the determination continues in force throughout the period (or the balance of the period) of 2 years and 14 days after its date of effect;
- then, at the end of that period (or the balance of that period), the determination granting the person disability support pension is, by force of this subsection, revoked.
- (4) If:
- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
  - (b) the person's partner had ceased to be qualified for carer payment when disability support pension ceased to be payable to the person for the reason mentioned in paragraph (1)(a);
- the Secretary may determine that the partner is to be treated as if the partner's carer payment had not been cancelled but had been suspended for the period of the suspension of the person's disability support pension.

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- (5) If:
- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
  - (b) within 2 years and 14 days from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that:
    - (i) the person did not receive disability support pension that was payable to the person; or
    - (ii) the person is not receiving disability support pension that is payable to the person;
- the Secretary is to determine that the disability support pension was or is payable to the person, as the case requires.
- (6) The reconsideration referred to in paragraph (5)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.
- (7) A determination that disability support pension was or is payable to the person under subsection (5) takes effect:
- (a) if the person applied for reconsideration under section 129—on the day the application was made; or
  - (b) in any other case—on the day the Secretary starts to reconsider the decision to suspend.

**97C Age pension, disability support pension and carer payment—  
suspension instead of cancellation under section 93 or 94  
(partners)**

*Application*

- (1) This section applies if:
- (a) one of the following determinations is made, in relation to a person who is a member of a couple, because of the occurrence of an event or change of circumstances:

- (i) a determination under subsection 95D(3), (4) or (5) suspending the person's age pension because the pension ceased to be payable to the person;
  - (ii) a determination under subsection 96(1), 97(1), 97A(1) or 97A(2) suspending the person's disability support pension because the person ceased to be qualified for the pension;
  - (iii) a determination under subsection 96(3), 97(3) or 97B(1) suspending the person's disability support pension because the pension ceased to be payable to the person;
  - (iv) a determination under subsection 56ED(3), (4) or (5) of the Veterans' Entitlements Act suspending the person's age service pension, invalidity service pension, income support supplement or veteran payment because the pension, supplement or payment ceased to be payable to the person; and
- (b) immediately before the event or change of circumstances, the person's partner was receiving an age pension, disability support pension or carer payment; and
  - (c) the partner's pension or payment ceases to be payable to the partner because the rate of the partner's pension or payment is nil; and
  - (d) the partner's cessation of payability occurs because of the occurrence of the same event or change of circumstances that resulted in the person's cessation of payability or qualification; and
  - (e) because of the partner's cessation of payability, the partner's pension or payment is to be, or has been, cancelled under section 93 or 94.

Note: For suspensions when a person's partner has been receiving service pension, income support supplement or veteran payment, see section 56EE of the Veterans' Entitlements Act.

*Partner suspension determination*

- (2) The Secretary may determine that:

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- (a) the partner is to be treated as if section 93 or 94 does not apply or had not applied (as the case may be) to cancel the partner's pension or payment; and
- (b) the partner's pension or payment is suspended with effect from the day the pension or payment would otherwise have ceased to be payable under section 93 or 94, for a period of:
  - (i) if section 94 would otherwise have applied—2 years and 14 days; or
  - (ii) in all other cases—2 years.

*Resumption of partner's pension or payment after suspension*

- (3) If:
  - (a) the Secretary suspends the partner's pension or payment under subsection (2); and
  - (b) within the period the suspension is in effect, the Secretary reconsiders the decision to suspend; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that:
    - (i) the partner did not receive pension or payment that was payable to the partner; or
    - (ii) the partner is not receiving pension or payment that is payable to the partner;

the Secretary is to determine that pension or payment was or is payable to the partner, as the case requires.
- (4) The reconsideration referred to in paragraph (3)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.
- (5) A determination that pension or payment was or is payable to the partner under subsection (3) takes effect:
  - (a) if the partner applied for reconsideration under section 129—on the day the application was made; or
  - (b) in any other case—on the day the Secretary starts to reconsider the decision to suspend.

*Cancellation of partner's pension or payment after period of suspension*

- (6) If:
- (a) the Secretary suspends the partner's pension or payment for a period under subsection (2); and
  - (b) the suspension continues in effect throughout the period;
- then, at the end of the period, the determination granting the partner pension or payment is, by force of this subsection, revoked.

*Partner ceasing to be member of couple*

- (7) To avoid doubt, subsections (3) to (6) apply to the partner even if the partner ceases to be a member of the couple after the event or change of circumstances referred to in subsection (1).

**98 Automatic rate reduction—partner starting to receive pension or benefit**

- (1) Subject to subsection (2), if:
- (a) a person is receiving a social security payment; and
  - (b) the person's partner starts to receive:
    - (i) a social security pension or benefit; or
    - (ii) a service pension, income support supplement or a veteran payment; and
  - (c) the person's social security payment rate is reduced because of the partner's receipt of the pension, benefit, supplement or payment;
- the social security payment becomes payable to the person at the reduced rate on the day on which the partner starts to receive the pension, benefit, supplement or payment.
- (2) If:
- (a) a person is receiving a social security payment; and
  - (b) the person's partner starts to receive:
    - (i) a social security pension or benefit; or
    - (ii) a service pension or a veteran payment; and

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- (c) because the partner starts to receive that pension, benefit or payment, the person's working credit balance or student income bank balance is reduced to nil; and
- (d) either because of the reduction of the balance to nil or because of the balance having already been reduced to nil—the person's social security payment rate is to be reduced; the social security payment becomes payable to the person at the reduced rate on:
  - (e) if the rate reduction is attributable to the reduction of the balance to nil—the day on which the balance was so reduced; and
  - (f) if the rate reduction is attributable to the balance having already been reduced to nil—the first day on which the opening balance was nil.

**99 Automatic rate reduction—recipient complying with subsection 68(2) notice**

- (1) Subject to subsection (2), if:
  - (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
  - (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
  - (c) the event or change of circumstances occurs; and
  - (d) the person informs the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the occurrence of the event or change of circumstances, the rate of the social security payment is to be reduced; and
  - (f) the person's rate of payment is not reduced before the end of the instalment period for the person that is current when the event or change of circumstances occurs;the following paragraphs have effect:

- (g) if the person's rate of payment is reduced during the instalment period (the **first period**) following the instalment period in which the event or change of circumstances occurs, the payment becomes payable to the person at the reduced rate immediately after the end of the instalment period in which the event or change occurs;
  - (h) if the person's rate of payment is not reduced during the first period, the payment becomes payable to the person at the reduced rate immediately after the end of the notification period.
- (2) If:
- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
  - (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the **notification period**); and
  - (c) the event or change of circumstances occurs; and
  - (d) the person informs the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the event or change of circumstances, the person's working credit balance or student income bank balance is reduced to nil in an instalment period (the **nil instalment period**) of the person that is the same as, or later than, the instalment period in which the event or change of circumstances occurs (the **event instalment period**); and
  - (f) either because of the reduction of the balance to nil or because of the balance having already been reduced to nil—the rate of the person's social security payment is to be reduced; and
  - (g) the person's rate of payment is not reduced before the end of the nil instalment period;
- the social security payment becomes payable to the person at the reduced rate from the day immediately after the day determined in accordance with subsection (3).

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- (3) For the purposes of subsection (2), the day immediately after which the social security payment becomes payable to the person at the reduced rate is:
- (a) if the rate reduction is attributable to the reduction of the balance referred to in paragraph (2)(e) to nil and the rate is so reduced during the instalment period (the *next instalment period*) following the nil instalment period—the later of:
    - (i) the day before the day on which the balance was reduced to nil; or
    - (ii) the end of the event instalment period; and
  - (b) if the rate reduction is attributable to the balance having already been reduced to nil and the rate is so reduced during the next instalment period—the later of:
    - (i) the day before the first day on which the opening balance was nil; or
    - (ii) the end of the event instalment period; and
  - (c) if the rate reduction is attributable to the reduction of the balance to nil but the rate is not so reduced during the next instalment period—the later of:
    - (i) the day before the day on which the balance was reduced to nil; or
    - (ii) the end of the notification period; and
  - (d) if the rate reduction is attributable to the balance having already been reduced to nil but the rate is not so reduced during the next instalment period—the later of:
    - (i) the day before the first day on which the opening balance is nil; or
    - (ii) the end of the notification period.

**100 Automatic rate reduction—recipient not complying with subsection 68(2) notice**

- (1) Subject to subsection (2), if:
- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and



- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the ***notification period***); and
- (c) the event or change of circumstances occurs; and
- (d) the person does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change of circumstances, the rate of the social security payment is to be reduced;

the social security payment becomes payable to the person at the reduced rate on the day on which the event or change of circumstances occurs.

(2) If:

- (a) a person who is receiving a social security payment is given a notice under subsection 68(2); and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the ***notification period***); and
- (c) the event or change of circumstances occurs; and
- (d) the person does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
- (e) because of the event or change of circumstances, the person's working credit balance or student income bank balance is reduced to nil in an instalment period of the person that is the same as, or later than, the instalment period in which the event or change of circumstances occurs; and
- (f) either because of the reduction of the balance to nil or because of the balance having already been reduced to nil—the rate of the person's social security payment is to be reduced;

the social security payment becomes payable to the person at the reduced rate on:

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- (g) if the rate reduction is attributable to the reduction of the balance to nil—the day on which the balance was so reduced; and
- (h) if the rate reduction is attributable to the balance having already been reduced to nil—the first day on which the opening balance was nil.

**101 Automatic rate reduction—receipt of pension or veteran payment by person receiving parenting payment**

If:

- (a) a person who is a member of a couple is receiving parenting payment; and
- (b) as a result of a social security pension, a service pension, income support supplement or a veteran payment becoming payable to the person, the rate at which parenting payment is payable to the person is reduced;

parenting payment becomes payable to the person at the reduced rate on the day on which the social security pension, the service pension, the income support supplement or the veteran payment, as the case may be, becomes payable to the person.

**103 Changes to payments by computer following automatic cancellation or reduction**

(1) If:

- (a) a person is receiving a social security payment on the basis of data in a computer; and
- (b) the payment is cancelled, or the payment rate is reduced, by the operation of a provision of the social security law; and
- (c) the cancellation or reduction is given effect by the operation of a computer program used under the control of the Secretary stopping payment or reducing the rate of payment;

the Secretary is taken to have made a determination that the provision referred to in paragraph (b) applies to the person's social security payment.

- (2) A determination that is taken, by virtue of subsection (1), to have been made is taken to have been made on the day on which the cancellation or reduction took effect.

### **Subdivision B—Concession cards**

#### **104 Automatic cancellation—holder complying with subsection 68(4) notice**

If:

- (a) a person who is the holder of a concession card is given a notice under subsection 68(4); and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and
- (c) the event or change of circumstances occurs; and
- (d) the person informs the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change of circumstances, the person would, but for this section, cease to be qualified for the card; and
- (f) the person does not cease to hold the card before the end of the notification period;

the person continues to be qualified for the card until the end of the notification period, and then ceases to be so qualified.

#### **105 Automatic cancellation—holder not complying with subsection 68(4) notice**

If:

- (a) a person who is the holder of a concession card is given a notice under subsection 68(4); and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change of circumstances within a specified period (the *notification period*); and

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- (c) the event or change of circumstances occurs; and
  - (d) the person does not inform the Department of the occurrence of the event or change of circumstances within the notification period in accordance with the notice; and
  - (e) because of the occurrence of the event or change of circumstances, the person ceases to be qualified for the card;
- the person ceases to be qualified for the card on the day on which the event or change of circumstances occurs.

**106 Changes by computer following automatic cancellation**

- (1) If:
- (a) a person is qualified for a concession card on the basis of data in a computer; and
  - (b) the person ceases, by virtue of section 104 or 105, to be qualified for the card; and
  - (c) the cessation is given effect by the operation of a computer program under the control of the Secretary causing the person to be notified of the cessation;
- the Secretary is taken to have made a determination that the provision referred to in paragraph (b) applies to the person's concession card.
- (2) A determination that is taken, by virtue of subsection (1), to have been made is taken to have been made on the day on which the cessation took effect.

**106A Automatic cancellation on cessation of qualification**

If a person who is the holder of a concession card ceases, otherwise than by virtue of section 104 or 105, to be qualified for the card, the card is cancelled by force of this section on the day on which the person ceases to be so qualified.

**Subdivision C—Additional provision for certain pensioner concession cards and automatic issue health care cards**

**106B Automatic cancellation**

- (1) Subject to subsection (3), if:
  - (a) a section 1061ZA pensioner concession card or a listed automatic issue health care card has been granted to a person; and
  - (b) in order to be qualified for the card, the person must be receiving, or be qualified for, a particular social security pension or benefit; and
  - (c) the pension or benefit is cancelled;the section 1061ZA pensioner concession card or listed automatic issue health care card, as the case may be, is, by force of this section, cancelled.
- (2) If:
  - (a) a health care card has been granted to a person; and
  - (b) the person was qualified for the card under subsection 1061ZK(4) of the 1991 Act; and
  - (c) the person ceases to be qualified under that subsection;the health care card is, by force of this section, cancelled.
- (3) Subsection (1) does not have effect in a case in which the Secretary determines in writing that he or she is satisfied that the person concerned is likely to be granted a social security pension or benefit before it is reasonably practicable to take steps to give effect to the cancellation of the card.
- (4) In this section:

***listed automatic issue health care card*** means an automatic issue health care card that is granted:

  - (a) to a person who receives one of the following social security payments:

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- (ii) jobseeker payment;
- (iv) special benefit;
- (vi) benefit PP (partnered); or
- (b) to a person who is receiving a youth allowance and who, at the time when a determination was made to grant the person the youth allowance:
  - (i) was not undertaking full-time study; and
  - (ii) was not a new apprentice.

***section 1061ZA pensioner concession card*** means a pensioner concession card granted to a person who is qualified for the card under section 1061ZA of the 1991 Act (except under subsection (1B) of that section).

## **Division 9—Date of effect of determinations**

### **Subdivision A—Determinations relating to claims**

#### **107 General rule**

- (1) Subject to subsections (2), (3), (4) and (5), a determination under section 37 takes effect on the day on which the determination is made or on such earlier or later day as is specified in the determination.
- (2) If:
  - (a) a decision (the *original decision*) is made rejecting a person's claim for a social security payment or a concession card; and
  - (b) the person is given a notice informing him or her of the original decision; and
  - (c) within 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and
  - (d) a decision that the claim be granted is made as a result of the application for review;the determination embodying the last-mentioned decision takes effect on the day on which the determination embodying the original decision took effect.
- (3) If:
  - (a) a decision (the *original decision*) is made rejecting a person's claim for a social security payment or concession card; and
  - (b) the person is given a notice informing him or her of the original decision; and
  - (c) more than 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and

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- (d) a decision that the claim be granted is made as a result of the application for review;  
the determination embodying the last-mentioned decision takes effect on the day on which the application for review was made.
- (4) If:
- (a) a decision (the *original decision*) is made rejecting a person's claim for a social security payment or concession card; and
  - (b) no notice is given to the person informing the person of the original decision; and
  - (c) the person applies to the Secretary, under section 129, for review of the original decision; and
  - (d) a decision that the claim be granted is made as a result of the application for review;  
the determination embodying the last-mentioned decision takes effect on the day on which the determination embodying the original decision took effect.
- (5) If:
- (a) a decision (the *original decision*) is made rejecting a person's claim for a social security payment or concession card; and
  - (b) the person is given a notice informing him or her of the original decision; and
  - (c) the Secretary reviews the decision under section 126 without any application under section 129 for review of the decision having been made; and
  - (d) a decision that the claim be granted is made as a result of the review;  
the determination embodying the last-mentioned decision takes effect on the day on which the determination embodying the original decision took effect.



**Subdivision B—Determinations under section 78, 81A, 85,  
85AA or 85A**

**108 Definition**

In this Subdivision:

*favourable determination* means a determination under section 78, 85, 85AA or 85A.

**109 Date of effect of favourable determination resulting from review**

(1) If:

- (a) a decision (the *original decision*) is made in relation to a person's social security payment; and
- (b) a notice is given to the person informing the person of the original decision; and
- (c) within 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

(2) If:

- (a) a decision (the *original decision*) is made in relation to a person's social security payment; and
- (b) a notice is given to the person informing the person of the original decision; and
- (c) more than 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the application for review was made.

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(3) If:

- (a) a decision (the *original decision*) is made in relation to a person's social security payment; and
- (b) the person is not given notice of the original decision; and
- (c) the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

(4) If:

- (a) a decision (the *original decision*) is made in relation to a person's social security payment; and
- (b) the person is given a notice informing him or her of the original decision; and
- (c) the Secretary reviews the decision under section 126 without any application under section 129 for review of the decision having been made; and
- (d) as a result of the review, the favourable determination is made within 13 weeks after notice of the original decision was given to the person;

the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

(5) If:

- (a) a decision (the *original decision*) is made in relation to a person's social security payment; and
- (b) the person is given a notice informing him or her of the original decision; and
- (c) the Secretary reviews the decision under section 126 without any application under section 129 for review of the decision having been made; and
- (d) as a result of the review, the favourable determination is made more than 13 weeks after notice of the original decision was given to the person;

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the favourable determination takes effect on the day on which the review was begun by the Secretary.

- (6) This section does not apply to determinations to which section 109A or 110A apply.
- (7) For the purposes of this section, if:
- (a) the Secretary makes a decision constituted by a determination made under section 78 to increase the rate at which a social security payment is being, or has been, paid; and
  - (b) the determination is made because an amount has been indexed or adjusted by the operation of Part 3.16 of the 1991 Act;
- then:
- (c) each person whose rate of social security payment is, or was, affected by the determination is taken to have been given notice of the determination and of the increased rate; and
  - (d) the notice is taken to have been given on the day on which the amount was so indexed or adjusted.

**109A Date of effect of determination under section 78 resulting from review required by section 126A**

If the Secretary makes a determination under section 78 (rate increase determination) as a result of a review required by section 126A (review of determination of youth allowance rate in relation to maintenance income), the determination takes effect:

- (a) unless paragraph (b) applies—on the date that would give full effect to the decision on review; or
- (b) if the date referred to in paragraph (a) is earlier than the first day of the income year before the income year in which the review decision was made—that first day.

**110 Date of effect of favourable determination**

- (1) Subject to subsections (1A) to (11A) (inclusive), if a favourable determination is made following a person having informed the

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Department of the occurrence of an event or change of circumstances, the determination takes effect:

- (a) on the day on which the person so informed the Department;  
or
  - (b) on the day on which the event or change occurred;  
whichever is the later.
- (1A) If a favourable determination is made in relation to a person who has not reached pension age:
- (a) following the person's having informed the Department of the occurrence of an event or change of circumstances; and
  - (b) because, in an instalment period of the person:
    - (i) there is a decrease in the amount of the person's employment income taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have been received by the person; or
    - (ii) the person has ceased to be taken, in accordance with that Division, to have received employment income;
- the determination takes effect on the first day of the instalment period, or on the first day of the instalment period in which the person so informs the Department, whichever is the later.
- (2) Subject to subsection (2A), if a favourable determination is made following a person having given the Department a statement about a matter in accordance with a notice under section 67 or 68, the determination takes effect on the day on which the matter arose.
- (2A) If a favourable determination is made in relation to a person who has not reached pension age:
- (a) following the person's having given the Department a statement about a matter in accordance with a notice under section 68 that relates to the payment of the social security payment in respect of an instalment period specified in the notice; and
  - (b) because, in the instalment period:
    - (i) there is a decrease in the amount of the person's employment income taken, in accordance with

Division 1AA of Part 3.10 of the 1991 Act, to have been received by the person; or

- (ii) the person has ceased to be taken, in accordance with that Division, to have received employment income;

the determination takes effect on the first day of the instalment period.

(3) Subject to subsection (3A), if:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner has been given a notice under section 68 that requires the partner to give the Department a statement; and
- (c) the notice relates to the payment of the partner's social security payment in respect of a period specified in the notice; and
- (d) the partner gives the Department a statement, in accordance with the notice, about a matter that arose during the specified period; and
- (e) following the giving of the statement, a favourable determination is made in relation to the person's social security payment;

the determination takes effect on the day on which the matter arose.

(3A) If:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner has not reached pension age; and
- (c) the partner has been given a notice under section 68 that requires the partner to give the Department a statement; and
- (d) the notice relates to the payment of the partner's social security payment in respect of an instalment period specified in the notice; and
- (e) the partner gives the Department a statement, in accordance with the notice, about a matter that arose during the instalment period; and

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- (f) following the giving of the statement, a favourable determination is made in relation to the person's social security payment; and
  - (g) the determination is made because, in the instalment period:
    - (i) there is a decrease in the amount of the partner's employment income taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have been received by the partner; or
    - (ii) the partner has ceased to be taken, in accordance with that Division, to have received employment income;
- the determination takes effect on the first day of the instalment period.
- (4) If:
- (a) a favourable determination is made following the death of a person's partner (the *partner*); and
  - (b) the favourable determination is made because the person elects not to receive bereavement payments; and
  - (c) within the bereavement period:
    - (i) the person notifies the Department, orally or in writing or in a manner approved by the Secretary, of the partner's death; or
    - (ii) the Secretary otherwise becomes aware of the death;
- the determination takes effect on the day on which the partner died.
- (5) If:
- (a) a favourable determination is made following the death of a person's partner (the *partner*); and
  - (b) immediately before the partner died, the partner:
    - (i) was not receiving a social security pension, a service pension, income support supplement or a veteran payment; and
    - (ii) was not a long-term social security recipient; and
  - (c) within the period of 4 weeks starting on the day after the day on which the partner dies:

- (i) the person notifies the Department, orally or in writing or in a manner approved by the Secretary, of the partner's death; or
  - (ii) the Secretary otherwise becomes aware of the death;
- the determination takes effect on the day on which the partner died.

(9) If:

- (a) the favourable determination is made as a result of the Secretary forming the opinion, for the purposes of subsection 5(12) of the 1991 Act, that a young person will not, or would not, if an application were duly made, receive payments under a prescribed educational scheme; and
  - (b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;
- the determination takes effect on the day on which the determination is made or on such earlier or later day as is specified in the determination.

(10) If:

- (a) the favourable determination is made because, for the purposes of subsection 5(11) of the 1991 Act, a young person is not qualified to receive a payment under a prescribed educational scheme; and
  - (b) the young person, or another person or organisation, was previously in receipt of a payment under a prescribed educational scheme in respect of the young person but the payment has since ceased; and
  - (c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;
- the determination takes effect on the day on which the determination is made or on such earlier or later day as is specified in the determination.

(11) If:

- (a) the favourable determination is made because, for the purposes of subsection 5(11) of the 1991 Act, a young person

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is not qualified to receive payments under any prescribed educational scheme; and

- (b) no application has been made for payments in respect of that young person under any prescribed educational scheme; and
- (c) the Secretary is satisfied that it is reasonable that no such application has been made; and
- (d) the young person ceased, within 13 weeks after becoming a prescribed student child, to be a prescribed student child because the Secretary formed an opinion for the purposes of paragraph 5(12)(c) of the 1991 Act;

the determination takes effect on the day on which the young person became a prescribed student child.

- (11A) If the Secretary makes a determination under section 78 (rate increase determination) as a result of a revised estimate of maintenance income for a parent of a person as referred to in section 123AA, the determination takes effect on the day the revised estimate was made by, or given to, the Secretary.
- (12) This section does not apply to determinations to which section 110A applies.

**110A Date of effect of favourable determinations resuming payment after suspensions relating to non-compliance**

If:

- (a) a favourable determination is made under section 85 resuming payment of a parenting payment, youth allowance, austudy payment, jobseeker payment or special benefit the payment of which had been suspended under section 80; and
- (b) the payment had been suspended because it was not payable because of:
  - (i) subsection 42P(1) or 42S(1) (if the payment was a participation payment and the person receiving the payment was a declared program participant); or
  - (ii) section 550B or 551 of the 1991 Act (if the payment was a youth allowance); or



(iii) section 576A or 577 of the 1991 Act (if the payment was an austudy payment);  
the determination takes effect, or is taken to have taken effect, on the day after the end of the period for which the payment, allowance or benefit is not payable because of section 550B, 551, 576A or 577 of the 1991 Act, or on the day after the serious failure period or unemployment non-payment period ends under subsection 42P(1) or 42S(3) or (4) or section 42Q of this Act, as the case requires.

#### **111 Date of effect of section 78 determination resulting from indexing or adjustment**

If:

- (a) the Secretary makes a determination under section 78; and
- (b) the determination is made because an amount has been indexed or adjusted by the operation of Part 3.16 of the 1991 Act;

the determination takes effect on the day on which the amount was so indexed or adjusted.

#### **114 Date of effect of other favourable determinations**

- (1) In the case of a favourable determination to which none of sections 109, 109A, 110 and 110A apply, the determination takes effect on the day on which the determination is made or on such other day as is specified in the determination.
- (2) A day specified in a determination for the purpose of subsection (1) may be:
  - (a) later than the day on which the determination is made; or
  - (b) not earlier than 13 weeks before the day on which the determination is made.

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**114A Date of effect of favourable determination—portability extensions**

A favourable determination that is made as a result of a determination referred to in:

- (a) subsection 1216(2), 1220A(1A) or 1220B(1A) of the 1991 Act; or
- (b) subclause 128(1A) of Schedule 1A to the 1991 Act; or
- (c) subitem 6(6) or 14(8) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014*;

may be expressed to take effect on a day earlier than otherwise permitted by this Subdivision.

**Subdivision C—Determinations under section 89**

**115 Definition**

In this Subdivision:

*favourable determination* means a determination under section 89.

**116 Date of effect of favourable determination resulting from review—concession cards**

(1) If:

- (a) a decision (the *original decision*) is made in relation to a person's qualification for a concession card; and
- (b) the person is given a notice informing him or her of the original decision; and
- (c) within 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

(2) If:

- (a) a decision (the ***original decision***) is made in relation to a person's qualification for a concession card; and
- (b) the person is given a notice informing him or her of the original decision; and
- (c) more than 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the application for review was made.

(3) If:

- (a) a decision (the ***original decision***) is made in relation to a person's qualification for a concession card; and
- (b) the person is not given any notice informing him or her of the original decision; and
- (c) the person applies to the Secretary, under section 129, for review of the original decision; and
- (d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

(4) If:

- (a) a decision (the ***original decision***) is made in relation to a person's qualification for a concession card; and
- (b) the person is given a notice informing him or her of the original decision; and
- (c) the Secretary reviews the decision under section 126 without any application under section 129 for review of the decision having been made;
- (d) as a result of the review, the favourable decision is made more than 13 weeks after the notice of the original decision was given to the person;

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the favourable determination takes effect on the day on which the determination embodying the original decision took effect.

**Subdivision D—Date of effect of adverse determinations relating to social security payments**

**117 Definition**

In this Subdivision:

*adverse determination* means a determination under section 79, 80, 81, 81A or 82.

**118 Date of effect of adverse determinations—general rules**

- (1) The day on which an adverse determination takes effect in relation to a social security payment is worked out:
  - (b) in the case of carer payment—in accordance with this section and section 120; and
  - (c) in the case of any other social security payment—in accordance with this section.
- (2) Subject to subsections (2A), (2B), (2D) and (2E), if:
  - (a) an adverse determination is made following a person having informed the Department of the occurrence of an event or change of circumstances; and
  - (b) the person is not paid an instalment of the social security payment after the occurrence of the event or change and before the determination is made;the determination takes effect on the day on which the event or change of circumstances occurred.
- (2A) If an adverse determination is made in relation to a person who has not reached pension age:
  - (a) following the person's having informed the Department of the occurrence of an event or change of circumstances; and

- (b) because the person is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income in an instalment period of the person;  
the determination takes effect on:
- (c) if the determination is attributable to the reduction, during the instalment period, of the person's working credit balance or student income bank balance to nil—the day on which the balance was so reduced; and
  - (d) if the determination is attributable to the person's having a working credit balance or a student income bank balance that has already been reduced to nil during the instalment period—the first day in the instalment period on which the person's opening balance was nil; and
  - (e) in any other case—the first day of the instalment period;
- so long as the person is not paid an instalment of the social security payment after the day worked out under paragraph (c), (d) or (e) and before the determination is made.

(2B) If:

- (a) an adverse determination is made in relation to a person following the person's having informed the Department of the occurrence of an event or change of circumstances; and
  - (b) the determination is made because, in an instalment period of the person, either:
    - (i) the person earns, derives or receives, or is taken to earn, derive or receive, ordinary income other than employment income; or
    - (ii) the person has reached pension age and is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income; and
  - (c) the person's student income bank balance is reduced to nil during the instalment period;
- the determination takes effect on:
- (d) if the determination is attributable to the reduction of the student income bank balance to nil—the day on which the balance was so reduced; and

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- (e) if the determination is attributable to the person's having a student income bank balance that has already been reduced to nil during the instalment period—the first day in the instalment period on which the person's opening balance was nil;

so long as the person is not paid an instalment of the social security payment after the day worked out under paragraph (d) or (e) and before the determination is made.

- (2D) If the Secretary makes a determination under section 79 (rate reduction determination) as a result of a revised estimate of the amount of maintenance income for a parent of a person as referred to in section 123AA, the determination takes effect on the day the revised estimate was made by, or given to, the Secretary.
- (2E) If the Secretary makes a determination under section 79 (rate reduction determination) as a result of a review required by section 126A (review of determination of youth allowance rate in relation to maintenance income), the determination takes effect on the date that would give full effect to the decision on review.
- (3) If:
  - (a) an adverse determination is made in relation to a person because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21, or Division 3 of Part 3.14, of the 1991 Act; and
  - (b) a social security payment has been paid to the person or the person's partner when, because of the payment of arrears of periodic compensation payments, the payment should have been cancelled or suspended;the determination takes effect on the first day of the periodic payments period to which the arrears of periodic compensation payments relate.
- (4) If:
  - (a) an adverse determination is made in relation to a person because of point 1064-E3, 1066A-F2A, 1067G-H25,

1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21, or  
Division 3 of Part 3.14, of the 1991 Act; and

- (b) the rate at which a social security payment was paid to the person or the person's partner was, because of the payment of arrears of periodic compensation payments, higher than the rate at which the payment should have been paid;

the determination takes effect on the first day of the periodic payments period to which the arrears of periodic compensation payments relate.

- (5) Subject to subsections (5A) and (5B), if the adverse determination is made following a person having given the Department a statement about a matter in accordance with a notice under section 67 or 68, the determination takes effect on the day on which the matter arose.

- (5A) If an adverse determination is made in relation to a person who has not reached pension age:

- (a) following the person's having given the Department a statement about a matter in accordance with a notice under section 68 that relates to the payment of the social security payment in respect of an instalment period specified in the notice; and

- (b) because the person is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income in the instalment period;

the determination takes effect on:

- (c) if the determination is attributable to the reduction, during the instalment period, of the person's working credit balance or student income bank balance to nil—the day on which the balance was so reduced; and

- (d) if the determination is attributable to the person's having a working credit balance or a student income bank balance that has already been reduced to nil during the instalment period—the first day in the instalment period on which the person's opening balance was nil; and

- (e) in any other case—the first day of the instalment period.

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(5B) If:

- (a) an adverse determination is made in relation to a person following the person's having given the Department a statement about a matter in accordance with a notice under section 68 that relates to the payment of the social security payment in respect of an instalment period specified in the notice; and
- (b) the determination is made because, in the instalment period, either:
  - (i) the person earns, derives or receives, or is taken to earn, derive or receive, ordinary income other than employment income; or
  - (ii) the person has reached pension age and is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income; and
- (c) the person's student income bank balance is reduced to nil during the instalment period;

the determination takes effect on:

- (d) if the determination is attributable to the reduction of the student income bank balance to nil—the day on which the balance was so reduced; and
- (e) if the determination is attributable to the person's having a student income bank balance that has already been reduced to nil during the instalment period—the first day in the instalment period on which the person's opening balance was nil.

(6) Subject to subsections (6A) and (6B), if:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner is given a notice under section 68 requiring the partner to give the Department a statement; and
- (c) the notice relates to the payment of the partner's social security payment in respect of a period specified in the notice; and



- (d) the partner gives the Department a statement, in accordance with the notice, about a matter that arose during the specified period; and
  - (e) following the giving of the statement, an adverse determination is made in relation to the person's social security payment;
- the determination takes effect on the day on which the matter arose.

(6A) If:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner has not reached pension age; and
- (c) the partner is given a notice under section 68 requiring the partner to give the Department a statement; and
- (d) the notice relates to the payment of the partner's social security payment in respect of an instalment period specified in the notice; and
- (e) the partner gives the Department a statement, in accordance with the notice, about a matter that arose during the instalment period; and
- (f) following the giving of the statement, an adverse determination is made in relation to the person's social security payment; and
- (g) the determination is made because the partner is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income in the instalment period;

the determination takes effect on:

- (h) if the adverse determination is attributable to the reduction, during the instalment period, of the partner's working credit balance or student income bank balance to nil—the day on which the balance was so reduced; and
- (i) if the determination is attributable to the partner's having a working credit balance or a student income bank balance that has already been reduced to nil during the instalment

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period—the first day of the instalment period on which the opening balance was nil; and

(j) in any other case—the first day of the instalment period.

(6B) If:

- (a) a person and his or her partner (the *partner*) are each receiving a social security payment; and
- (b) the partner is given a notice under section 68 requiring the partner to give the Department a statement; and
- (c) the notice relates to the payment of the partner's social security payment in respect of an instalment period specified in the notice; and
- (d) the partner gives the Department a statement, in accordance with the notice, about a matter that arose during the instalment period; and
- (e) the partner's student income bank balance is reduced to nil during the instalment period; and
- (f) following the giving of the statement, an adverse determination is made in relation to the person's social security payment; and
- (g) the determination is made because, in the instalment period, either:
  - (i) the partner earns, derives or receives, or is taken to earn, derive or receive, ordinary income other than employment income; or
  - (ii) the partner has reached pension age and is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received employment income;

the determination takes effect on:

- (h) if the determination is attributable to the reduction of the partner's student income bank balance to nil—the day on which the balance was so reduced; and
- (i) if the determination is attributable to the partner's having a student income bank balance that has already been reduced to nil during the instalment period—the first day in the

instalment period on which the partner's opening balance was nil.

(7) If:

(a) the person whose social security payment is affected by the adverse determination has contravened a provision of this Act or a provision of the 1991 Act (other than an excluded provision); and

(b) the contravention causes a delay in the making of the determination;

the adverse determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

(7A) Subsection (7) does not apply to a determination under subsection 81(3).

(8) If:

(a) a person has made a false statement or misrepresentation; and

(b) because of the false statement or misrepresentation, a social security payment has been paid to a person when it should have been cancelled or suspended;

the adverse determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

(9) If:

(a) a person has made a false statement or misrepresentation; and

(b) because of the false statement or misrepresentation, the rate at which a social security payment was paid to a person was higher than it should have been;

the adverse determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

(11) If:

(a) a person's social security payment is suspended under section 80, 81 or 82; and

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- (b) the payment is subsequently cancelled under section 80, 81 or 82;  
the determination by which the payment is cancelled takes effect on the day on which the payment was suspended.
- (11A) Despite subsection (11), a determination under section 80 or subsection 81(3) cancelling a person's social security payment that has already been suspended under subsection 81(3) takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.
- (12) An adverse determination in relation to telephone allowance takes effect:
- (a) on the day on which it is made; or
  - (b) if a later day is specified in the determination, on that day.
- (12A) If:
- (a) a decision (the ***social security decision***) was made that rent assistance (the ***social security rent assistance***) was to be included when calculating a person's rate of social security payment for each day in a period; and
  - (b) the condition in subsection (12B) is met for each day in that period (which is about rent assistance also being included in family tax benefit); and
  - (c) because the inclusion of the social security rent assistance was contrary to Part 3.7 of the 1991 Act, an adverse determination is made to reduce the rate of, or cancel, the person's social security payment for each day in that period;
- the adverse determination takes effect on the first day of that period.
- (12B) The condition in this subsection is met for each day in a period if:
- (a) both of the following apply:
    - (i) the person was a member of a couple (other than an illness separated couple, a respite care couple or a temporarily separated couple) on each day in the period;

- (ii) when the social security decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person's, or the person's partner's, Part A rate of family tax benefit for each day in the period; or
  - (b) both of the following apply:
    - (i) the person was not a member of a couple, or was a member of an illness separated couple, a respite care couple, or a temporarily separated couple, on each day in the period;
    - (ii) when the social security decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person's Part A rate of family tax benefit for each day in the period; or
  - (c) all of the following apply:
    - (i) when the social security decision was made, no determination of a kind mentioned in subparagraph (a)(ii) or (b)(ii) (as the case requires) was in force;
    - (ii) after the social security decision was made, such a determination was made;
    - (iii) each day in the period either is, or comes after, the day on which the determination was made.
- (12C) If:
- (a) an adverse determination is made under section 80 suspending the payment of a parenting payment, youth allowance, austudy payment, jobseeker payment or special benefit to a person; and
  - (b) the determination was made because of the application of:
    - (i) subsection 42P(1) or 42S(1) (if the payment is a participation payment and the person is a declared program participant); or
    - (ii) section 550B or 551 of the 1991 Act (if the payment is a youth allowance); or

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- (iii) section 576A or 577 of the 1991 Act (if the payment is an austudy payment);  
the determination is taken to have taken effect on the day of the start of the period for which the payment, allowance or benefit is not payable because of that section.
- (12D) However, subsection (12C) does not apply to an adverse determination if the determination would take effect on an earlier day under another provision of this Act.
- (13) In any other case, an adverse determination takes effect:
- (a) on the day on which it is made; or
  - (b) if a later day is specified in the determination, on that day.
- (14) For the purposes of subsection (7), the excluded provisions are:
- (a) subsections 67(2), 68(2) and 69(2) of this Act to the extent that they relate to the giving of a notice requiring a person to give a statement to the Department; and
  - (b) sections 192, 193, 194 and 195 of this Act.

**120 Additional rules in the case of carer payment**

- (1) If:
- (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer payment because the carer is providing care for a care receiver or care receivers; and
  - (b) the determination is based on an assessment of the taxable income of the care receiver, or any of the care receivers, for a tax year; and
  - (c) the assessment is subsequently amended by the Commissioner of Taxation, a tribunal or a court; and
  - (d) as a result of the amendment of the assessment, the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, is more than the income ceiling under section 198A of the 1991 Act; and

- (e) the Secretary makes a determination under section 80 cancelling or suspending the carer payment;  
the adverse determination takes effect on the day on which the earlier determination took effect.
- (2) If:
- (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer payment because the carer is providing care for a care receiver or care receivers; and
  - (b) in making the determination, the Secretary had regard to the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, for a tax year; and
  - (c) the taxable income of the care receiver or any of the care receivers is or includes an amount estimated by:
    - (i) in the case of a care receiver who is a higher ADAT score adult—the care receiver or the care receiver’s partner; or
    - (ii) in the case of a care receiver who is a sole care child, combined care child or multiple care child—the parent of the care receiver, the parent’s partner (if the parent is a member of a couple) or the carer; or
    - (iii) in the case of a care receiver who is a lower ADAT score adult—the carer or the care receiver’s partner; or
    - (iv) in the case of a care receiver who is a dependent child of a lower ADAT score adult—the carer or the care receiver’s parent; and
  - (d) the Commissioner of Taxation subsequently makes an assessment of that taxable income; and
  - (e) as a result of the assessment, the taxable income of the care receiver or the sum of the taxable incomes of the care receivers is more than the income ceiling under section 198A of the 1991 Act; and

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- (f) the Secretary makes a determination under section 80 cancelling or suspending the carer payment;  
the adverse determination takes effect on the day on which the earlier determination took effect.
- (3) If:
- (a) on the basis of the taxable income for a tax year of a care receiver who is a higher ADAT score adult, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care for the care receiver; and
  - (b) the care receiver's taxable income for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and
  - (c) the Secretary makes a determination under section 80 cancelling or suspending the carer's carer payment;  
the adverse determination takes effect:
    - (d) if the Secretary made the determination under section 80 after the carer or care receiver informed the Department that the care receiver's taxable income exceeded the income ceiling—on the day on which the carer or care receiver informed the Department; or
    - (e) if, when the Secretary made the determination under section 80, the Department had not been informed by the carer or the care receiver that the care receiver's taxable income exceeded the income ceiling—on the day on which the care receiver's taxable income exceeded the income ceiling.
- (4) If:
- (a) on the basis of the taxable income for a tax year of a care receiver who is a sole care child, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care for the care receiver; and
  - (b) the care receiver's taxable income for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and



- (c) the Secretary makes a determination under section 80 cancelling or suspending the carer's carer payment;  
the adverse determination takes effect:
  - (d) if the Secretary made the determination under section 80 after the parent or carer of the child informed the Department that the care receiver's taxable income exceeded the income ceiling—on the day on which the parent or carer informed the Department; or
  - (e) if, when the Secretary made the determination under section 80, the Department had not been informed by the parent or carer that the care receiver's taxable income exceeded the income ceiling—on the day on which the care receiver's taxable income exceeded the income ceiling.
- (5) If:
- (a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are combined care children, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care to the care receivers; and
  - (b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and
  - (c) the Secretary makes a determination under section 80 cancelling or suspending the carer's carer payment;  
the adverse determination takes effect:
  - (d) if the Secretary made the determination under section 80 after a parent or carer of any of the children informed the Department that the sum of the taxable incomes exceeded the income ceiling—on the day on which the parent or carer informed the Department; or
  - (e) if, when the Secretary made the determination under section 80, the Department had not been informed by a parent or carer of any of the children that the sum of the taxable incomes exceeded the income ceiling—on the day on which the sum of the taxable incomes of the care receivers exceeded the income ceiling.

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(5A) If:

- (a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are a lower ADAT score adult and one or more multiple care children, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care to the care receivers; and
- (b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and
- (c) the Secretary makes a determination under section 80 cancelling or suspending the carer's carer payment;

the adverse determination takes effect:

- (d) if the Secretary made the determination under section 80 after the carer or the lower ADAT score adult informed the Department that the sum of the taxable incomes exceeded the income ceiling—on the day on which the Department was so informed; or
- (e) if, when the Secretary made the determination under section 80, the Department had not been informed by the carer or the lower ADAT score adult that the sum of the taxable incomes exceeded the income ceiling—on the day on which the sum of the taxable incomes exceeds the income ceiling.

(6) If:

- (a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are a lower ADAT score adult and a dependent child, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care to the care receivers; and
- (b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and
- (c) the Secretary makes a determination under section 80 cancelling or suspending the carer's carer payment;

the adverse determination takes effect:

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- (d) if the Secretary made the determination under section 80 after the carer, the lower ADAT score adult or a parent of the dependent child informed the Department that the sum of the taxable incomes exceeded the income ceiling—on the day on which the Department was so informed; or
- (e) if, when the Secretary made the determination under section 80, the Department had not been informed by the carer, the lower ADAT score adult or a parent of the dependent child that the sum of the taxable incomes exceeded the income ceiling—on the day on which the sum of the taxable incomes exceed the income ceiling.

### **Subdivision E—Date of effect of adverse determinations relating to concession cards**

#### **121 Definition**

In this Subdivision:

*adverse determination* means a determination under subsection 77(1) or (3) determining that a seniors health card, or a health care card that is income-tested for a person, is to be cancelled or under section 86 or 87.

#### **122 Date of effect of adverse determinations**

An adverse determination takes effect:

- (a) on the day on which it is made; or
- (b) if a later day is specified in the determination, on that day.

## Division 10—Continuing effect of determinations

### 123 Continuing effect of determinations

- (1) A determination that:
  - (a) a person's claim for a social security payment is granted; or
  - (b) a social security payment is payable to a person;continues in effect until:
  - (ba) the payment is cancelled by section 38M of the 1991 Act, or subsection 42AM(4) or section 42AP of this Act; or
  - (bb) immediately before the start of a payment suspension period for the person under section 42AL; or
  - (c) a further determination in relation to the payment under section 80, 81 or 82, subsection 95C(1) or section 124H, 124M or 124NF takes effect; or
  - (d) the payment ceases to be payable under section 90, 91, 93, 94 or 95; or
  - (e) the end of the day immediately before the day on which the person dies.
- (2) A determination that a person is qualified for a concession card continues in effect until:
  - (a) a further determination under subsection 77(1) or (3) or section 86 or 87 takes effect; or
  - (b) the person ceases to be qualified under section 104 or 105.
- (3) A determination of the rate of a social security payment continues in effect until:
  - (a) a further determination in relation to the payment under section 78, 79, 81A or 85A takes effect; or
  - (b) the payment becomes payable at a lower rate under section 98, 99 or 100.

## **Division 11—Estimates and verification of maintenance income for Youth Allowance Rate Calculator**

### **123AA Estimate of maintenance income for Youth Allowance Rate Calculator**

- (1) In working out the annualised amount of maintenance income for the parent of a person for the purposes of the maintenance income test in Module GA of the Youth Allowance Rate Calculator in section 1067G of the 1991 Act, the Secretary may have regard to an estimate of the amount of maintenance income for a period made by, or given to, the Secretary, if the Secretary is satisfied that the estimate is reasonable.
- (2) If the Secretary has no reason to believe that there is any amount of maintenance income for the parent of the person for the period, the Secretary is taken to have had regard to an estimate of nil.

### **123AB Verification of maintenance income for Youth Allowance Rate Calculator**

- (1) The method statement in this section applies if the Secretary is required by section 126A to review one or more decisions determining a rate of youth allowance for a person for a period or periods in an income year.

*Method statement*

Step 1. Work out the amount of maintenance income for a parent of the person for the income year using the information referred to in paragraph 126A(c). In doing so:

- (a) assume that the person is an FTB child of the parent for the year; and

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- (b) only take into account maintenance income received in relation to the person; and
- (c) in working out whether maintenance income is received in relation to the person, have regard to the considerations that would apply under the Family Assistance Act.

This amount is the parent's *actual maintenance income* for the income year.

Step 2. Work out the *annualised maintenance income free area* for the parent for the income year under section 123AC.

Step 3. Work out the *annual amount of estimated maintenance income* for the parent under section 123AD.

Step 4. Go to subsection (2) if the actual maintenance income is equal to or more than the annual amount of estimated maintenance income and either:

- (a) the actual maintenance income is less than 125% of the annualised maintenance income free area; or
- (b) the actual maintenance income is equal to or more than 125% of the annualised maintenance income free area and the actual maintenance income is less than 125% of the annual amount of estimated maintenance income.

Step 5. Go to subsection (3) in any other case.

- (2) If the method statement says go to this subsection, the Secretary must affirm the decision or decisions under review.
- (3) If the method statement says go to this subsection, the Secretary must recalculate the person's rate of youth allowance having regard to the parent's actual maintenance income for the income

year and vary or substitute the decision or decisions under review accordingly.

### **123AC Annualised maintenance income free area**

For the purposes of the method statement in section 123AB, work out the annualised maintenance income free area for a parent of the person for the income year using this method statement.

#### *Method statement*

Step 1. Using Submodule 4 of Module GA of the Youth Allowance Rate Calculator in section 1067G of the 1991 Act, work out whether the maintenance income free area (the **MIFA**) for the parent was the same on all days in the income year. If it was, then that MIFA is the **annualised maintenance income free area** for the parent for the income year.

Step 2. If the MIFA for the parent was not the same on all days in the income year, work out for how many days in the income year each MIFA applied.

Step 3. Work out the **MIFA share** for each such period by using this formula:

$$\text{MIFA} \times \frac{\text{Number of days in the period}}{\text{Number of days in the income year}}$$

Step 4. Add up the MIFA share for each such period in the income year. The result is the **annualised maintenance income free area** for the parent for the income year.

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**123AD Annual amount of estimated maintenance income**

For the purposes of the method statement in section 123AB, work out the annual amount of estimated maintenance income for a parent of a person using this method statement.

*Method statement*

Step 1. For each estimate of maintenance income of a parent of a person that applied in relation to a period in the income year, work out the **annualised estimate** by multiplying the amount of the estimate by:

$$\frac{\text{Number of days in income year}}{\text{Number of days in income year for which estimate applied}}$$

Step 2. For each annualised estimate worked out in step 1 for the income year, work out the **period estimate** by multiplying the annualised estimate by:

$$\frac{\text{Number of days in income year for which estimate applied}}{\text{Number of days in income year}}$$

Step 3. Add up all the period estimates for periods that occurred in the income year. This is the **annual amount of estimated maintenance income** for the parent for the income year.



## **Part 3A—Nominees**

### **Division 1—Preliminary**

#### **123A Definitions**

In this Part:

**correspondence nominee** means a person who, by virtue of an appointment in force under section 123C, is the correspondence nominee of another person.

**nominee** means a correspondence nominee or a payment nominee.

**payment nominee** means:

- (a) a person who, by virtue of an appointment in force under section 123B, is the payment nominee of another person; or
- (b) a person to whom instalments of youth allowance of another person are to be paid in accordance with subsection 45(1).

**principal**, in relation to a nominee, means:

- (a) in the case of a nominee appointed under section 123B or 123C, the person in relation to whom the nominee was appointed; or
- (b) in the case of a person to whom instalments of youth allowance are to be paid in accordance with subsection 45(1), the person on whose behalf those instalments are to be so paid.

**relevant payment** means:

- (a) instalments of a social security periodic payment; or
- (b) instalments of a special employment advance; or
- (c) a social security payment that is a lump sum benefit for the purposes of section 47; or
- (ca) a clean energy payment; or
- (d) instalments of utilities allowance; or

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- (e) instalments of energy supplement under Part 2.25B of the 1991 Act; or
- (f) a payment of quarterly pension supplement; or
- (g) a payment of a student start-up loan.

## **Division 2—Appointment of nominees**

### **123B Appointment of payment nominee**

Subject to section 123D, the Secretary may, in writing:

- (a) appoint a person (including a body corporate) to be the payment nominee of another person for the purposes of the social security law; and
- (b) direct that the whole or a specified part of a specified relevant payment that is payable to the nominee's principal, or would, but for subsection 45(1), be so payable, is to be paid to the nominee.

### **123C Appointment of correspondence nominee**

Subject to section 123D, the Secretary may, in writing, appoint a person (including a body corporate) to be the correspondence nominee of another person for the purposes of the social security law.

### **123D Provisions relating to appointments**

- (1) A person may be appointed as the payment nominee and the correspondence nominee of the same person.
- (2) The Secretary must not appoint a nominee for a person (the *proposed principal*) under section 123B or 123C except:
  - (a) with the written consent of the person to be appointed; and
  - (b) after taking into consideration the wishes (if any) of the proposed principal regarding the making of such an appointment.
- (3) The Secretary must cause a copy of an appointment under section 123B or 123C to be given to:
  - (a) the nominee; and
  - (b) the principal.

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- (4) The Secretary must not appoint a payment nominee for a person who is the holder of a concession card but is not receiving a social security payment.

**123E Suspension and revocation of nominee appointments**

- (1) If a person who is a nominee by virtue of an appointment under section 123B or 123C informs the Secretary in writing that the person no longer wishes to be a nominee under that appointment, the Secretary must, as soon as practicable, revoke the appointment.
- (2) If:
- (a) the Secretary gives a person who is a nominee a notice under section 123K; and
  - (b) the person informs the Department that:
    - (i) an event or change of circumstances has occurred or is likely to occur; and
    - (ii) the event or change of circumstances is likely to have an effect referred to in paragraph 123K(1)(b);
- the Secretary may suspend or revoke the appointment by virtue of which the person is a nominee.
- (3) If:
- (a) the Secretary gives a person who is a nominee a notice under section 123K or 123L; and
  - (b) the person does not comply with the requirement of the notice;
- the Secretary may suspend or revoke the appointment, or each appointment, by virtue of which the person is a nominee.
- (4) While an appointment is suspended, the appointment has no effect for the purposes of this Part.
- (5) The Secretary may, at any time, cancel the suspension of an appointment under subsection (2) or (3).
- (6) The suspension or revocation of an appointment, and the cancellation of such a suspension, must be in writing.

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- (7) The revocation of an appointment has effect on and from such day, being later than the day of the revocation, as is specified in the revocation.
- (8) Subsections (2) and (3) do not apply to a person who is a payment nominee by virtue of paragraph (b) of the definition of *payment nominee* in section 123A.
- (9) The Secretary must cause a copy of:
- (a) a suspension of an appointment; or
  - (b) a revocation of an appointment; or
  - (c) a cancellation of a suspension of an appointment;
- to be given to:
- (d) the nominee; and
  - (e) the principal.

## Division 3—Payments to payment nominee

### 123F Payment of instalments etc. to payment nominee

- (1) If:
  - (a) a person has a payment nominee; and
  - (b) the whole or a part of a relevant payment is payable to the person, or would, but for subsection 45(1), be so payable; and
  - (c) the Secretary has given a direction in relation to the relevant payment under section 123B;the relevant payment is to be paid in accordance with the direction.
- (2) An amount paid to the payment nominee of a person:
  - (a) is paid to the payment nominee on behalf of the person; and
  - (b) is taken, for the purposes of the social security law (other than this Part), to have been paid to the person and to have been so paid when it was paid to the nominee.
- (3) An amount that is to be paid to the payment nominee of a person must be paid to the credit of a bank account nominated and maintained by the nominee.
- (4) The Secretary may direct that the whole or a part of an amount that is to be paid to a payment nominee be paid to the payment nominee in a different way from that provided for by subsection (3). If the Secretary gives such a direction, an amount to which the direction relates is to be paid in accordance with the direction.
- (5) Subsections (3) and (4) do not apply in the case of a person who is a payment nominee by virtue of paragraph (b) of the definition of *payment nominee* in section 123A.

## **Division 4—Functions and responsibilities of nominees**

### **123G Definition**

In this Division:

***benefit recipient*** means a person who:

- (a) has made a claim for, or is receiving, a social security payment; or
- (b) has made a claim for, or is the holder of, a concession card.

### **123H Actions of correspondence nominee on behalf of benefit recipient**

- (1) Subject to section 123S and subsection (4), any act that may be done by a benefit recipient under, or for the purposes of, the social security law (other than an act for the purposes of Division 2 or 3) may be done by the benefit recipient's correspondence nominee.
- (2) Without limiting subsection (1), an application or claim that may be made under the social security law by a benefit recipient may be made by the benefit recipient's correspondence nominee on behalf of the benefit recipient, and an application or claim so made is taken to be made by the benefit recipient.
- (3) An act done by a benefit recipient's correspondence nominee under this section has effect, for the purposes of the social security law (other than this Part), as if it had been done by the benefit recipient.
- (4) If, under a provision of the social security law, the Secretary:
  - (a) gives to a benefit recipient who has a correspondence nominee a notice making a requirement of the benefit recipient; or
  - (b) notifies a benefit recipient who has a correspondence nominee that the benefit recipient is required to do an act;

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subsection (1) does not authorise the correspondence nominee to do an act that is required by the notice or the notification, as the case may be, to be done by the benefit recipient.

**123I Giving of notices to correspondence nominee**

- (1) Any notice that the Secretary is authorised or required by the social security law to give to a benefit recipient may be given by the Secretary to the benefit recipient's correspondence nominee.
- (2) The notice:
  - (a) must, in every respect, be in the same form, and in the same terms, as if it were being given to the benefit recipient; and
  - (b) may be given to the correspondence nominee personally or by post or in any other manner approved by the Secretary.
- (3) If:
  - (a) under subsection (1), the Secretary gives a notice (the **nominee notice**) to a benefit recipient's correspondence nominee; and
  - (b) the Secretary afterwards gives the benefit recipient a notice that:
    - (i) is expressed to be given under the same provision of the social security law as the nominee notice; and
    - (ii) makes the same requirement of the benefit recipient as the nominee notice;

section 123J ceases to have effect in relation to the nominee notice.
- (4) If:
  - (a) under subsection (1), the Secretary gives a notice (the **nominee notice**) to a benefit recipient's correspondence nominee; and
  - (b) the Secretary has already given to the benefit recipient a notice that:
    - (i) is expressed to be given under the same provision of the social security law as the nominee notice; and



- (ii) makes the same requirement of the benefit recipient as the nominee notice;  
section 123J does not have effect in relation to the nominee notice.

### **123J Compliance by correspondence nominee**

- (1) If, under section 123I, a notice is given to a benefit recipient's correspondence nominee, the following paragraphs have effect:
- (a) for the purposes of the social security law, other than this Part, the notice is taken:
    - (i) to have been given to the benefit recipient; and
    - (ii) to have been so given on the day on which the notice was given to the correspondence nominee;
  - (b) any requirement that the notice makes of the benefit recipient may be satisfied by the correspondence nominee;
  - (c) any act done by the correspondence nominee for the purpose of satisfying a requirement of the notice has effect, for the purposes of the social security law (other than Part 6 of this Act), as if it had been done by the benefit recipient;
  - (d) if the correspondence nominee fails to satisfy a requirement of the notice, the benefit recipient is taken, for the purposes of the social security law, to have failed to comply with the requirement;
  - (e) for the purposes of determining whether anything done by the correspondence nominee constitutes compliance with the notice, the social security law has effect as if a reference in the notice to the benefit recipient becoming aware that a specified event or change of circumstances is likely to occur were a reference to the correspondence nominee becoming so aware.
- (2) In order to avoid doubt, and without limiting subsection (1), it is declared as follows:
- (a) if the notice requires the benefit recipient to inform the Department of a matter within a specified period and the correspondence nominee informs the Department of the matter within that period in accordance with the notice, the

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benefit recipient is taken, for the purposes of the social security law, to have complied with the requirement set out in the notice;

- (b) if the notice requires the benefit recipient to give a statement about a matter, or produce a document, to the Department within a specified period and the correspondence nominee gives a statement about that matter, or produces the document, as the case may be, to the Department within that period in accordance with the notice, the benefit recipient is taken, for the purposes of the social security law, to have complied with the requirement set out in the notice;
- (c) if the notice requires the benefit recipient to inform the Department of a matter within a specified period and the correspondence nominee does not inform the Department of the matter within that period in accordance with the notice, the benefit recipient is taken, for the purposes of the social security law, to have failed to comply with the requirement set out in the notice;
- (d) if the notice requires the benefit recipient to give a statement about a matter, or produce a document, to the Department within a specified period and the correspondence nominee does not give a statement about that matter, or produce the document, as the case may be, to the Department within that period in accordance with the notice, the benefit recipient is taken, for the purposes of the social security law, to have failed to comply with the requirement set out in the notice.

**123K Notification by nominee of matters affecting ability to act as nominee**

- (1) The Secretary may give a nominee of a benefit recipient a notice that requires the nominee to inform the Department if:
  - (a) either:
    - (i) an event or change of circumstances occurs; or
    - (ii) the nominee becomes aware that an event or change of circumstances is likely to occur; and
  - (b) the event or change of circumstances is likely to affect:

- (i) the ability of the nominee to act as the payment nominee or correspondence nominee of the benefit recipient, as the case may be; or
  - (ii) the ability of the Secretary to give notices to the nominee under this Act; or
  - (iii) the ability of the nominee to comply with notices given to the nominee by the Secretary under this Act.
- (2) Subject to subsection (3), a notice under subsection (1):
- (a) must be in writing; and
  - (b) may be given personally or by post or by any other means approved by the Secretary; and
  - (c) must specify how the nominee is to give the information to the Department; and
  - (d) must specify the period within which the nominee is to give the information to the Department.
- (3) A notice under subsection (1) is not ineffective merely because it fails to comply with paragraph (2)(c).
- (4) Subject to subsection (5), the period specified under paragraph (2)(d) must not end earlier than 14 days after:
- (a) the day on which the event or change of circumstances occurs; or
  - (b) the day on which the nominee becomes aware that the event or change of circumstances is likely to occur.
- (5) If a notice requires the nominee to inform the Department of any proposal by the nominee to leave Australia, subsection (4) does not apply to that requirement.
- (6) This section 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 or citizenship.

**123L Statement by payment nominee regarding disposal of money**

- (1) The Secretary may give the payment nominee of a benefit recipient a notice that requires the nominee to give the Department a statement giving particulars of the disposal by the nominee of money paid under the social security law to the nominee on behalf of the benefit recipient.
- (2) Subject to subsection (3), a notice under subsection (1):
  - (a) must be in writing; and
  - (b) may be given personally or by post or by any other means approved by the Secretary; and
  - (c) must specify how the nominee is to give the statement to the Department; and
  - (d) must specify the period within which the nominee is to give the statement to the Department.
- (3) A notice under subsection (1) is not ineffective merely because it fails to comply with paragraph (2)(c).
- (4) The period specified under paragraph (2)(d) must not end earlier than 14 days after the day on which the notice is given.
- (5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
- (6) A nominee must not refuse or fail to comply with a notice under subsection (1).

Penalty: 60 penalty units.
- (7) Subsection (6) applies only to the extent to which the person is capable of complying with the notice.
- (8) Subsection (6) does not apply if the person has a reasonable excuse.
- (9) An offence against subsection (6) is an offence of strict liability.

- (10) This section 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 or citizenship.

## **Division 5—Other matters**

### **123M Protection of principal against liability for actions of nominee**

Nothing in this Part has the effect of rendering a person guilty of an offence against this Act in respect of any act or omission of the person's correspondence nominee.

### **123N Protection of nominee against criminal liability**

- (1) A nominee is not subject to any criminal liability under the social security law in respect of:
  - (a) any act or omission of the principal; or
  - (b) anything done, in good faith, by the nominee in his or her capacity as nominee.
- (2) This section has effect subject to section 123L.

### **123O Duty of nominee to principal**

- (1) It is the duty of a person who is the payment or correspondence nominee of another person at all times to act in the best interests of the principal.
- (2) A nominee does not commit a breach of the duty imposed by subsection (1) by doing an act if, when the act is done, there are reasonable grounds for believing that it is in the best interests of the principal that the act be done.
- (3) A nominee does not commit a breach of the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, there are reasonable grounds for believing that it is in the best interests of the principal that the act be not done.

### **123P Saving of Secretary's powers of revocation**

Nothing in this Part is to be taken to be an expression of a contrary intention for the purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.

### **123Q Saving of Secretary's powers to give notices to principal**

Nothing in this Part is intended in any way to limit or affect the Secretary's powers under other provisions of the social security law to give notices to, or make requirements of, a person who has a nominee.

### **123R Notification of nominee where notice given to principal**

If, under a provision of the social security law (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee, the Secretary may inform the correspondence nominee of the giving of the notice and of the terms of the notice.

### **123S Right of nominee to attend with principal**

- (1) If:
- (a) under a provision of the social security law (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee; and
  - (b) the notice requires the person:
    - (i) to attend the Department; or
    - (ii) to attend a particular place; and
  - (c) the Secretary informs the person's correspondence nominee of the giving of the notice;
- the correspondence nominee may attend the Department or place, as the case may be, with the person if the person so wishes.

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- (2) If:
- (a) under a provision of the social security law (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee; and
  - (b) the notice requires the person to undergo a medical, psychiatric or psychological examination;  
the correspondence nominee may accompany the person while the examination is being conducted:
  - (c) if the person so wishes; and
  - (d) to the extent to which the person conducting the examination consents.
- (3) If a person's correspondence nominee is a body corporate, the last reference in subsection (1) or (2) to the correspondence nominee is to be read as a reference to an officer or employee of the correspondence nominee.



## **Part 3AA—Enhanced income management regime**

### **Division 1—Introduction**

#### **123SA Simplified outline of this Part**

- There is an enhanced income management regime for recipients of certain welfare payments.
- A person may become subject to the enhanced income management regime because the Queensland Commission requires the person to be subject to the enhanced income management regime or if the person was a program participant under the Cape York provision in Part 3D immediately before 6 March 2023.
- A person may become subject to the enhanced income management regime because:
  - (a) the person meets the criteria relating to disengaged youth and the person's usual place of residence is within the Northern Territory; or
  - (b) the person meets the criteria relating to long-term welfare payment recipients and the person's usual place of residence is within the Northern Territory.
- A person may become subject to the enhanced income management regime because the person voluntarily agrees to be subject to the enhanced income management regime.
- Certain welfare payments are divided into qualified and unqualified portions, with the qualified portions being credited to a BasicsCard bank account. The amount of each portion may be varied by the Secretary. Recipients are unable to spend the qualified portions of such payments on certain

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goods or services such as alcohol, tobacco products or gambling.

**123SB Definitions**

In this Part:

***balance of the qualified portion***, of a category B welfare payment, means:

- (a) if a deduction is to be made from, or an amount is to be set off against, the payment under:
  - (i) section 61, 61A or 238 of this Act; or
  - (ii) section 1231 of the 1991 Act; or
  - (iii) section 84, 84A, 92, 92A, 225, 226, 227 or 228A of the Family Assistance Administration Act;the amount of the qualified portion of the payment less the amount of the deduction or the amount of the set-off; or
- (b) in any other case—the amount of the qualified portion of the payment.

***balance of the qualified portion***, of a category D welfare payment, means:

- (a) if a deduction is to be made from, or an amount is to be set off against, the payment under:
  - (i) section 61, 61A or 238 of this Act; or
  - (ii) section 1231 of the 1991 Act; or
  - (iii) section 84, 84A, 92, 92A, 225, 226, 227 or 228A of the Family Assistance Administration Act;the amount of the qualified portion of the payment less the amount of the deduction or the amount of the set-off; or
- (b) in any other case—the amount of the qualified portion of the payment.

***balance of the qualified portion***, of a category G welfare payment, means:

- (a) if a deduction is to be made from, or an amount is to be set off against, the payment under:
  - (i) section 61, 61A or 238 of this Act; or
  - (ii) section 1231 of the 1991 Act; or
  - (iii) section 84, 84A, 92, 92A, 225, 226, 227 or 228A of the Family Assistance Administration Act;the amount of the qualified portion of the payment less the amount of the deduction or the amount of the set-off; or
- (b) in any other case—the amount of the qualified portion of the payment.

**BasicsCard bank account** means a bank account of a kind determined by a legislative instrument made under section 123SU.

**Bundaberg and Hervey Bay area** means the area within the boundaries of the Division (within the meaning of the *Commonwealth Electoral Act 1918*) of Hinkler, as those boundaries were in force on 31 May 2018.

**cash-like product** includes the following:

- (a) a gift card, store card, voucher or similar article (whether in a physical or electronic form);
- (b) a money order, postal order or similar order (whether in a physical or electronic form);
- (c) digital currency.

**category A welfare payment** means:

- (a) a social security benefit; or
- (b) a social security pension; or
- (c) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance.

**category B welfare payment** means:

- (a) a category A welfare payment; or
- (b) double orphan pension; or
- (c) family tax benefit under the Family Assistance Act; or

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- (d) family tax benefit advance under the Family Assistance Administration Act; or
- (e) stillborn baby payment under the Family Assistance Act; or
- (f) carer allowance; or
- (g) child disability assistance; or
- (h) carer supplement; or
- (i) mobility allowance; or
- (j) pensioner education supplement; or
- (k) telephone allowance under Part 2.25 of the 1991 Act; or
- (l) utilities allowance under Part 2.25A of the 1991 Act; or
- (m) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre; or
- (n) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement; or
- (o) a social security bereavement payment; or
- (p) an advance payment under Part 2.22 of the 1991 Act; or
- (q) an advance pharmaceutical allowance under Part 2.23 of the 1991 Act; or
- (r) a mobility allowance advance under section 1045 of the 1991 Act.

***category C welfare payment*** means:

- (a) youth allowance; or
- (b) jobseeker payment; or
- (c) special benefit; or
- (d) pension PP (single); or
- (e) benefit PP (partnered).

***category D welfare payment*** means:

- (a) a social security benefit; or
- (b) a disability support pension; or
- (c) a carer payment; or

- (d) a pension PP (single); or
- (e) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or
- (f) double orphan pension; or
- (g) family tax benefit under the Family Assistance Act; or
- (h) family tax benefit advance under the Family Assistance Administration Act; or
- (i) stillborn baby payment under the Family Assistance Act; or
- (j) carer allowance; or
- (k) child disability assistance; or
- (l) carer supplement; or
- (m) mobility allowance; or
- (n) pensioner education supplement; or
- (o) telephone allowance under Part 2.25 of the 1991 Act; or
- (p) utilities allowance under Part 2.25A of the 1991 Act; or
- (q) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre; or
- (r) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement; or
- (s) a social security bereavement payment; or
- (t) an advance payment under Part 2.22 of the 1991 Act; or
- (u) an advance pharmaceutical allowance under Part 2.23 of the 1991 Act; or
- (v) a mobility allowance advance under section 1045 of the 1991 Act.

***category F welfare payment*** means:

- (a) a social security benefit; or
- (b) a disability support pension; or
- (c) a carer payment; or
- (d) a pension PP (single); or

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- (e) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance.

**category G welfare payment** means:

- (a) a category F welfare payment; or
- (b) double orphan pension; or
- (c) family tax benefit under the Family Assistance Act; or
- (d) family tax benefit advance under the Family Assistance Administration Act; or
- (e) stillborn baby payment under the Family Assistance Act; or
- (f) carer allowance; or
- (g) child disability assistance; or
- (h) carer supplement; or
- (i) mobility allowance; or
- (j) pensioner education supplement; or
- (k) telephone allowance under Part 2.25 of the 1991 Act; or
- (l) utilities allowance under Part 2.25A of the 1991 Act; or
- (m) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre; or
- (n) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement; or
- (o) a social security bereavement payment; or
- (p) an advance payment under Part 2.22 of the 1991 Act; or
- (q) an advance pharmaceutical allowance under Part 2.23 of the 1991 Act; or
- (r) a mobility allowance advance under section 1045 of the 1991 Act.

**Ceduna area** means Ceduna within the meaning of the *Social Security (Administration) (Trial Area — Ceduna and Surrounding Region) Determination 2015* as in force on 15 March 2016 and

includes the Surrounding Region (within the meaning of that determination as so in force).

**East Kimberley area** means East Kimberley within the meaning of the *Social Security (Administration) (Trial Area – East Kimberley) Determination 2016* as in force on 26 April 2016 and includes the areas of each of the Included Communities (within the meaning of that determination as so in force).

**eligible recipient** has the same meaning as in Part 3B.

**excluded goods** has the same meaning as in Part 3B.

**excluded service** has the same meaning as in Part 3B.

**exempt welfare payment recipient** has the same meaning as in Part 3B.

**Goldfields area** means the following Local Government Areas as at 7 February 2018:

- (a) the Shire of Leonora;
- (b) the Shire of Laverton;
- (c) the City of Kalgoorlie-Boulder;
- (d) the Shire of Coolgardie;
- (e) the Shire of Menzies.

**Local Government Areas** means areas designated by the Governor of Western Australia to be a city, town or shire, in accordance with the *Local Government Act 1995* (WA).

**Part 3B payment nominee** has the same meaning as in Part 3B.

**qualified portion**, of a category B welfare payment, has the meaning given by section 123SJ.

**qualified portion**, of a category D welfare payment, has the meaning given by section 123SM.

**qualified portion**, of a category G welfare payment, has the meaning given by section 123SP.

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***Queensland Commission*** has the same meaning as in Part 3B.

***subject to the enhanced income management regime*** has the meaning given by Division 2.

***unqualified portion***, of a category B welfare payment, has the meaning given by section 123SJ.

***unqualified portion***, of a category D welfare payment, has the meaning given by section 123SM.

***unqualified portion***, of a category G welfare payment, has the meaning given by section 123SP.

***voluntary enhanced income management agreement*** has the meaning given by section 123SF.



## **Division 2—Persons subject to the enhanced income management regime**

### **123SC Persons subject to the enhanced income management regime—Queensland Commission**

- (1) For the purposes of this Part, a person is *subject to the enhanced income management regime* at a particular time (the *test time*) on or after 6 March 2023 if:
  - (a) at the test time, the person, or the person’s partner, is an eligible recipient of a category A welfare payment; and
  - (b) on or after 6 March 2023, the Queensland Commission gave the Secretary a written notice requiring that the person be subject to the income management regime under Part 3B; and
  - (c) the notice was given under a law of Queensland; and
  - (d) at the test time, the notice had not been withdrawn or revoked and had not expired; and
  - (e) if, at the test time, the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B).
- (2) For the purposes of this Part, a person is *subject to the enhanced income management regime* at a particular time (the *test time*) on or after 6 March 2023 if:
  - (a) at the test time, the person, or the person’s partner, is an eligible recipient of a category A welfare payment; and
  - (b) subsection (3) applies in relation to the person; and
  - (c) if, at the test time, the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B).
- (3) This subsection applies in relation to a person if:
  - (a) immediately before 6 March 2023, subitem 97(2) or (4) of Schedule 1 to the *Social Security (Administration)*

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*Amendment (Continuation of Cashless Welfare) Act 2020* applies in relation to the person and a notice; and

- (b) immediately before 6 March 2023, the person was a program participant under section 124PGD.
- (4) Subsection (3) ceases to apply in relation to the person if on or after 6 March 2023 the notice referred to in paragraph (3)(a) is withdrawn or revoked by the Queensland Commission or expires.
- (5) This section applies on and after 6 March 2023 despite item 97 of Schedule 1 to the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Act 2020*.

**123SD Persons subject to the enhanced income management regime—Northern Territory**

*Disengaged youth*

- (1) For the purposes of this Part, a person is ***subject to the enhanced income management regime*** at a particular time (the ***test time***) on or after 6 March 2023 if:
  - (a) immediately before 6 March 2023:
    - (i) the person was a program participant under Part 3D; and
    - (ii) the person's usual place of residence was within the Northern Territory; and
  - (b) at the test time, the person's usual place of residence is within the Northern Territory; and
  - (c) at the test time, the person is an eligible recipient of a category C welfare payment; and
  - (d) at the test time, the person is at least 15 years of age and under 25 years of age; and
  - (e) at the test time, the person is not an exempt welfare payment recipient; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B); and

- (g) the person was an eligible recipient of a category C welfare payment for at least 13 weeks during the 26-week period ending immediately before the test time.
- (2) If:
- (a) a person is subject to the enhanced income management regime under subsection (1); and
  - (b) paragraph (1)(b) ceases to apply in relation to the person; and
  - (c) at the time of that cessation, paragraphs (1)(c), (d), (e) and (f) apply in relation to the person;
- then the person remains subject to the enhanced income management regime under subsection (1) until the earlier of the following:
- (d) the time paragraph (1)(c), (d), (e) or (f) ceases to apply in relation to the person;
  - (e) the end of the period of 13 weeks beginning on the day that paragraph (1)(b) ceased to apply in relation to the person.

*Long-term welfare payment recipient*

- (3) For the purposes of this Part, a person is ***subject to the enhanced income management regime*** at a particular time (the ***test time***) on or after 6 March 2023 if:
- (a) immediately before 6 March 2023:
    - (i) the person was a program participant under Part 3D; and
    - (ii) the person's usual place of residence was within the Northern Territory; and
  - (b) at the test time, the person's usual place of residence is within the Northern Territory; and
  - (c) at the test time, the person is an eligible recipient of a category C welfare payment; and
  - (d) at the test time, the person is at least 25 years of age but has not reached pension age; and
  - (e) at the test time, the person is not an exempt welfare payment recipient; and

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- (f) if, at the test time, the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B); and
  - (g) the person was an eligible recipient of a category C welfare payment for at least 52 weeks during the 104-week period ending immediately before the test time.
- (4) If:
- (a) a person is subject to the enhanced income management regime under subsection (3); and
  - (b) paragraph (3)(b) ceases to apply in relation to the person; and
  - (c) at the time of that cessation, paragraphs (3)(c), (d), (e) and (f) apply in relation to the person;
- then the person remains subject to the enhanced income management regime under subsection (3) until the earlier of the following:
- (d) the time paragraph (3)(c), (d), (e) or (f) ceases to apply in relation to the person;
  - (e) the end of the period of 13 weeks beginning on the day that paragraph (3)(b) ceased to apply in relation to the person.

**123SE Persons subject to the enhanced income management regime—volunteers**

- (1) For the purposes of this Part, a person is *subject to the enhanced income management regime* at a particular time on or after 6 March 2023 if:
- (a) at that time, a voluntary enhanced income management agreement is in force in relation to the person; or
  - (b) immediately before 6 March 2023, the person was a voluntary participant under section 124PH.

*Cessation—former section 124PH voluntary participants*

- (2) If paragraph (1)(b) applies to a person, the person may make a request to the Secretary to cease to be subject to the enhanced

income management regime under this section. The request cannot be withdrawn or revoked.

- (3) If the person does so, the Secretary must give the person a notice stating that the person ceases to be subject to the enhanced income management regime under this section. The notice comes into force on a day specified in the notice (which must be no later than 7 days after the day on which the request was made).
- (4) A notice under subsection (3) has effect accordingly.
- (5) A notice under subsection (3) is not a legislative instrument.
- (6) Subsection (3) does not prevent paragraph (1)(a) applying in relation to the person at a later time.

### **123SF Voluntary enhanced income management agreement**

- (1) A person may enter into a written agreement with the Secretary under which the person agrees voluntarily to be subject to the enhanced income management regime throughout the period when the agreement is in force.
- (2) An agreement under subsection (1) is to be known as a ***voluntary enhanced income management agreement***.
- (3) The Secretary must not enter into a voluntary enhanced income management agreement with a person unless:
  - (a) the person is an eligible recipient of a category F welfare payment; and
  - (b) the person's usual place of residence is within the Ceduna area, the East Kimberley area, the Goldfields area or the Bundaberg and Hervey Bay area; and
  - (c) if the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B).
- (4) The Secretary must not enter into a voluntary enhanced income management agreement with a person if:

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- (a) the person is subject to the income management regime under Part 3B; or
- (b) during the 12-month period ending when the voluntary enhanced income management agreement is to come into force, there were 4 occasions on which previous voluntary enhanced income management agreements relating to the person were terminated under subsection 123SH(3).

**123SG Duration of voluntary enhanced income management agreement**

- (1) A voluntary enhanced income management agreement in relation to a person:
  - (a) comes into force at the time specified in the agreement, so long as:
    - (i) at that time, the person is an eligible recipient of a category F welfare payment; and
    - (ii) at that time, the person's usual place of residence is within the Ceduna area, the East Kimberley area, the Goldfields area or the Bundaberg and Hervey Bay area; and
    - (iii) if, at that time, the person has a Part 3B payment nominee—that nominee is subject to the enhanced income management regime or is subject to the income management regime (within the meaning of Part 3B); and
    - (iv) at that time, the person is not subject to the income management regime under Part 3B; and
  - (b) remains in force until:
    - (i) it is terminated under section 123SH, unless subparagraph (ii) applies; or
    - (ii) if the agreement specifies a period (which must be at least 13 weeks) during which it is to remain in force, and the agreement has not been terminated under section 123SH before the end of that period—the end of that period.

- (2) If a voluntary enhanced income management agreement (the ***original agreement***) in relation to a person is in force, subsection (1) does not prevent the Secretary from entering into a new voluntary enhanced income management agreement with the person, so long as the new agreement is expressed to come into force immediately after the original agreement ceases to be in force.
- (3) If a voluntary enhanced income management agreement in relation to a person has ceased to be in force, subsection (1) does not prevent the Secretary from entering into a new voluntary enhanced income management agreement with the person.

### **123SH Termination of voluntary enhanced income management agreement**

#### *Termination by request*

- (1) If a voluntary enhanced income management agreement in relation to a person is in force, the person may, by written notice given to the Secretary, request the Secretary to terminate the agreement.
- (2) However, a person may make a request under subsection (1) only if the agreement has been in force for at least 13 weeks.
- (3) The Secretary must comply with a request made in accordance with subsections (1) and (2) by terminating the agreement as soon as practicable after receiving the request.

#### *Other grounds for termination*

- (4) If:
  - (a) a voluntary enhanced income management agreement in relation to a person is in force; and
  - (b) either of the following events occurs:
    - (i) the person ceases to be an eligible recipient of a category F welfare payment;
    - (ii) in a case where the person has a Part 3B payment nominee—that nominee ceases to be subject to the

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enhanced income management regime or ceases to be subject to the income management regime (within the meaning of Part 3B);

the Secretary must terminate the agreement as soon as practicable after the occurrence of the event.

*Limit on new voluntary enhanced income management agreements*

- (5) If a voluntary enhanced income management agreement in relation to a person is terminated under this section, the Secretary must not enter into another voluntary enhanced income management agreement with the person within 21 days after the termination.

**123SI Relationship with other provisions**

If a person is subject to the enhanced income management regime at a particular time, then the person cannot be subject to the income management regime under Part 3B at that time and cannot be a program participant or a voluntary participant under Part 3D at that time.



## **Division 3—Deductions from welfare payments**

### **Subdivision A—Persons subject to the enhanced income management regime—Queensland Commission**

#### **123SJ Category B welfare payment to be split into qualified and unqualified portions**

##### *Payments by instalments*

- (1) If an instalment of a category B welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SC:
  - (a) the percentage of the gross amount of the payment that is qualified (the ***qualified portion***) is the percentage determined by the Secretary under subsection (2) of this section, after consultation with the Queensland Commission; and
  - (b) the percentage of the gross amount of the payment that is unqualified (the ***unqualified portion***) is the percentage that is equal to 100% minus the percentage applicable under paragraph (a).

Note: The percentage may be varied under subsection (4).

- (2) The Secretary may determine a percentage in relation to a person for the purposes of paragraph (1)(a).

##### *Payments otherwise than by instalments*

- (3) If a category B welfare payment is payable, otherwise than by instalments, to a person who is subject to the enhanced income management regime under section 123SC, 100% of the gross amount of the payment is qualified (the ***qualified portion***).

Note: The percentage may be varied under subsection (4).

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*Variation by Secretary*

- (4) For a person who is subject to the enhanced income management regime under section 123SC, the Secretary may make a determination that:
- (a) varies the percentage applicable under paragraph (1)(a) to 0%; and
  - (b) varies the percentage applicable under paragraph (1)(b) to 100%; and
  - (c) varies the percentage applicable under subsection (3) to 0%.
- (5) The Secretary may make a determination under subsection (4) only if:
- (a) the Secretary is satisfied that the person is unable to use the person's debit card that was issued to the person and that is attached to the person's BasicsCard bank account, or is unable to access that account, as a direct result of:
    - (i) a technological fault or malfunction with that card or account; or
    - (ii) a natural disaster; or
    - (iii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or
  - (b) the person's category B welfare payment is payable in instalments and the Secretary is satisfied that any part of the payment is payable:
    - (i) at a time determined under subsection 43(2), where that determination is made because the person is in severe financial hardship as a result of exceptional and unforeseen circumstances; or
    - (ii) under a determination under subsection 51(1).

*When determinations take effect*

- (6) A determination under subsection (2) or (4) takes effect on the day specified in the determination (which must not be earlier than the day on which the determination is made).

*Determinations are not legislative instruments*

- (7) A determination under subsection (2) or (4) is not a legislative instrument.

**123SK Payment of balance of qualified portion of category B welfare payment**

If a category B welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SC, the Secretary must pay the balance of the qualified portion of the payment to the credit of a BasicsCard bank account maintained by the person.

**123SL Recipient's use of funds from category B welfare payments**

A person who receives a category B welfare payment:

- (a) may use the balance of the qualified portion of the payment, as paid under section 123SK, to obtain goods or services, other than:
- (i) excluded goods or excluded services; or
  - (ii) a cash-like product that could be used to obtain excluded goods or excluded services; and
- (b) may use the unqualified portion of the payment, as paid to the person, at the person's discretion.

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**Subdivision B—Persons subject to the enhanced income management regime—Northern Territory**

**123SM Category D welfare payment to be split into qualified and unqualified portions**

*Payments by instalments*

- (1) If an instalment of a category D welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SD:
  - (a) the percentage of the gross amount of the payment that is qualified (the **qualified portion**) is 50%; and
  - (b) the percentage of the gross amount of the payment that is unqualified (the **unqualified portion**) is 50%.

Note: The percentage may be varied under subsection (3).

*Payments otherwise than by instalments*

- (2) If a category D welfare payment is payable, otherwise than by instalments, to a person who is subject to the enhanced income management regime under section 123SD, 100% of the gross amount of the payment is qualified (the **qualified portion**).

Note: The percentage may be varied under subsection (3).

*Variation by Secretary*

- (3) For a person who is subject to the enhanced income management regime under section 123SD, the Secretary may make a determination that:
  - (a) varies the percentage applicable under paragraph (1)(a) to 0%; and
  - (b) varies the percentage applicable under paragraph (1)(b) to 100%; and
  - (c) varies the percentage applicable under subsection (2) to 0%.

- (4) The Secretary may make a determination under subsection (3) only if:
- (a) the Secretary is satisfied that the person is unable to use the person's debit card that was issued to the person and that is attached to the person's BasicsCard bank account, or is unable to access that account, as a direct result of:
    - (i) a technological fault or malfunction with that card or account; or
    - (ii) a natural disaster; or
    - (iii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or
  - (b) the person's category D welfare payment is payable in instalments and the Secretary is satisfied that any part of the payment is payable:
    - (i) at a time determined under subsection 43(2), where that determination is made because the person is in severe financial hardship as a result of exceptional and unforeseen circumstances; or
    - (ii) under a determination under subsection 51(1).
- (5) A determination under subsection (3) takes effect on the day specified in the determination (which must not be earlier than the day on which the determination is made).
- (6) A determination under subsection (3) is not a legislative instrument.

### **123SN Payment of balance of qualified portion of category D welfare payment**

If a category D welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SD, the Secretary must pay the balance of the qualified portion of the payment to the credit of a BasicsCard bank account maintained by the person.

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**123SO Recipient's use of funds from category D welfare payments**

A person who receives a category D welfare payment:

- (a) may use the balance of the qualified portion of the payment, as paid under section 123SN, to obtain goods or services, other than:
  - (i) excluded goods or excluded services; or
  - (ii) a cash-like product that could be used to obtain excluded goods or excluded services; and
- (b) may use the unqualified portion of the payment, as paid to the person, at the person's discretion.

**Subdivision C—Persons subject to the enhanced income management regime—volunteers**

**123SP Category G welfare payment to be split into qualified and unqualified portions**

*Payments by instalments*

- (1) If an instalment of a category G welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SE:
  - (a) the percentage of the gross amount of the payment that is qualified (the **qualified portion**) is 50%; and
  - (b) the percentage of the gross amount of the payment that is unqualified (the **unqualified portion**) is 50%.

Note: The percentage may be varied under subsection (3).

*Payments otherwise than by instalments*

- (2) If a category G welfare payment is payable, otherwise than by instalments, to a person who is subject to the enhanced income management regime under section 123SE, 100% of the gross amount of the payment is qualified (the **qualified portion**).

Note: The percentage may be varied under subsection (3).

*Variation by Secretary*

- (3) For a person who is subject to the enhanced income management regime under section 123SE, the Secretary may make a determination that:
- (a) varies the percentage applicable under paragraph (1)(a) to 0%; and
  - (b) varies the percentage applicable under paragraph (1)(b) to 100%; and
  - (c) varies the percentage applicable under subsection (2) to 0%.
- (4) The Secretary may make a determination under subsection (3) only if:
- (a) the Secretary is satisfied that the person is unable to use the person's debit card that was issued to the person and that is attached to the person's BasicsCard bank account, or is unable to access that account, as a direct result of:
    - (i) a technological fault or malfunction with that card or account; or
    - (ii) a natural disaster; or
    - (iii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or
  - (b) the person's category G welfare payment is payable in instalments and the Secretary is satisfied that any part of the payment is payable:
    - (i) at a time determined under subsection 43(2), where that determination is made because the person is in severe financial hardship as a result of exceptional and unforeseen circumstances; or
    - (ii) under a determination under subsection 51(1).
- (5) A determination under subsection (3) takes effect on the day specified in the determination (which must not be earlier than the day on which the determination is made).

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- (6) A determination under subsection (3) is not a legislative instrument.

**123SQ Payment of balance of qualified portion of category G welfare payment**

If a category G welfare payment is payable to a person who is subject to the enhanced income management regime under section 123SE, the Secretary must pay the balance of the qualified portion of the payment to the credit of a BasicsCard bank account maintained by the person.

**123SR Recipient's use of funds from category G welfare payments**

A person who receives a category G welfare payment:

- (a) may use the balance of the qualified portion of the payment, as paid under section 123SQ, to obtain goods or services, other than:
- (i) excluded goods or excluded services; or
  - (ii) a cash-like product that could be used to obtain excluded goods or excluded services; and
- (b) may use the unqualified portion of the payment, as paid to the person, at the person's discretion.



## **Division 4—Information**

### **123SS Disclosure of information to the Secretary—financial institution**

- (1) Despite any law (whether written or unwritten) in force in a State or Territory, an officer or employee of a financial institution may give the Secretary information about a person if:
  - (a) the person is subject to the enhanced income management regime; and
  - (b) the disclosed information is relevant to the operation of this Part.

Note: Subsection 202(8A) allows a person to disclose information about a BasicsCard bank account to a financial institution.

- (2) If information about a person is disclosed as mentioned in subsection (1), the Secretary may disclose information about the person to an officer or employee of the financial institution for the purposes of the performance of the duties, or the exercise of the powers, of the officer or employee.

### **123ST Disclosure of information—Queensland Commission**

- (1) Despite any law (whether written or unwritten) in force in Queensland, the Queensland Commission may give the Secretary information about a person if:
  - (a) either:
    - (i) the person is subject to the enhanced income management regime under section 123SC; or
    - (ii) the Queensland Commission is considering whether to give a notice of the kind referred to in paragraph 123SC(1)(b) in relation to the person; and
  - (b) the disclosed information is relevant to the operation of this Part.

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- (2) If information about a person is disclosed by the Queensland Commission as mentioned in subsection (1), the Secretary may disclose information about the person to the Queensland Commission for the purposes of the performance of the functions, or the exercise of the powers, of the Queensland Commission.
- (3) If:
- (a) a person ceases to be subject to the enhanced income management regime under section 123SC because of the cancellation of a category A welfare payment of the person or the person's partner; and
  - (b) immediately before the cancellation, the relevant notice referred to in paragraph 123SC(1)(b) or (3)(a) had not been withdrawn or revoked and had not expired;
- then, as soon as practicable after the cancellation, the Secretary must give the Queensland Commission written notice of the cancellation.

**Division 5—Other matters****123SU BasicsCard bank accounts**

- (1) For the purposes of this Part, the Secretary may, by legislative instrument, determine a kind of bank account to be maintained by a person who is subject to the enhanced income management regime for the receipt of payments under this Part.
- (2) A legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account so determined.

**123SV Exceptions to Part IV of the *Competition and Consumer Act 2010***

- (1) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the declining of a transaction by a financial institution is specified and specifically authorised if the transaction would involve:
  - (a) money in a BasicsCard bank account; and
  - (b) a business of a kind specified in a legislative instrument made under subsection (2).
- (2) The Secretary may, by legislative instrument, declare a kind of business, whether by reference to merchant category codes, terminal identification codes, card accepted identification codes or otherwise, in relation to which transactions involving money in a BasicsCard bank account may be declined by a financial institution.
- (3) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the declining of a transaction by a supplier of goods or services is specified and specifically authorised if the transaction would involve:
  - (a) money in a BasicsCard bank account; and

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- (b) the obtaining of:
  - (i) excluded goods or excluded services; or
  - (ii) a cash-like product that could be used to obtain excluded goods or excluded services.
- (4) To avoid doubt, for the purposes of this section, it does not matter whether money in a BasicsCard bank account represents the qualified portion or unqualified portion of a payment.

**123SW This Part has effect despite other provisions etc.**

This Part has effect despite anything in:

- (a) any other provision of this Act; or
- (b) the 1991 Act; or
- (c) the Family Assistance Act; or
- (d) the Family Assistance Administration Act.

## **Part 3B—Income management regime**

### **Division 1—Introduction**

#### **123TA Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up an income management regime for recipients of certain welfare payments.
- A person may become subject to the income management regime because:
  - (a) a child protection officer of a State or Territory requires the person to be subject to the income management regime; or
  - (b) the Secretary has determined that the person is a vulnerable welfare payment recipient; or
  - (c) the person meets the criteria relating to disengaged youth; or
  - (d) the person meets the criteria relating to long-term welfare payment recipients; or
  - (e) the person, or the person's partner, has a child who does not meet school enrolment requirements; or
  - (f) the person, or the person's partner, has a child who has unsatisfactory school attendance; or
  - (g) the Queensland Commission requires the person to be subject to the income management regime; or

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(ga) an officer or employee of a recognised State/Territory authority requires the person to be subject to the income management regime; or

(h) the person voluntarily agrees to be subject to the income management regime.

- A person who is subject to the income management regime will have an income management account.
- Amounts will be deducted from the person's welfare payments and credited to the person's income management account.
- Amounts will be debited from the person's income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of:
  - (a) the person; and
  - (b) the person's children (if any); and
  - (c) the person's partner (if any); and
  - (d) any other dependants of the person.

**123TB Objects**

The objects of this Part are as follows:

- (a) to reduce immediate hardship and deprivation by ensuring that the whole or part of certain welfare payments is directed to meeting the priority needs of:
  - (i) the recipient of the welfare payment; and
  - (ii) the recipient's children (if any); and
  - (iii) the recipient's partner (if any); and
  - (iv) any other dependants of the recipient;

- (b) to ensure that recipients of certain welfare payments are given support in budgeting to meet priority needs;
- (c) to reduce the amount of certain welfare payments available to be spent on alcoholic beverages, gambling, tobacco products and pornographic material;
- (d) to reduce the likelihood that recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments;
- (e) to encourage socially responsible behaviour, including in relation to the care and education of children;
- (f) to improve the level of protection afforded to welfare recipients and their families.

### **123TC Definitions**

In this Part:

**2020 economic support payment** means:

- (a) a first 2020 economic support payment under Division 1 of Part 2.6B of the 1991 Act; or
- (b) a second 2020 economic support payment under Division 2 of Part 2.6B of the 1991 Act; or
- (c) a first 2020 economic support payment under the ABSTUDY Scheme; or
- (d) a second 2020 economic support payment under the ABSTUDY Scheme; or
- (e) a first 2020 economic support payment under Division 1 of Part 9 of the Family Assistance Act; or
- (f) a second 2020 economic support payment under Division 2 of Part 9 of the Family Assistance Act.

**2022 cost of living payment** means:

- (a) a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act; or
- (b) a 2022 cost of living payment under the ABSTUDY Scheme.

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**account statement**, in relation to an income management account, means a statement that sets out:

- (a) the amounts credited to the income management account during a particular period; and
- (b) the amounts debited from the income management account during that period; and
- (c) the balance of the income management account as at the end of that period.

**acquire** has the same meaning as in the *Competition and Consumer Act 2010*.

**additional economic support payment** means:

- (a) an additional economic support payment 2020 under Division 1 of Part 2.6C of the 1991 Act; or
- (b) an additional economic support payment 2021 under Division 2 of Part 2.6C of the 1991 Act; or
- (c) an additional economic support payment 2020 under Division 1 of Part 10 of the Family Assistance Act; or
- (d) an additional economic support payment 2021 under Division 2 of Part 10 of the Family Assistance Act.

**applicable school period** has the meaning given by section 123UI.

**category E welfare payment** means:

- (a) youth allowance; or
- (b) jobseeker payment; or
- (c) special benefit; or
- (d) pension PP (single); or
- (e) benefit PP (partnered).

**category H welfare payment** means:

- (a) a social security benefit; or
- (b) a social security pension; or
- (c) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or



- (d) a service pension; or
- (e) income support supplement; or
- (ea) a veteran payment.

***category I welfare payment*** means:

- (a) a category H welfare payment; or
- (b) double orphan pension; or
- (c) family tax benefit under the Family Assistance Act; or
- (d) family tax benefit advance under the Family Assistance Administration Act; or
- (e) stillborn baby payment under the Family Assistance Act; or
- (g) carer allowance; or
- (ga) child disability assistance; or
- (gb) carer supplement; or
- (h) mobility allowance; or
- (i) pensioner education supplement; or
- (j) telephone allowance under Part 2.25 of the 1991 Act; or
- (k) veterans supplement under section 118B of the Veterans' Entitlements Act; or
- (l) utilities allowance under Part 2.25A of the 1991 Act; or
- (n) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre; or
- (o) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement; or
- (p) a social security bereavement payment; or
- (q) a veterans' entitlement bereavement payment; or
- (s) an advance payment under Part 2.22 of the 1991 Act; or
- (t) an advance pharmaceutical allowance under Part 2.23 of the 1991 Act; or
- (u) a mobility allowance advance under section 1045 of the 1991 Act; or

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- (v) an advance payment under Part IVA of the Veterans' Entitlements Act.

**category P welfare payment** means:

- (a) a social security benefit; or
- (b) a social security pension; or
- (c) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance.

**category Q welfare payment** means:

- (a) a category P welfare payment; or
- (b) carer allowance; or
- (ba) child disability assistance; or
- (bb) carer supplement; or
- (c) mobility allowance; or
- (d) pensioner education supplement; or
- (e) telephone allowance under Part 2.25 of the 1991 Act; or
- (f) utilities allowance under Part 2.25A of the 1991 Act; or
- (g) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre; or
- (h) a social security bereavement payment (other than a social security bereavement payment in relation to an age pension or a carer payment); or
- (i) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement; or
- (j) an advance payment under Part 2.22 of the 1991 Act (other than an advance payment of an age pension or a carer payment); or
- (k) an advance pharmaceutical allowance under Part 2.23 of the 1991 Act; or
- (l) a mobility allowance advance under section 1045 of the 1991 Act; or

- (m) double orphan pension; or
- (n) family tax benefit under the Family Assistance Act; or
- (o) family tax benefit advance under the Family Assistance Administration Act; or
- (p) stillborn baby payment under the Family Assistance Act.

**category R welfare payment** means:

- (c) a service pension; or
- (d) income support supplement; or
- (da) a veteran payment.

**category S welfare payment** means:

- (a) family tax benefit under the Family Assistance Act; or
- (b) family tax benefit advance under the Family Assistance Administration Act; or
- (c) stillborn baby payment under the Family Assistance Act; or
- (e) double orphan pension; or
- (f) carer allowance; or
- (fa) child disability assistance; or
- (fb) carer supplement; or
- (g) a distance education payment under the scheme known as the Assistance for Isolated Children Scheme, where the payment relates to a child or children at a Homelands Learning Centre.

**child** of a person means:

- (a) a child for whom the person is the principal carer; or
- (b) an FTB child of the person; or
- (c) on or after 1 July 2008—a regular care child of the person.

This definition does not apply to:

- (d) the definition of **child protection officer** in this section; or
- (e) Division 2; or
- (f) subsection 123ZE(2); or
- (g) section 123ZEB.

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**child protection officer** means an officer or employee of a State or Territory who has functions, powers or duties in relation to the care, protection or welfare of children.

**clean energy income-managed payment** means:

- (a) a clean energy advance under the 1991 Act; or
- (c) a clean energy advance under the Family Assistance Act; or
- (d) quarterly energy supplement under the 1991 Act; or
- (e) quarterly energy supplement under the Veterans' Entitlements Act for service pension.

**closure day** means the day on which Part 1 of Schedule 1 to the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* commences.

**declared child protection State or Territory** has the meaning given by section 123TF.

**declared primary school area** has the meaning given by subsection 123TG(1).

**declared secondary school area** has the meaning given by subsection 123TG(3).

**declared voluntary income management area** has the meaning given by section 123TGA.

**economic security strategy payment** means:

- (a) an economic security strategy payment under Part 2.17 of the 1991 Act; or
- (b) an economic security strategy payment under Part VIIG of the Veterans' Entitlements Act; or
- (c) an economic security strategy payment to families under Part 6 of the Family Assistance Act; or
- (d) a payment under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*.

**eligible care child** has the meaning given by section 123UH.

***eligible care period*** has the meaning given by section 123UJ.

***eligible recipient*** has the meaning given by section 123TK.

***ETR income-managed payment*** means:

- (a) ETR payment under the Family Assistance Act; or
- (b) ETR payment under the Veterans' Entitlements Act.

***excluded goods*** has the meaning given by subsection 123TI(1).

***excluded Part 3B payment nominee*** means:

- (a) the Public Trustee (however described) of a State or Territory; or
- (b) a Part 3B payment nominee who:
  - (ia) is not subject to the enhanced income management regime (within the meaning of Part 3AA); and
  - (i) is not subject to the income management regime; and
  - (ii) is not a program participant under Part 3D.

***excluded service*** has the meaning given by subsection 123TI(2).

***exempt welfare payment recipient*** has the meaning given by section 123UGB, 123UGC or 123UGD.

***family law order*** means:

- (a) a parenting order within the meaning of section 64B of the *Family Law Act 1975*; or
- (b) a family violence order within the meaning of section 4 of that Act; or
- (c) a State child order registered under section 70D of that Act; or
- (d) an overseas child order registered under section 70G of that Act.

***full-time student*** has the meaning given by section 123UGF.

***household stimulus payment*** means:

- (a) a training and learning bonus under Part 2.18 of the 1991 Act; or

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- (c) an education entry payment supplement under Division 14 of Part 2.13A of the 1991 Act; or
- (d) a back to school bonus or single income family bonus under Part 7 of the Family Assistance Act; or
- (e) a payment under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009*.

**income management account** means a notional account kept in accordance with section 123WA.

**Income Management Record** means the Income Management Record established by section 123VA.

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

**net amount** of an instalment or payment means:

- (a) if a deduction is made from, or an amount is set off against, the instalment or payment under:
  - (i) section 61 or 238 of this Act; or
  - (ii) section 1231 of the 1991 Act; or
  - (iii) section 84, 84A, 92, 92A, 225, 226 or 227 of the Family Assistance Administration Act; or
  - (iv) section 50A, 50B, 58J, 79L, 122B, 122D, 205 or 205AA of the Veterans' Entitlements Act;so much of the instalment or payment as remains after the deduction is made or the set-off occurs, as the case may be; or
- (b) in any other case—the amount of the instalment or payment.

**non-alcoholic beverage** means a beverage other than an alcoholic beverage.

**parenting plan** has the same meaning as in the *Family Law Act 1975*.

**Part 3B payment nominee** means:

- (a) a person who is, by virtue of an appointment in force under section 123B of this Act or section 219TB of the Family Assistance Administration Act, the payment nominee of another person; or
- (b) a person to whom payment of another person's service pension or veteran payment is made by virtue of an approval in force under section 58D of the Veterans' Entitlements Act; or
- (c) a person to whom payment of another person's service pension or veteran payment is made by virtue of an appointment in force under section 202 of the Veterans' Entitlements Act; or
- (d) a person to whom another person's instalments of youth allowance are to be paid in accordance with subsection 45(1) of this Act.

***pornographic material*** has the meaning given by section 123TJ.

***priority needs*** has the meaning given by section 123TH.

***quarter*** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

***Queensland Commission*** means a body or agency that:

- (a) is established by a law of Queensland; and
- (b) is specified in a legislative instrument made by the Minister for the purposes of this paragraph.

***recognised State or Territory*** has the meaning given by section 123TGAB.

***recognised State/Territory authority*** has the meaning given by section 123TGAA.

***registered parenting plan*** has the same meaning as in the *Family Law Act 1975*.

***repeal day*** means the day on which Part 2 of Schedule 1 to the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* commences.

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***school age child*** has the meaning given by section 123UGG.

***stored value card*** includes a portable device that is:

- (a) capable of storing monetary value in a form other than physical currency; and
- (b) of a kind specified in a legislative instrument made by the Minister for the purposes of this paragraph.

***subject to the income management regime*** has the meaning given by section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF, 123UFAA or 123UFA.

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.

***tobacco product*** has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

***unsatisfactory school attendance situation*** has the meaning given by section 123UK.

***veterans' entitlement bereavement payment*** means:

- (a) a bereavement payment within the meaning of subsection 53K(3) of the Veterans' Entitlements Act; or
- (b) a bereavement payment paid under subsection 53L(4) of that Act; or
- (c) an amount paid under subsection 53Q(1) of that Act; or
- (d) a bereavement payment within the meaning of subsection 53T(1) of that Act.

***voluntary income management agreement*** means an agreement under section 123UM.

***vulnerable welfare payment recipient*** has the meaning given by section 123UGA.



**123TF Declared child protection State or Territory**

The Minister may, by legislative instrument, determine that a specified State or Territory is a *declared child protection State or Territory* for the purposes of this Part.

**123TG Declared primary school area and declared secondary school area***Declared primary school area*

- (1) The Minister may, by legislative instrument, determine that:
  - (a) a specified State; or
  - (b) a specified Territory; or
  - (c) a specified area;is a *declared primary school area* for the purposes of this Part.
- (2) This Part does not prevent an area specified under paragraph (1)(c) from being described as the area within the boundary of premises occupied by a particular primary school.

*Declared secondary school area*

- (3) The Minister may, by legislative instrument, determine that:
  - (a) a specified State; or
  - (b) a specified Territory; or
  - (c) a specified area;is a *declared secondary school area* for the purposes of this Part.
- (4) This Part does not prevent an area specified under paragraph (3)(c) from being described as the area within the boundary of premises occupied by a particular secondary school.

**123TGAA Recognised State/Territory authority**

- (1) The Minister may, by legislative instrument, determine that:
  - (a) a specified department, or a specified part of a department, of a State or Territory; or

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- (b) a specified body of a State or Territory; or
  - (c) a specified agency of a State or Territory;
- is a ***recognised State/Territory authority*** for the purposes of this Part.

*Functions, powers or duties of officers or employees*

- (2) Before making a determination under subsection (1), the Minister must be satisfied that officers or employees of the department or part of the department, or of the body or agency, have functions, powers or duties in relation to the care, protection, welfare or safety of adults, children or families.

*Appropriate review process*

- (3) Before making a determination under subsection (1), the Minister must be satisfied that there is an appropriate process for reviewing any decisions to give notices of the kind referred to in paragraph 123UFAA(1)(b) that could be made by officers or employees of the department or part of the department or of the body or agency if the Minister were to make the determination.
- (4) In deciding whether the Minister is satisfied as mentioned in subsection (3), the Minister must have regard to the following:
  - (a) the cost of the review process to applicants;
  - (b) the timeliness of the review process;
  - (c) whether the review process provides that applicants are entitled to be represented and heard;
  - (d) the degree of independence of the review process;
  - (e) whether the review process provides for the use of the services of an interpreter.

This subsection does not limit the matters to which the Minister may have regard to in deciding whether the Minister is satisfied as mentioned in subsection (3).

**123TGAB Recognised State or Territory**

The Minister may, by legislative instrument, determine that a specified State or Territory is a *recognised State or Territory* for the purposes of this Part.

**123TGA Declared voluntary income management area**

The Minister may, by legislative instrument, determine that:

- (a) a specified State; or
- (b) a specified Territory; or
- (c) a specified area;

is a *declared voluntary income management area* for the purposes of this Part.

**123TH Priority needs**

- (1) For the purposes of this Part, a person's *priority needs* are as follows:
  - (a) food;
  - (b) non-alcoholic beverages;
  - (c) clothing;
  - (d) footwear;
  - (e) basic personal hygiene items;
  - (f) basic household items;
  - (g) housing, including:
    - (i) rent; and
    - (ii) home loan repayments; and
    - (iii) repairs; and
    - (iv) maintenance;
  - (h) household utilities, including:
    - (i) electricity; and
    - (ii) gas; and
    - (iii) water; and
    - (iv) sewerage; and

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- (v) garbage collection; and
- (vi) fixed-line telephone;
- (i) rates and land tax;
- (j) health, including:
  - (i) medical, nursing, dental or other health services; and
  - (ii) pharmacy items; and
  - (iii) the supply, alteration or repair of artificial teeth; and
  - (iv) the supply, alteration or repair of an artificial limb (or part of a limb), artificial eye or hearing aid; and
  - (v) the supply, alteration or repair of a medical or surgical appliance; and
  - (vi) the testing of eyes; and
  - (vii) the prescribing of spectacles or contact lenses; and
  - (viii) the supply of spectacles or contact lenses; and
  - (ix) the management of a disability;
- (k) child care and development;
- (l) education and training;
- (m) items required for the purposes of the person's employment, including:
  - (i) a uniform or other occupational clothing; and
  - (ii) protective footwear; and
  - (iii) tools of trade;
- (n) funerals;
- (o) public transport services, where the services are used wholly or partly for purposes in connection with any of the above needs;
- (p) the acquisition, repair, maintenance or operation of:
  - (i) a motor vehicle; or
  - (ii) a motor cycle; or
  - (iii) a bicycle;that is used wholly or partly for purposes in connection with any of the above needs;
- (q) any thing specified in a legislative instrument made by the Minister for the purposes of this paragraph.

- (2) For the purposes of this Part, excluded goods or excluded services are not *priority needs*.

### **123TI Excluded goods and excluded services**

#### *Excluded goods*

- (1) Each of the following goods are *excluded goods* for the purposes of this Part:
- (a) alcoholic beverages;
  - (b) tobacco products;
  - (c) pornographic material;
  - (d) goods specified in a legislative instrument made by the Minister for the purposes of this paragraph.

#### *Excluded services*

- (2) Each of the following services is an *excluded service* for the purposes of this Part:
- (a) gambling;
  - (b) a service specified in a legislative instrument made by the Minister for the purposes of this paragraph.

### **123TJ Pornographic material**

- (1) For the purposes of this Part, *pornographic material* is:
- (a) a publication, film or computer game classified RC; or
  - (b) an unclassified publication, film or computer game that contains material that would be likely to cause it to be classified RC; or
  - (c) a publication classified Category 1 restricted or Category 2 restricted; or
  - (d) an unclassified publication that contains material that would be likely to cause it to be classified Category 1 restricted or Category 2 restricted; or
  - (e) a film classified X 18+; or

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- (f) an unclassified film that contains material that would be likely to cause it to be classified X 18+.
- (2) An expression used in subsection (1) and in the *Classification (Publications, Films and Computer Games) Act 1995* has the same meaning in subsection (1) as it has in that Act.

**123TK Eligible recipient**

- (1) For the purposes of this Part, if a claim by a person for a particular payment is granted, the person is an ***eligible recipient*** of the payment during the period:
  - (a) beginning on:
    - (i) if the payment is in relation to a service pension or income support supplement—the provisional commencement day (within the meaning of the Veterans' Entitlements Act) for the payment; or
    - (ii) in any other case—the start day for the payment; and
  - (b) ending when the payment is cancelled.
- (2) For the purposes of this Part, a person is an ***eligible recipient*** of a veteran payment while the person is receiving that payment.

## **Division 2—Persons subject to the income management regime**

### **Subdivision A—Situations in which a person is subject to the income management regime**

#### **123UA Persons subject to the income management regime**

This Subdivision sets out the various situations in which a person is *subject to the income management regime*.

#### **123UC Persons subject to the income management regime—child protection**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
  - (a) at the test time, the person, or the person's partner, is an eligible recipient of a category H welfare payment; and
  - (b) before the test time, a child protection officer of a State or Territory gave the Secretary a written notice requiring that the person be subject to the income management regime under this section; and
  - (c) the notice was given:
    - (i) under a law (whether written or unwritten) in force in a State or Territory (other than a law of the Commonwealth); or
    - (ii) in the exercise of the executive power of a State or Territory; and
  - (d) at the test time, the notice had not been withdrawn or revoked; and
  - (e) at the test time, the State or Territory is a declared child protection State or Territory; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and

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- (g) at the test time, the person is not subject to the income management regime under section 123UF; and
  - (h) at the test time, the person is not:
    - (i) a program participant (within the meaning of Part 3D) for the purposes of cashless welfare arrangements; or
    - (ii) a voluntary participant (within the meaning of that Part) for the purposes of cashless welfare arrangements.
- (2) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).

**123UCA Persons subject to the income management regime—vulnerable welfare payment recipients**

- (1) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
- (a) at the test time, the person is an eligible recipient of a category H welfare payment; and
  - (b) at the test time, the person's usual place of residence is within a State, a Territory or an area specified in an instrument under subsection (3); and
  - (c) at the test time, the person is a vulnerable welfare payment recipient; and
  - (d) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (e) at the test time, the person is not subject to the income management regime under section 123UC, 123UD, 123UE, 123UF or 123UFAA.



- (2) If:
- (a) a person is subject to the income management regime under subsection (1); and
  - (b) paragraph (1)(b) ceases to apply in relation to the person; and
  - (c) at the time of that cessation, paragraphs (1)(a), (c), (d) and (e) apply in relation to the person;
- then the person remains subject to the income management regime under subsection (1) until paragraph (1)(a), (c), (d) or (e) ceases to apply in relation to the person.
- (3) The Minister may, by legislative instrument, specify a State, a Territory or an area for the purposes of this section.
- (5) If:
- (a) a person was a program participant under section 124PGE on the day before the closure day; and
  - (b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;
- then, despite subsection (1) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

### **123UCB Persons subject to the income management regime— disengaged youth**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
- (a) at the test time, the person is an eligible recipient of a category E welfare payment; and
  - (b) at the test time, the person is at least 15 years of age and under 25 years of age; and
  - (c) at the test time, the person's usual place of residence is within a State, a Territory or an area specified in an instrument under subsection (4); and
  - (d) at the test time, the person is not an exempt welfare payment recipient; and

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- (e) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (f) at the test time, the person is not subject to the income management regime under section 123UC, 123UCA, 123UD, 123UE, 123UF or 123UFAA; and
  - (g) the person was an eligible recipient of a category E welfare payment for at least 13 weeks during the 26-week period ending immediately before the test time.
- (2) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).
- (3) If:
- (a) a person is subject to the income management regime under subsection (1); and
  - (b) paragraph (1)(c) ceases to apply in relation to the person; and
  - (c) at the time of that cessation, paragraphs (1)(a), (b), (d), (e), and (f) apply in relation to the person;
- then the person remains subject to the income management regime under subsection (1) until the earlier of the following:
- (d) the time paragraph (1)(a), (b), (d), (e), or (f) ceases to apply in relation to the person;
  - (e) the end of the period of 13 weeks beginning on the day that paragraph (1)(c) ceased to apply in relation to the person.
- (4) The Minister may, by legislative instrument, specify a State, a Territory or an area for the purposes of this section.
- (6) If:

- (a) a person was a program participant under section 124PGE on the day before the closure day; and
  - (b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;
- then, despite subsections (1) and (2) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

**123UCC Persons subject to the income management regime—  
long-term welfare payment recipients**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
  - (a) at the test time, the person is an eligible recipient of a category E welfare payment; and
  - (b) at the test time, the person is at least 25 years of age but has not reached pension age; and
  - (c) at the test time, the person's usual place of residence is within a State, a Territory or an area specified in an instrument under subsection (4); and
  - (d) at the test time, the person is not an exempt welfare payment recipient; and
  - (e) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (f) at the test time, the person is not subject to the income management regime under section 123UC, 123UCA, 123UD, 123UE, 123UF or 123UFAA; and
  - (g) the person was an eligible recipient of a category E welfare payment for at least 52 weeks during the 104-week period ending immediately before the test time.
- (2) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:

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- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).
- (3) If:
- (a) a person is subject to the income management regime under subsection (1); and
  - (b) paragraph (1)(c) ceases to apply in relation to the person; and
  - (c) at the time of that cessation, paragraphs (1)(a), (b), (d), (e), and (f) apply in relation to the person;
- then the person remains subject to the income management regime under subsection (1) until the earlier of the following:
- (d) the time paragraph (1)(a), (b), (d), (e), or (f) ceases to apply in relation to the person;
  - (e) the end of the period of 13 weeks beginning on the day that paragraph (1)(c) ceased to apply in relation to the person.
- (4) The Minister may, by legislative instrument, specify a State, a Territory or an area for the purposes of this section.
- (6) If:
- (a) a person was a program participant under section 124PGE on the day before the closure day; and
  - (b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;
- then, despite subsections (1) and (2) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

**123UD Persons subject to the income management regime—school enrolment**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
- (a) at the test time, the person, or the person's partner, is an eligible recipient of a category H welfare payment; and
  - (b) at the test time, the person, or the person's partner, has an eligible care child; and
  - (c) under a law of a State or Territory, the eligible care child is required to be enrolled at school; and
  - (d) the Secretary is satisfied that it is appropriate for the eligible care child to be enrolled at:
    - (i) a primary school in a declared primary school area; or
    - (ii) a secondary school in a declared secondary school area; and
  - (e) at the test time, the eligible care child is not enrolled at:
    - (i) if subparagraph (d)(i) applies—a primary school in the declared primary school area; or
    - (ii) if subparagraph (d)(ii) applies—a secondary school in the declared secondary school area; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (g) at the test time, the person is not subject to the income management regime under section 123UC or 123UF; and
  - (h) at the test time, a determination under subsection (2) is not in force in relation to the person; and
  - (i) such other conditions (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph are satisfied.
- (2) The Secretary may, by writing, determine that a person is exempt from subsection (1).

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- (3) In making a determination under subsection (2), the Secretary must comply with any principles set out in a legislative instrument made by the Minister for the purposes of this subsection.
- (4) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).
- (4B) If:
- (a) a person was a program participant under section 124PGE on the day before the closure day; and
  - (b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;
- then, despite subsections (1) and (4) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

*Documentary evidence*

- (5) If a person, or the person's partner, has an eligible care child, the Secretary may, by written notice given to the person, request the person to give the Secretary, within a period (the ***compliance period***) specified in the notice, documentary evidence of the eligible care child's enrolment at a school during a specified applicable school period.
- (6) A notice under subsection (5) must set out the effect of subsection (9).
- (7) The compliance period specified in a notice under subsection (5) must not be shorter than 7 days.

- (8) The Secretary may extend the compliance period specified in a notice under subsection (5).
- (9) If:
  - (a) a person is given a notice under subsection (5); and
  - (b) the person does not comply with the notice;the Secretary may determine that subsection (1) has effect as if the eligible care child was not enrolled at any school at any time during the applicable school period specified in the notice.
- (10) This Part does not prevent a notice from being characterised as:
  - (a) a notice under subsection (5); and
  - (b) a notice under another provision of a law of the Commonwealth.

### **123UE Persons subject to the income management regime—school attendance**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
  - (a) at the test time, the person, or the person's partner, is an eligible recipient of a category H welfare payment; and
  - (b) at the test time, an unsatisfactory school attendance situation exists in relation to a child; and
  - (c) throughout a period that ended before the unsatisfactory school attendance situation came into existence, the child was an eligible care child of:
    - (i) the person; or
    - (ii) the person's partner; and
  - (d) at the test time, the child is enrolled at a school; and
  - (e) if the school is a primary school—at the test time, the school is in a declared primary school area; and
  - (f) if the school is a secondary school—at the test time, the school is in a declared secondary school area; and
  - (g) before the test time, the person, or the person's partner, had been given a formal warning under section 123UL; and

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- (h) the whole or a part of an applicable school period in relation to the child occurred in the period:
    - (i) beginning when the formal warning was given; and
    - (ii) ending at the test time; and
  - (i) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (j) at the test time, the person is not subject to the income management regime under section 123UC or 123UF; and
  - (k) at the test time, a determination under subsection (2) is not in force in relation to the person; and
  - (l) such other conditions (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph are satisfied.
- (2) The Secretary may, by writing, determine that a person is exempt from subsection (1).
- (3) In making a determination under subsection (2), the Secretary must comply with any principles set out in a legislative instrument made by the Minister for the purposes of this subsection.
- (4) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
  - (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).
- (6) If:
  - (a) a person was a program participant under section 124PGE on the day before the closure day; and



(b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;  
then, despite subsections (1) and (4) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

**123UF Persons subject to the income management regime—  
Queensland Commission**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
- (a) at the test time, the person, or the person's partner, is an eligible recipient of a category P welfare payment; and
  - (b) before the test time, the Queensland Commission gave the Secretary a written notice requiring that the person be subject to the income management regime under this section; and
  - (c) the notice was given under a law of Queensland; and
  - (d) the notice was not given in such circumstances (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
  - (e) at the test time, the notice had not been withdrawn or revoked; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (g) the test time occurs before 1 January 2022.
- (2) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
- (a) at the test time, neither the person, nor the person's partner, is an eligible recipient of a category P welfare payment; and
  - (b) at the test time, the person, or the person's partner, is an eligible recipient of a category R welfare payment; and
  - (c) before the test time, the Queensland Commission gave the Secretary a written notice requiring that the person be subject to the income management regime under this section; and
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- (d) the notice was given under a law of Queensland; and
  - (e) the notice was not given in such circumstances (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
  - (f) at the test time, the notice had not been withdrawn or revoked; and
  - (g) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (h) the test time occurs before 1 January 2022.
- (3) For the purposes of this Part, a person is ***subject to the income management regime*** at a particular time (the ***test time***) if:
- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1) or (2).

*Relationship with Part 3D*

- (4) If a person becomes a program participant under section 124PGD on a day (the ***trigger day***), the following apply:
- (a) despite any other provision of this Part, the Secretary may, on a day (the ***transfer day***) before the end of 60 days beginning on the trigger day, pay, to the credit of a welfare restricted bank account (within the meaning of Part 3D) maintained by the person, an amount equal to the credit balance (if any) of the person's income management account as at the end of the day before the transfer day;
  - (b) immediately after any such payment:
    - (i) the Income Management Record is debited by an amount equal to the payment; and
    - (ii) the person's income management account is debited by an amount equal to the payment;

- (c) if the person is subject to the income management regime under subsection (1) on the day before the trigger day—the person ceases to be subject to the income management regime under subsection (1) on the trigger day.

**123UFAA Persons subject to the income management regime—  
other State/Territory referrals**

- (1) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:
  - (a) at the test time, the person, or the person's partner, is an eligible recipient of a category H welfare payment; and
  - (b) before the test time, an officer or employee of a recognised State/Territory authority gave the Secretary a written notice requiring that the person be subject to the income management regime under this section; and
  - (c) the notice was given:
    - (i) under a law (whether written or unwritten) in force in a State or Territory (other than a law of the Commonwealth); or
    - (ii) in the exercise of the executive power of a State or Territory; and
  - (d) at the test time, the notice had not been withdrawn or revoked; and
  - (e) at the test time, the State or Territory is a recognised State or Territory; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (g) at the test time, the person is not subject to the income management regime under section 123UC, 123UD, 123UE or 123UF.
- (2) For the purposes of this Part, a person is *subject to the income management regime* at a particular time (the *test time*) if:

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- (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).
- (4) If:
- (a) a person was a program participant under section 124PGE on the day before the closure day; and
  - (b) on or after that day and before the repeal day, the Secretary made a determination under subsection 124PHA(1) or 124PHB(3) in relation to the person;
- then, despite subsections (1) and (2) of this section, the person cannot become subject to the income management regime under this section at any time after the making of that determination.

**123UFA Persons subject to the income management regime—voluntary income management agreement**

For the purposes of this Part, a person is *subject to the income management regime* at a particular time if, at that time, a voluntary income management agreement is in force in relation to the person.

**Subdivision BA—Additional provisions relating to vulnerable welfare payment recipients**

**123UGA Vulnerable welfare payment recipients**

*Determination by Secretary*

- (1) The Secretary may, by writing, determine that a person is a *vulnerable welfare payment recipient* for the purposes of this Part.
- (2) In making a determination under subsection (1), the Secretary must comply with any decision-making principles set out in a legislative

instrument made by the Minister for the purposes of this subsection.

*Duration of determination*

- (3) A determination made under subsection (1):
- (a) comes into force:
    - (i) on the day on which it is made; or
    - (ii) if a later day is specified in the determination—on that later day; and
  - (b) remains in force (unless earlier revoked):
    - (i) for 12 months; or
    - (ii) if a shorter period is specified in the determination—for that shorter period.

*New determinations*

- (4) If a determination made under subsection (1) is, or has been, in force in relation to a person, subsection (3) does not prevent the Secretary from making a new determination under subsection (1) in relation to that person.

*Variation and revocation*

- (5) The Secretary may, by writing, vary or revoke a determination made under subsection (1):
- (a) on his or her own initiative; or
  - (b) on request made under subsection (8).
- (6) In deciding whether to vary or revoke a determination made under subsection (1), the Secretary must comply with any decision-making principles set out in an instrument made for the purposes of subsection (2).
- (7) Subsection (5) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

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*Request to reconsider circumstances*

- (8) Subject to subsection (9), if a determination made under subsection (1) is in force in relation to a person, the person may request the Secretary to:
  - (a) reconsider the person's circumstances; and
  - (b) vary, or revoke, the determination.
- (9) A person must not make a request under subsection (8) in relation to a determination if, at any time during the preceding period of 90 days, the person has made a request under that subsection in relation to the same determination.
- (10) If a person makes a request under subsection (8), the Secretary must reconsider the person's circumstances unless the request was made in contravention of subsection (9).

*Determination not a legislative instrument*

- (11) A determination made under subsection (1) is not a legislative instrument.

**Subdivision BB—Additional provisions relating to disengaged youth and long-term welfare payment recipients**

**123UGB Exempt welfare payment recipient—inclusion in specified class**

- (1) The Secretary may, by writing, determine that a person is an ***exempt welfare payment recipient*** if the Secretary is satisfied that the person is included in a class of persons specified in an instrument made by the Minister under subsection (2).
- (2) The Minister may, by legislative instrument, specify a class of persons to be exempt welfare payment recipients for the purposes of this section.
- (3) A determination made by the Secretary under subsection (1) is not a legislative instrument.

**123UGC Exempt welfare payment recipient—person is not the principal carer of a child**

- (1) The Secretary may, by writing, determine that a person is an *exempt welfare payment recipient* at a particular time (the *test time*) if:
  - (a) at the test time, the person is not the principal carer of a child who is a school age child or younger; and
  - (b) the Secretary is satisfied that one of the following applies:
    - (i) the person is a full-time student or a new apprentice at the test time;
    - (ii) within at least 4 of the last 6 fortnights before the test time, the person has received less than 25% of the maximum basic rate of youth allowance, jobseeker payment, pension PP (single) or benefit (PP) partnered (other than because a compliance penalty period applied to the person);
    - (iia) within at least 4 of the last 6 fortnights before the test time, the person has received less than 25% of the equivalent rate of special benefit (other than because a compliance penalty period applied to the person);
    - (iii) at the test time, the person is undertaking an activity specified in an instrument made by the Minister under subsection (2).
- (2) The Minister may, by legislative instrument, specify activities for the purpose of subparagraph (1)(b)(iii). The activities may be specified by reference to a class of persons undertaking the activities.
- (3) A determination made by the Secretary under subsection (1) is not a legislative instrument.

**123UGD Exempt welfare payment recipient—person is the principal carer of a child**

- (1) The Secretary may, by writing, determine that a person is an *exempt welfare payment recipient* at a particular time (the *test time*) if:
- (a) at the test time, the person is the principal carer of a child who is a school age child or younger; and
  - (b) in relation to each child who is a school age child—the Secretary is satisfied that:
    - (i) at the test time, the child is enrolled at a school, and, in each of the 2 school terms ending immediately before that time, the child has had no more than 5 absences for reasons that are not satisfactory to a person responsible for the operation of the school; or
    - (ia) at the test time, the child is enrolled at a school, and, in each of the 2 school terms ending immediately before that time, the child has had more than 5 absences for reasons that are not satisfactory to a person responsible for the operation of the school but the person is taking reasonable steps to ensure that the child attends school as required by the law of the State or Territory concerned; or
    - (ii) at the test time, the child is covered by a schooling arrangement that is acceptable under a law of a State or Territory as an alternative to a requirement under that law to enrol at, or attend, a school (for example, the child is home-schooled), and the child’s schooling is progressing satisfactorily; or
    - (iii) at the test time, the child is participating in an activity specified in an instrument made by the Minister under subsection (2); and
  - (c) in relation to each other child—the Secretary is satisfied that, at the test time, the person or the child is participating in the required number and kind of activities specified in an instrument made by the Minister under subsection (3); and



- (d) the Secretary is satisfied that there were no indications of financial vulnerability in relation to the person during the 12-month period ending immediately before the test time.

Note: In deciding whether he or she is satisfied as mentioned in paragraph (1)(d), the Secretary must comply with decision-making principles: see subsection (5).

*Alternative activities for school age children*

- (2) The Minister may, by legislative instrument, specify activities for the purpose of subparagraph (1)(b)(iii).

*Activities relating to children (other than school age children)*

- (3) The Minister must, by legislative instrument, specify the number and kind of activities that a person, or the person's child (other than a school age child), may participate in for the purposes of paragraph (1)(c).
- (4) The activities that may be specified under subsection (3) may relate to a child's intellectual, physical or social development.

*Decision-making principles relating to financial vulnerability*

- (5) In deciding whether he or she is satisfied as mentioned in paragraph (1)(d), the Secretary must comply with any decision-making principles set out in a legislative instrument made by the Minister for the purposes of this subsection.

*Determination not a legislative instrument*

- (6) A determination made by the Secretary under subsection (1) is not a legislative instrument.

*Definitions*

- (7) In this section:

**person responsible**, for the operation of a school, has the same meaning as in Part 3C.

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**123UGF Full-time student**

A person is a *full-time student* for the purposes of this Part if the person:

- (a) is an eligible recipient of youth allowance; and
- (b) is undertaking full-time study (as defined by section 541B of the 1991 Act).

**123UGG School age child**

- (1) For the purposes of this Part, a child is a *school age child* if the child is required, under a law of a State or Territory:
  - (a) to be enrolled at a school; or
  - (b) to attend a school at times required under that law.

- (2) For the purposes of this section:

*attendance*, at a school, includes attendance at a place, for the purpose of schooling, that is acceptable under a law of a State or Territory as an alternative to a requirement under that law to attend a school.

*enrolment*, at a school, includes anything, for the purposes of schooling, that is acceptable under a law of a State or Territory as an alternative to a requirement under that law to enrol at a school.

**Subdivision C—Additional provisions relating to school enrolment and attendance**

**123UH Eligible care child**

For the purposes of this Part, a person (the *first person*) is an *eligible care child* of another person at a particular time if, and only if:

- (a) at the particular time, the first person is a child for whom the other person is the principal carer; or
- (b) all of the following conditions are satisfied:
  - (i) that time occurs during an eligible care period;

- (ii) under a family law order, registered parenting plan or parenting plan that is in force during the eligible care period, the first person is supposed to live or spend time with the other person;
- (iii) assuming the family law order, registered parenting plan or parenting plan were complied with during the eligible care period, the first person would have been in the other person's care for at least 14% of that period.

### **123UI Applicable school period**

- (1) For the purposes of this Part, an *applicable school period* in relation to a child is a period ascertained in accordance with a legislative instrument made by the Minister for the purposes of this subsection.
- (2) A period ascertained under subsection (1) may be a recurring period.
- (3) A period may be ascertained under subsection (1) by reference to a term of the school attended by the child.
- (4) For the purposes of this Part, it is immaterial whether an applicable school period begins before or after the commencement of this section.

### **123UJ Eligible care period**

- (1) For the purposes of this Part, an *eligible care period* is a period ascertained in accordance with a legislative instrument made by the Minister for the purposes of this subsection.
- (2) A period ascertained under subsection (1) may be a recurring period (for example, a fortnight).
- (3) For the purposes of this Part, it is immaterial whether an eligible care period begins before or after the commencement of this section.

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**123UK Unsatisfactory school attendance situation**

- (1) For the purposes of this Part, the question whether an *unsatisfactory school attendance situation* exists, or has existed, in relation to a child is to be ascertained in accordance with a legislative instrument made by the Minister for the purposes of this subsection.
- (2) However, an *unsatisfactory school attendance situation* does not exist in relation to a child if the child is not required, under a law of a State or Territory, to attend school in a State or Territory.
- (3) For the purposes of this Part, it is immaterial whether an unsatisfactory school attendance situation exists or has existed before or after the commencement of this section.

**123UL Formal warning—unsatisfactory school attendance situation**

If:

- (a) a person is not subject to the income management regime under section 123UE; and
- (b) the person, or the person's partner, has an eligible care child; and
- (c) an unsatisfactory school attendance situation exists, or has existed, in relation to the eligible care child;

the Secretary may give the person a formal warning that the person, or the person's partner, could become subject to the income management regime under section 123UE if an unsatisfactory school attendance situation exists in relation to the eligible care child.

**Subdivision D—Voluntary income management agreements**

**123UM Voluntary income management agreement**

- (1) A person may enter into a written agreement with the Secretary under which the person agrees voluntarily to be subject to the

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income management regime throughout the period when the agreement is in force.

- (2) An agreement under subsection (1) is to be known as a ***voluntary income management agreement***.
- (3) The Secretary must not enter into a voluntary income management agreement with a person (the ***first person***) unless:
  - (a) the first person is an eligible recipient of a category H welfare payment; and
  - (b) the first person's usual place of residence is within a declared voluntary income management area; and
  - (c) if the first person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee.
- (4) In deciding whether to enter into a voluntary income management agreement with a person, the Secretary must have regard to:
  - (a) the extent to which it would be feasible for the Secretary to take action under Division 6 in relation to the person if the person were subject to the income management regime; and
  - (b) such other matters (if any) as the Secretary considers relevant.
- (5) The Secretary must not enter into a voluntary income management agreement with a person if:
  - (a) the person is subject to the income management regime under section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF or 123UFAA; or
  - (b) during the 12-month period ending when the voluntary income management agreement is to come into force, there were 4 occasions on which previous voluntary income management agreements relating to the person were terminated under subsection 123UO(2).

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**123UN Duration of voluntary income management agreement**

- (1) A voluntary income management agreement in relation to a person (the *first person*):
- (a) comes into force at the time specified in the agreement, so long as:
    - (i) at that time, the first person is an eligible recipient of a category H welfare payment; and
    - (ii) at that time, the first person's usual place of residence is within a declared voluntary income management area; and
    - (iii) if, at that time, the first person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
    - (v) at that time, the first person is not subject to the income management regime under section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF or 123UFAA; and
  - (b) remains in force until:
    - (i) it is terminated under section 123UO; or
    - (ii) if the agreement specifies a period (which must be at least 13 weeks) during which it is to remain in force, and the agreement has not been terminated under section 123UO before the end of that period—the end of that period.
- (3) If a voluntary income management agreement (the *original agreement*) in relation to a person is in force, subsection (1) does not prevent the Secretary from entering into a new voluntary income management agreement with the person, so long as the new agreement is expressed to come into force immediately after the original agreement ceases to be in force.
- (4) If a voluntary income management agreement in relation to a person has ceased to be in force, subsection (1) does not prevent the Secretary from entering into a new voluntary income management agreement with the person.

## **123UO Termination of voluntary income management agreement**

### *Termination by request*

- (1) If a voluntary income management agreement relates to a person, the person may, by written notice given to the Secretary, request the Secretary to terminate the agreement.
- (1A) However, a person must not make a request under subsection (1) unless the voluntary income management agreement to which the request relates has been in force for at least 13 weeks.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable after receiving the request, unless the request relates to a voluntary income management agreement that, on the day the request is received, has not been in force for at least 13 weeks.

### *Grounds of termination*

- (3) If:
  - (a) a voluntary income management agreement in relation to a person (the **first person**) is in force; and
  - (b) any of the following events occurs:
    - (i) the first person ceases to be an eligible recipient of a category H welfare payment;
    - (iii) in a case where the first person has a Part 3B payment nominee—the Part 3B payment nominee becomes an excluded Part 3B payment nominee;
    - (v) the first person becomes subject to the income management regime under section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF or 123UFAA;
    - (vi) the Secretary becomes satisfied that it is not feasible for the Secretary to take action under Division 6 in relation to the first person;

the Secretary must terminate the voluntary income management agreement as soon as practicable after the occurrence of the event.

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(3A) If:

- (a) a voluntary income management agreement in relation to a person is in force; and
- (b) the person's usual place of residence is within the Northern Territory;

the Secretary may, by written notice given to the person, terminate the agreement. The termination takes effect on a day specified in the notice (which must not be earlier than the day on which the notice is given).

*Limit on new voluntary income management agreements*

- (4) If a voluntary income management agreement in relation to a person is terminated under this section, the Secretary must not enter into another voluntary income management agreement with the person within 21 days after the termination.



## **Division 3—Establishment of the Income Management Record**

### **123VA Establishment of the Income Management Record**

The Income Management Record is established by this section.

### **123VC Bank account**

Amounts standing to the credit of the Income Management Record may be kept in a single bank account.

## **Division 4—Income management accounts**

### **Subdivision A—Income management accounts**

#### **123WA Income management accounts**

*Income management accounts to be kept*

- (1) Separate notional accounts are to be kept within the Income Management Record in the names of particular persons.

*Person's income management account*

- (2) An account kept in the name of a person is to be known as the person's **income management account**.

Note: Section 123TC provides that **income management account** means a notional account kept in accordance with this section.

*Amounts not held on trust*

- (3) An amount standing to the credit of a person's income management account is not held on trust.

#### **123WB Opening of income management accounts**

*Power*

- (1) The Secretary may open an income management account in the name of a particular person.
- (2) The Secretary may open the income management account even if the person is not subject to the income management regime.

*Duty*

- (3) The Secretary must open an income management account in the name of a particular person if:

- (a) the person does not already have an income management account; and
- (b) the person is subject to the income management regime.

### **123WC Closing of income management accounts**

The Secretary may close a person's income management account if the balance of the income management account is nil, and:

- (a) the person is not subject to the income management regime; or
- (b) the person has died.

### **123WD Income management accounts may have a nil balance**

*Nil balance*

- (1) A person's income management account may have a nil balance.

*Examples*

- (2) The following are examples of cases where an income management account might have a nil balance:
  - (a) no amount has been credited to the income management account;
  - (b) the balance of the income management account has been debited under section 123WJ;
  - (c) the balance of the income management account has been debited under section 123WL;
  - (d) the balance of the income management account has been debited under Division 6.

### **123WE One income management account per person**

*Only one income management account*

- (1) Only one income management account may be kept in respect of a particular person.

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- (2) A contravention of subsection (1) does not affect the validity of an income management account.

*Amalgamation*

- (3) If the Secretary becomes aware that 2 or more income management accounts are being kept in respect of the same person, the Secretary must amalgamate the accounts into a single account.

**123WF Credits to, and debits from, a person's income management account**

An amount must not be credited to, or debited from, a person's income management account except as provided by this Part.

**Subdivision B—Account statements**

**123WG Internet and telephone access to account statements etc.**

*Scope*

- (1) This section applies if an income management account is kept in the name of a person.

*Internet and telephone access to account statements etc.*

- (2) The Secretary may issue the person with a means of identification (for example, a personal identification number) that enables the person to do either or both of the following:
- (a) to access on the internet electronic versions of account statements for the person's income management account;
  - (b) to be told the balance of the person's income management account using an automated telephone answering system.

### **123WH Person may request account statements**

*Scope*

- (1) This section applies if an income management account is kept in the name of a person.

*Account statement may be requested*

- (2) The person may request the Secretary to give the person a written account statement for the income management account.
- (3) The Secretary must comply with the request.
- (4) However, the Secretary may refuse to comply with the request if the person has made a previous request at any time during the preceding period of 30 days.

### **123WI Account statements to be given**

*Scope*

- (1) This section applies if an income management account is kept in the name of a person.

*Account statement to be given*

- (2) At least once each quarter, the Secretary must give the person a written account statement for the income management account.
- (3) However, the Secretary is not required to give the person a written account statement relating to a particular period unless:
  - (a) an amount has been credited to, or debited from, the income management account during that period; or
  - (b) the income management account has a credit balance as at the end of that period.

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**Subdivision C—Miscellaneous**

**123WJ Payment of credit balances of income management accounts—person ceases to be subject to the income management regime**

*Scope*

- (1) This section applies if:
  - (a) at a particular time, a person (the *first person*) ceases to be subject to the income management regime; and
  - (b) the first person's income management account has a credit balance at that time; and
  - (c) if, immediately before the first person ceased to be subject to the income management regime, the first person was subject to the income management regime under section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF or 123UFAA—the Secretary is satisfied that the first person is not likely to become subject to the income management regime within 60 days after the cessation; and
  - (d) if, immediately before the first person ceased to be subject to the income management regime, the first person was subject to the income management regime under section 123UFA—the Secretary is satisfied that the first person is not likely to become subject to the income management regime under section 123UC, 123UCA, 123UCB, 123UCC, 123UD, 123UE, 123UF or 123UFAA within 60 days after the cessation.

*Residual amount*

- (2) For the purposes of this section, the *residual amount* is an amount equal to the credit balance of the first person's income management account.
- (3) The residual amount is payable to the first person in accordance with this section.

*Payment by instalments*

- (4) The Secretary may determine that the whole or a part of the residual amount is to be paid to the first person by instalments. The instalments are to be paid on the days specified in a determination made by the Secretary.
- (5) The days specified in the determination must occur within the 12-month period beginning when the person ceased to be subject to the income management regime.
- (6) If an instalment is paid under subsection (4):
  - (a) the Income Management Record is debited by an amount equal to the amount of the instalment; and
  - (b) the first person's income management account is debited by an amount equal to the amount of the instalment.

*Lump sum payment*

- (7) The Secretary may determine that the whole or a part of the residual amount is to be paid to the first person as a single lump sum on a day determined by the Secretary.
- (8) The day specified in the determination must occur within the 12-month period beginning when the person ceased to be subject to the income management regime.
- (9) The Secretary must not make a determination under subsection (7) unless:
  - (a) the lump sum is \$200 or less; or
  - (b) the Secretary is satisfied that there are special circumstances that warrant the making of the determination; or
  - (c) immediately before the first person ceased to be subject to the income management regime, the first person was subject to the income management regime under section 123UFA.
- (10) If a lump sum is paid under subsection (7):
  - (a) the Income Management Record is debited by an amount equal to the lump sum; and

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- (b) the first person's income management account is debited by an amount equal to the lump sum.

*Expense payment*

- (11) The Secretary may, on behalf of the Commonwealth:
  - (a) make a payment in discharge, in whole or in part, of an obligation of the first person to pay an amount to a third person; or
  - (b) make a payment in discharge, in whole or in part, of an obligation of a third person to pay an amount to a fourth person;so long as:
  - (c) the payment is made with the consent of the first person; and
  - (d) the amount paid by the Secretary does not exceed the residual amount.
- (12) The payment under subsection (11) must occur within the 12-month period beginning when the person ceased to be subject to the income management regime.
- (13) If the Secretary makes a payment under subsection (11):
  - (a) the Income Management Record is debited by an amount equal to the amount paid under subsection (11); and
  - (b) the first person's income management account is debited by an amount equal to the amount paid under subsection (11); and
  - (c) the Secretary is taken to have paid the first person so much of the residual amount as equals the amount paid under subsection (11).

*Set-off*

- (14) If the first person owes an amount (the *debt amount*) to the Commonwealth, the Secretary may, with the consent of the first person, set off the whole or part of the residual amount against the whole or a part of the debt amount.



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- (15) The set-off under subsection (14) must occur within the 12-month period beginning when the person ceased to be subject to the income management regime.
- (16) If the Secretary sets off an amount under subsection (14):
- (a) the Income Management Record is debited by an amount equal to the amount set off; and
  - (b) the first person's income management account is debited by an amount equal to the amount set off; and
  - (c) the Secretary is taken to have paid the first person so much of the residual amount as equals the amount set off.
- (16A) Subsection (14) is not limited by Chapter 5 of the 1991 Act also applying in relation to the debt amount.

*Tax consequences*

- (17) If a payment is made under subsection (4), (7) or (11), the payment does not have consequences under the income tax law for the first person.
- (18) If the Secretary sets off an amount under subsection (14), the set-off does not have consequences under the income tax law for the first person.

*Interpretation*

- (19) This section is subject to section 123WJA.

**123WJA Ceasing payment of credit balances of income management accounts—person becomes subject to the income management regime again**

- (1) This section applies if:
- (a) at a particular time, a person ceases to be subject to the income management regime; and
  - (b) at the time referred to in paragraph (a), there is a residual amount in relation to the person; and

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- (c) at any time after the cessation, the person becomes subject to the income management regime again; and
  - (d) at the time referred to in paragraph (c), the whole or a part of the residual amount has not been paid to the person in accordance with section 123WJ.
- (2) The Secretary may determine that section 123WJ ceases to apply in relation to:
- (a) the whole of the residual amount; or
  - (b) a part of the residual amount specified in the determination.
- The determination has effect accordingly.
- (3) In this section:
- residual amount* has the same meaning as in subsection 123WJ(2).

**123WK Payment into bank account etc. of credit balances of income management accounts—person ceases to be subject to the income management regime**

*Scope*

- (1) This section applies to an amount that is to be paid to a person as:
- (a) an instalment under subsection 123WJ(4); or
  - (b) a lump sum under subsection 123WJ(7).

*Payment into bank account etc.*

- (2) The amount is to be paid to the credit of a bank account kept by the person.
- (3) The bank account may be kept by the person either alone or jointly or in common with another person.
- (4) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).

- (5) If the Secretary gives a direction under subsection (4), the amount is to be paid in accordance with the direction.

### **123WL Payment of credit balances of income management accounts—person dies**

#### *Scope*

- (1) This section applies if:
- (a) an income management account is kept in the name of a person; and
  - (b) the person dies; and
  - (c) at the time of the person's death, the person's income management account has a credit balance.

#### *Residual amount*

- (2) For the purposes of this section, the **residual amount** is an amount equal to the credit balance of the person's income management account.

#### *Payment of residual amount*

- (3) The residual amount is to be paid in one or more of the following ways (as determined by the Secretary):
- (a) to the legal personal representative of the person;
  - (b) to one or more other persons whom the Secretary is satisfied have carried out, are carrying out, or will carry out, an appropriate activity in relation to the estate or affairs of the person;
  - (c) to the credit of a bank account nominated by the person for the purposes of subsection 55(2).

An amount that is to be paid under this subsection is to be paid as a lump sum on a day determined by the Secretary.

- (3A) A person may be paid more than one amount under subsection (3).
- (5) If a lump sum is paid under subsection (3):

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- (a) the Income Management Record is debited by an amount equal to the lump sum; and
- (b) the person's income management account is debited by an amount equal to the lump sum.

*Tax consequences*

- (6) If a payment is made under subsection (3), the payment does not have consequences under the income tax law for the person's estate.

**123WM Payment into bank account etc. of credit balances of income management accounts—person dies**

*Scope*

- (1) This section applies to an amount that is to be paid to a person under paragraph 123WL(3)(a) or (b).

*Payment into bank account etc.*

- (2) The amount is to be paid to the credit of a bank account kept by the person.
- (3) The bank account may be kept by the person either alone or jointly or in common with another person.
- (4) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).
- (5) If the Secretary gives a direction under subsection (4), the amount is to be paid in accordance with the direction.

**123WN Crediting of amounts to income management accounts—  
Ministerial rules**

The Minister may, by legislative instrument, make rules providing that an amount ascertained in accordance with the rules is to be credited to:

- (a) the Income Management Record; and
  - (b) a person's income management account;
- in the circumstances specified in the rules.

## **Division 5—Deductions from welfare payments**

### **Subdivision B—Child protection**

#### **123XI Deductions from category I welfare payments—instalments**

##### *Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UC; and
  - (b) an instalment of a category I welfare payment is payable to the person.

##### *Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

##### *Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of an instalment of a category I welfare payment is:
  - (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

## **123XJ Deductions from category I welfare payments—lump sums**

### *Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UC; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

### *Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

### *Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of a category I welfare payment is:
  - (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;of the net amount of the payment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

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**Subdivision BA—Vulnerable welfare payment recipients**

**123XJA Deductions from category I welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UCA; and
  - (b) an instalment of category I welfare payment is payable to the person.

*Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (4) For the purposes of subsection (2), the ***deductible portion*** of an instalment of a category I welfare payment is:
  - (a) 50%; or
  - (b) if another percentage (not exceeding 100%) is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the other percentage;of the net amount of the instalment (rounded down to the nearest cent).
- (5) An instrument under paragraph (4)(b) may specify different percentages in relation to different category I welfare payments.



- (6) An instrument under paragraph (4)(b) may specify a percentage that is higher than 50% only if the Minister considers the higher percentage is necessary to promote the objects of this Part.

### **123XJB Deductions from category I welfare payments—lump sums**

#### *Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime under section 123UCA; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

#### *Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

#### *Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of a category I welfare payment is:
- (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;
- of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

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**Subdivision BB—Disengaged youth and long-term welfare  
payment recipients**

**123XJC Deductions from category I welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UCB or 123UCC; and
  - (b) an instalment of category I welfare payment is payable to the person.

*Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (4) For the purposes of subsection (2), the **deductible portion** of an instalment of a category I welfare payment is:
  - (a) 50%; or
  - (b) if another percentage (not exceeding 100%) is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the other percentage;of the net amount of the instalment (rounded down to the nearest cent).
- (5) An instrument under paragraph (4)(b) may specify different percentages in relation to different category I welfare payments.

- (6) An instrument under paragraph (4)(b) may specify a percentage that is higher than 50% only if the Minister considers the higher percentage is necessary to promote the objects of this Part.

### **123XJD Deductions from category I welfare payments—lump sums**

#### *Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime under section 123UCB or 123UCC; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

#### *Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

#### *Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of a category I welfare payment is:
- (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;
- of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

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**Subdivision C—School enrolment and attendance**

**123XK Deductions from category I welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UD or 123UE; and
  - (b) an instalment of a category I welfare payment is payable to the person.

*Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of an instalment of a category I welfare payment is:
  - (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

## **123XL Deductions from category I welfare payments—lump sums**

### *Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UD or 123UE; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

### *Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

### *Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of a category I welfare payment is:
  - (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;of the net amount of the payment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

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**Subdivision D—Queensland Commission**

**123XM Deductions from category Q welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under subsection 123UF(1) or (3); and
  - (b) an instalment of a category Q welfare payment is payable to the person.

*Deductions from category Q welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category Q welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of an instalment of a category Q welfare payment is the percentage of the net amount of the instalment determined by the Secretary in relation to the instalment (rounded down to the nearest cent).
- (4) The percentage specified in the determination must not exceed 100%.

**123XN Deductions from category Q welfare payments—lump sums**

*Scope*

- (1) This section applies if:
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- (a) a person is subject to the income management regime under subsection 123UF(1) or (3); and
- (b) a category Q welfare payment is payable to the person otherwise than by instalments.

*Deductions from category Q welfare payments—lump sums*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the category Q welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of a category Q welfare payment is the percentage of the net amount of the payment determined by the Secretary in relation to the payment (rounded down to the nearest cent).
- (4) The percentage specified in the determination must not exceed 100%.

**123XO Deductions from category S welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under subsection 123UF(2); and
  - (b) an instalment of a category S welfare payment is payable to the person.

*Deductions from category S welfare payments—instalments*

- (2) The following provisions have effect:
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- (a) the Secretary must deduct from the instalment of the category S welfare payment the deductible portion of the instalment;
- (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
- (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of an instalment of a category S welfare payment is the percentage of the net amount of the instalment determined by the Secretary in relation to the instalment (rounded down to the nearest cent).
- (4) The percentage specified in the determination must not exceed 100%.

**123XP Deductions from category S welfare payments—lump sums**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under subsection 123UF(2); and
  - (b) a category S welfare payment is payable to the person otherwise than by instalments.

*Deductions from category S welfare payments—lump sums*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the category S welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.



*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of a category S welfare payment is the percentage of the net amount of the payment determined by the Secretary in relation to the payment (rounded down to the nearest cent).
- (4) The percentage specified in the determination must not exceed 100%.

**Subdivision DAA—Other State/Territory referrals**

**123XPAA Deductions from category I welfare payments—instalments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UFAA; and
  - (b) an instalment of a category I welfare payment is payable to the person.

*Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;
  - (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of an instalment of a category I welfare payment is:
  - (a) 70%; or

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- (b) if another percentage (not exceeding 100%) is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the other percentage;  
of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages depending on one or more of the following:
- (a) the category I welfare payments payable to persons subject to the income management regime under section 123UFAA;
  - (b) the usual place of residence of those persons;
  - (c) the recognised State/Territory authorities whose officers or employees may give a notice of the kind referred to in paragraph 123UFAA(1)(b).

**123XPAB Deductions from category I welfare payments—lump sums**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime under section 123UFAA; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

*Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of a category I welfare payment is:
- (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;
- of the net amount of the payment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages depending on one or more of the following:
- (a) the category I welfare payments payable to persons subject to the income management regime under section 123UFAA;
  - (b) the usual place of residence of those persons;
  - (c) the recognised State/Territory authorities whose officers or employees may give a notice of the kind referred to in paragraph 123UFAA(1)(b).

**Subdivision DA—Voluntary income management agreements**

**123XPA Deductions from category I welfare payments—instalments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime under section 123UFA; and
  - (b) an instalment of a category I welfare payment is payable to the person.

*Deductions from category I welfare payments—instalments*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the instalment of the category I welfare payment the deductible portion of the instalment;

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- (b) an amount equal to the deductible portion of the instalment is credited to the Income Management Record;
- (c) an amount equal to the deductible portion of the instalment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the **deductible portion** of an instalment of a category I welfare payment is:
  - (a) 70%; or
  - (b) if another percentage (not exceeding 100%) is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the other percentage;of the net amount of the instalment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

**123XPB Deductions from category I welfare payments—lump sums**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime under section 123UFA; and
  - (b) a category I welfare payment is payable to the person otherwise than by instalments.

*Deductions from category I welfare payments—lump sums*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the category I welfare payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

*Deductible portion*

- (3) For the purposes of subsection (2), the ***deductible portion*** of a category I welfare payment is:
- (a) 100%; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage;
- of the net amount of the payment (rounded down to the nearest cent).
- (4) An instrument under paragraph (3)(b) may specify different percentages in relation to different category I welfare payments.

**Subdivision DB—Economic support payments, economic security strategy payments, household stimulus payments and cost of living payments**

**123XPBA Deductions from 2020 economic support payments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) a 2020 economic support payment is payable to the person.

*Deductions from 2020 economic support payments*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the 2020 economic support payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

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- (3) For the purposes of subsection (2), the *deductible portion* of a 2020 economic support payment is 100% of the amount of the payment.

**123XPBB Deductions from additional economic support payments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) an additional economic support payment is payable to the person.

*Deductions from additional economic support payments*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the additional economic support payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the *deductible portion* of an additional economic support payment is 100% of the amount of the payment.

**123XPC Deductions from economic security strategy payments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) an economic security strategy payment is payable to the person.
- (2) However, this section does not apply in relation to an economic security strategy payment under Part VIIG of the Veterans'

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Entitlements Act if the person is subject to the income management regime because of section 123UF.

*Deductions from economic security strategy payments*

- (3) The following provisions have effect:
- (a) the Secretary must deduct from the economic security strategy payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (4) For the purposes of subsection (3), the ***deductible portion*** of an economic security strategy payment is 100% of the amount of the payment.

**123XPD Deductions from household stimulus payments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) a household stimulus payment is payable to the person.

*Deductions from household stimulus payments*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the household stimulus payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the ***deductible portion*** of a household stimulus payment is 100% of the amount of the payment.

Section 123XPE

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**123XPE Deductions from 2022 cost of living payment**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) a 2022 cost of living payment is payable to the person.

*Deductions from 2022 cost of living payment*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the 2022 cost of living payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the ***deductible portion*** of a 2022 cost of living payment is 100% of the amount of the payment.

**Subdivision DC—Relocation scholarship payments**

**123XPG Deductions from relocation scholarship payments**

*Scope*

- (1) This section applies if:
- (a) a person is subject to the income management regime; and
  - (b) a relocation scholarship payment is payable to the person.

*Deductions from payment*

- (2) The following provisions have effect:
- (a) the Secretary must deduct from the relocation scholarship payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;



- (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the ***deductible portion*** of a relocation scholarship payment is:
  - (a) 100% of the amount of the payment; or
  - (b) if a lower percentage is specified in a legislative instrument made by the Minister for the purposes of this paragraph—the lower percentage of the amount of the payment.

### **Subdivision DE—Clean energy income-managed payments**

#### **123XPJ Deductions from clean energy income-managed payments**

##### *Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime; and
  - (b) a clean energy income-managed payment is payable to the person.

##### *Deductions from clean energy income-managed payments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the ***deductible portion*** of a clean energy income-managed payment is 100% of the amount of the payment.

Section 123XPK

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**Subdivision DF—ETR income-managed payments**

**123XPK Deductions from ETR income-managed payments**

*Scope*

- (1) This section applies if:
  - (a) a person is subject to the income management regime; and
  - (b) an ETR income-managed payment is payable to the person.

*Deductions from ETR income-managed payments*

- (2) The following provisions have effect:
  - (a) the Secretary must deduct from the payment the deductible portion of the payment;
  - (b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
  - (c) an amount equal to the deductible portion of the payment is credited to the person's income management account.
- (3) For the purposes of subsection (2), the deductible portion of an ETR income-managed payment is 100% of the amount of the payment.

**Subdivision E—Deducted amount taken to have been paid**

**123XQ Deducted amount taken to have been paid**

*Scope*

- (1) This section applies if an amount is deducted under this Division from an instalment or payment that is payable to a person.

*Deducted amount taken to have been paid*

- (2) The deducted amount is taken, for the purposes of:
  - (a) the income tax law; and
  - (b) this Act (other than this Part); and

- (c) the 1991 Act; and
- (d) the Family Assistance Act; and
- (e) the Family Assistance Administration Act; and
- (f) the *Student Assistance Act 1973*; and
- (g) the Veterans' Entitlements Act; and
- (h) the *Child Support (Assessment) Act 1989*;

to have been paid to the person at whichever of the following times is applicable:

- (i) if the deducted amount was equal to 100% of the net amount of the instalment or payment—when the instalment or payment would have been paid if the deduction had not been made;
- (j) otherwise—when the instalment or payment was paid.

## Division 6—Debits from income management accounts

### Subdivision A—General

#### 123YA Priority needs—application of income management account

##### *Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance.

##### *Priority needs*

- (2) If the Secretary is aware of any unmet priority needs of:
  - (a) the first person; or
  - (b) the first person's children (if any); or
  - (c) the first person's partner (if any); or
  - (d) any other dependants of the first person;the Secretary must, within a reasonable period after becoming aware of those priority needs, take appropriate action under Subdivision B directed towards meeting those priority needs.
- (3) If:
  - (a) the Secretary is satisfied that the current or future balance of the first person's income management account exceeds what is reasonably required to meet the current, and reasonably foreseeable, priority needs of:
    - (i) the first person; and
    - (ii) the first person's children (if any); and
    - (iii) the first person's partner (if any); and
    - (iv) any other dependants of the first person; and

- (b) the first person requests the Secretary to take action under this Division that:
    - (i) is not directed towards meeting the current, and reasonably foreseeable, priority needs mentioned in paragraph (a); and
    - (ii) would result in the first person's income management account being debited by a particular amount; and
  - (c) the Secretary is satisfied that the debit would not result in the current or future balance of the first person's income management account falling below what is reasonably required to meet the current, and reasonably foreseeable, priority needs mentioned in paragraph (a);
- the Secretary must not unreasonably refuse the request.

### **123YB Secretary must have regard to the best interests of children**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the ***first person***) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the person has one or more children.

#### *Secretary must have regard to the best interests of children*

- (2) In deciding whether to take action under this Division that results in an amount being debited from the first person's income management account, the Secretary must have regard to:
  - (a) the best interests of the first person's children; and
  - (b) such other matters (if any) as the Secretary considers relevant.

Section 123YC

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**Subdivision B—Restricted debits**

**123YC Vouchers—general**

*Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

*Vouchers*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) give the first person a voucher that:
    - (i) has a face value of a particular amount; and
    - (ii) enables the first person to acquire goods or services; or
  - (b) with the consent of the first person, give a third person a voucher that:
    - (i) has a face value of a particular amount; and
    - (ii) enables the third person to acquire goods or services;so long as the face value of the voucher does not exceed the credit balance of the first person's income management account.
- (3) A voucher may be for limited goods or services.

*Income Management Record to be debited*

- (4) If the first person or a third person is given a voucher under subsection (2), the Income Management Record is debited by an amount equal to the face value of the voucher.

*First person's income management account to be debited*

- (5) If the first person or a third person is given a voucher under subsection (2), the first person's income management account is debited by an amount equal to the face value of the voucher.

*Criteria*

- (6) The Secretary must not give the first person or a third person a voucher under subsection (2) if the Secretary is satisfied that any of the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (7) If the first person or a third person is given a voucher under subsection (2), the giving of the voucher does not have any consequences under the income tax law for the first person or the third person, as the case may be.

## **123YD Vouchers—Part 3B payment nominee**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

*Vouchers*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) give the Part 3B payment nominee a voucher that:
    - (i) has a face value of a particular amount; and
    - (ii) enables the Part 3B payment nominee to acquire goods or services; or

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- (b) with the consent of the Part 3B payment nominee, give a third person a voucher that:
- (i) has a face value of a particular amount; and
  - (ii) enables the third person to acquire goods or services;
- so long as the face value of the voucher does not exceed the credit balance of the first person's income management account.
- (3) A voucher may be for limited goods or services.

*Income Management Record to be debited*

- (4) If the Part 3B payment nominee or a third person is given a voucher under subsection (2), the Income Management Record is debited by an amount equal to the face value of the voucher.

*First person's income management account to be debited*

- (5) If the Part 3B payment nominee or a third person is given a voucher under subsection (2), the first person's income management account is debited by an amount equal to the face value of the voucher.

*Criteria*

- (6) The Secretary must not give the Part 3B payment nominee or a third person a voucher under subsection (2) if the Secretary is satisfied that any of the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (7) If the Part 3B payment nominee or a third person is given a voucher under subsection (2), the giving of the voucher does not have any consequences under the income tax law for the Part 3B payment nominee, the first person or the third person.



## **123YE Stored value cards—general**

### *Scope*

- (1) This section applies if:
- (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

### *Stored value cards*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) give the first person a stored value card that enables the first person to acquire goods or services, so long as no part of the monetary value stored on the card may be withdrawn in cash; or
  - (c) increase the monetary value stored on a stored value card held by the first person, so long as:
    - (i) no part of the monetary value stored on the card may be withdrawn in cash; and
    - (ii) the stored value card enables the first person to acquire goods or services;
- so long as:
- (e) if paragraph (a) applies—the monetary value stored on the card does not exceed the credit balance of the first person's income management account; or
  - (f) if paragraph (c) applies—the increase in monetary value does not exceed the credit balance of the first person's income management account.
- (3) A stored value card may be for limited goods or services.

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*Income Management Record to be debited*

- (4) If, under subsection (2), the Secretary gives the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.
- (5) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the first person, the Income Management Record is debited by an amount equal to the increase in the monetary value.

*First person's income management account to be debited*

- (6) If, under subsection (2), the Secretary gives the first person a stored value card, the first person's income management account is debited by an amount equal to the monetary value stored on the card.
- (7) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the first person, the first person's income management account is debited by an amount equal to the increase in the monetary value.

*Criteria*

- (8) The Secretary must not, under subsection (2):
  - (a) give the first person a stored value card; or
  - (b) increase the monetary value stored on a stored value card;if the Secretary is satisfied that the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (9) If, under subsection (2), the Secretary gives the first person a stored value card, the giving of the card does not have consequences under the income tax law for the first person.
- (10) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the first person, the increase

does not have consequences under the income tax law for the first person.

### **123YF Stored value cards—Part 3B payment nominee**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

#### *Stored value cards*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) give the Part 3B payment nominee a stored value card that enables the Part 3B payment nominee to acquire goods or services, so long as no part of the monetary value stored on the card may be withdrawn in cash; or
  - (b) with the consent of the Part 3B payment nominee, give the first person a stored value card that enables the first person to acquire goods or services, so long as no part of the monetary value stored on the card may be withdrawn in cash; or
  - (c) increase the monetary value stored on a stored value card held by the Part 3B payment nominee, so long as:
    - (i) no part of the monetary value stored on the card may be withdrawn in cash; and
    - (ii) the stored value card enables the Part 3B payment nominee to acquire goods or services; or
  - (d) with the consent of the Part 3B payment nominee, increase the monetary value stored on a stored value card held by the first person, so long as:
    - (i) no part of the monetary value stored on the card may be withdrawn in cash; and

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- (ii) the stored value card enables the first person to acquire goods or services;

so long as:

- (e) if paragraph (a) or (b) applies—the monetary value stored on the card does not exceed the credit balance of the first person's income management account; or
- (f) if paragraph (c) or (d) applies—the increase in the monetary value does not exceed the credit balance of the first person's income management account.
- (3) A stored value card may be for limited goods or services.

*Income Management Record to be debited*

- (4) If, under subsection (2), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.
- (5) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the Part 3B payment nominee or the first person, the Income Management Record is debited by an amount equal to the increase in the monetary value.

*First person's income management account to be debited*

- (6) If, under subsection (2), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the first person's income management account is debited by an amount equal to the monetary value stored on the card.
- (7) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the Part 3B payment nominee or the first person, the first person's income management account is debited by an amount equal to the increase in the monetary value.

*Criteria*

- (8) The Secretary must not, under subsection (2):
- (a) give the Part 3B payment nominee or the first person a stored value card; or
  - (b) increase the monetary value stored on a stored value card; if the Secretary is satisfied that the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (9) If, under subsection (2), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the giving of the card does not have consequences under the income tax law for the Part 3B payment nominee or the first person.
- (10) If, under subsection (2), the Secretary increases the monetary value stored on a stored value card held by the Part 3B payment nominee or the first person, the increase does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

## **123YG Expense payment—general**

*Scope*

- (1) This section applies if:
- (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

*Expense payment*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) make a payment in discharge, in whole or in part, of an obligation of the first person to pay an amount to a third

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person in respect of expenditure incurred by the first person in relation to goods or services; or

- (b) with the consent of the first person, make a payment in discharge, in whole or in part, of an obligation of a third person to pay an amount to a fourth person in respect of expenditure incurred by the third person in relation to goods or services; or
- (c) make a payment in discharge, in whole or in part, of an obligation of the first person to pay an amount by way of rates or land tax; or
- (d) with the consent of the first person, make a payment in discharge, in whole or in part, of an obligation of a third person to pay an amount by way of rates or land tax;

so long as the amount paid does not exceed the credit balance of the first person's income management account.

*Income Management Record to be debited*

- (3) If the Secretary makes a payment under subsection (2), the Income Management Record is debited by an amount equal to the amount paid.

*First person's income management account to be debited*

- (4) If the Secretary makes a payment under subsection (2), the first person's income management account is debited by an amount equal to the amount paid.

*Criteria*

- (5) The Secretary must not make a payment under paragraph (2)(a) or (b) if the Secretary is satisfied that the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (6) If the Secretary makes a payment under subsection (2), the payment does not have consequences under the income tax law for the first person.

### **123YH Expense payment—Part 3B payment nominee**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

#### *Expense payment*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) make a payment in discharge, in whole or in part, of an obligation of the Part 3B payment nominee to pay an amount to a third person in respect of expenditure incurred by the Part 3B payment nominee in relation to goods or services; or
  - (b) with the consent of the Part 3B payment nominee, make a payment in discharge, in whole or in part, of an obligation of a third person to pay an amount to a fourth person in respect of expenditure incurred by the third person in relation to goods or services; or
  - (c) make a payment in discharge, in whole or in part, of an obligation of the first person to pay an amount to a third person in respect of expenditure incurred by the first person in relation to goods or services;so long as the amount paid does not exceed the credit balance of the first person's income management account.

#### *Income Management Record to be debited*

- (3) If the Secretary makes a payment under subsection (2), the Income Management Record is debited by an amount equal to the amount paid.

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*First person's income management account to be debited*

- (4) If the Secretary makes a payment under subsection (2), the first person's income management account is debited by an amount equal to the amount paid.

*Criteria*

- (5) The Secretary must not make a payment under subsection (2) if the Secretary is satisfied that the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (6) If the Secretary makes a payment under subsection (2), the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

**123YI Crediting of account—general**

*Scope*

- (1) This section applies if:
- (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

*Crediting of accounts*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) pay an amount to a third person on condition that the third person will:
    - (i) credit the amount to an account held by the first person with the third person; and
    - (ii) not allow the first person to debit the account except for the purposes of acquiring goods or services; and



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- (iii) if required to do so under section 123ZH, repay to the Commonwealth so much of the amount paid by the Secretary as has not been applied by the first person for the purposes of the acquisition of goods or services; or
    - (b) with the consent of the first person, pay an amount to a third person on condition that the third person will:
      - (i) credit the amount to an account held by a fourth person with the third person; and
      - (ii) not allow the fourth person to debit the account except for the purposes of acquiring goods or services; and
      - (iii) if required to do so under section 123ZH, repay to the Commonwealth so much of the amount paid by the Secretary as has not been applied by the fourth person for the purposes of the acquisition of goods or services;
- so long as the amount paid by the Secretary does not exceed the credit balance of the first person's income management account.
- (3) The goods or services referred to in paragraph (2)(a) or (b) may be limited to such goods or services as are determined by the Secretary.

*Income Management Record to be debited*

- (4) If the Secretary pays an amount to a third person under subsection (2), the Income Management Record is debited by an amount equal to the amount paid.

*First person's income management account to be debited*

- (5) If the Secretary pays an amount to a third person under subsection (2), the first person's income management account is debited by an amount equal to the amount paid.

*Criteria*

- (6) The Secretary must not, under subsection (2), pay an amount to a third person if the Secretary is satisfied that any of the relevant goods or services are excluded goods or excluded services.

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*Tax consequences*

- (7) If the Secretary pays an amount to a third person under subsection (2), the payment does not have consequences under the income tax law for the first person.

**123YJ Crediting of account—Part 3B payment nominee**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

*Crediting of accounts*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) pay an amount to a third person on condition that the third person will:
    - (i) credit the amount to an account held by the Part 3B payment nominee with the third person; and
    - (ii) not allow the Part 3B payment nominee to debit the account except for the purposes of acquiring goods or services; and
    - (iii) if required to do so under section 123ZH, repay to the Commonwealth so much of the amount paid by the Secretary as has not been applied by the Part 3B payment nominee for the purposes of the acquisition of goods or services; or
  - (b) with the consent of the Part 3B payment nominee, pay an amount to a third person on condition that the third person will:
    - (i) credit the amount to an account held by a fourth person with the third person; and

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- (ii) not allow the fourth person to debit the account except for the purposes of acquiring goods or services; and
  - (iii) if required to do so under section 123ZH, repay to the Commonwealth so much of the amount paid by the Secretary as has not been applied by the fourth person for the purposes of the acquisition of goods or services; or
- (c) pay an amount to a third person on condition that the third person will:
- (i) credit the amount to an account held by the first person with the third person; and
  - (ii) not allow the first person to debit the account except for the purposes of acquiring goods or services; and
  - (iii) if required to do so under section 123ZH, repay to the Commonwealth so much of the amount paid by the Secretary as has not been applied by the first person for the purposes of the acquisition of goods or services;
- so long as the amount paid by the Secretary does not exceed the credit balance of the first person's income management account.
- (3) The goods or services referred to in paragraph (2)(a), (b) or (c) may be limited to such goods or services as are determined by the Secretary.

*Income Management Record to be debited*

- (4) If the Secretary pays an amount to a third person under subsection (2), the Income Management Record is debited by an amount equal to the amount paid.

*First person's income management account to be debited*

- (5) If the Secretary pays an amount to a third person under subsection (2), the first person's income management account is debited by an amount equal to the amount paid.

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*Criteria*

- (6) The Secretary must not, under subsection (2), pay an amount to a third person if the Secretary is satisfied that any of the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (7) If the Secretary pays an amount to a third person under subsection (2), the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

**123YK Transfers to accounts—general**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

*Transfers*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) pay an amount to the credit of an account held by the first person with:
    - (i) a bank; or
    - (ii) a person specified in a legislative instrument made by the Secretary for the purposes of this subparagraph; so long as money standing to the credit of the account cannot be debited except for the purposes of:
      - (iii) acquiring goods or services; or
      - (iv) paying account-related fees or charges; or
  - (b) with the consent of the first person, pay an amount to the credit of an account held by a third person with:

- (i) a bank; or
  - (ii) a person specified in a legislative instrument made by the Secretary for the purposes of this subparagraph; so long as money standing to the credit of the account cannot be debited except for the purposes of:
    - (iii) acquiring goods or services; or
    - (iv) paying account-related fees or charges;so long as the amount paid by the Secretary does not exceed the credit balance of the first person's income management account.
- (3) The goods or services referred to in paragraph (2)(a) or (b) may be limited to such goods or services as are determined by the Secretary.

*Income Management Record to be debited*

- (4) If, under subsection (2), the Secretary pays an amount to the credit of an account, the Income Management Record is debited by an amount equal to the amount paid.

*First person's income management account to be debited*

- (5) If, under subsection (2), the Secretary pays an amount to the credit of an account, the first person's income management account is debited by an amount equal to the amount paid.

*Criteria*

- (6) The Secretary must not, under subsection (2), pay an amount to the credit of an account if the Secretary is satisfied that any of relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (7) If, under subsection (2), the Secretary pays an amount to the credit of an account, the payment does not have any consequences under the income tax law for the first person.

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**123YL Transfers to accounts—Part 3B payment nominee**

*Scope*

- (1) This section applies if:
- (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

*Transfers*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) pay an amount to the credit of an account held by the Part 3B payment nominee with:
    - (i) a bank; or
    - (ii) a person specified in a legislative instrument made by the Secretary for the purposes of this subparagraph; so long as money standing to the credit of the account cannot be debited except for the purposes of:
      - (iii) acquiring goods or services; or
      - (iv) paying account-related fees or charges; or
  - (b) with the consent of the Part 3B payment nominee, pay an amount to the credit of an account held by a third person with:
    - (i) a bank; or
    - (ii) a person specified in a legislative instrument made by the Secretary for the purposes of this subparagraph; so long as money standing to the credit of the account cannot be debited except for the purposes of:
      - (iii) acquiring goods or services; or
      - (iv) paying account-related fees or charges;so long as the amount paid by the Secretary does not exceed the credit balance of the first person's income management account.

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- (3) The goods or services referred to in paragraph (2)(a) or (b) may be limited to such goods or services as are determined by the Secretary.

*Income Management Record to be debited*

- (4) If, under subsection (2), the Secretary pays an amount to the credit of an account, the Income Management Record is debited by an amount equal to the amount paid.

*First person's income management account to be debited*

- (5) If, under subsection (2), the Secretary pays an amount to the credit of an account, the first person's income management account is debited by an amount equal to the amount paid.

*Criteria*

- (6) The Secretary must not, under subsection (2), pay an amount to the credit of an account if the Secretary is satisfied that any of the relevant goods or services are excluded goods or excluded services.

*Tax consequences*

- (7) If, under subsection (2), the Secretary pays an amount to the credit of an account, the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

### **123YM Restricted direct payment—general**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

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*Direct payment*

- (2) The Secretary may, on behalf of the Commonwealth:
- (a) pay an amount to the credit of a bank account held by the first person (whether alone or jointly or in common with another person); or
  - (b) with the consent of the first person, pay an amount to the credit of a bank account held by a third person (whether alone or jointly or in common with another person); or
  - (c) if:
    - (i) the first person is subject to the income management regime under section 123UF; and
    - (ii) under a law of Queensland, the Queensland Commission gave the Secretary a written notice stating that a specified bank account held by a third person is a nominated third party account in relation to the first person; and
    - (iii) the notice has not been withdrawn or revoked;pay the amount to the credit of that bank account; or
  - (d) pay an amount to the first person by way of a cheque; or
  - (e) with the consent of the first person, pay an amount to a third person by way of a cheque; or
  - (f) pay an amount to the first person by way of cash; or
  - (g) with the consent of the first person, pay an amount to a third person by way of cash; or
  - (h) give the first person a stored value card that enables the first person to withdraw cash;
- so long as:
- (j) if paragraph (a), (b), (c), (d), (e), (f) or (g) applies—the amount paid does not exceed the credit balance of the first person’s income management account; or
  - (k) if paragraph (h) applies—the monetary value stored on the card does not exceed the credit balance of the first person’s income management account.



*Income Management Record to be debited*

- (3) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g), the Income Management Record is debited by an amount equal to the amount paid.
- (4) If, under paragraph (2)(h), the Secretary gives the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.

*First person's income management account to be debited*

- (5) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g), the first person's income management account is debited by an amount equal to the amount paid.
- (6) If, under paragraph (2)(h), the Secretary gives the first person a stored value card, the first person's income management account is debited by an amount equal to the monetary value stored on the card.

*Criteria*

- (7) The Secretary must not pay an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g) if the Secretary has reasonable grounds to believe that the whole or a part of the amount paid will be used to acquire excluded goods or excluded services.
- (8) The Secretary must not give the first person a stored value card under paragraph (2)(h) if the Secretary has reasonable grounds to believe that the whole or a part of the monetary value stored on the card will be used to acquire excluded goods or excluded services.

*Tax consequences*

- (9) If the Secretary makes a payment under paragraph (2)(a), (d) or (f) the payment does not have consequences under the income tax law for the first person.

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- (10) If the Secretary makes a payment under paragraph (2)(b), (c), (e) or (g), the payment does not have consequences under the income tax law for the first person or the third person.
- (11) If, under paragraph (2)(h), the Secretary gives the first person a stored value card, the giving of the card does not have consequences under the income tax law for the first person.

**123YN Restricted direct payment—Part 3B payment nominee**

*Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

*Direct payment*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) pay an amount to the credit of a bank account held by the Part 3B payment nominee (whether alone or jointly or in common with another person); or
  - (b) with the consent of the Part 3B payment nominee, pay an amount to the credit of a bank account held by a third person (whether alone or jointly or in common with another person); or
  - (c) if:
    - (i) the first person is subject to the income management regime under section 123UF; and
    - (ii) under a law of Queensland, the Queensland Commission gave the Secretary a written notice stating that a specified bank account held by a third person is a nominated third party account in relation to the first person; and

- (iii) the notice has not been withdrawn or revoked;  
pay the amount to the credit of that bank account; or
  - (d) pay an amount to the Part 3B payment nominee by way of a cheque; or
  - (e) with the consent of the Part 3B payment nominee, pay an amount to a third person by way of a cheque; or
  - (f) pay an amount to the Part 3B payment nominee by way of cash; or
  - (g) with the consent of the Part 3B payment nominee, pay an amount to a third person by way of cash; or
  - (h) give the Part 3B payment nominee a stored value card that enables the Part 3B payment nominee to withdraw cash; or
  - (i) with the consent of the Part 3B payment nominee, give the first person a stored value card that enables the first person to withdraw cash;
- so long as:
- (j) if paragraph (a), (b), (c), (d), (e), (f) or (g) applies—the amount paid does not exceed the credit balance of the first person’s income management account; or
  - (k) if paragraph (h) or (i) applies—the monetary value stored on the card does not exceed the credit balance of the first person’s income management account.

*Income Management Record to be debited*

- (3) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g), the Income Management Record is debited by an amount equal to the amount paid.
- (4) If, under paragraph (2)(h) or (i), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.

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*First person's income management account to be debited*

- (5) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g), the first person's income management account is debited by an amount equal to the amount paid.
- (6) If, under paragraph (2)(h) or (i), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the first person's income management account is debited by an amount equal to the monetary value stored on the card.

*Criteria*

- (7) The Secretary must not pay an amount under paragraph (2)(a), (b), (c), (d), (e), (f) or (g) if the Secretary has reasonable grounds to believe that the whole or a part of the amount paid will be used to acquire excluded goods or excluded services.
- (8) The Secretary must not give the Part 3B payment nominee or the first person a stored value card under paragraph (2)(h) or (i) if the Secretary has reasonable grounds to believe that the whole or a part of the monetary value stored on the card will be used to acquire excluded goods or excluded services.

*Tax consequences*

- (9) If the Secretary makes a payment under paragraph (2)(a), (d) or (f), the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.
- (10) If the Secretary makes a payment under paragraph (2)(b), (c), (e) or (g), the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.
- (11) If, under paragraph (2)(h) or (i), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the giving of the card does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

## **Subdivision C—Unrestricted debits**

### **123YO Unrestricted direct payment—general**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person does not have a Part 3B payment nominee.

#### *Direct payment*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) pay an amount to the credit of a bank account held by the first person (whether alone or jointly or in common with another person); or
  - (b) with the consent of the first person, pay an amount to the credit of a bank account held by a third person (whether alone or jointly or in common with another person); or
  - (c) pay an amount to the first person by way of a cheque; or
  - (d) with the consent of the first person, pay an amount to a third person by way of a cheque; or
  - (e) pay an amount to the first person by way of cash; or
  - (f) with the consent of the first person, pay an amount to a third person by way of cash; or
  - (g) give the first person a stored value card that enables the first person to withdraw cash;so long as:
  - (i) if paragraph (a), (b), (c), (d), (e) or (f) applies—the amount paid does not exceed the credit balance of the first person's income management account; or

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- (j) if paragraph (g) applies—the monetary value stored on the card does not exceed the credit balance of the first person’s income management account.
- (3) In deciding whether to take action under subsection (2), the Secretary must have regard to:
  - (a) such matters (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
  - (b) such other matters (if any) as the Secretary considers relevant.

*Income Management Record to be debited*

- (4) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e) or (f), the Income Management Record is debited by an amount equal to the amount paid.
- (5) If, under paragraph (2)(g), the Secretary gives the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.

*First person’s income management account to be debited*

- (6) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e) or (f), the first person’s income management account is debited by an amount equal to the amount paid.
- (7) If, under paragraph (2)(g), the Secretary gives the first person a stored value card, the first person’s income management account is debited by an amount equal to the monetary value stored on the card.

*Tax consequences*

- (8) If the Secretary makes a payment under paragraph (2)(a), (c) or (e), the payment does not have consequences under the income tax law for the first person.

- (9) If the Secretary makes a payment under paragraph (2)(b), (d) or (f), the payment does not have consequences under the income tax law for the first person or the third person.
- (10) If, under paragraph (2)(g), the Secretary gives the first person a stored value card, the giving of the card does not have consequences under the income tax law for the first person.

### **123YP Unrestricted direct payment—Part 3B payment nominee**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance; and
  - (c) the first person has a Part 3B payment nominee.

#### *Direct payment*

- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) pay an amount to the credit of a bank account held by the Part 3B payment nominee (whether alone or jointly or in common with another person); or
  - (b) with the consent of the Part 3B payment nominee, pay an amount to the credit of a bank account held by a third person (whether alone or jointly or in common with another person); or
  - (c) pay an amount to the Part 3B payment nominee by way of a cheque; or
  - (d) with the consent of the Part 3B payment nominee, pay an amount to a third person by way of a cheque; or
  - (e) pay an amount to the Part 3B payment nominee by way of cash; or
  - (f) with the consent of the Part 3B payment nominee, pay an amount to a third person by way of cash; or

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- (g) give the Part 3B payment nominee a stored value card that enables the Part 3B payment nominee to withdraw cash; or
  - (h) with the consent of the Part 3B payment nominee, give the first person a stored value card that enables the first person to withdraw cash;
- so long as:
- (i) if paragraph (a), (b), (c), (d), (e) or (f) applies—the amount paid does not exceed the credit balance of the first person’s income management account; or
  - (j) if paragraph (g) or (h) applies—the monetary value stored on the card does not exceed the credit balance of the first person’s income management account.
- (3) In deciding whether to take action under subsection (2), the Secretary must have regard to:
- (a) such matters (if any) as are specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
  - (b) such other matters (if any) as the Secretary considers relevant.

*Income Management Record to be debited*

- (4) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e) or (f), the Income Management Record is debited by an amount equal to the amount paid.
- (5) If, under paragraph (2)(g) or (h), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the Income Management Record is debited by an amount equal to the monetary value stored on the card.

*First person’s income management account to be debited*

- (6) If the Secretary pays an amount under paragraph (2)(a), (b), (c), (d), (e) or (f), the first person’s income management account is debited by an amount equal to the amount paid.



- (7) If, under paragraph (2)(g) or (h), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the first person's income management account is debited by an amount equal to the monetary value stored on the card.

*Tax consequences*

- (8) If the Secretary makes a payment under paragraph (2)(a), (c) or (e), the payment does not have consequences under the income tax law for the Part 3B payment nominee or the first person.
- (9) If the Secretary makes a payment under paragraph (2)(b), (d) or (f), the payment does not have consequences under the income tax law for the Part 3B payment nominee, the first person or the third person.
- (10) If, under paragraph (2)(g) or (h), the Secretary gives the Part 3B payment nominee or the first person a stored value card, the giving of the card does not have consequences under the income tax law for the Part 3B payment nominee or the first person.

### **Subdivision D—Miscellaneous action**

#### **123YQ Miscellaneous action**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) the first person's income management account has a credit balance.

*Miscellaneous action*

- (2) The Secretary may, on behalf of the Commonwealth, take an action specified in a legislative instrument made by the Minister for the purposes of this subsection, so long as the non-administrative expenses paid by the Commonwealth in relation to the taking of

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the action do not exceed the credit balance of the first person's income management account.

*Income Management Record to be debited*

- (3) If the Secretary takes action under subsection (2), the Income Management Record is debited by an amount equal to the non-administrative expenses paid by the Commonwealth in relation to the taking of the action.

*First person's income management account to be debited*

- (4) If the Secretary takes action under subsection (2), the first person's income management account is debited by an amount equal to the non-administrative expenses paid by the Commonwealth in relation to the taking of the action.

*Criteria*

- (5) The Secretary must not take action under subsection (2) unless the Secretary is satisfied that the action:
- (a) will benefit any or all of the following:
    - (i) the first person;
    - (ii) the first person's children (if any);
    - (iii) the first person's partner (if any);
    - (iv) any other dependants of the first person; and
  - (b) will not result in the acquisition of any excluded goods or excluded services.

*Tax consequences*

- (6) If the Secretary takes action under subsection (2), the taking of the action does not have consequences under the income tax law for:
- (a) the first person; or
  - (b) any other person for whose benefit the action was taken.

**123YR Credit of income management account in error**

- (1) If the Secretary is satisfied that an amount (the *excess amount*) has been credited to a person's income management account in error, the Secretary may determine, in writing, that:
  - (a) the person's income management account is to be debited by one or more amounts equal to the excess amount; or
  - (b) the person must repay to the Commonwealth, as a debt due to the Commonwealth, an amount equal to the excess amount.

Note: Paragraph (b)—for debt recovery, see Chapter 5 of the 1991 Act.
- (2) If the Secretary makes a determination under paragraph (1)(a):
  - (a) the Income Management Record is debited by one or more amounts equal to the excess amount; and
  - (b) the person's income management account is debited by one or more amounts equal to the excess amount.
- (3) A determination made under subsection (1) is not a legislative instrument.

## Division 7—Information

### 123ZB Information-gathering powers—school enrolment and attendance

In determining the scope of the power conferred on the Secretary by section 192 or 195 to require the giving of information, or the production of a document, it is to be assumed that:

- (a) each reference in this Part to a declared primary school area were a reference to a State or Territory; and
- (b) each reference in this Part to a declared secondary school area were a reference to a State or Territory.

### 123ZC Child protection—notice of cancellation of category H welfare payments

#### *Scope*

- (1) This section applies if:
  - (a) a person ceases to be subject to the income management regime under section 123UC because of the cancellation of a category H welfare payment of the person or the person's partner; and
  - (b) immediately before the cancellation, the relevant notice referred to in paragraph 123UC(1)(b) had not been withdrawn or revoked.

#### *Notice*

- (2) As soon as practicable after the cancellation, the Secretary must give a child protection officer of the State or Territory written notice of the cancellation.

**123ZD Queensland Commission—notice of cancellation of welfare payments**

*Scope*

- (1) This section applies if:
  - (a) a person ceases to be subject to the income management regime under section 123UF because of the cancellation of:
    - (i) a category P welfare payment of the person or the person's partner; or
    - (ii) a category R welfare payment of the person or the person's partner; and
  - (b) immediately before the cancellation, the relevant notice referred to in paragraph 123UF(1)(b) or (2)(c) had not been withdrawn or revoked.

*Notice*

- (2) As soon as practicable after the cancellation, the Secretary must give the Queensland Commission written notice of the cancellation.

**123ZDA Other State/Territory referrals—notice of cancellation of category H welfare payments**

*Scope*

- (1) This section applies if:
  - (a) a person ceases to be subject to the income management regime under section 123UFAA because of the cancellation of a category H welfare payment of the person or the person's partner; and
  - (b) immediately before the cancellation, the relevant notice referred to in paragraph 123UFAA(1)(b) had not been withdrawn or revoked.

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*Notice*

- (2) As soon as practicable after the cancellation, the Secretary must give an officer or employee of the recognised State/Territory authority written notice of the cancellation.

**123ZE Disclosure of information to the Secretary—child protection**

- (1) Despite any law (whether written or unwritten) in force in a State or Territory, a child protection officer of a State or Territory may give the Secretary information about a person if:
- (a) either:
    - (i) the person is subject to the income management regime under section 123UC; or
    - (ii) the child protection officer is considering whether to give a notice of the kind referred to in paragraph 123UC(1)(b) in relation to the person; and
  - (b) the disclosed information is relevant to the operation of this Part.
- (2) If information about a person is disclosed by a child protection officer of a State or Territory as mentioned in subsection (1), the Secretary may disclose information about the person to a child protection officer of the State or Territory for the purposes of the performance of the functions and duties, or the exercise of the powers, of the child protection officer in relation to the care, protection or welfare of children.

**123ZEA Disclosure of information to the Secretary—Queensland Commission**

- (1) Despite any law (whether written or unwritten) in force in Queensland, the Queensland Commission may give the Secretary information about a person if:
- (a) either:
    - (i) the person is subject to the income management regime under section 123UF; or

- (ii) the Queensland Commission is considering whether to give a notice of the kind referred to in paragraph 123UF(1)(b) or (2)(c) in relation to the person; and
  - (b) the disclosed information is relevant to the operation of this Part.
- (2) If information about a person is disclosed by the Queensland Commission as mentioned in subsection (1), the Secretary may disclose information about the person to the Queensland Commission for the purposes of the performance of the functions, or the exercise of the powers, of the Queensland Commission.

### **123ZEAA Disclosure of information to the Secretary—other State/Territory referrals**

- (1) Despite any law (whether written or unwritten) in force in a State or Territory, an officer or employee of a recognised State/Territory authority may give the Secretary information about a person if:
  - (a) either:
    - (i) the person is subject to the income management regime under section 123UFAA; or
    - (ii) the officer or employee is considering whether to give a notice of the kind referred to in paragraph 123UFAA(1)(b) in relation to the person; and
  - (b) the disclosed information is relevant to the operation of this Part.
- (2) If information about a person is disclosed as mentioned in subsection (1), the Secretary may disclose information about the person to an officer or employee of the recognised State/Territory authority for the purposes of the performance of the functions and duties, or the exercise of the powers, of the officer or employee.

**123ZEB Disclosure of information to the Secretary—school enrolment and attendance**

- (1) Despite any law (whether written or unwritten) in force in a State or Territory:
- (a) a State or Territory; or
  - (b) a non-government school authority; or
  - (c) any other person who is responsible for the operation of one or more schools;
- may give the Secretary information about the enrolment, or non-enrolment, of children at school.
- (2) Despite any law (whether written or unwritten) in force in a State or Territory:
- (a) a State or Territory; or
  - (b) a non-government school authority; or
  - (c) any other person who is responsible for the operation of one or more schools;
- may give the Secretary information about the attendance, or non-attendance, of children at school.



## **Division 8—Debt recovery etc.**

### **123ZF Person other than payee obtaining payment of a cheque**

#### *Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) an amount is paid by cheque under section 123YM, 123YN, 123YO or 123YP; and
  - (c) the payment resulted in the first person's income management account being debited by an amount equal to the amount paid; and
  - (d) a person (the *second person*) other than the payee of the cheque obtains possession of the cheque from the payee; and
  - (e) the cheque is not endorsed by the payee to the second person; and
  - (f) the second person obtains value for the cheque.

#### *Recovery*

- (2) The amount of the cheque is a debt due by the second person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

#### *Crediting of amounts*

- (3) The Secretary may determine, in writing, that the first person's income management account is to be credited by an amount equal to the amount of the cheque.
- (4) If the Secretary makes a determination under subsection (3), then an amount equal to the amount of the cheque is:
  - (a) credited to the Income Management Record; and
  - (b) credited to the first person's income management account.

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**123ZG Misuse of vouchers and stored value cards**

*Scope*

- (1) This section applies if:
- (a) a person (the ***first person***) is subject to the income management regime; and
  - (b) either:
    - (i) the Secretary has given the first person or another person a voucher under subsection 123YC(2) or 123YD(2); or
    - (ii) the Secretary has given the first person or another person a stored value card under subsection 123YE(2), 123YF(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2); and
  - (c) the Secretary's action resulted in the first person's income management account being debited; and
  - (d) a person (the ***unauthorised person***) other than the person to whom the voucher or stored value card was given:
    - (i) obtains possession of the voucher or stored value card from the person to whom the voucher or stored value card was given; and
    - (ii) uses the voucher or stored value card to acquire goods or services or to obtain cash; and
  - (e) the unauthorised person does so without the consent of the person to whom the voucher or stored value card was given.

*Recovery*

- (2) In the case of the use of a voucher, an amount equal to the face value of the voucher is a debt due by the unauthorised person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (3) In the case of the use of a stored value card, an amount equal to the monetary value involved in the use is a debt due by the unauthorised person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

*Crediting of amounts*

- (4) In the case of the use of a voucher, the Secretary may determine, in writing, that the first person's income management account is to be credited by an amount equal to the face value of the voucher.
- (5) If the Secretary makes a determination under subsection (4), then an amount equal to the face value of the voucher is:
  - (a) credited to the Income Management Record; and
  - (b) credited to the first person's income management account.
- (6) In the case of the use of a stored value card, the Secretary may determine, in writing, that the first person's income management account is to be credited by an amount equal to the monetary value involved in the use.
- (7) If the Secretary makes a determination under subsection (6), then an amount equal to the monetary value involved in the use is:
  - (a) credited to the Income Management Record; and
  - (b) credited to the first person's income management account.

### **123ZH Repayment of money credited to an account**

*Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) under section 123YI or 123YJ, the Secretary has paid an amount to a third person; and
  - (c) the payment resulted in the first person's income management account being debited by an amount equal to the amount paid.

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*Repayment*

- (2) The Secretary may, by written notice given to the third person, require the third person to repay to the Commonwealth (as a debt due to the Commonwealth) so much of the amount paid as has not been applied by the relevant account holder for the purposes of the acquisition of goods or services.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

*Crediting of amounts*

- (3) If:
- (a) the Secretary gives the third person a notice under subsection (2); and
  - (b) the Secretary is aware of the amount (the **relevant amount**) that has not been applied by the relevant account holder for the purposes of the acquisition of goods or services;
- the Secretary may determine, in writing, that the first person's income management account is to be credited by an amount equal to the relevant amount.
- (4) If the Secretary makes a determination under subsection (3), then an amount equal to the relevant amount is:
- (a) credited to the Income Management Record; and
  - (b) credited to the first person's income management account.

**123ZI Breach of condition relating to crediting of account**

*Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) under section 123YI or 123YJ, the Secretary has paid an amount to a third person; and
  - (c) the payment resulted in the first person's income management account being debited by an amount equal to the amount paid; and

(d) the third person has breached a condition of the payment.

*Recovery*

- (2) So much of the amount paid as has not been applied by the relevant account holder for the purposes of the acquisition of goods or services is a debt due by the third person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

*Crediting of amounts*

- (3) If the Secretary is aware of the amount (the **relevant amount**) that has not been applied by the relevant account holder for the purposes of the acquisition of goods or services, the Secretary may determine, in writing, that the first person's income management account is to be credited by an amount equal to the relevant amount.
- (4) If the Secretary makes a determination under subsection (3), then an amount equal to the relevant amount is:
- (a) credited to the Income Management Record; and
  - (b) credited to the first person's income management account.

**123ZIA Balance of income management account falls below value of action taken under Division 6**

*Scope*

- (1) This section applies if:
- (a) the Secretary takes action under Division 6 that requires an amount (the **initial amount**) to be debited from a person's income management account; and
  - (b) at any time between the taking of the action and the recording of the debit as mentioned in subsection 123ZNA(2), the balance of the person's account falls below an amount equal to the initial amount.

Note: The recording of the debiting of the initial amount may leave the person's income management account having a debit balance, but

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subsections (2) and (3) allow a credit to that account of an amount equal to the initial amount.

*Crediting of amounts*

- (2) The Secretary may determine, in writing, that the person's income management account is to be credited by an amount equal to the initial amount.
- (3) If the Secretary makes a determination under subsection (2), then an amount equal to the initial amount is:
  - (a) credited to the Income Management Record; and
  - (b) credited to the person's income management account.

*Debt*

- (4) If the Secretary makes a determination under subsection (2), then an amount equal to the initial amount is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

**123ZJ Value of action taken under Division 6 exceeds credit balance of income management account**

*Scope*

- (1) This section applies if:
  - (a) a person (the *first person*) is subject to the income management regime; and
  - (b) the Secretary purports to take action under Division 6; and
  - (c) apart from this section, the action is invalid because of a breach of whichever of the following requirements is applicable under Division 6:
    - (i) in the case of giving a voucher—the requirement that the face value of the voucher must not exceed the credit balance of the first person's income management account;

- (ii) in the case of giving a stored value card—the requirement that the monetary value stored on the card must not exceed the credit balance of the first person’s income management account;
  - (iii) in the case of increasing the monetary value stored on a stored value card—the requirement that the increase in the monetary value must not exceed the credit balance of the first person’s income management account;
  - (iv) in the case of paying an amount—the requirement that the amount paid must not exceed the credit balance of the first person’s income management account;
  - (v) in the case of taking an action under subsection 123YQ(2)—the requirement that the non-administrative expenses paid by the Commonwealth in relation to the taking of the action must not exceed the credit balance of the first person’s income management account; and
- (d) the breach was the result of an administrative error or oversight.

*Validation*

- (2) Both:
- (a) the action taken by the Secretary; and
  - (b) the resulting debit from the first person’s income management account;
- are as valid as they would have been if:
- (c) the requirement mentioned in paragraph (1)(c) were not applicable to the action; and
  - (d) this Part had allowed the first person’s income management account to have a debit balance.
- (2A) To avoid doubt, the action to which subparagraph (1)(c)(ii), (iii), (iv) or (v) applies is covered by paragraph 123ZN(1)(e), (f), (g) or (h) (as the case requires).

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*Relevant excess*

- (3) For the purposes of this section, the *relevant excess* is:
- (a) in the case of giving a voucher—the amount by which the face value of the voucher exceeds the credit balance of the first person’s income management account; or
  - (b) in the case of giving a stored value card—the amount by which the monetary value stored on the card exceeds the credit balance of the first person’s income management account; or
  - (c) in the case of increasing the monetary value stored on a stored value card—the amount by which the increase in the monetary value exceeds the credit balance of the first person’s income management account; or
  - (d) in the case of paying an amount—the amount by which the amount paid exceeds the credit balance of the first person’s income management account; or
  - (e) in the case of taking an action under subsection 123YQ(2)—the amount by which the non-administrative expenses paid by the Commonwealth in relation to the taking of the action exceeds the credit balance of the first person’s income management account.

*Crediting of amounts*

- (4) An amount equal to the relevant excess is:
- (a) credited to the Income Management Record; and
  - (b) credited to the first person’s income management account.

*Recovery*

- (5) An amount equal to the relevant excess is a debt due by the first person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.



**123ZJA Action purportedly taken under Division 6 as a result of administrative error**

*Scope*

- (1) This section applies if:
- (a) the Secretary purports to take action under Division 6; and
  - (b) apart from this section, the action is invalid; and
  - (c) the action is due to an administrative error.

*Relevant excess*

- (2) If the action purportedly taken results in an amount (an **excess amount**) being credited to a person's income management account in error, the Secretary may determine, in writing, that:
- (a) the person's income management account is to be debited by one or more amounts equal to the excess amount; or
  - (b) the person must repay to the Commonwealth, as a debt due to the Commonwealth, an amount equal to the excess amount.

Note: Paragraph (b)—for debt recovery, see Chapter 5 of the 1991 Act.

- (3) If the Secretary makes a determination under paragraph (2)(a):
- (a) the Income Management Record is debited by one or more amounts equal to the excess amount; and
  - (b) the person's income management account is debited by one or more amounts equal to the excess amount.

*Debt due to the Commonwealth*

- (4) If the action purportedly taken results in an amount (an **excess amount**) being paid to a person in error and the person does not have an income management account, an amount equal to the excess amount is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (5) If the action purportedly taken results in a voucher being given to a person in error, an amount equal to the face value of the voucher is a debt due by the person to the Commonwealth.

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Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (6) If the action purportedly taken results in a stored value card being given to a person in error, an amount equal to the monetary value of the stored value card is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (7) Subject to subsection (8), if the action purportedly taken results in a payment being made to the credit of an account held by a person with:
- (a) a bank; or
  - (b) a person specified in a legislative instrument made by the Secretary for the purposes of subparagraph 123YK(2)(a)(ii) or (b)(ii) or 123YL(2)(a)(ii) or (b)(ii);
- in error, an amount equal to the amount of the payment is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (8) If an account mentioned in subsection (7) is held by a person jointly or in common with another person, each account holder is jointly and severally liable for the payment of a debt due to the Commonwealth under that subsection.
- (9) If the action purportedly taken results in a payment being made to a person by way of a cheque or cash, and the payment is made in error, an amount equal to the amount of the payment is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

*Crediting of amounts*

- (10) If the action purportedly taken results in an amount (a **shortfall amount**) being debited from a person's income management account in error, an amount equal to the shortfall amount must be:
- (a) credited to the Income Management Record; and
  - (b) credited to the person's income management account.

- (11) A determination made under subsection (2) is not a legislative instrument.

## Division 9—Miscellaneous

### 123ZK Secretary must comply with certain directions given by the Queensland Commission

#### *Deductible portion*

- (1) If:
- (a) a person is subject to the income management regime under section 123UF; and
  - (b) under a law of Queensland, the Queensland Commission gives the Secretary a written direction about the exercise of a power of the Secretary under subsection 123XM(3), 123XN(3), 123XO(3) or 123XP(3) in relation to the person; the Secretary must comply with the direction.

#### *Debits from income management accounts*

- (2) If:
- (a) a person is subject to the income management regime under section 123UF; and
  - (b) under a law of Queensland, the Queensland Commission gives the Secretary a written direction about the exercise of a power of the Secretary under Division 6 that results in a debit from the person's income management account; the Secretary must comply with the direction.

### 123ZL Surrender of unused vouchers and unused stored value cards

#### *Scope*

- (1) This section applies if:
- (a) a person (the **first person**) is subject to the income management regime; and
  - (b) either:

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- (i) the Secretary has given the first person or another person a voucher under subsection 123YC(2) or 123YD(2); or
- (ii) the Secretary has given the first person or another person a stored value card under subsection 123YE(2), 123YF(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2); and
- (c) as a result of the taking of the action referred to in paragraph (b), the first person's income management account has been debited by a particular amount (the **debited amount**); and
- (d) the voucher or stored value card has not been used.

*Surrender of voucher or stored value card*

- (2) The voucher or stored value card may be surrendered to the Secretary.

*Income Management Record to be credited*

- (3) If, under subsection (2), the voucher or stored value card is surrendered to the Secretary, an amount equal to the debited amount is credited to the Income Management Record.

*First person's income management account to be credited*

- (4) If, under subsection (2), the voucher or stored value card is surrendered to the Secretary, an amount equal to the debited amount is credited to the first person's income management account.

**123ZM Vouchers**

- (1) The Secretary may, on behalf of the Commonwealth, purchase vouchers to be given under subsection 123YC(2) or 123YD(2).
- (2) The Secretary may, on behalf of the Commonwealth:
  - (a) issue vouchers to be given under subsection 123YC(2) or 123YD(2); and

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- (b) enter into agreements with the suppliers of goods or services under which the suppliers undertake to accept those vouchers in consideration for the supply of goods or services.
- (3) Subsections (1) and (2) do not limit the executive power of the Commonwealth.
- (4) To the extent to which:
  - (a) the issue of vouchers under paragraph (2)(a); or
  - (b) an agreement entered into under paragraph (2)(b);involves a borrowing of money by the Commonwealth, that borrowing is authorised by this subsection.

Note: Subsection 56(1) of the *Public Governance, Performance and Accountability Act 2013* provides that an agreement for the borrowing of money by the Commonwealth is of no effect unless the borrowing is expressly authorised by or under an Act.

**123ZN Appropriation**

- (1) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of:
  - (a) making payments under subsection 123WJ(4), (7) or (11) or 123WL(3); and
  - (b) enabling the Secretary to set off an amount under subsection 123WJ(14); and
  - (c) making a purchase mentioned in subsection 123ZM(1); and
  - (d) making a payment of an amount payable by the Commonwealth under an agreement mentioned in paragraph 123ZM(2)(b); and
  - (e) enabling the Secretary to give a stored value card under subsection 123YE(2), 123YF(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2); and
  - (f) enabling the Secretary to increase, under subsection 123YE(2) or 123YF(2), the monetary value stored on a stored value card; and
  - (g) enabling the Secretary to pay an amount under subsection 123YG(2), 123YH(2), 123YI(2), 123YJ(2),

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123YK(2), 123YL(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2); and

- (h) paying or discharging expenses incurred by the Commonwealth in relation to action taken by the Secretary under subsection 123YQ(2); and
  - (i) making a payment to cover an invalid action, as mentioned in subsection 123ZJA(1).
- (2) To avoid doubt, subsection (1) is the only provision of this Part that appropriates the Consolidated Revenue Fund.

**123ZNA Recording of amounts in accounts and records**

- (1) This section applies to:
  - (a) the crediting of an amount to the Income Management Record, or to a person's income management account, under this Part; and
  - (b) the debiting of an amount from the Income Management Record, or from a person's income management account, under this Part.
- (2) The crediting or debiting takes effect at the time an entry recording the crediting or debiting is made in the accounts and records of the Department or the Human Services Department.

**123ZO This Part has effect despite other provisions etc.**

This Part has effect despite anything in:

- (a) any other provision of this Act; or
- (b) the 1991 Act; or
- (c) the Family Assistance Act; or
- (d) the Family Assistance Administration Act; or
- (e) the *Student Assistance Act 1973*; or
- (f) the Veterans' Entitlements Act.