



Social Security (Administration) Act 1999

No. 191, 1999



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

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Social Security (Administration) Act 1999

No. 191, 1999

Part 1 Preliminary

Section 1

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

[Assented to 23 December 1999]

The Parliament of Australia enacts:

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.

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.
- (3) A reference in this Act to the social security law (other than the reference in section 4) is a reference to this Act, the 1991 Act and any other Act that is expressed to form part of the social security law.
- (4) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the 1991 Act or any other Act that is expressed to form part of the social security law.
- (5) To the extent that a provision of this Act relates to:
 - (a) a double orphan pension; or
 - (b) a family allowance;a reference in the provision to a person includes a reference to an approved care organisation.
- (6) Unless a contrary intention appears, a reference in this Act (other than a reference in section 243):
 - (a) to this Act; or
 - (b) to the social security law;includes a reference to regulations made under section 243.

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4 Social security law

This Act forms part of the social security law.

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.

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

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- (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 and the Social Security Appeals Tribunal.

9 Government policy statements

- (1) The Minister may prepare a written statement of the policy of the Commonwealth Government in relation to the administration of the social security law and may give a copy of the statement to:
 - (a) the Secretary; and
 - (b) the Executive Director of the Social Security Appeals Tribunal.
- (2) If the Minister gives a copy of a statement to the Secretary or the Executive Director under subsection (1), the Minister must cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the Minister gives the copy under that subsection.
- (3) In exercising powers under the social security law, an officer must have regard to any statement a copy of which has been given to the Secretary under subsection (1).
- (4) In exercising powers under the social security law, the Executive Director and the Social Security Appeals Tribunal must have regard to any statement a copy of which has been given to the Executive Director under subsection (1).

10 Agreement on administrative arrangements

- (1) The Secretary and the Executive Director of the Social Security Appeals Tribunal may agree on administrative arrangements to further the objectives of Part 4 of this Act.

- (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.
- (4) The Secretary and the Secretary to the Department of Agriculture, Fisheries and Forestry may agree on administrative arrangements to further the objectives of sections 26 and 27 of the 1991 Act.
- (5) The Secretary and the Commissioner of Taxation may agree on administrative arrangements to further the objectives of Part 2.17AA of the 1991 Act.

Part 3—Provision of benefits

Division 1—Claim for social security payment or concession card

Subdivision A—Need for claim

11 General rule

Subject to 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.

Subdivision B—Cases where claim not necessary

12 Certain transfers between payments

(1) Subject to subsection (3), if:

- (a) a person is receiving an income support payment; and
- (b) while receiving the payment, the person becomes qualified for another income support payment (the *other payment*); and
- (c) the Secretary determines that the person is to be transferred to the other payment;

the person is taken, for the purposes of the social security law, to have made a claim for the other payment on the day on which the person became qualified for the other payment.

(2) Subject to subsection (3), if:

- (a) a person who has been receiving an income support payment ceases to receive the payment; and
- (b) immediately after ceasing to receive that payment, the person becomes qualified for another income support payment (the *other payment*); and

- (c) the Secretary determines that the person is to be transferred to the other payment;
the person is taken, for the purposes of the social security law, to have made a claim for the other payment on the day on which the person became qualified for the other payment.
- (3) The Secretary may only make a determination under subsection (1) or (2) if the transfer is one that the Secretary could have determined should occur apart from this section.

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
 - (b) the person is, on the day on which the Department is contacted, qualified for the social security payment; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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
 - (b) the person is, on the day on which the Department is contacted, qualified for the social security payment; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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

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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 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
 - (b) the claimant is, on the day on which the Department is contacted, qualified for the social security payment; and
 - (c) the Secretary gives the claimant a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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
 - (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.

- (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 facsimile, 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
 - (b) the person is, on the day on which the Department is contacted, qualified for the concession card; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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
 - (b) the person is, on the day on which the Department is contacted, qualified for the concession card; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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

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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 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

- (b) the claimant is, on the day on which the Department is contacted, qualified for the concession card; and

- (c) the Secretary gives the claimant a written notice acknowledging that the Department has been contacted in relation to the making of the claim; 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.

- (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 facsimile, computer equipment or other electronic means.

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

15 Deemed claim—incorrect claim

- (1) For the purposes of the social security law, if:
- (a) a person makes a claim for a social security payment; and
 - (b) the claim is an incorrect claim; and
 - (c) the person subsequently makes a claim for another social security payment for which the person is qualified; and
 - (d) the Secretary is satisfied that it is reasonable that this subsection be applied;
- the person is taken to have made a claim for that other 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.
- (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 this section, a claim made by a person is an incorrect claim if:
- (a) the claim is 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; and

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(b) when the claim was made, the person was qualified for a social security payment, other than a supplementary payment.

(5) In this section:

supplementary payment means:

- (a) carer allowance; or
- (b) double orphan pension; or
- (c) education entry payment; or
- (d) employment entry payment; or
- (e) family allowance; or
- (f) family tax payment; or
- (g) maternity allowance; or
- (h) maternity immunisation allowance; or
- (i) mobility allowance; or
- (j) pensioner education supplement.

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 claims made under a scheduled international social security agreement.
 - (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 either:
 - (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).
- (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

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- (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.

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 special employment advance 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.

Subdivision D—Time limits for claims for maternity allowance and maternity immunisation allowance

19 Time limits

- (1) A claim for maternity allowance must be made within 26 weeks after the birth of the child to whom the claim relates.
- (2) A claim for maternity immunisation allowance must be made before the child to whom the claim relates:
 - (a) reaches the age of 2 years; or
 - (b) would have reached that age if the child had not died.
- (3) If a claim referred to in subsection (1) or (2) is made after the time fixed by that subsection, the claim is taken not to have been made.

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

A claim for pension bonus must be made within the lodgment period fixed by this Subdivision.

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

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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
 - (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.

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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;
 - (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 F—Lapsing of certain claims

27 Lapsing of certain claims for maternity immunisation allowance

- (1) If:
- (a) claims for maternity allowance and maternity immunisation allowance are made by a person at the same time in respect of the same child; and
 - (b) the child is not a stillborn child; and
 - (c) maternity allowance is paid to the person in relation to the child; and
 - (d) the person ceases to be qualified for family allowance in respect of the child before the claim for maternity immunisation allowance has been determined;
- the claim for maternity immunisation allowance is taken not to have been made.
- (2) Nothing in subsection (1):
- (a) prevents the claimant referred to in that subsection making another claim for maternity immunisation allowance in respect of the same child; or
 - (b) prevents any other person making a claim for maternity immunisation allowance in respect of the same child.

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.

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Subdivision H—Residence requirements for claimants

29 General rule

- (1) Subject to sections 30, 31 and 32, 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, 31 and 32, 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;
 - (ii) the person has a qualifying residence exemption for special benefit;
 - (iii) the person holds a visa determined by the Minister to be a visa to which this subparagraph applies.

31 Exclusion of certain claims from requirements of section 29

- (1) In its application to a claim for:
 - (a) double orphan pension; or
 - (b) family allowance; or
 - (c) family tax payment; or
 - (d) maternity allowance; or
 - (e) maternity immunisation allowance; or
 - (f) mobility allowance;section 29 has effect as if:
 - (g) paragraph (1)(b) of that section were omitted; and
 - (h) the words “or is not in Australia” were omitted from subsection (2).

- (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 made by an approved care organisation.

32 Claims for sickness allowance

- (1) This section only has effect in relation to a claim for sickness allowance.
- (2) For the purposes of section 29, if:
 - (a) a person is temporarily absent from Australia; and
 - (b) the person is absent in order to seek medical treatment of a kind that is not available in Australia;
the person is taken to be in Australia:
 - (c) if the period of absence does not exceed 13 weeks—during the whole of that period; or
 - (d) if the period of absence exceeds 13 weeks—during the first 13 weeks of that period.

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.

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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 claims by persons in gaol etc.

35 Special provision regarding certain 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.

Division 2—Determination of claim

36 Obligation of Secretary to determine claim

- (1) Subject to subsection (2), 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.

37 Grant of claim

- (1) Subject to 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.
- (2) The Secretary must determine that a claim for a newstart allowance is to be granted if the Secretary is satisfied that:
 - (a) the claimant is qualified, or is expected to be qualified, for the allowance; and
 - (b) the allowance would be payable apart from:
 - (i) the application of a waiting period; or
 - (ii) the application of an activity test non-payment period; or
 - (iii) the application of an activity test breach rate reduction period where the activity test breach rate reduction reduces the rate of newstart allowance payable to the claimant to nil; or
 - (iv) the application of an administrative breach rate reduction period where the administrative breach rate reduction reduces the rate of newstart allowance payable to the person to nil; or

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- (v) the application of an income maintenance period where the rate of newstart allowance payable to the person is nil.
- (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:
- (a) mature age allowance under Part 2.12A;
 - (b) mature age allowance under Part 2.12B;
 - (c) newstart allowance;
 - (d) parenting payment;
 - (e) partner allowance;
 - (f) widow allowance;
 - (g) youth allowance.
- (5) If:
- (a) a determination has been made under subsection (1) granting a claim for a newstart allowance to a person who was qualified for the allowance under subsection 593(1B) of the 1991 Act; and
 - (b) the person ceases to be qualified for the allowance under subsection 593(1B) of the 1991 Act but becomes qualified for the allowance 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 an activity test non-payment period; or
 - (iii) the application of an activity test breach rate reduction period where the activity test breach rate reduction reduces the rate of allowance or payment payable to the claimant to nil; or
 - (iv) the application of an administrative breach rate reduction period where the administrative breach rate reduction reduces the rate of allowance or payment payable to the person to nil; or
 - (v) the application of an income maintenance period where the rate of allowance or payment payable to the person is nil.
- (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 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

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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.

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 (2) and (3), 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.
- (2) If a person makes a claim for maternity immunisation allowance, subsection (1) has effect in relation to the claim as if the period referred to in that subsection were the period:

- (a) starting immediately after the day on which the claim is lodged; and
 - (b) ending at the earlier of the following times:
 - (i) the end of the period of 104 weeks starting immediately after the day on which the claim is lodged;
 - (ii) the day on which the child concerned reaches the age of 2 years.
- (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).

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

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- (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 3—Commencement of social security payment

41 Commencement

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.

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 4—Payment of social security payment

43 Payment by instalments

- (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.
- (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.
- (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.
- (4) If:
 - (a) an amount (the **added amount**) of pharmaceutical allowance is added to a person's maximum basic rate in working out the amount of an instalment of a social security payment; and
 - (b) apart from this subsection, the amount of the instalment would be less than the person's fortnightly PA rate;the amount of the instalment is to be increased to the person's fortnightly PA rate.
- (5) For the purposes of subsection (4), a person's fortnightly PA rate is worked out by dividing the added amount by 26.
- (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 subsection (4) and section 45, instalments of a person's social security periodic payment are to be paid to that person.
- (2) Subject to subsection (4), 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) The Secretary may, in writing, direct that the whole or a part of the instalments of a person's social security periodic payment or special employment advance are to be paid to someone else on behalf of the person.
- (4) If the Secretary gives a direction under subsection (3), the instalments are to be paid in accordance with the direction.
- (5) Subsections (3) and (4) do not apply in relation to instalments of youth allowance to which section 45 applies.

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:
 - (a) to the person; or
 - (b) to someone other than the person's parent on behalf of the person.
- (3) If the Secretary gives a direction under subsection (2), the instalments are to be paid in accordance with the direction.

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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.

47 Payment of lump sum benefits

- (1) In this section:

lump sum benefit means:

- (a) an advance payment under section 864A or Part 2.22 of the 1991 Act; or
 - (b) crisis payment; or
 - (c) disaster relief payment; or
 - (d) education entry payment; or
 - (e) employment entry payment; or
 - (f) fares allowance; or
 - (g) maternity allowance; or
 - (h) maternity immunisation allowance; or
 - (i) special employment advance, except where the Secretary has made a determination under subsection 46(2).
- (2) If a claim for crisis payment is granted because of subsection 37(7), the Secretary may pay an amount equal to the 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 subsection (6), a person's lump sum benefit is to be paid to the person.
- (5) The Secretary may direct that the whole or a part of a person's lump sum benefit is to be paid to someone else on behalf of the person.
- (6) If the Secretary gives a direction under subsection (5), the lump sum benefit is to be paid in accordance with the direction.

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, in relation to a person, 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.

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.

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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.

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:
 - (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;
 - (b) bereavement allowance;
 - (c) carer payment;
 - (d) disability support pension;
 - (e) mature age allowance payable under Part 2.12A of the 1991 Act;
 - (f) mature age partner allowance payable under Part 2.12A of the 1991 Act;

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- (g) pension PP (single) to which clause 105A of Schedule 1A to the 1991 Act applies;
 - (h) pensioner education supplement;
 - (i) widow B pension;
 - (j) wife pension;
 - (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 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.

(3) If:

(a) a person is receiving a wife pension; 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 wife pension are to be paid to the 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 wife 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.

(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.

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- (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) An amount (the *relevant amount*) that is to be paid to a person under section 44, 45, 47, 48 or 50 is to be paid in the manner set out in this section.
- (2) Subject to subsection (4), 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.
- (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:
- (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, other than pension bonus, after death

- (1) If:
- (a) an amount representing a social security payment (other than pension bonus) is payable to a person; and

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- (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 after death

- (1) This section sets out the only circumstances in which a pension bonus will be payable after the death of the person concerned.
- (2) If:
- (a) a person claims a pension bonus; 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;
- the bonus is payable to the legal personal representative of the person.
- (3) If:
- (a) a person claims a pension bonus; 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 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.
- (5) If a pension bonus is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus.

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
 - (b) sections 1231 and 1234A of the 1991 Act.

61 Deduction at request of recipient

The Secretary may make deductions from instalments of a social security payment payable to a person if the person asks the Secretary:

- (a) to make the deductions; and
- (b) to pay the amounts deducted to the Commissioner of Taxation.

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

Division 6—Provision of information by claimants and recipients

Subdivision A—General

63 Requirement to attend Department etc.

- (1) This section applies to a person if:
 - (a) either:
 - (i) the person is receiving, or has made a claim for, a social security payment; or
 - (ii) the person is the holder of, or has made a claim for, a concession card; and
 - (b) the person is not a person to whom section 64 applies.
- (2) If the Secretary is of the opinion that a person to whom this section applies, other than a person to whom subsection (3) 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 give the person written notice that he or she is required, within a specified time, to:
 - (e) attend that office; or
 - (f) contact the Department; or
 - (g) attend that place for that purpose; or
 - (h) give that information;as the case may be.
- (3) If the Secretary is of the opinion that a person who is receiving, or has made a claim for, a newstart allowance 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:

- (e) attend that office; or
- (f) contact the Department; or
- (g) attend that place for that purpose; or
- (h) give that information;

as the case may be.

(4) If:

- (a) a person is receiving, or has made a claim for, a social security payment; and
- (b) the Secretary gives the person a notice under subsection (2); and
- (c) the requirement of the notice is reasonable; and
- (d) the person does not comply with the requirement;

the following paragraphs have effect:

- (e) if the person is receiving a youth allowance, the allowance is not payable, and if, at a later time, a youth allowance becomes payable to the person, an administrative breach rate reduction period applies to the person;
- (f) in any other case, the payment that the person is receiving or has claimed is not payable.

(5) If:

- (a) a person is receiving, or has made a claim for, a newstart allowance; and
- (b) the Secretary notifies the person under subsection (3); and
- (c) the requirement of the notification is reasonable; and
- (d) the person does not comply with the requirement;

a newstart allowance is not payable, and if, at a later time, a newstart allowance becomes payable to the person, an administrative breach rate reduction period applies to the person.

(6) If:

- (a) a person is the holder of, or has made a claim for, a concession card; and

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- (b) the Secretary gives the person a notice under subsection (2);
and
 - (c) the requirement of the notice is reasonable; and
 - (d) the person does not comply with the requirement;the person ceases to be qualified, or is not qualified, as the case requires, for a concession card.
- (7) The Secretary may give a person a notice under subsection (2) by sending the notice by prepaid post addressed to the person at the postal address of the person last known to the Secretary. This subsection does not prevent the Secretary from giving the person notice in any other way.
- (8) The Secretary may notify a person for the purposes of subsection (3) by sending a written notification by prepaid post addressed to the person at the postal address of the person last known to the Secretary. This subsection does not prevent the Secretary from notifying the person in any other way.
- (9) The Secretary may determine:
 - (a) that a social security payment that was not payable because of paragraph (4)(f) or subsection (5) is payable to a person;
or
 - (b) that an administrative breach rate reduction period does not apply to a person under paragraph (4)(e) or subsection (5);if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement under subsection (2) or (3), as the case may be.
- (10) The Secretary may determine that a person who, by virtue of subsection (6), has ceased to be, or is not, qualified for a concession card is qualified for such a card if the Secretary is satisfied that the person has a reasonable excuse for not complying with the requirement of the notice under subsection (2).
- (11) A notice under subsection (2) or a notification under subsection (3) must inform the person to whom it is given of the effect of this section.

64 Requirement to undergo medical examination etc.

- (1) This section applies to a person if:
- (a) the person has made a claim for a disability support pension and the claim has not been determined; or
 - (b) the person is receiving a disability support pension; or
 - (c) the person has made a claim for sickness allowance; or
 - (d) the person is receiving sickness allowance; or
 - (e) the person has made a claim for a newstart allowance but is temporarily incapacitated for work because of sickness or the occurrence of an accident; or
 - (f) the person is receiving a newstart allowance and is exempt from the activity test under Subdivision BA of Division 1 of Part 2.12 of the 1991 Act; or
 - (g) the person has made a claim for youth allowance and:
 - (i) is temporarily incapacitated for work; or
 - (ii) does not have the capacity to undertake the course of education as part of which he or she is undertaking full-time study; or
 - (h) the person is receiving a youth allowance and has a temporary incapacity exemption under section 542A of the 1991 Act.
- (2) If:
- (a) this section applies to a person; and
 - (b) the Secretary is of the opinion that the person should:
 - (i) attend an office of the Department; or
 - (ii) contact the Department; or
 - (iii) attend a particular place for a particular purpose; or
 - (iv) complete a questionnaire; or
 - (v) undergo a medical, psychiatric or psychological examination; or
 - (vi) give information to the Secretary;
- the Secretary may give the person written notice that the person is required, within a specified time, to:
- (c) attend that office; or

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- (d) contact the Department; or
 - (e) attend that place for that purpose; or
 - (f) complete that questionnaire; or
 - (g) undergo that examination and provide to the Secretary the report, in the approved form, of the person who conducts the examination; or
 - (h) give that information to the Secretary;
- as the case may be.
- (3) The Secretary may give a person notice for the purposes of subsection (2) by sending the notice by prepaid post addressed to the person at his or her postal address last known to the Secretary. This subsection does not prevent the Secretary from giving the person notice in any other way.
- (4) If:
- (a) the Secretary gives a person a notice under subsection (2); and
 - (b) the Secretary is satisfied that it is reasonable for this section to apply to the person; and
 - (c) the person does not take reasonable steps to comply with the requirement of the notice;
- the following paragraphs have effect:
- (d) if the person is a person referred to in paragraph (1)(a), a disability support pension is not payable to the person;
 - (e) if the person is a person referred to in paragraph (1)(b), disability support pension ceases to be payable to the person;
 - (f) if the person is a person referred to in paragraph (1)(c), sickness allowance is not payable to the person;
 - (g) if the person is a person referred to in paragraph (1)(d), sickness allowance ceases to be payable to the person;
 - (h) if the person is a person referred to in paragraph (1)(e), (f), (g) or (h):
 - (i) newstart allowance or youth allowance, as the case may be, is not payable; and

- (ii) if at a later time, such an allowance becomes payable to the person, an administrative breach rate reduction period applies to the person; and
 - (iii) in the case of a person referred to in paragraph (1)(f), the person ceases to be exempt from the activity test under Subdivision BA of Division 1 of Part 2.12 of the 1991 Act; and
 - (iv) in the case of a person referred to in paragraph (1)(h), the person ceases to have a temporary incapacity exemption under section 542A of the 1991 Act.
- (5) A notice under subsection (2) must inform the person to whom it is given of the effect of this section.

65 Medical certificate in support of claim for sickness allowance

- (1) Subject to subsection (3), a claim for sickness allowance must be supported by the certificate of a medical practitioner which states:
 - (a) the medical practitioner's diagnosis; and
 - (b) the medical practitioner's prognosis; and
 - (c) that the person is incapacitated for work; and
 - (d) the period for which the person is incapacitated for work.
- (2) A certificate for the purpose of subsection (1) must be in accordance with a form approved by the Secretary.
- (3) A person's claim for sickness allowance need not be supported by a medical certificate if the person is claiming to be qualified for sickness allowance under section 667 of the 1991 Act.
- (4) The Secretary may, in special circumstances, direct that subsection (1) or (2) does not apply in relation to a claim.

66 Notice to obtain foreign payment

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

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- (d) disability support pension;
- (e) parenting payment;
- (f) special needs age pension;
- (g) special needs disability support pension;
- (h) special needs widow B pension;
- (i) special needs wife pension;
- (j) widow allowance;
- (k) widow B pension;
- (l) wife pension.

(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 CFP 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 CFP 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.

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 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 payment to the person of the social security payment.
- (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

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- (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 affect the payment of the social security payment or the person's qualification for the concession card, as the case requires.

68 Person receiving social security payment or holding concession card

- (1) Subsection (2) applies to a person to whom a social security payment is being 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 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.
- (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 affect the payment of the social security payment or the person's qualification for the concession card, as the case requires.

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 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;
 - (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

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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

If a person is being paid a carer payment because he or she is providing constant 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.

71 Notice to recipient of family allowance or family tax payment regarding change of address

The Secretary may give a person who is receiving family allowance or family tax payment a notice that requires the person to inform the Department if the person has changed or changes his or her address.

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 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).
- (3) Subject to subsections (4), (5), (6) and (7), the period specified for the purpose of paragraph (1)(d) 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;
 - (e) in the case of a notice under section 71—be the period of 14 days after:
 - (i) the day on which the recipient of the notice changed or changes his or her address; or
 - (ii) the day on which the notice is given;whichever is the later.
- (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 (other than a notice under section 71) that requires the
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giving of information about an event or change of circumstances, the period to be specified for the purpose of paragraph (1)(d) 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 or 68:
 - (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.
- (5) If the Secretary is satisfied that, having regard to:
- (a) special circumstances related to the person to whom a notice under section 71 is to be given; or
 - (b) the likely circumstances of the person when the notice is given;
- it is desirable that the period specified in the notice for the purpose of paragraph (1)(d) be extended, the period to be so specified is such period as the Secretary directs in writing, being a period that ends not earlier than 15 days, and not later than 28 days, after:
- (c) the day on which the recipient of the notice changed or changes his or her address; or
 - (d) the day on which the notice is given;
- whichever is the later.
- (6) If a notice under section 67 or 68 specifies an event consisting of the death of a person, the period to be specified under paragraph (1)(d) is a period of 28 days after the day on which the event occurs.
- (7) To the extent that a notice under section 67, 68 or 71 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 the person, in response to

the notice, knowingly or recklessly gives information or a statement that 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 notice provisions

Sections 67 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

A person must not, without reasonable excuse, refuse or fail to comply with a notice under section 67, 68, 69 or 70 to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

Subdivision C—Provision of tax file numbers

75 Secretary's power to request tax file numbers

- (1) This section applies to a person in Australia who:
 - (a) has made a claim for a social security payment; or
 - (b) is receiving a social security payment.
- (2) The Secretary may request, but not compel, a person to whom this section applies:
 - (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
 - (b) if the person does not have a tax file number:

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- (i) to apply to the Commissioner of Taxation for a tax file number; and
 - (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner of Taxation has issued it.
- (3) If:
 - (a) this section applies to a person; and
 - (b) the person is a member of a couple; and
 - (c) the person's partner is in Australia;the Secretary may request, but not compel, the person to give the Secretary a written statement of the tax file number of the person's partner.
- (4) If:
 - (a) this section applies to a person (the *recipient*) because the person is receiving a social security payment; and
 - (b) the income of a person (other than the recipient) is required to be taken into account for the purpose of working out the rate of the recipient's social security payment; and
 - (c) the person referred to in paragraph (b) is in Australia;the Secretary may request, but not compel, the recipient to give the Secretary a written statement of the tax file number or numbers of each person who is a person referred to in paragraph (b).

76 Effect of failure by person to satisfy request for person's tax file number

- (1) If the Secretary makes a request under subsection 75(2) of a person who has made a claim for, or is receiving, a social security payment, the social security payment is not payable to the person unless, within 28 days after the request is made:
 - (a) the person satisfies the request; or
 - (b) the person satisfies subsection (2) or (3) of this section.
- (2) A person satisfies this subsection if:
 - (a) the person has given the Secretary an employment declaration; and

- (b) the declaration states that the 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 person of the person's tax file number; and
 - (c) the person has given the Secretary a document that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—that number; and
 - (d) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.
- (3) A person satisfies this subsection if:
- (a) the person has given the Secretary an employment declaration; and
 - (b) the declaration states that an application by the person for a tax file number is pending; and
 - (c) the person has given the Secretary a document that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the person—that number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn; and
 - (d) the Commissioner has not told the Secretary that the person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number.

77 Effect of failure by person to satisfy request for partner's or related person's tax file number

- (1) If the Secretary makes a request under subsection 75(3) of a person who has made a claim for, or is receiving, a social security payment, the social security payment is not payable to the person unless, within 28 days after the request is made:
- (a) the person satisfies the request; or

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- (b) the person satisfies subsection (3) or (4) of this section; or
 - (c) the Secretary exempts the person from the need to satisfy the request.
- (2) If the Secretary makes a request under subsection 75(4) of a person who is receiving a social security payment, the social security payment is not payable to the person unless, within 28 days after the request is made:
- (a) the person satisfies the request; or
 - (b) the person satisfies subsection (3) or (4) of this section; or
 - (c) the Secretary exempts the person from the need to satisfy the request.
- (3) A person satisfies this subsection if:
- (a) the person has given the Secretary a declaration by the related person in accordance with a form approved by the Secretary; and
 - (b) the declaration states that the related 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 related person of his or her tax file number; and
 - (c) the person has given the Secretary a document in which the related person authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the related person has a tax file number; and
 - (ii) if the related person has a tax file number—that number; and
 - (d) the Commissioner of Taxation has not told the Secretary that the related person has no tax file number.
- (4) A person satisfies this subsection if:
- (a) the person has given the Secretary a declaration by the related person in accordance with a form approved by the Secretary; and
 - (b) the declaration states that an application by the related person for a tax file number is pending; and

- (c) the person has given the Secretary a document in which the related person authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the related person—that number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn; and
 - (d) the Commissioner of Taxation has not told the Secretary that an application by the related person for a tax file number has been refused or withdrawn.
- (5) The Secretary may exempt a person from compliance with a request for a statement of a related person's tax file number if the Secretary is satisfied that:
- (a) the person does not know the related person's tax file number; and
 - (b) the person can obtain none of the following from the related person:
 - (i) the related person's tax file number;
 - (ii) a statement of the related person's tax file number;
 - (iii) a declaration by the related person under paragraph (3)(a) or (4)(a).
- (6) In this section:
- related person*** means:
- (a) in relation to a person of whom a request has been made under subsection 75(3)—the person's partner; or
 - (b) in relation to a person of whom a request has been made under subsection 75(4)—a person who is a person referred to in paragraph 75(4)(b).

Division 7—Various determinations

Subdivision A—Provisions relating to social security payments

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.

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;

the Secretary is to determine that the payment is to be cancelled or suspended.

- (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.

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 newstart allowance) 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 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 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

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- (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.
- (3) If:
- (a) a person who is receiving family allowance or family tax payment has been given a notice under section 71; and
 - (b) the person has not informed the Department, in accordance with the notice, that the person has changed his or her address; and
 - (c) the Secretary is satisfied that mail from the Secretary or an officer addressed to the person has been returned to the Secretary or officer because the person has changed his or her address;
- the Secretary may determine that the family allowance or family tax payment, as the case may be, is to be suspended.
- (4) The Secretary may make a determination under subsection (3) even if the Secretary is not satisfied that:
- (a) the person concerned has ceased to be qualified for family allowance or family tax payment; or
 - (b) family allowance or family tax payment has ceased to be payable to the person.
- (5) Subsection (3) does not limit the Secretary's power to suspend or cancel a person's family allowance or family tax payment under section 80.
- (6) If:
- (a) a person's family allowance or family tax payment is suspended under subsection (3); and
 - (b) the family allowance or family tax payment has been suspended for a period of 52 weeks;
- the family allowance or family tax payment, as the case may be, is cancelled, by force of this subsection, on the day immediately after the end of the last instalment period in respect of which the person

received an instalment of family allowance or family tax payment, as the case may be.

82 Cancellation 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.

(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.

83 Changes to payments by computer

(1) If:

- (a) payment of a social security payment is based upon data in a computer; and
- (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.

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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

(1) If:

- (a) a social security payment ceases to be payable to a person under section 93 or the Secretary cancels or suspends a person's social security payment under section 80, 81 or 82; and
- (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.

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.
- (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.

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

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- (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;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

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 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, 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

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(b) as a result of a social security pension or service pension 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 or the service pension, as the case may be, becomes payable to the person.

92 Automatic cancellation of parenting payment—partner receiving ABSTUDY payment that includes dependent spouse allowance

If:

- (a) a person who is a member of a couple is receiving parenting payment; and
- (b) as a result of a payment under the ABSTUDY scheme (the *ABSTUDY payment*) that includes a dependent spouse allowance becoming payable to the person's partner, 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 ABSTUDY payment becomes payable to the person's partner.

93 Automatic cancellation—recipient complying with subsection 68(2) notice

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
 - (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 section;
 - (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 section.

94 Automatic cancellation—recipient not complying with subsection 68(2) notice

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:

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- (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 ceases to be payable to the person on the day on which the event or change of circumstances occurs.

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; and
- (b) the notice relates to the payment of that social security payment in respect of a period specified in the notice; and
- (c) the person does not comply with the notice;

then, subject to subsection (2), the social security payment is cancelled by force of this section on and from 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.

96 Disability support pension—suspension instead of cancellation in some cases

(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;
- 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.
- (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 the income, or increased income, earned by the person from his or her employment; and
 - (b) the person has informed the Secretary about the income or increased 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.
- (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;

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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;

then, for the period of the suspension, the partner is taken to be partnered (partner getting neither pension nor benefit).

(6) If:

- (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 wife pension or carer payment;

the Secretary must determine that the partner's wife pension or carer payment, as the case may be, 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.
- (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 wife pension or 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 wife pension or carer payment, as the case may be, had not been cancelled but had been suspended under section 96.
- (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 the income, or increased income, earned by the person from his or her employment; and
 - (b) within the period of 2 years after the pension ceased to be payable, the income earned by the person from his or her employment 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.
- (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 wife pension or carer payment when disability support pension ceased to be payable to the person for the reason mentioned in paragraph (3)(a);
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the Secretary may determine that the partner is to be treated as if the partner's wife pension or carer payment, as the case may be, had not been cancelled but had been suspended under section 96.

98 Automatic rate reduction—partner starting to receive pension or benefit

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; and
- (c) the person's social security payment rate is reduced because of the partner's receipt of the pension or benefit;

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 or benefit.

99 Automatic rate reduction—recipient complying with subsection 68(2) notice

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.

100 Automatic rate reduction—recipient not complying with subsection 68(2) notice

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; 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 social security payment becomes payable to the person at the reduced rate on the day on which the event or change of circumstances occurs.

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101 Automatic rate reduction—receipt of pension 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 or a service pension 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 or the service pension, as the case may be, becomes payable to the person.

102 Automatic rate reduction of parenting payment—partner receiving ABSTUDY payment that includes dependent spouse allowance

If:

- (a) a person who is a member of a couple is receiving parenting payment; and
- (b) as a result of a payment under the ABSTUDY scheme (the *ABSTUDY payment*) that includes a dependent spouse allowance becoming payable to the person's partner, 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 ABSTUDY payment becomes payable to the person's partner.

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:

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- (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 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.

Division 9—Date of effect of determinations

Subdivision A—Determinations relating to claims

107 General rule

- (1) Subject to subsections (2), (3) and (4), 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
 - (d) a decision that the claim be granted is made as a result of the application for review;

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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) as a result of the review, a decision that the claim be granted is made more than 13 weeks after notice of the original decision was given to the person;

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 or 85

108 Definition

In this Subdivision:

favourable determination means a determination under section 78 or 85.

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.

(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

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(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;

the favourable determination takes effect on the day on which the review was begun by the Secretary.

(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a social security pension because the payment ceased to be payable under section 1218 of

the 1991 Act, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the day on which the cancellation or suspension of the social security payment took effect.

110 Date of effect of favourable determination following notification under section 68 notice

- (1) Subject to subsections (2) to (11) (inclusive), if a favourable determination is made following a person having informed the 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.
- (2) 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 68 that relates to the payment of a social security payment in respect of a period specified in the notice, the determination takes effect on the day on which the matter arose.
- (3) 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;

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the determination takes effect on the day on which the matter arose.

- (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 or a service pension; 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.
- (6) If:
- (a) the favourable determination relates to family allowance or family tax payment; and
 - (b) the favourable determination is made following the birth of a child; and
 - (c) the recipient informed the Department of the birth of the child within 13 weeks after the birth;

the determination takes effect on the day on which the child was born.

(7) If:

- (a) the favourable determination relates to family allowance or family tax payment; and
- (b) as part of the process of the adoption of a child by the recipient of the allowance or payment, the child is entrusted to the recipient's care by the appropriate authority; and
- (c) the favourable determination is made because the child is an FA child or FTP child of the recipient; and
- (d) the recipient informed the Department of the circumstances in which the child became an FA child or FTP child of the recipient within 13 weeks after the day on which the child became such a child of the recipient;

the determination takes effect on the day referred to in paragraph (d).

(8) If:

- (a) a person (the *youth allowance claimant*) makes a claim for youth allowance (the *initial claim*); and
- (b) on the day on which the initial claim is made, the youth allowance claimant is an FA child of another person; and
- (c) the other person afterwards requests that his or her rate of family allowance be increased on the ground that the youth allowance claimant is an FA child of the other person; and
- (d) a favourable determination is made as a result of the request; and
- (e) the Secretary is satisfied that it is reasonable for this subsection to apply to the other person;

the determination takes effect on a day specified in the determination (not being a day before the day on which the initial claim was made).

(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

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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 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.

(12) In this section:

appropriate authority, in relation to the adoption of a child, means a person or agency that, under the law of the State, Territory or country whose courts have jurisdiction in respect of the adoption, is authorised to arrange the adoption of children.

111 Date of effect of section 78 determination resulting from indexation 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.

112 Date of effect of favourable determination following giving of statement

If the favourable determination is made following a person having given the Department a statement about a matter in accordance with a notice under section 68, the determination takes effect on the day on which the matter arose.

113 Date of effect of favourable determination following amendment of assessment of taxable income

If:

- (a) a determination (the *earlier determination*) of a person's rate of family allowance is made; and
- (b) in working out the rate of family allowance, regard is had to the person's income for a tax year; and
- (c) the income to which regard was had included an amount of taxable income assessed by the Commissioner; and

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- (d) the assessment is subsequently amended by:
 - (i) the Commissioner of Taxation; or
 - (ii) a tribunal; or
 - (iii) a court; and
 - (e) the person's taxable income for that year according to the assessment as amended is less than the person's taxable income for that year according to the assessment that was amended; and
 - (f) the Secretary makes a determination varying the person's rate of family allowance to give effect to the recalculation required by section 884 of the 1991 Act;
- the later determination takes effect:
- (g) if the amendment of the assessment was made on application by the person—on the day on which the earlier determination took effect; or
 - (h) in any other case—on the day on which the person notifies the Department or an officer of the amendment of the assessment.

114 Date of effect of other favourable determinations

- (1) In the case of a favourable determination to which neither section 109, section 110 nor section 113 applies, 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.

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

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(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;

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 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:

(a) in the case of family allowance—in accordance with this section and section 119; and

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- (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) 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.
- (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 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 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;

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the determination takes effect on the first day of the periodic payments period to which the arrears of periodic compensation payments relate.

- (5) 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 68 that relates to the payment of the social security payment in respect of a period specified in the notice, the determination takes effect on the day on which the matter arose.
- (6) 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.
- (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.

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- (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.
- (10) If the adverse determination is made because, under section 1218 of the 1991 Act, a social security payment ceases to be payable, the determination takes effect on such day (which may be on or after the day on which the social security payment ceases to be payable under that section) as is specified in the determination.
- (11) If:
- (a) a person's social security payment is suspended under section 81 or 82; and
 - (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.
- (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.
- (13) In any other case, an adverse determination takes effect:

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- (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.

119 Additional rules in the case of family allowance

- (1) If:
- (a) a determination of a person's rate of family allowance is made; and
 - (b) in working out the rate of family allowance, regard is had to the person's income for a tax year; and
 - (c) the income to which regard is had includes an amount of taxable income assessed by the Commissioner; and
 - (d) the assessment is subsequently amended by:
 - (i) the Commissioner of Taxation; or
 - (ii) a tribunal; or
 - (iii) a court; and
 - (e) the income for that year (including the taxable income according to the assessment as amended) is more than 110% of the amount of the income on which the earlier determination was based; and
 - (f) the Secretary makes a determination (the *later determination*) varying the person's rate of family allowance to give effect to the recalculation required by section 884 of the 1991 Act;

the later determination takes effect on the day on which the earlier determination took effect.

- (2) If:
- (a) the Secretary makes a determination (the *earlier determination*) of a person's rate of family allowance; and

- (b) in making the determination, the Secretary has regard to the person's income for a tax year; and
- (c) the income to which regard is had includes an amount or amounts estimated by the person; and
- (d) the person's income for the tax year is more than 110% of the amount of the income on which the earlier determination was based; and
- (e) the Secretary makes a determination (the *later determination*) varying the person's rate of family allowance, or cancelling the person's family allowance, to give effect to the recalculation required by section 885 of the 1991 Act;

the later determination takes effect on the day on which the earlier determination took effect.

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:

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- (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 profoundly disabled child or a disabled 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
 - (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

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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 profoundly disabled 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 disabled 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

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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 disabled 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 disabled 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 disabled 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.

(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:

- (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 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:
 - (c) a further determination in relation to the payment under section 80, 81 or 82 takes effect; or
 - (d) the payment ceases to be payable under section 90, 91, 92, 93 or 94.
- (2) A determination that a person is qualified for a concession card continues in effect until:
 - (a) a further determination under 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 or 79 takes effect; or
 - (b) the payment becomes payable at a lower rate under section 98, 99 or 100.

Part 4—Review of decisions

Division 1—Effect of Part

124 Application of Part to decisions under repealed laws

This Part applies as if a decision under:

- (a) the 1947 Act; or
 - (b) the 1991 Act as in force immediately before the commencement of this Part;
- were a decision under the social security law.

125 Decisions by officers under instruments

For the purposes of this Part, a decision made by an officer under an instrument (other than regulations or a disallowable instrument) made or issued under this Act or the 1991 Act is taken to be a decision under the social security law.

Division 2—Internal review

126 Review of decisions by Secretary

- (1) The Secretary may review:
 - (a) subject to subsection (2), a decision of an officer under the social security law; or
 - (b) a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989*; or
 - (c) a decision of an officer under the *Farm Household Support Act 1992*; or
 - (d) a decision under section 5A, 5B, 5C, 5D, 5DA, 5DB, 5E, 5EA or 5EB of the *Health Insurance Act 1973*; or
 - (e) a decision under section 44-24 of the *Aged Care Act 1997* by the Secretary or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act;if the Secretary is satisfied that there is sufficient reason to review the decision.
- (2) The Secretary may review a decision:
 - (a) whether or not any person has applied for review of the decision; and
 - (b) even though an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.
- (3) The Secretary may:
 - (a) affirm a decision; or
 - (b) vary a decision; or
 - (c) set a decision aside and substitute a new decision.
- (4) If:
 - (a) the Secretary sets a decision aside under subsection (3); and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, determine that the event is taken to have occurred for the purposes of the social security law.

127 Decisions that are not reviewable by the Secretary

- (1) The Secretary may not, on an application under section 129, review a decision made by the Secretary himself or herself.
- (2) The Secretary may not review a decision made by the Employment Secretary:
 - (a) approving an activity under the Community Service Program; or
 - (b) declaring, under section 28 of the 1991 Act, a program of work to be an approved program of work for unemployment payment.
- (3) The Secretary may not review a decision made by the Minister for Agriculture, Fisheries and Forestry or the Secretary to the Department of Agriculture, Fisheries and Forestry under the *Farm Household Support Act 1992*.

128 Notice to Executive Director or AAT Registrar

- (1) If:
 - (a) the Secretary makes a decision under subsection 126(4); and
 - (b) at the time when the Secretary makes the decision, a person has applied to the Social Security Appeals Tribunal for review of the decision that was reviewed by the Secretary;the Secretary must give the Executive Director written notice of the Secretary's decision under subsection 126(4).
- (2) If:
 - (a) the Secretary makes a decision under subsection 126(4); and
 - (b) at the time when the Secretary makes the decision, a person has applied to the Administrative Appeals Tribunal for review of the decision that was reviewed by the Secretary;

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the Secretary must give the Registrar of the Administrative Appeals Tribunal written notice of the Secretary's decision under subsection 126(4).

129 Application for review

- (1) Subject to subsections (3) and (4), a person affected by:
 - (a) a decision of an officer under the social security law; or
 - (b) a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989*; or
 - (c) a decision of an officer under the *Farm Household Support Act 1992*; or
 - (d) a decision under section 5A, 5B, 5C, 5D, 5DA, 5DB, 5E, 5EA or 5EB of the *Health Insurance Act 1973*; or
 - (e) a decision under section 44-24 of the *Aged Care Act 1997* by the Secretary or by a person to whom the Secretary has sub-delegated power under section 96-2(7) of that Act;may apply to the Secretary for review of the decision.
- (2) If an officer makes a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement:
 - (a) for the purposes of the application of this section to the decision:
 - (i) both of the parties to the agreement are taken to be persons affected by the decision; and
 - (ii) only one of the parties is entitled to apply for review of the decision; and
 - (b) if a party applies for review of the decision, the Secretary must:
 - (i) by notice in writing or in a manner approved by the Secretary, inform the other party of the making of the application and give the other party such of the information contained in the application as is reasonably necessary to enable the party to make a submission in connection with the review; and
 - (ii) give both parties a reasonable opportunity to make a submission in connection with the review.

- (3) If:
- (a) an officer makes a decision under Part 3 in relation to pension bonus; and
 - (b) notice is given to the person concerned;
- the person is not entitled to make an application under subsection (1) for review of the decision more than 13 weeks after the giving of the notice.
- (4) A person may not apply under subsection (1) for review of:
- (a) a decision made by the Secretary himself or herself; or
 - (b) a decision under subparagraph (2)(b)(i) regarding the information to be given to a person under that subparagraph; or
 - (c) a decision made by the Employment Secretary:
 - (i) under section 28 of the 1991 Act; or
 - (ii) approving a course of study or a labour market program; or
 - (iii) exempting a person from the application of a provision of the social security law; or
 - (d) a decision made by the Minister for Agriculture, Fisheries and Forestry or the Secretary to the Department of Agriculture, Fisheries and Forestry under the *Farm Household Support Act 1992*; or
 - (e) a decision made by the Health Secretary under or in relation to the social security law; or
 - (f) a decision made by the CEO himself or herself in the exercise of a delegated power.
- (5) A reference in this section to a decision of an officer under the social security law includes a reference to a determination that the Secretary is taken, by virtue of a provision of the social security law, to have made.

130 Withdrawal of application

- (1) A person who has applied for review of a decision may withdraw the application at any time before the review has been completed.

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- (2) If an application for review of a decision is withdrawn, the application is taken never to have been made.
- (3) An application may be withdrawn orally or in writing or in any other manner approved by the Secretary.

131 Secretary may continue payment pending outcome of application for review

- (1) Subject to subsection (2), if:
 - (a) an adverse decision is made in relation to a social security payment; and
 - (b) the adverse decision:
 - (i) depends on the exercise of a discretion, or the holding of an opinion, by a person; or
 - (ii) would result in the application of an activity test non-payment period; and
 - (c) a person applies to the Secretary under section 129 for review of the adverse decision;the Secretary may declare that the payment of the social security payment is to continue pending the determination of the review as if the adverse decision had not been made.
- (2) Subsection (1) does not apply in the case of a decision to which section 133 or 134 applies.
- (3) A declaration under subsection (1) must be by notice in writing.
- (4) While a declaration under subsection (1) is in force in relation to an adverse decision, the social security law (other than this Part) applies as if the adverse decision had not been made.
- (5) A declaration under subsection (1) in relation to an adverse decision:
 - (a) takes effect on the day on which it is made or on such earlier day (if any) as is specified in the declaration; and
 - (b) ceases to have effect if:
 - (i) the application for review is withdrawn; or

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- (ii) a decision is made by the Secretary on the review of the adverse decision; or
 - (iii) the declaration is revoked by the Secretary.
- (6) A reference in subsection (1) to a person's holding of an opinion is a reference to the person's holding that opinion, whether or not the social security law expressly requires the opinion to be held before the decision concerned is made.
- (7) In this section:
- adverse decision*, in relation to a social security payment, means:
- (a) a decision to cancel or suspend the social security payment; or
 - (b) a decision to reduce the rate of the social security payment.

132 Guidelines for exercise of Secretary's power to continue payment

- (1) The Minister, by determination in writing:
- (a) is to determine guidelines for the exercise of the Secretary's power to make declarations under section 131 in relation to social security payments to persons who are subject to an activity test non-payment period; and
 - (b) may revoke or vary those guidelines.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

133 Automatic payment if review of section 544C terms decision sought

- (1) This section applies to a decision to give a notice under section 544C of the 1991 Act because of a person's failure to agree to terms of a Youth Allowance Activity Agreement proposed by the Secretary.
- (2) If:
- (a) a person applies under section 129 for review of a decision to which this section applies; and

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- (b) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (c) payment of youth allowance is to be made, pending the determination of the review, as if the Youth Allowance Activity Agreement had not been required;
 - (d) if payment of the allowance had ceased for a period before the person applied for the review—arrears of allowance are payable to the person for the period in spite of section 118;
 - (e) the social security law (other than this Division) applies as if the Youth Allowance Activity Agreement had not been required.
- (3) Subsection (2) ceases to have effect if:
 - (a) the application for review is withdrawn; or
 - (b) the review of the decision is determined.

134 Automatic payment if review of section 607 terms decision sought

- (1) This section applies to a decision to give a notice under section 607 of the 1991 Act because of a person's failure to agree to terms of a Newstart Activity Agreement proposed by the Secretary.

(2) If:

- (a) a person applies under section 129 for review of a decision to which this section applies; and
- (b) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (c) payment of newstart allowance is to continue, pending the determination of the review, as if the Newstart Activity Agreement had not been required;
- (d) if payment of the allowance had ceased for a period before the person applied for the review—arrears of allowance are payable to the person for the period despite section 118;
- (e) the social security law (other than this Division) has effect as if the Newstart Activity Agreement had not been required.

- (3) Subsection (2) ceases to have effect if the application for review is withdrawn.
- (4) Subsection (2) ceases to have effect when the review of the decision is determined.

135 Review of decisions following application under section 129

- (1) Subject to subsections (3) and (4) and 127(1), if a person applies under section 129 for review of a decision, the Secretary, the CEO or an authorised review officer must:
 - (a) review the decision; and
 - (b) do one of the following:
 - (i) affirm the decision;
 - (ii) vary the decision;
 - (iii) set the decision aside and substitute a new decision.
- (2) In the case of an application for review of a decision made by an officer of the Employment Department as a delegate of the Secretary, the reference in subsection (1) to an authorised review officer is to be read as a reference to an authorised review officer who is an officer of that Department.
- (3) An authorised review officer may not review a decision relating to the exercise of the Secretary's power under section 1285A of the 1991 Act.
- (4) In varying or substituting a decision, an authorised review officer may not exercise the Secretary's power under subsection 1218A(2) of the 1991 Act.
- (5) If:
 - (a) a person sets aside a decision under subsection (1); and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;the Secretary may, if satisfied that it is reasonable to do so, determine that the event is taken to have occurred for the purposes of the social security law.

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136 Notice of decision on review

If a person makes a decision under subsection 135(1) (the *review decision*), the person must:

- (a) give the applicant written notice of the review decision; and
- (b) if the review decision relates to a decision made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* in relation to a particular agreement—give written notice of the review decision to the other party to the agreement.

137 Certain decisions not to be revived

(1) This section has effect if:

- (a) the Secretary makes a determination (the *first determination*) that:
 - (i) a social security payment is granted or is payable to a person; or
 - (ii) a social security payment is payable to a person at a particular rate; and
- (b) the Secretary makes a determination (the *second determination*):
 - (i) cancelling the social security payment; or
 - (ii) reducing the rate at which the social security payment is payable; and
- (c) notice of the second determination is given to the person; and
- (d) the person applies under section 129 for review of the second determination; and
- (e) the application is made more than 13 weeks after notice of the second determination was given; and
- (f) a decision (the *review decision*) is made by the Secretary, an authorised review officer, the Social Security Appeals Tribunal or the Administrative Appeals Tribunal; and
- (g) the review decision, or the effect of the review decision, is:
 - (i) to set aside the second determination; or
 - (ii) to affirm a decision setting aside the second determination.

- (2) This section has effect if:
- (a) the Secretary makes a determination (the ***first determination***) that:
 - (i) a social security payment is granted or is payable to a person; or
 - (ii) a social security payment is payable to a person at a particular rate; and
 - (b) the Secretary makes a determination (the ***second determination***):
 - (i) cancelling the social security payment; or
 - (ii) reducing the rate at which the social security payment is payable; and
 - (c) notice of the second determination is given to the person; and
 - (d) the Secretary reviews the second determination under section 126 without any application under section 129 for review of the decision having been made; and
 - (e) the decision of the Secretary on the review is to set aside the second determination; and
 - (f) the decision on the review is made more than 13 weeks after notice of the second determination was given.
- (3) This section has effect if:
- (a) the Secretary makes a determination (the ***first determination***) that:
 - (i) a person's claim for a concession card is granted; or
 - (ii) a person is qualified for a concession card; and
 - (b) the Secretary makes a determination (the ***second determination***) cancelling the concession card; and
 - (c) notice of the second determination is given to the person; and
 - (d) the person applies under section 129 for review of the second determination; and
 - (e) the application is made more than 13 weeks after notice of the second determination was given; and
 - (f) a decision (the ***review decision***) is made by the Secretary, an authorised review officer, the Social Security Appeals Tribunal or the Administrative Appeals Tribunal; and

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- (g) the review decision, or the effect of the review decision, is:
 - (i) to set aside the second determination; or
 - (ii) to affirm a decision setting aside the second determination.
- (4) This section has effect if:
 - (a) the Secretary makes a determination (the *first determination*) that:
 - (i) a person's claim for a concession card is granted; or
 - (ii) a person is qualified for a concession card; and
 - (b) the Secretary makes a determination (the *second determination*) cancelling the concession card; and
 - (c) notice of the second determination is given to the person; and
 - (d) the Secretary reviews the second determination under section 126 without any application under section 129 for review of the declaration having been made; and
 - (e) the decision of the Secretary on the review is to set aside the second determination; and
 - (f) the decision is made more than 13 weeks after notice of the second determination was given.
- (5) If this section has effect:
 - (a) the second determination does not become void from the time when it was made; and
 - (b) the mere setting aside of the second determination does not of itself revive the first determination.
- (6) For the purposes of this section, a person is taken to have applied for review of a determination (the *primary determination*) if:
 - (a) the person applies for review of another determination or decision; and
 - (b) a review of the primary determination is necessary to resolve the issues raised by the review of that other determination or decision.

138 Notification of further rights of review

- (1) If a person (the *decision-maker*) gives another person notice under section 136, the notice must include:
 - (a) a statement to the effect that the other person may, subject to the social security law, apply to the Social Security Appeals Tribunal for review of the decision-maker's decision; and
 - (b) a statement about the decision-maker's decision that:
 - (i) sets out the reasons for the decision; and
 - (ii) sets out the findings by the decision-maker on material questions of fact; and
 - (iii) refers to the evidence or other material on which those findings were based; and
 - (c) a statement to the effect that, if the other person is dissatisfied with the decision of the Social Security Appeals Tribunal, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision of the Social Security Appeals Tribunal.
- (2) A contravention of subsection (1) in relation to notice of a decision does not affect the validity of the decision.

Division 3—Review by the Social Security Appeals Tribunal

Subdivision A—Preliminary

139 Continuance of Social Security Appeals Tribunal

- (1) The Social Security Appeals Tribunal continued in existence by the 1991 Act is further continued in existence by this Act.
- (2) Provisions relating to the constitution and membership, and the organisation of the business of, the Social Security Appeals Tribunal, together with certain saving provisions, are to be found in Schedule 3.

Subdivision B—Review by SSAT

140 Application of Division

- (1) This Division applies to:
 - (a) all decisions of an officer under the social security law, including a decision under section 606 of the 1991 Act to the extent to which it relates to the terms of a Newstart Activity Agreement that is in force; and
 - (b) a decision under section 544B of the 1991 Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; and
 - (c) a decision under section 5A, 5B, 5C, 5D, 5DA, 5DB, 5E, 5EA or 5EB of the *Health Insurance Act 1973*; and
 - (d) all decisions of an officer under the *Farm Household Support Act 1992*; and
 - (e) all decisions of an officer under subsection 91A(3) of the *Child Support (Assessment) Act 1989*; and
 - (f) all decisions under section 44-24 of the *Aged Care Act 1997* by the Secretary, or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act.

- (2) A reference in this section to a decision of an officer under the social security law includes a reference to a determination that the Secretary is taken, by virtue of a provision of the social security law, to have made.

141 SSAT objective

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

142 Application for review by SSAT

- (1) Subject to section 144, if:
- (a) a decision has been reviewed by the Secretary, the CEO or an authorised review officer under section 126 or 135; and
 - (b) the decision has been affirmed, varied or set aside;
- a person whose interests are affected by the decision of the Secretary, the CEO or the authorised review officer may apply to the SSAT for review of that decision.
- (2) Subject to section 144, if a decision has been made by the Secretary himself or herself or by the CEO himself or herself, a person whose interests are affected by the decision may apply to the SSAT for review of the decision.
- (3) If an officer makes a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of the application of subsection (1) or (2) of this section to the decision, both of the parties to the agreement are taken to be persons whose interests are affected by the decision.
- (4) For the purposes of subsection (1), the decision made by the Secretary, the CEO or the authorised review officer is taken to be:
- (a) if the Secretary, the CEO or the authorised review officer affirms a decision—that decision as affirmed; and
 - (b) if the Secretary, the CEO or the authorised review officer varies a decision—that decision as varied; and

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- (c) if the Secretary, the CEO or the authorised review officer sets a decision aside and substitutes a new decision—the new decision.
- (5) For the purposes of subsection (2), if:
- (a) an application has been made under subsection 129(1) for review of a decision made by the Secretary himself or herself or the CEO himself or herself; and
 - (b) before the application under subsection 129(1) was made, the Secretary or CEO had reviewed the decision under section 126;
- the decision made by the Secretary or CEO is taken to be:
- (c) if the Secretary or CEO had affirmed or varied the decision—that decision as affirmed or varied; and
 - (d) if the Secretary or CEO had set the decision aside and substituted a new decision—the new decision.

143 Application requirement for certain decisions

- (1) The SSAT may only review a decision under section 544B of the 1991 Act (to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force) if the application is expressed to be an application for review of that decision.
- (2) The SSAT may only review a decision under section 606 of the 1991 Act (to the extent to which it relates to the terms of a Newstart Activity Agreement that is in force) if the application is expressed to be an application for review of that decision.

144 Non-reviewable decisions

The SSAT cannot review any of the following decisions:

- (a) a decision of an RAS authority to refuse to certify a person as a financial hardship farmer under section 26 of the 1991 Act;
- (b) a decision of an RAS authority to refuse to certify an asset as an unrealisable asset of a financial hardship farmer under section 27 of the 1991 Act;

- (c) a decision of the Minister for Agriculture, Fisheries and Forestry or the Secretary to the Department of Agriculture, Fisheries and Forestry under the *Farm Household Support Act 1992*;
- (d) a decision under section 36 of the 1991 Act;
- (e) a decision under a provision dealing with the approval by the Employment Secretary of a course, labour market program, program of work for unemployment payment or rehabilitation program;
- (f) a decision under section 16 of this Act;
- (g) a decision under section 58 or 59 to pay an amount to a person;
- (h) a decision to make a payment under section 75 of this Act;
- (i) a decision, under subsection 59(3) of this Act, to grant a claim for a pension bonus after the claimant has died;
- (j) a decision under subsection 7A(2) or paragraph 15(b) of the *Farm Household Support Act 1992*;
- (k) a decision to give a notice under Subdivision B of Division 6 of Part 3 of this Act;
- (l) a decision under subparagraph 129(2)(b)(i) regarding the information that is to be given to a person under that paragraph;
- (m) a decision under section 131 or 145 of this Act;
- (n) a decision under section 192, 193, 194 or 195 of this Act;
- (o) a decision under section 238 of this Act;
- (p) a decision of the Secretary:
 - (i) determining, under subsection 1100(2) of the 1991 Act, that it is not appropriate for that subsection to apply in respect of a payment or a class or kind of payments; or
 - (ii) determining, in accordance with section 1100 of the 1991 Act, that a rate of exchange is appropriate for the calculation of the value in Australian currency of an amount (the ***foreign amount***) received by a person in a foreign currency if that rate does not differ by more than 5% from the rate of exchange that was applied when the

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person received Australian currency for the foreign amount;

- (q) a decision under subsection 1218A(2) of the 1991 Act;
- (r) a decision under the Family Allowance Rate Calculator in section 1069 of the 1991 Act that is made by a disallowable instrument;
- (s) a decision relating to the Secretary's power under section 182 of this Act to settle proceedings before the AAT.

145 Secretary may continue payment pending outcome of application for review

- (1) If:
 - (a) an adverse decision is made in relation to a social security payment; and
 - (b) the adverse decision:
 - (i) depends on the exercise of a discretion by a person or the holding of an opinion by a person; or
 - (ii) would result in the application of an activity test non-payment period; and
 - (c) a person applies to the SSAT under subsection 142(1) or (2) for review of the adverse decision;the Secretary may declare that payment of the social security payment is to continue, pending the determination of the review, as if the adverse decision had not been made.
- (2) A declaration must be by notice in writing.
- (3) While a declaration under subsection (1) is in force in relation to an adverse decision, the social security law (other than this Division) applies as if the adverse decision had not been made.
- (4) A declaration under subsection (1) in relation to an adverse decision:
 - (a) takes effect on the day on which the declaration is made or on such earlier day (if any) as is specified in the declaration; and
 - (b) ceases to have effect if:

- (i) the application to the SSAT for review of the adverse decision is withdrawn; or
 - (ii) the review of the adverse decision is determined by the SSAT; or
 - (iii) the declaration is revoked by the Secretary.
- (5) A reference in subsection (1) to a person's holding of an opinion is a reference to the person's holding that opinion, whether or not the social security law expressly requires the opinion to be held before the decision concerned is made.
- (6) In this section:
- adverse decision*, in relation to a social security payment, means:
- (a) a decision to cancel or suspend the social security payment; or
 - (b) a decision to reduce the rate of the social security payment.

146 Guidelines for exercise of Secretary's power to continue payment

- (1) The Minister, by determination in writing:
- (a) is to set guidelines for the exercise of the Secretary's power to make declarations under subsection 145(1) that would result in the application of an activity test non-payment period; and
 - (b) may revoke or vary those guidelines.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

147 Automatic payment if review of decision under section 544C of the 1991 Act sought

- (1) If:
- (a) a decision has been made, whether before or after the commencement of this paragraph, to give a notice under section 544C of the 1991 Act because of a person's failure to

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agree to terms of a Youth Allowance Activity Agreement proposed by the Secretary; and

- (b) a person applies to the Social Security Appeals Tribunal under section 142 for review of the decision; and
- (c) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (d) payment of the youth allowance is to be made, pending the determination of the review, as if the Agreement had not been required;
- (e) if payment of the allowance had ceased for a period before the person applied for the review—arrears of allowance are payable to the person for the period, in spite of section 118;
- (f) the social security law (other than this Division) has effect as if the Agreement had not been required.

(2) Subsection (1) ceases to have effect if:

- (a) the application for review is withdrawn; or
- (b) the review of the decision is determined.

148 Automatic payment if review of decision under section 607 of the 1991 Act sought

(1) If:

- (a) a decision has been made, whether before or after the commencement of this paragraph, to give a notice under section 607 of the 1991 Act because of a person's failure to agree to terms of a Newstart Activity Agreement proposed by the Secretary; and
- (b) a person applies to the SSAT under subsection 142(1) for review of the decision; and
- (c) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (d) payment of the newstart allowance is to be made, pending the determination of the review, as if the agreement had not been required;

- (e) if payment of the allowance had ceased for a period before the person applied for the review—arrears of allowance are payable to the person for the period, in spite of section 118;
 - (f) the social security law (other than this Division) has effect as if the agreement had not been required.
- (2) Subsection (1) ceases to have effect if:
- (a) the application for review is withdrawn; or
 - (b) the review of the decision is determined.

149 SSAT review powers

- (1) If a person applies to the SSAT for review of a decision (other than a decision referred to in subsection (5)), the SSAT must:
- (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and:
 - (i) substitute a new decision; or
 - (ii) send the matter back to the Secretary or the CEO, as the case requires, for reconsideration in accordance with any directions or recommendations of the SSAT.
- (2) If the SSAT sets a decision aside and substitutes for it a decision that a person is entitled to a social security payment (other than pension bonus), the SSAT must:
- (a) assess the rate at which the social security payment is to be paid to the person; or
 - (b) ask the Secretary or the CEO, as the case requires, to assess the rate at which the social security payment is to be paid to the person.
- (3) If the SSAT sets a decision aside and substitutes for it a decision that a person is entitled to a pension bonus, the SSAT must:
- (a) assess the amount of the pension bonus that is to be paid to the person; or
 - (b) ask the Secretary to assess the amount of the pension bonus that is to be paid to the person.

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(4) If:

- (a) the SSAT sets a decision aside under subsection (1); and
- (b) the Secretary or the SSAT (as the case may be), is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary or the SSAT, as the case requires, may, if satisfied that it is reasonable to do so, direct that the event is to be taken, for the purposes of the social security law, to have occurred.

(5) This section does not apply to:

- (a) a decision under section 544B of the 1991 Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or
- (b) a decision under section 606 of the 1991 Act to the extent to which it relates to the terms of a Newstart Activity Agreement that is in force.

150 SSAT review powers (Activity Agreement decisions)

If a person applies to the SSAT for review of:

- (a) a decision under section 525B of the 1991 Act as previously in force to the extent to which it related to the terms of a Job Search Activity Agreement that was previously in force; or
- (b) a decision under section 544B of that Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or
- (c) a decision under section 606 of that Act to the extent to which it relates to the terms of a Newstart Activity Agreement that is in force;

the SSAT must:

- (d) affirm the decision; or
- (e) set aside the decision and send the matter back to the Secretary or the CEO, as the case requires, for reconsideration in accordance with any recommendations of the Tribunal.

151 Powers of the SSAT

- (1) Subject to subsection (2), the SSAT may, for the purpose of reviewing a decision under the social security law, exercise all the powers and discretions that are conferred by the social security law on the Secretary.
- (2) The reference in subsection (1) to powers and discretions conferred by the social security law does not include a reference to a power or discretion conferred by:
 - (a) a provision dealing with the form and place of lodgment of a claim; or
 - (b) a provision dealing with the manner of payment of a social security payment; or
 - (c) section 1233 of the 1991 Act; or
 - (d) a provision dealing with the giving of a notice requiring information; or
 - (e) section 1100 of the 1991 Act; or
 - (f) section 1218A of the 1991 Act; or
 - (g) section 131 or 145 of this Act; or
 - (h) a provision dealing with the imposition of requirements before the grant of a social security payment; or
 - (i) a provision dealing with the deduction of amounts from payments of a social security payment for tax purposes.
- (3) The SSAT may, for the purpose of reviewing a decision under the *Health Insurance Act 1973*, exercise all the powers and discretions conferred by that Act on the Secretary.
- (4) Nothing in this section applies in relation to the review of:
 - (a) a decision under section 544B of the 1991 Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or
 - (b) a decision under section 606 of the 1991 Act to the extent to which it relates to the terms of a Newstart Activity Agreement that is in force.

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152 Date of effect of SSAT decisions (other than Activity Agreement decisions)

- (1) Subject to subsections (2) and (3), a decision of the SSAT comes into operation immediately on the giving of the decision.
- (2) The SSAT may specify in a decision that the decision is not to come into operation until a later day specified in the decision and, if it does so, the decision comes into operation on that later day.
- (3) Subject to subsections (4) and (5), if the SSAT:
 - (a) varies a decision under review; or
 - (b) sets aside a decision under review and substitutes a new decision;the decision as varied or the new decision (as the case may be) has effect, or is to be taken to have had effect, on and from the day on which the decision under review has or had effect.
- (4) If:
 - (a) a person is given written notice of a decision under the social security law; and
 - (b) the person applies to the SSAT more than 13 weeks after the notice was given for review of the decision; and
 - (c) the SSAT varies the decision or sets the decision aside and substitutes a new decision; and
 - (d) the effect of the decision of the SSAT is:
 - (i) to grant the person's claim for a social security payment or a concession card; or
 - (ii) to direct the making of a payment of a social security payment to the person or the issue of a concession card to the person, as the case may be; or
 - (iii) to increase the rate of the person's social security payment;the social security law has effect as if the decision under review had taken effect on the day on which the application was made to the SSAT for review of that decision.
- (5) The SSAT may declare:

- (a) that subsection (3) does not apply to a decision by the SSAT on a review; and
 - (b) that subsections (1) and (2) apply instead.
- (6) This section does not apply to:
- (a) a decision under section 544B of that Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or
 - (b) a decision under section 606 of the 1991 Act to the extent to which the decision relates to the terms of a Newstart Activity Agreement that is in force.

153 Date of effect of SSAT decision (Activity Agreement decision)

- (1) This section applies to:
- (a) a decision under section 544B of the 1991 Act to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; and
 - (b) a decision under section 606 of the 1991 Act to the extent to which the decision relates to the terms of a Newstart Activity Agreement that is in force.
- (2) Subject to subsection (3), a decision by the SSAT in relation to a decision to which this section applies comes into operation immediately on the giving of the decision.
- (3) The SSAT may specify in a decision that the decision is not to come into operation until a later day specified in the decision and, if it does so, the decision comes into operation on that later day.

154 Application requirements

- (1) A person may apply to the SSAT for review of a decision by:
- (a) sending or delivering a written application to:
 - (i) an office of the SSAT; or
 - (ii) an office of the Department; or
 - (iii) if the decision was made by the CEO or an employee of the Agency—an office of the Agency; or

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- (b) going to an office of the SSAT and making an oral application; or
 - (c) contacting an office of the SSAT by telephone and making an oral application.
- (2) If a person makes an oral application in accordance with paragraph (1)(b) or (c), the person receiving the oral application must make a written record of the details of the oral application and note on the record the day on which the application is made.
- (3) If a written record of an oral application is made in accordance with subsection (2), Division 4 has effect as if the written record were a written application.
- (4) An application may include a statement of the reasons for seeking a review of the decision.

155 Variation of decision before review completed

- (1) If an officer varies a decision after an application has been made to the SSAT for review of the decision but before determination of the review, the application for review is to be treated as if it were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made to the SSAT for review of the original decision but before the determination of the review, the application for review is to be treated as if it were an application for review of the new decision.
- (3) If:
- (a) a person applies to the SSAT for review of a decision; and
 - (b) before determination of the review, an officer varies the decision or sets it aside and substitutes a new decision;
- the person may either:
- (c) proceed with the application for review of the decision as varied or the new decision, as the case may be; or
 - (d) withdraw the application under section 171.

156 Parties to SSAT review

- (1) The parties to a review by the SSAT are:
 - (a) the applicant; and
 - (b) the Secretary; and
 - (c) if the relevant decision was made by the CEO or an employee of the Agency in the exercise of a delegated power—the CEO; and
 - (d) any other person who has been made a party to the review under subsection (4) or (5).
- (2) If a person has applied under section 142 for review of a decision, any other person whose interests are affected by the decision may apply to the Executive Director to be made a party to the review.
- (3) An application under subsection (2) must be in writing.
- (4) The Executive Director may order that a person who has applied under subsection (2) be made a party to the review.
- (5) If one of the parties to an agreement applies to the SSAT for review of a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about the agreement, the Executive Director must order that the other party to the agreement be made a party to the review. This requirement does not apply if the other party to the agreement has given the Executive Director a written notice waiving his or her rights under section 142 and this subsection in relation to the review.

Division 4—Procedures for review by the SSAT

Subdivision A—Preliminary procedures

157 Procedure on receipt of application for review by SSAT

- (1) If an application under section 142 is sent or delivered to an office of the Department or the Agency, the Secretary must send the application to the Executive Director as soon as practicable and, in any case, not later than 7 days after the application is received at the office of the Department or the Agency, as the case may be.
- (2) If:
 - (a) an application under section 142 is sent or delivered to an office of the SSAT; or
 - (b) the Secretary sends such an application to the Executive Director in accordance with subsection (1);the Executive Director must give the applicant and the Secretary written notice that the application has been received.
- (3) Within 28 days after receiving notice of the making of an application from the Executive Director, the Secretary must send to the Executive Director:
 - (a) a statement about the decision under review that:
 - (i) sets out the findings of fact made by the person who made the decision; and
 - (ii) refers to the evidence on which those findings were based; and
 - (iii) gives the reasons for the decision; and
 - (b) the original or a copy of every document or part of a document that:
 - (i) is in the possession, or under the control, of the Secretary; and
 - (ii) relates to the applicant; and
 - (iii) is relevant to the review of the decision.

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

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

- (1) The Executive Director must give each party (other than the Secretary) a copy of the statement referred to in paragraph 157(3)(a).
- (2) The Executive Director may make an order directing a person who has received a copy of a statement in accordance with subsection (1):
 - (a) not to disclose information in the statement; or
 - (b) not to disclose information in the statement except in the circumstances or for the purposes specified in the order.
- (3) An order under subsection (2) must be made by written notice given to the person to whom it is directed.
- (4) A person must not contravene an order under subsection (2).

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159 Arrangements for hearing of application

- (1) If an application is made to the SSAT for review of a decision, the Executive Director must fix a day, time and place for the hearing of the application.
- (2) If a declaration under section 145 is in force in relation to a decision, the Executive Director must take reasonable steps to ensure that the decision is reviewed as quickly as possible.
- (3) The Executive Director must give the applicant and any other parties to the review written notice of the day, time and place fixed for the hearing of the application.
- (4) The notice under subsection (3) must be given a reasonable time before the day fixed for the hearing.

160 Notice of application to person affected by decision

- (1) If:
 - (a) an application has been made to the SSAT for review of a decision; and
 - (b) the Executive Director is satisfied that the interests of a person who is not a party to the review are affected by the decision;the Executive Director must take reasonable steps to give the person written notice that an application has been made to the SSAT for review of the decision.
- (2) The notice under subsection (1):
 - (a) must be in writing; and
 - (b) must include notification of the person's right under section 156 to apply to the Executive Director to be added as a party to the review; and
 - (c) may be given at any time before the determination of the review.
- (3) The Executive Director must give each party to the review a copy of the notice.

- (4) If an officer makes a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of subsection (1) of this section, both of the parties to the agreement are taken to be persons whose interests are affected by the decision.

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

161 Submissions to SSAT

- (1) Subject to section 162, a party to a review of a decision may make oral or written submissions to the SSAT or both oral and written submissions.
- (2) The Secretary or CEO may make written submissions to the SSAT.
- (3) A party to a review of a decision may have another person make submissions to the SSAT on behalf of the party.
- (4) The Executive Director may determine that submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment.
- (5) Without limiting subsection (4), the Executive Director may make a determination under subsection (4) in relation to an application if:
- (a) the application is urgent; or
 - (b) the party lives in a remote area and unreasonable expense would be incurred if the party or the party's representative had to travel to the place at which the hearing is to be held; or
 - (c) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing; or
 - (d) the applicant is unable to attend the hearing because of illness or infirmity.
- (6) If a party is not proficient in English, the Executive Director may give directions in relation to the use of an interpreter in connection with the hearing of the review.

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- (7) A reference in this section to a party does not include a reference to the Secretary or the CEO.

162 SSAT hearings on written submissions only

- (1) The Executive Director may direct that a hearing be conducted without oral submissions from the parties if:
- (a) the Executive Director considers that the review hearing could be determined fairly on the basis of written submissions by the parties; and
 - (b) all parties to the review consent to the hearing being conducted without oral submissions.
- (2) If the Executive Director gives a direction under subsection (1), the Executive Director must give each of the parties to the review written notice:
- (a) informing the party of the direction; and
 - (b) inviting the party to submit written submissions; and
 - (c) specifying the address to which the written submissions are to be delivered; and
 - (d) specifying the time within which the written submissions are to be delivered.
- (3) The time specified under paragraph (2)(d) must be such as to allow a reasonable period for the parties to make written submissions.
- (4) Despite subsection (1), the SSAT, as constituted for the hearing, may, if it thinks necessary after considering the written submissions made by the parties, make an order permitting the parties to make oral submissions to the SSAT at the hearing of the review.
- (5) A reference in subsection (4) to a party does not include a reference to the Secretary or the CEO.

163 SSAT hearings without oral submissions by party

- (1) If a party to a review has informed the Executive Director that the party does not intend to make oral submissions to the SSAT, the

SSAT may proceed to hear the application for review without oral submissions from the party.

- (2) If:
- (a) the Executive Director has determined that oral submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment; and
 - (b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party's representative, as the case may, after taking reasonable steps to do so;
- the Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
- (3) If:
- (a) the Executive Director has not determined that oral submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment; and
 - (b) the party or the party's representative, as the case may be, does not attend the hearing at the time fixed for the hearing;
- the Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
- (4) If the Executive Director gives an authorisation under subsection (2) or (3), the SSAT may proceed to hear the application in accordance with the authorisation.
- (5) The Executive Director may revoke an authorisation under subsection (2) or (3).

164 Evidence on oath or affirmation

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

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165 Provision of further information by Secretary

- (1) The Executive Director may ask the Secretary to provide the SSAT with information or a document that the Secretary has and that is relevant to the review of a decision.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, not later than 14 days after the request is made.

166 Exercise by Secretary of powers under section 192

- (1) The Executive Director may ask the Secretary to exercise the Secretary's powers under section 192 if the Executive Director is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of a decision.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, within 7 days after the request is made.

Subdivision C—The hearing

167 Hearing procedure

- (1) The SSAT, in reviewing a decision:
 - (a) is not bound by legal technicalities, legal forms or rules of evidence; and
 - (b) is to act as speedily as a proper consideration of the review allows; and
 - (c) in determining what a proper consideration of the review requires, must have regard to the objective laid down by section 141.
- (2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.

168 Hearing in private

- (1) The hearing of a review is to be in private.

- (2) The Executive Director may give directions, in writing or otherwise, as to the persons who may be present at any hearing of a review.
- (3) In giving directions under subsection (2), the Executive Director must have regard to the wishes of the parties and the need to protect their privacy.

169 Restrictions on disclosure of information obtained at hearing

- (1) The Executive Director may make an order directing a person who is present at the hearing of a review:
 - (a) not to disclose information obtained by the person in the course of the hearing; or
 - (b) not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the order.
- (2) A person must not contravene an order under subsection (1).

Penalty: Imprisonment for 2 years.

Subdivision D—Other procedural matters

170 Adjournment of SSAT hearings

- (1) The SSAT may adjourn the hearing of a review of a decision from time to time.
- (2) Without limiting subsection (1), the SSAT may refuse to adjourn the hearing of a review if:
 - (a) the hearing has already been adjourned on 2 or more occasions; or
 - (b) the SSAT is satisfied that to grant an adjournment would be inconsistent with the pursuit of the objective laid down by section 141; or
 - (c) a declaration under section 131 or 145 is in force in relation to the decision under review.

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171 Withdrawal of application for review

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

172 Dismissal of an application

- (1) If:
 - (a) a person makes an application to the SSAT for review of a decision; and
 - (b) the Executive Director is satisfied:
 - (i) after having communicated with the person; or
 - (ii) after having made reasonable attempts to communicate with the person and having failed to do so;that the person does not intend to proceed with the application;the Executive Director may dismiss the application.

- (2) If the Executive Director dismisses an application under subsection (1), the application is taken to have been withdrawn at the time at which the application was dismissed.

173 Chairperson for each SSAT hearing

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

174 Decision of questions before SSAT

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

175 Directions as to procedure for hearings

- (1) The Executive Director:
 - (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of decisions under the social security law, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989*; and

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- (b) may give directions as to the procedure to be followed by the SSAT in connection with a particular review.
- (2) A direction under subsection (1) must not be inconsistent with any provision of the social security law.
- (3) A direction under paragraph (1)(b) may be given before or after the hearing of the particular review has commenced.
- (4) The presiding member of the SSAT as constituted for the purposes of a particular review may give directions as to the procedure to be followed on the hearing of the review.
- (5) A direction under subsection (4) must not be inconsistent with:
 - (a) any provision of the social security law; or
 - (b) any provision of the *Farm Household Support Act 1992*; or
 - (c) subsection 91A(3) of the *Child Support (Assessment) Act 1989*; or
 - (d) a direction under subsection (1) of this section.
- (6) A direction under subsection (4) may be given before or after the hearing of the particular review has commenced.
- (7) Directions under this section must have due regard to the objective laid down by section 141.

176 Costs of review

- (1) Subject to subsection (4), a party to a review must bear any expenses incurred by the party in connection with the review.
- (2) The SSAT may determine that the Commonwealth is to pay the reasonable costs that are:
 - (a) incurred by a party for travel and accommodation in connection with the review; and
 - (b) specified in the determination.
- (3) If the SSAT arranges for the provision of a medical service in relation to a party to a review, the SSAT may determine that the Commonwealth is to pay the costs of the provision of the service.

- (4) If the SSAT makes a determination under subsection (2) or (3), the costs to which the determination relates are payable by the Commonwealth.

Subdivision E—Notification of decisions

177 Procedure following SSAT decision

- (1) When the SSAT makes its decision on a review, the SSAT must:
- (a) prepare a written statement that:
 - (i) sets out the decision of the SSAT on the review; and
 - (ii) sets out the reasons for the decision; and
 - (iii) sets out the findings on any material questions of fact; and
 - (iv) refers to evidence or other material on which the findings of fact are based; and
 - (b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the making of the decision in relation to the review; and
 - (c) if a person gave the Executive Director a notice under subsection 156(5) in connection with the review—give that person a copy of the statement referred to in paragraph (a) within 14 days after the making of the decision in relation to the review; and
 - (d) return to the Secretary any document that the Secretary has provided to the SSAT in connection with the review; and
 - (e) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact are based.
- (2) When the SSAT determines a review, the Executive Director must give each party to the review (other than the Secretary) a written notice that includes a statement to the effect that, if the person is dissatisfied with the decision of the SSAT, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the AAT for review of the decision.
- (3) A failure to comply with subsection (2) in relation to a decision of the SSAT does not affect the validity of the decision.

Division 5—Review by the Administrative Appeals Tribunal

Subdivision A—Preliminary

178 Application of Division

- (1) Unless a contrary intention appears, the provisions of this Division apply to:
 - (a) all decisions of an officer under the social security law, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989*; and
 - (b) all decisions under section 44-24 of the *Aged Care Act 1997* by the Secretary or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act.
- (2) This Division applies as if a decision under the 1991 Act, as in force immediately before the commencement of this Part, were a decision under the social security law.

Subdivision B—Right to review by AAT

179 Review of decisions by AAT

- (1) If:
 - (a) a decision has been reviewed by the SSAT; and
 - (b) the decision has been affirmed, varied or set aside by the SSAT;application may be made to the AAT for review of the decision of the SSAT.
- (2) For the purposes of subsection (1), the decision made by the SSAT is taken to be:
 - (a) where the SSAT affirms a decision—that decision as affirmed; and
 - (b) where the SSAT varies a decision—that decision as varied; and

- (c) where the SSAT sets a decision aside and substitutes a new decision—the new decision; and
 - (d) where the SSAT sets a decision aside and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT—the directions or recommendations of the SSAT.
- (3) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.
- (4) If:
- (a) the AAT sets aside a decision of the SSAT; and
 - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary may, if satisfied that it is reasonable to do so, direct that the event is to be taken, for the purposes of the social security law, to have occurred.
- (5) If an officer makes a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of the application of the *Administrative Appeals Tribunal Act 1975* to, or to a matter arising out of, the decision, both of the parties to the agreement are taken to be persons whose interests are affected by the decision.

180 Variation of decision before AAT review completed

- (1) If an officer varies a decision after an application has been made to the AAT for review of that decision but before the determination of the application, the application is to be treated as if:
- (a) the decision as varied had been affirmed by the SSAT; and
 - (b) the application were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made to the AAT for review of the original decision but before the determination of the application, the application is to be treated as if:

Part 4 Review of decisions

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- (a) the SSAT had set aside the original decision and substituted the new decision; and
 - (b) the application were an application for review of the new decision.
- (3) If:
- (a) a person applies to the AAT for review of a decision; and
 - (b) before determination of the application, an officer varies the decision or sets the decision aside and substitutes a new decision;
- the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

181 Review by AAT limited to decisions reviewed by SSAT

The AAT may only review a decision that has been reviewed by the SSAT.

182 Settlement of proceedings before the AAT

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

Subdivision C—Modification of Administrative Appeals Tribunal Act

183 Definition

In this Subdivision:

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

184 Notice of application for review

The AAT Act applies to an application under section 179 for review of a decision as if the reference in subsection 29(11) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the party who made the application under section 179).

185 Parties to a review by the AAT

The AAT Act applies to an application under section 179 for review as if the reference in paragraph 30(1)(b) of the AAT Act to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

186 Lodgment of documents with the AAT

- (1) The AAT Act applies to an application under section 179 for review as if references in section 37 of the AAT Act to the person who made the decision the subject of the application were references to:
 - (a) if the original decision was made by the CEO or an employee of the Agency—the CEO; or
 - (b) in any other case—the Secretary.
- (2) If a person applies to the AAT under section 179 for review of a decision, the Secretary is to be taken to have complied with the Secretary's obligations under paragraph 37(1)(a) of the AAT Act in relation to the decision if the Secretary gives the AAT the prescribed number of copies of the statement prepared by the SSAT under paragraph 177(1)(a).
- (3) Subsection (2) does not limit the powers of the AAT under section 38 of the AAT Act.
- (4) If:
 - (a) a person applies under section 179 for review of a decision; and

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(b) the original decision was made by the CEO or an employee of the Agency;

subsection (2) applies as if references to the Secretary were references to the CEO.

(5) In this section:

original decision means the decision that was reviewed by the SSAT.

187 Power of AAT to obtain additional information

The AAT Act applies to an application under section 179 for review as if references in section 38 of the AAT Act to the person who lodges a statement referred to in paragraph 37(1)(a) of that Act with the AAT were references to the Executive Director.

188 Operation and implementation of the decision under review

- (1) The AAT Act applies to an application under section 179 for review of a decision as if references in subsection 41(4) of the AAT Act to the person who made the decision were references to each party to the review by the SSAT.
- (2) The AAT Act applies to an application under section 179 for review of a decision as if references in section 41 of the AAT Act to the decision to which the relevant proceeding relates were references to:
 - (a) if the SSAT affirmed the original decision—the original decision; or
 - (b) if the SSAT varied the original decision:
 - (i) the original decision as varied by the SSAT; and
 - (ii) the original decision; or
 - (c) if the SSAT set aside the original decision and substituted a new decision:
 - (i) the new decision; and
 - (ii) the original decision; or

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

189 Failure of party to appear

The AAT Act applies to the review of a decision on an application under section 179 as if the reference in subsection 42A(2) of the AAT Act to the person who made the decision were a reference to the Secretary.

190 Limit of AAT power in reviewing a decision

The AAT Act applies to the review of a decision on an application under section 179 as if the reference in subsection 43(1) of the AAT Act to all powers and discretions conferred on the person who made the decision excluded the Secretary's power under subsection 1218A(2) of the 1991 Act.

Part 5—Information management

Division 1—Information gathering

191 Application of Division

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

192 General power to obtain information

The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to the Department if the Secretary considers that the information or document may be relevant to one or more of the following:

- (a) the question whether a person who has made a claim for a social security payment is or was qualified for the payment;
- (b) the question whether a social security payment is payable to a person who is receiving the payment;
- (c) the question whether a social security payment was payable to a person who has received the payment;
- (d) the rate of social security payment that is or was applicable to a person;
- (e) the administration of an agreement between Australia and a foreign country on social security matters;

- (f) the question whether a person who has been granted a concession card is or was qualified for the card;
- (g) the question whether a person who has applied for financial supplement is eligible for the supplement;
- (h) the question whether a person who has obtained a financial supplement is or was eligible for the supplement;
- (i) the determination of the maximum amount of financial supplement that a person is eligible for.

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

The Secretary may require a person who owes a debt to the Commonwealth under or as a result of the social security law or the *Farm Household Support Act 1992*:

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

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

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

- (a) that would help the Department locate another person (the *debtor*) who owes a debt to the Commonwealth under or as a result of the social security law or the *Farm Household Support Act 1992*; or
 - (b) that is relevant to the debtor's financial situation;
- the Secretary may require the person to give the information, or produce the document, to the Department.

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195 Obtaining information to verify claims etc.

- (1) The Secretary may require a person to give information about a class of persons to the Department for any or all of the following purposes:
 - (a) to detect cases in which amounts of social security payment under the social security law have been paid when they should not have been paid;
 - (b) to detect cases in which concession cards have been granted to persons to whom they should not have been granted;
 - (c) to verify the qualification of persons who have made claims for social security payments under the social security law for those payments;
 - (d) to verify the eligibility of persons who have applied for financial supplement.

- (2) The information that the Secretary may require about each person in the class of persons is all or any of the following information (but no other information):
 - (a) full name and any previous name;
 - (b) address;
 - (c) sex;
 - (d) marital status;
 - (e) date of birth;
 - (f) date of death;
 - (g) dates of entries into and departures from Australia;
 - (h) any payments received by the person from the person given the notice, within the period of 52 weeks before the giving of the notice, and the account number of the account into which any of those payments were paid;
 - (i) in relation to a course of study being undertaken by the person:
 - (i) the name of the educational institution that the person is attending;
 - (ii) the name of any educational institution previously attended by the person;
 - (iii) the person's enrolment status;

- (iv) the person's student identification number;
 - (v) the name of the course;
 - (vi) the course code;
 - (vii) the date on which the course started or starts;
 - (viii) the date on which the course ends;
 - (ix) the subject or unit code;
 - (x) the normal full-time study work load for the course;
 - (xi) indicators of the person's work load, including (but not limited to) effective full-time student units, credit points, contact hours, number of subjects undertaken and number of assignments completed;
 - (xii) the number of semesters required to complete the course;
 - (xiii) the date on which the person first attended, or will first attend, the course;
 - (xiv) the date on which the person last attended, or will last attend, the course;
 - (xv) whether the person has discontinued the course and, if the person has discontinued the course, the date on which it happened;
 - (xvi) details of any unapproved absences from the course;
 - (xvii) the results or grade obtained by the person;
 - (j) in relation to any employment of the person by the person given the notice:
 - (i) the date on which the person's employment started; and
 - (ii) the date on which the person's employment ended.
- (3) The Secretary may require information about a particular class of persons whether or not the Secretary is able to identify any of the persons in that class as being:
- (a) persons:
 - (i) who have received; or
 - (ii) who are receiving; or
 - (iii) who have made claims for; social security payments; or
 - (b) persons:

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- (i) who are the holders of concession cards; or
 - (ii) who have made claims for concession cards; or
 - (c) persons who have applied for financial supplement.
- (4) Within 13 weeks after information is given in response to a requirement under subsection (1), the Secretary must decide which (if any) of the information is, or is likely to be, relevant to a matter referred to in subsection (1).
- (5) If the Secretary decides, within the 13 week period, that some or all of the information given in response to the requirement is not, or is not likely to be, relevant to a matter referred to in subsection (1), the Secretary must ensure that any record of the irrelevant information is destroyed.
- (6) If the Secretary has not made a decision under subsection (4) at the end of the 13 week period, the Secretary must ensure that any record of all or any part of the information is destroyed.

196 Written notice of requirement

- (1) A requirement under this Division must be made by written notice given to the person of whom the requirement is made.
- (2) The notice:
- (a) may be given personally or by post or in any other manner approved by the Secretary; and
 - (b) must specify:
 - (i) how the person is to give the information or produce the document to which the requirement relates; and
 - (ii) the period within which the person is to give the information or produce the document to the Department; and
 - (iii) the officer (if any) to whom the information is to be given or the document is to be produced; and
 - (iv) that the notice is given under this section.
- (3) The period specified under subparagraph (2)(b)(ii) must not end earlier than 14 days after the notice is given.

- (4) The notice may require the person to give the information by appearing before a specified officer to answer questions.
- (5) If the notice requires the person to appear before an officer, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the notice is given.

197 Offence—failure to comply with requirement

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

Penalty: Imprisonment for a term not exceeding 12 months.

198 Obligations not affected by State or Territory laws

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

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

that the person is required to give or produce to the Department or an officer for the purposes of the social security law.

Division 2—End-of-employment statements

199 Request for end-of-employment statement

If a person's employment (including employment under a contract for services) ceases, the person may request his or her former employer to give the person a statement, in accordance with a form approved by the Secretary, about that employment.

200 Offence—failure to give end-of-employment statement

If a person makes a request under section 199, the former employer must comply with the request as soon as practicable.

Penalty: Imprisonment for a term not exceeding 12 months.

Division 3—Confidentiality

201 Operation of Division

- (1) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*.
- (2) The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

202 Protection of personal information

- (1) A person may obtain protected information if the information is obtained for the purposes of the social security law, the *Child Care Payments Act 1997* or the *Farm Household Support Act 1992*.
- (2) A person may:
 - (a) make a record of protected information; or
 - (b) disclose such information to any person; or
 - (c) otherwise use such information;if the record, disclosure or use made of the information by the person is made:
 - (d) for the purposes of the social security law, the *Child Care Payments Act 1997* or the *Farm Household Support Act 1992*; or
 - (e) for the purpose for which the information was disclosed to the person under section 207 or 208 of this Act.

203 Offence—unauthorised access to information

- (1) If:
 - (a) a person intentionally obtains information; and
 - (b) the person:

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- (i) is not authorised by or under the social security law or the *Farm Household Support Act 1992* to obtain the information; and
 - (ii) has no other lawful authority to obtain the information; and
 - (c) the person knows or ought reasonably to know that the information is protected information;
- the person is guilty of an offence.
- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not exceeding 2 years.

204 Offence—unauthorised use of protected information

- (1) If:
- (a) a person intentionally:
 - (i) makes a record of; or
 - (ii) discloses to any other person; or
 - (iii) otherwise makes use of; information; and
 - (b) the person is not authorised or required by or under the social security law or the *Farm Household Support Act 1992* to make the record, disclosure or use of the information that is made by the person; and
 - (c) the person knows or ought reasonably to know that the information is protected information;
- the person is guilty of an offence.
- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not exceeding 2 years.

205 Offence—soliciting disclosure of protected information

- (1) If:
- (a) a person (the *first person*) solicits the disclosure of protected information from an officer or another person; and
 - (b) the disclosure would be in contravention of this Division; and

- (c) the first person knows or ought reasonably to know that the information is protected information;
the first person is guilty of an offence, whether or not any protected information is actually disclosed.
- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not exceeding 2 years.

206 Offence—offering to supply protected information

- (1) A person who offers to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information, is guilty of an offence.
- (2) A person who holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information, is guilty of an offence.
- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not exceeding 2 years.
- (4) Nothing in subsection (1) or (2) renders an officer acting in the performance or exercise of his or her duties, functions or powers under the social security law or the *Farm Household Support Act 1992* guilty of an offence.

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

An officer must not, except for the purposes of the social security law, the *Child Care Payments Act 1997* or the *Farm Household Support Act 1992*, be required:

- (a) to produce any document in his or her possession; or
(b) to disclose any matter or thing of which he or she had notice; because of the performance or exercise of his or her duties, functions or powers under the social security law or the *Farm Household Support Act 1992*, to:
(c) a court; or

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- (d) a tribunal; or
 - (e) an authority; or
 - (f) a person;
- having power to require the production of documents or the answering of questions.

208 Disclosure of information by Secretary

- (1) Despite sections 204 and 207, the Secretary may:
 - (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by an officer in the performance of his or her functions or duties or in the exercise of his or her powers under the social security law, the *Child Care Payments Act 1997* or the *Farm Household Support Act 1992* to such persons and for such purposes as the Secretary determines; or
 - (b) disclose any such information:
 - (i) to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or
 - (ii) to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it; or
 - (iii) to a competent authority or competent institution of a foreign country that is a party to a scheduled international social security agreement for any purpose relating to giving effect to that agreement.
- (2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines from time to time in force under section 209.
- (3) In disclosing information under subparagraph (1)(b)(i), the Secretary must act in accordance with guidelines from time to time in force under section 209.

- (4) If an expression used in subsection (1) in relation to a foreign country is defined in a scheduled international social security agreement to which that country is a party, the expression has the same meaning, when used in this section, in relation to that country as it has in the agreement.

209 Guidelines for exercise of Secretary's disclosure powers

- (1) The Minister, by determination in writing:
- (a) is to determine guidelines for the exercise of:
 - (i) the Secretary's power to give certificates for the purposes of paragraph 208(1)(a); and
 - (ii) the Secretary's power under subparagraph 208(1)(b)(ii); and
 - (b) may revoke or vary those guidelines.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

210 Officer's declaration

An officer must make a declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary.

Part 6—Offences

Division 1—Preliminary

211 Application of Part

This Part extends to:

- (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
- (b) all persons, irrespective of their nationality, who are making, or have made, a claim for a social security payment under the social security law; and
- (c) all persons, irrespective of their nationality, who are receiving, or have received, a payment of a social security payment under the social security law.

Division 2—Offences

212 False statement in connection with claim or hardship request

A person must not knowingly or recklessly make a false or misleading statement in connection with, or in support of, the person's or any other person's:

- (a) claim for a social security payment under the social security law; or
- (b) request under paragraph 1129(1)(d) of the 1991 Act that section 1129 of that Act apply to the person; or
- (c) request under paragraph 1131(1)(f) of the 1991 Act that section 1131 of that Act apply to the person; or
- (d) request under paragraph 1132A(1)(b) of the 1991 Act that paragraph 838(1)(d) of that Act not apply to the person.

213 False statement to deceive or affect rates

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

- (a) deceive an officer doing duty in relation to the social security law; or
- (b) affect the rate of a social security payment under the social security law.

214 False statement or document

A person must not knowingly or recklessly:

- (a) make to an officer a statement which is false in any particular; or
- (b) present to an officer a document which is false in any particular.

215 Knowingly obtaining payment that is not payable

A person must not knowingly obtain:

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- (a) payment of a social security payment under the social security law; or
 - (b) payment of an instalment of a social security payment under the social security law;
- which is:
- (c) not payable at all; or
 - (d) only payable in part.

216 Payment knowingly obtained through fraud etc.

A person must not knowingly obtain:

- (a) payment of a social security payment under the social security law; or
 - (b) payment of an instalment of a social security payment under the social security law;
- by means of:
- (c) a false or misleading statement made knowingly or recklessly; or
 - (d) impersonation; or
 - (e) a fraudulent device.

Division 3—Penalties

217 Penalty for contravention of Division 2

A person who contravenes a provision of Division 2 is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

218 Repayment of social security payment

- (1) If a person is convicted of an offence against section 217, the court may:
 - (a) impose a penalty in respect of the offence; and
 - (b) order the person to pay the Commonwealth an amount equal to any amount paid by way of social security payment because of the act, failure or omission that constituted the offence.
- (2) In spite of anything in the social security law or any other law, a person is not to be imprisoned for failing to pay an amount payable to the Commonwealth under paragraph (1)(b).

219 Penalty where person convicted of more than one offence

- (1) Subject to subsection (2), if a person is convicted of more than one offence against section 217, the court may, if it thinks fit, impose one penalty for all the offences.
- (2) A single penalty imposed under subsection (1) must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed for each offence.

Division 4—Procedural matters

220 Joining of charges

Charges against the same person for a number of offences against section 217 may be joined in one complaint, information or declaration if those charges:

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

221 Particulars of each offence

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

222 Trial of joined charges

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

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

223 Evidentiary effect of Secretary's certificate

- (1) For the purposes of paragraph 218(1)(b), a certificate signed by the Secretary is evidence of the matters specified in the certificate.
- (2) Without limiting subsection (1), a certificate may specify:
 - (a) a person; and
 - (b) an amount that has been paid to the person by way of social security payment because of:
 - (i) an act; or
 - (ii) a failure; or

- (iii) an omission; and
- (c) the act, failure or omission that caused the amount to be paid.

224 Enforcement of court certificate as judgment

If:

- (a) a court makes an order under paragraph 218(1)(b), under paragraph 1351(1)(b) of the 1991 Act as in force before 20 March 2000 or under subsection 239(7) of the 1947 Act; and
- (b) the clerk or other appropriate officer of the court gives a certificate specifying:
 - (i) the amount ordered to be paid to the Commonwealth; and
 - (ii) the person by whom the amount is to be paid; and
- (c) the certificate is filed in a court (which may be the court that made the order) that has civil jurisdiction to the extent of the amount to be paid;

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

Division 5—Liability of corporations, employers and principals for offences

Subdivision A—Interpretation

225 State of mind of a person

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

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

226 Director of a corporation

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

227 Conduct

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

228 Offence

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

Subdivision B—Proceedings against corporations

229 State of mind of corporation

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

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

230 Conduct of officer of corporation

If:

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

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

Subdivision C—Proceedings against non-corporations

231 State of mind of individual

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

Part 6 Offences

Division 5 Liability of corporations, employers and principals for offences

Section 232

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

232 Conduct of employee or agent

If:

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

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

233 Exclusion of imprisonment as penalty for certain offences

In spite of any other provision of the social security law, if:

- (a) a person is convicted of an offence; and
- (b) the person would not have been convicted if sections 231 and 232 had not been in force;

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

Part 7—Miscellaneous**234 Delegation**

- (1) Subject to subsection (3), the Secretary may, in writing, delegate to an officer all or any of the powers of the Secretary under the social security law.
- (2) Subject to subsection (3), the Secretary may, in writing and in accordance with service arrangements, delegate to the CEO or an employee of the Agency all or any of the powers of the Secretary under the social security law.
- (3) The Secretary cannot delegate to anyone except the CEO:
 - (a) the Secretary's power under subsection 1218A(2) of the 1991 Act; or
 - (b) the Secretary's power under paragraph 1314(1)(b) of that Act.
- (4) If the Secretary delegates to the CEO the Secretary's power under subsection 1218A(2) or paragraph 1314(1)(b) of the 1991 Act, the CEO cannot, in spite of any provision to the contrary in the Agency Act, delegate the power to an employee of the Agency.
- (5) The Health Secretary may, in writing, delegate to an officer of the Health Department all or any of the powers and functions of the Health Secretary under this Act.
- (6) The Employment Secretary may, in writing, delegate the power of the Employment Secretary under section 28 of the 1991 Act to declare particular programs of work to be programs of work for unemployment payment:
 - (a) to an officer of the Employment Department or the Department of Family and Community Services; or
 - (b) to an employee of the Agency.
- (7) In this section:

Section 235

officer does not include the CEO or an employee of the Agency.

235 Authorised review officers

The Secretary may, in writing, authorise an officer to perform duties as an authorised review officer for the purposes of the social security law.

236 Decisions to be in writing

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

237 Notice of decisions

- (1) If notice of a decision under the social security law is:
 - (a) delivered to a person personally; or
 - (b) left at the address of the place of residence or business of the person last known to the Secretary; or
 - (c) sent by prepaid post to the postal address of the person last known to the Secretary;notice of the decision is taken, for the purposes of the social security law, to have been given to the person.
- (2) Notice of a decision under the social security law may be given to a person by properly addressing, prepaying and posting the document as a letter.
- (3) If notice of a decision is given in accordance with subsection (2), notice of the decision is taken to have been given to the person at the time at which the notice would be delivered in the ordinary course of the post unless the contrary is proved.
- (4) This section only applies to notices of decisions, and nothing in this section affects the operation of sections 28A and 29 of the *Acts Interpretation Act 1901* in relation to other notices under the social security law (for example, a notice that requires a person to inform

the Department about some matter or a notice that requires a person to give the Secretary a statement about some matter).

238 Payments to Commissioner of Taxation

- (1) The Secretary must, in accordance with section 218 of the *Income Tax Assessment Act 1936*, for the purpose of enabling the collection of tax that is, or may become, payable by a recipient of a social security payment:
 - (a) make deductions from the instalments of, or make a deduction from, the social security payment payable to a person; and
 - (b) pay the amount deducted to the Commissioner of Taxation.
- (2) The Secretary must, in accordance with a notice given to the Secretary under section 72AA of the *Child Support (Registration and Collection) Act 1988* in relation to the recipient of a social security pension or a social security benefit:
 - (a) make deductions from the instalments of the pension or benefit payable to the person; and
 - (b) pay the amounts deducted to the Commissioner of Taxation.

239 Judicial notice of certain matters

- (1) All courts are to take judicial notice of a signature that purports to be attached or appended to any official document if the signature is of a person who:
 - (a) holds or has held the office of:
 - (i) Secretary; or
 - (ii) Director-General of Social Security; or
 - (iii) Director-General of Social Services; or
 - (b) is or has been an officer.
- (2) If the signature of a person referred to in subsection (1) purports to be attached or appended to any official document, all courts are to take judicial notice of the fact that the person holds, or has held, an office referred to in subsection (1) or is, or has been, an officer.

Section 240

240 Documentary evidence

- (1) If the signature of any person who:
 - (a) holds or has held the office of:
 - (i) Secretary; or
 - (ii) Director-General of Social Security; or
 - (iii) Director-General of Social Services; or
 - (b) is or has been an officer;purports to be attached or appended to any official document, the document is to be received in all courts as prima facie evidence of the facts and statements contained in it.
- (2) A statement in writing signed by a person referred to in subsection (1) that a person is or was receiving a social security payment under the social security law or the 1947 Act on a certain date at a certain rate is to be received in all courts as prima facie evidence that the person is or was receiving the social security payment on the date, and at the rate, stated.

241 Annual report

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

242 Appropriation

Payments of social security payments under the social security law and payments by the Commonwealth to financial corporations under the Student Financial Supplement Scheme established under Chapter 2B of the 1991 Act are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

243 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act or the 1991 Act to be prescribed; or
 - (b) necessary or convenient for carrying out or giving effect to this Act or the 1991 Act and, in particular, may make regulations prescribing penalties of a fine not exceeding 10 penalty units for any breach of the regulations.
- (2) Without limiting subsection (1), the matters that may be prescribed by regulations include:
 - (a) ways (other than ways involving the use of a document) in which a claim, application, submission, declaration or determination may be made or withdrawn, or information or a notice, statement, certificate, direction or consent may be given, for the purposes of a provision of the social security law; and
 - (b) matters relating to the doing of anything in a way referred to in paragraph (a), including matters relating to proof of the doing of things in such a way.
- (3) The reference in subsection (2) to ways by which something may be made, withdrawn or given includes, but is not limited to:
 - (a) the use of electronic equipment; and
 - (b) ways that involve the use of a telecommunications system.
- (4) Anything made, withdrawn or given in a way prescribed by regulations made by virtue of subsection (2) is taken, for the purposes of the social security law:
 - (a) to have been made, withdrawn or given in writing; and
 - (b) to have been made, withdrawn or given in accordance with the social security law.
- (5) The reference in paragraph (2)(a) to a determination does not include a reference to a determination that is a disallowable instrument.

Part 8—Transitional and saving provisions

244 Construction of references to 1991 Act

A reference in:

- (a) a provision of a law of the Commonwealth or a Territory enacted before 20 March 2000 (whether or not the provision has come into operation); or
- (b) an instrument or a document;

to a provision of the 1991 Act that has been repealed by the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999* is, on and after 20 March 2000, to be construed as a reference to the corresponding provision of this Act.

245 Correspondence of provisions

- (1) If one provision of the 1991 Act and one provision of this Act have the same legal effect, the 2 provisions correspond to each other.
- (2) If:
 - (a) a provision of the 1991 Act has a particular legal effect in relation to a number of payment types; and
 - (b) a provision of this Act has that legal effect in relation to one or more, but not all, of those payment types;the provisions correspond to each other, for the purpose of subsection (1), in relation to the payment types referred to in paragraph (b).
- (3) In this section:

legal effect includes conferring the power to issue an instrument.

payment type means a pension, benefit or allowance.

246 Saving of social security payments and concession cards

- (1) If a determination under the 1991 Act granting a claim for a social security payment or concession card is in force immediately before 20 March 2000, the determination has effect, on and from 20 March 2000, as if it were a determination under this Act granting a claim for the payment or card.
- (2) If a determination under the 1991 Act directing the making of a payment of a social security payment is in force immediately before 20 March 2000, the determination has effect, on and from 20 March 2000, as if it were a determination under this Act directing the making of a payment of the social security payment.

247 Saving of instruments under 1991 Act

- (1) An instrument that was in force, immediately before 20 March 2000, under a provision of the 1991 Act that is amended or repealed by the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999* has effect, on and from 20 March 2000, as if it were an instrument made under the corresponding provision of this Act.
- (2) Without limiting subsection (1), the instrument may be:
 - (a) a determination; or
 - (b) a direction; or
 - (c) an approval; or
 - (d) a notice; or
 - (e) a declaration; or
 - (f) an authorisation.
- (3) Subsection (1) does not apply to:
 - (a) a determination to which section 246 applies; or
 - (b) a delegation under section 1299 of the 1991 Act.
- (4) If an instrument to which subsection (1) applies was, when made, to have effect only for a limited period, the instrument has effect under subsection (1) only for so much of the period as had not already expired before 20 March 2000.

Section 248

248 Saving of claims for social security payments and concession cards

(1) If:

(a) a person has lodged a claim for a social security payment or a concession card under the 1991 Act before 20 March 2000; and

(b) the claim has not been determined before 20 March 2000; the claim has effect, on and from 20 March 2000, as if it were a claim under this Act for the payment or card.

(2) If:

(a) subsection (1) applies to a claim; and

(b) the claim is granted under this Act;

the determination granting the claim may have a date of effect before 20 March 2000.

(3) If:

(a) subsection (1) applies to a claim; and

(b) the claim is granted under this Act; and

(c) the determination granting the claim has a date of effect before 20 March 2000;

the payment of instalments during the period that starts on the date of effect of the determination and ends on 19 March 2000 is taken to be made under this Act and the person making the claim has no rights under the 1991 Act arising from the claim.

249 Transitional instalment period

If:

(a) an instalment period relating to an instalment of a social security payment payable to a person under the 1991 Act commenced before 20 March 2000; and

(b) the instalment period would have ended after 20 March 2000; this Act has effect in relation to that period and that instalment as if:

(c) this Act had been in force throughout the whole of the instalment period; and

- (d) the instalment period had been a period determined under subsection 43(1) of this Act.

250 Application for amount owing at recipient's death

If:

- (a) before 20 March 2000, a person made an application under a provision of the 1991 Act that relates to the payment of a social security payment after a person has died; and
- (b) the application was not determined before 20 March 2000;

then:

- (c) the application has effect, on and from 20 March 2000, as if it had been made under the corresponding provision of this Act and:
- (d) this Act has effect as if the amount in respect of which the application was made were an amount payable under this Act; and
- (e) the application has no effect for the purposes of the 1991 Act.

251 Power to obtain information about events etc. before 20 March 2000

If a provision of this Act gives the Secretary power to request a person to give information or produce a document, the power extends to requesting a person:

- (a) to give information about matters that arose before 20 March 2000; or
- (b) to produce a document that came into existence, or relates to matters that arose, before 20 March 2000.

252 Unfinished reviews by Secretary

(1) If:

- (a) a person made an application under section 1240 of the 1991 Act before 20 March 2000; and
 - (b) the application was not determined before 20 March 2000;
- the application has effect, from 20 March 2000, as if it were an application under section 129 of this Act.

Section 253

- (2) The date of effect of the decision made in response to the application may be before 20 March 2000.
- (3) If:
 - (a) subsection (1) applies to an application; and
 - (b) the date of effect of the decision made in response to the application is before 20 March 2000;the decision has effect, for the period that starts on the date of effect of the decision and ends on 19 March 2000, as if it were a decision made under the 1991 Act.

253 Unfinished reviews by SSAT

- (1) If:
 - (a) a person made an application under section 1247 of the 1991 Act before 20 March 2000; and
 - (b) the application was not determined before 20 March 2000;the application has effect, on and from 20 March 2000, as if it were an application under section 142 of this Act.
- (2) The date of effect of the decision made in response to the application may be before 20 March 2000.
- (3) If:
 - (a) subsection (1) applies to an application; and
 - (b) the date of effect of the decision made in response to the application is before 20 March 2000;the decision has effect, for the period that starts on the date of effect of the decision and ends on 19 March 2000, as if it were a decision made under the 1991 Act.

254 Unfinished reviews by AAT

- (1) If:
 - (a) a person made an application under section 1283 of the 1991 Act before 20 March 2000; and
 - (b) the application was not determined before 20 March 2000;

the application has effect, on and from 20 March 2000, as if it were an application under section 179 of this Act.

- (2) The date of effect of the decision made in response to the application may be before 20 March 2000.
- (3) If:
 - (a) subsection (1) applies to an application; and
 - (b) the date of effect of the decision made in response to the application is before 20 March 2000;the decision has effect, for the period that starts on the date of effect of the decision and ends on 19 March 2000, as if it were a decision made under the 1991 Act.

255 Saving of steps in review process

If:

- (a) a person made an application under section 1240, 1247 or 1283 of the 1991 Act before 20 March 2000; and
 - (b) the application was not determined before 20 March 2000;
- anything done under, or for the purposes of, a provision of the 1991 Act before 20 March 2000 has effect, on and after that date, as if it had been done under, or for the purposes of, the corresponding provision of this Act.

256 Entitlements and liabilities

- (1) Subsection (2) applies to an amount that:
 - (a) would have been payable on or after 20 March 2000; and
 - (b) represents an entitlement that arose before 20 March 2000 under a provision of the 1991 Act as in force before that date.
- (2) For the purposes of section 242, an amount to which this subsection applies is taken to be payable, on and after 20 March 2000, under the social security law.
- (3) A debt due under the 1991 Act before 20 March 2000 and remaining unpaid on that date is taken to be a debt due under the social security law.

Section 257

257 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters in relation to any transitional matters (including prescribing any saving or application provisions) arising out of the enactment of this Act.
- (2) Without limiting subsection (1), and in spite of any other provision of this or any other Act, regulations made by virtue of subsection (1) may:
 - (a) modify the effect of a provision of this Part (other than this section); or
 - (b) substitute another provision for any provision of this Part (other than this section); or
 - (c) add a provision to this Part (other than this section).

Part 9—Temporary rounding-off provisions

258 Rounding off instalment of social security pension or benefit

- (1) In this section:

instalment means an instalment of a social security pension or benefit.

- (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.

259 Rounding off instalments of family allowance

If the amount of an instalment of family allowance would not be a multiple of 5 cents, the amount is to be increased to the nearest amount that is a multiple of 5 cents.

260 Cessation of operation of Part

This Part ceases to have effect immediately before the commencement of section 54.

Schedule 1—Dictionary

Note: See section 3.

1 Definitions

(1) In this Act:

1991 Act means the *Social Security Act 1991*.

AAT means the Administrative Appeals Tribunal.

authorised review officer means an officer authorised under section 235 to perform duties as an authorised review officer for the purposes of the social security law.

concession card means a seniors health card.

social security periodic payment means:

- (a) a social security benefit; or
- (b) a social security pension; or
- (c) carer allowance; or
- (d) family allowance; or
- (e) family tax payment; or
- (f) double orphan pension; or
- (g) mobility allowance; or
- (h) non-benefit PP (partnered); or
- (i) pensioner education supplement.

SSAT means the Social Security Appeals Tribunal.

transfer day, in relation to a transferee to a social security pension or benefit, has the meaning given by subclause (2).

transferee, in relation to a social security pension or benefit, has the meaning given by subclause (2).

(2) If:

Clause 1

- (a) a social security pension or benefit (the *old payment*) ceases to be payable to a person otherwise than because another social security payment becomes payable to the person; and
 - (b) immediately after the old payment ceases to be payable, the person is qualified for another social security pension or benefit (the *new payment*); and
 - (c) the person makes a claim for the new payment;
- the person is a transferee to the new payment and the person's transfer day is the day that immediately follows the last day on which the old payment is payable to the person.

Clause 1

Schedule 2—Rules for working out start day

Note: See section 42.

Part 1—Introductory

1 Definitions

In this Schedule, unless the contrary intention appears:

benefit means a social security benefit.

pension means a social security pension.

2 Different start days under Parts 2 and 3

(1) If:

(a) but for this subclause, a person would have a start day under Part 2 of this Schedule in relation to a social security payment and would also have a start day under Part 3 of this Schedule in relation to the same payment; and

(b) the start day under Part 3 would be earlier than the start day under Part 2;

the day worked out under Part 3 is the person's start day in relation to the social security payment.

(2) If, but for this subclause, a person would have 2 start days under Part 3 of this Schedule in relation to the same social security payment, one day earlier than the other, the earlier day is the person's start day under Part 3 in relation to the social security payment.

(3) If:

(a) 2 or more clauses of Part 3 of this Schedule apply to the working out of a person's start day in relation to a social security payment; and

(b) the person's start day under both or all of those clauses is the same day;

Clause 2

that day is the person's start day under Part 3 in relation to the social security payment.

Part 2—General rules

3 Start day—general rule

If:

- (a) a person makes a claim for a social security payment; and
- (b) the person is qualified for the payment on the day on which the claim is made;

the person's start day in relation to the payment is the day on which the claim is made.

4 Start day—early claim

(1) If:

- (a) a person (other than a detained person) makes a claim for a relevant social security payment; 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 to be made on the first day on which the person is qualified for the social security payment.

(2) For the purposes of subclause (1), the following provisions have effect:

- (a) subject to paragraph (b), any social security payment, other than newstart allowance or special benefit, is a relevant social security payment;
- (b) family allowance, family tax payment, maternity allowance, maternity immunisation allowance or parenting payment is not a relevant social security payment in the case of a person who becomes qualified for the allowance or payment because of the birth of a child.

- (3) If:
- (a) a detained person makes a claim for a social security payment; and
 - (b) the person is not, on the day on which the claim is made, qualified for the payment; and
 - (c) the person becomes qualified for the payment within 3 weeks after the claim is made;
- the claim is taken to be made on the first day on which the person is qualified for the payment.
- (4) Subclause (3) does not have effect in relation to a claim for a crisis payment or for a social security pension or benefit.
- (5) If:
- (a) a person makes a claim for a newstart allowance; and
 - (b) the person is in receipt of youth allowance or austudy payment; and
 - (c) the claim is made not earlier than 4 weeks before the day on which, in the opinion of the Secretary, the person will become qualified for a newstart allowance;
- the claim is taken to be made on the day on which the person becomes qualified for that allowance.
- (6) If:
- (a) a person makes a claim for a newstart allowance or youth allowance; and
 - (b) when the claim is made, the person is serving a liquid assets test waiting period;
- the claim is taken to be made on the first day on which the person is qualified for a newstart allowance or youth allowance, as the case may be.
- (7) In this clause:
- detained person*** means a person who:
- (a) is in gaol; or
 - (b) is undergoing psychiatric confinement because the person has been charged with an offence.

Clause 5

5 Effect of exclusion period

- (1) If, on the day that would, but for this clause, be a person's start day under this Schedule in relation to a social security payment, the person is subject to one or more exclusion periods, the person's start day in relation to the payment is worked out as follows:
- (a) if the person is subject to one exclusion period—the start day is the first day after the end of that period;
 - (b) if the person is subject to 2 or more exclusion periods—the start day is the first day after all the periods have ended.
- (2) In this clause:

exclusion period means a period during which, because of a provision of the social security law, a social security payment that would otherwise be payable to a person is not payable to the person, including:

- (a) a waiting period; and
- (b) a non-payment period; and
- (c) a compensation preclusion period; and
- (d) a period during which a person is in gaol.

6 Saving

Nothing in this Schedule operates to make a social security payment payable to a person on a day on which, because of another provision of the social security law, the payment is not payable to the person.

Part 3—Backdated start day

Division 1—Explanatory

7 Explanation of Part

In some circumstances, a person's start day in relation to a social security payment may be earlier than the day worked out under Part 2 of this Schedule. This Part contains rules that enable the start day to be worked out in those circumstances.

Division 2—Rules applying to all or most social security payments

8 Claim made soon after partner's claim

If:

- (a) a person makes a claim for a social security benefit or pension within 14 days after the person's partner makes a claim for a social security benefit or pension; and
 - (b) the person's claim and the partner's claim are both granted;
- the person's start day in relation to the benefit or pension is the first day on which the person is qualified for the pension or benefit in the period starting on the partner's start day in relation to the pension or benefit granted to the partner and ending on the day on which the person made the claim for the pension or benefit.

9 Claim by transferee

(1) If:

- (a) a person is a transferee to a benefit or pension; and
 - (b) the person makes a claim for the benefit or pension within 14 days after the day that is the person's transfer day in relation to the benefit or pension;
- the transfer day is also the person's start day in relation to the benefit or pension.

(2) If:

- (a) a person is a transferee to a benefit or pension; and
- (b) the person makes a claim for the benefit or pension more than 14 days, but not more than 13 weeks, after the person's transfer day; and
- (c) the Secretary determines that:
 - (i) during the period beginning on the person's transfer day and ending on the day on which the person made the claim, the person suffered from an illness or from an incapacity due to a medical condition; and

- (ii) the illness or incapacity was the sole or principal cause of the person's failure to make the claim within 14 days after the person's transfer day;
the person's transfer day is also the person's start day in relation to the benefit or pension.

10 Claim soon after childbirth

If a woman makes a claim for a social security payment within 4 weeks after giving birth to a child, the woman's start day in relation to the payment is the first day on which the woman is qualified for the payment in the period starting on the birth of the child and ending on the day on which the claim is made.

11 Incapacitated claimant

- (1) If:
- (a) a person becomes incapacitated for work as a result of a medical condition; and
 - (b) the person makes a claim for a benefit or pension within 5 weeks after the day on which the incapacity begins; and
 - (c) the person continues to suffer the medical condition from the day on which the incapacity begins until the claim is made;
- the person's start day in relation to the benefit or pension is the first day on which the person was qualified for the benefit or pension in the period starting on the day on which the incapacity began and ending on the day on which the claim was made.
- (2) If:
- (a) a person becomes incapacitated for work as a result of a medical condition; and
 - (b) the person makes a claim for a benefit or pension more than 5 weeks after the day on which the incapacity begins; and
 - (c) the Secretary is satisfied that:
 - (i) the person has continued to suffer the medical condition from the day on which the incapacity began until the claim was made; and

Schedule 2 Rules for working out start day

Part 3 Backdated start day

Division 2 Rules applying to all or most social security payments

Clause 12

- (ii) the medical condition was the sole or principal cause of the person's failure to make the claim within 5 weeks after the day on which the incapacity began;

the person's start day in relation to the pension or benefit is the first day on which the person was qualified for the benefit or pension in the period of 4 weeks ending immediately before the day on which the claim was made.

12 Claim after death of partner

If:

- (a) a person's partner dies; and
- (b) the person makes a claim for a social security payment within 4 weeks after the death of the partner;

the person's start day in relation to the payment is the first day on which the person was qualified for the payment in the period starting on the day on which the partner died and ending on the day on which the claim was made.

13 Claim for social security payment following claim for disaster relief payment

If a person:

- (a) is qualified for a disaster relief payment; and
- (b) makes a claim for the payment; and
- (c) within 14 days after making that claim, makes a claim for another social security payment;

the person's start day in relation to that other social security payment is the day on which the person became qualified for the disaster relief payment.

14 Claim where Part 3.14A of the 1991 Act applies

(1) If:

- (a) a person, or a person's partner, has reached pension age; and
- (b) Part 3.14A of the 1991 Act applies to the person or the person's partner because of a transfer of qualifying interests by the person or the person's partner; and

- (c) the transfer was completed on or after 20 March 2000 but before 15 September 2000; and
- (d) the person makes a claim for a social security payment within the period of 3 months starting on the day on which the transfer was completed;

the claimant's start day in relation to the social security payment is:

- (e) the day on which the transfer was completed; or
- (f) the day on which the person becomes qualified for the social security payment;

whichever is later.

(2) If:

- (a) a person, or a person's partner, has reached pension age; and
- (b) Part 3.14A of the 1991 Act applies to the person or the person's partner because of a transfer of qualifying interests by the person or the person's partner; and
- (c) the transfer was completed on or after 15 September 2000; and
- (d) the person makes a claim for a social security payment;

the claimant's start day in relation to the social security payment is the day on which the claim is made.

Clause 15

Division 3—Rules applying to particular social security payments

15 Certain persons subject to cancellation of austudy payment, newstart allowance or youth allowance

If:

- (a) a person receives an austudy payment, a newstart allowance or a youth allowance; and
- (b) either:
 - (i) the person is subject to an administrative exclusion because of the operation of section 551C or 577C of the 1991 Act or section 630C or 631 of that Act applies; or
 - (ii) an administrative rate reduction period applies to the person and the person's administrative breach reduced rate is nil; and
- (c) payment of the payment or allowance is cancelled; and
- (d) the person lodges a claim for an austudy payment, a newstart allowance or youth allowance within 14 days after the day (the *cancellation day*) on which the cancellation of the payment or allowance referred to in paragraph (a) takes effect;

the person's start day in relation to the payment or allowance to which the claim referred to in paragraph (d) relates is the day after the cancellation day.

16 Carer allowance for disabled child or children

(1) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for 2 care receivers who are disabled children; and
- (b) the person makes a claim for carer allowance within 52 weeks after the day on which the person became qualified for the allowance;

the person's start day in relation to the allowance is the day on which the person became qualified for carer allowance.

(2) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for 2 care receivers who are disabled children; and
- (b) the person makes a claim for carer allowance more than 52 weeks after the day on which the person became qualified for the allowance;

the person's start day in relation to the allowance is the first day of the period of 52 weeks ending immediately before the day on which the claim was made.

17 Carer allowance for disabled adult

(1) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled adult in circumstances where the disability affecting the adult is due to an acute onset; and
- (b) the person makes a claim for carer allowance within 26 weeks after the day on which the person became qualified for the allowance in the circumstances mentioned in paragraph (a);

the person's start day in relation to the allowance is the day on which the person became qualified for carer allowance in the circumstances mentioned in paragraph (a).

(2) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled adult in circumstances where the disability affecting the adult is due to an acute onset; and
- (b) the person makes a claim for carer allowance more than 26 weeks after the day on which the person became qualified for the allowance in the circumstances mentioned in paragraph (a);

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the person's start day in relation to the allowance is the first day of the period of 26 weeks ending immediately before the day on which the claim was made.

18 Double orphan pension

If:

- (a) a person (the *claimant*) is qualified for a double orphan pension for a young person; and
- (b) the claimant makes a claim for double orphan pension for the young person within 13 weeks after the birth of the young person;

the claimant's start day in relation to the pension is the first day on which the person was qualified for the pension in the period starting on the day of the young person's birth and ending on the day on which the claim was made.

19 Double orphan pension—claim following death of former recipient

If:

- (a) a person (the *former recipient*) who is receiving double orphan pension for a young person dies; and
- (b) another person (the *claimant*) makes a claim for double orphan pension for the young person within 13 weeks after the death of the former recipient;

the claimant's start day in relation to the double orphan pension is the first day on which the claimant was qualified for the pension in the period starting on the day of the former recipient's death and ending on the day on which the claim was made.

20 Family allowance

If:

- (a) a person has an FA child; and
- (b) the person makes a claim for a family allowance for the child; and

(c) the claim is made within 13 weeks after the day on which the child became an FA child of the person;
the person's start day in relation to the allowance is the first day on which the person was qualified for the allowance in the period starting on the day on which the child became a dependent child of the person and ending on the day on which the claim was made.

21 Family allowance to an approved care organisation

If:

- (a) a young person becomes an FP child of an approved care organisation; and
- (b) the organisation makes a claim for family allowance for the young person within 4 weeks after the day on which the young person became an FP child of the organisation;
the organisation's start day in relation to the allowance is the first day on which the organisation was qualified for the payment in the period starting on the day referred to in paragraph (b) and ending on the day on which the claim was made.

22 Family allowance—carer allowance also payable

- (1) This clause applies if:
 - (a) a person who is qualified for family allowance makes a claim for family allowance; and
 - (b) an FA child of the person is also a disabled child, or one of 2 disabled children, in respect of whom the person is qualified for carer allowance under section 953 or 954 of the 1991 Act; and
 - (c) either:
 - (i) the person's start day in relation to carer allowance is the day determined under clause 15 of this Schedule; or
 - (ii) child disability allowance was payable to the person for the child or children from a day determined in accordance with section 959 or 960 of the 1991 Act as in force at any time before 1 July 1999.

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Clause 23

- (2) If the person makes the claim for family allowance within 52 weeks after the day on which he or she became qualified for family allowance, the person's start day in relation to the family allowance is the day on which he or she became so qualified.
- (3) If the person makes the claim for family allowance more than 52 weeks after the day on which he or she became qualified for family allowance, the person's start day in relation to family allowance is the first day on which the person was qualified for the allowance in the period of 52 weeks ending immediately before the day on which the claim for family allowance was made.

23 Family allowance—claim relating to youth allowance claimant

If:

- (a) a person (the *youth allowance claimant*) makes a claim for youth allowance (the *initial claim*); and
- (b) on the day on which the initial claim is made, another person is qualified for family allowance for the youth allowance claimant; and
- (c) that person subsequently makes a claim for family allowance in respect of the youth allowance claimant; and
- (d) the Secretary is satisfied that it is reasonable for this clause to apply to that person;

the person's start day in relation to family allowance is the day on which the initial claim is made.

24 Family allowance—claim following death of former recipient

If:

- (a) a person (the *former recipient*) who is receiving family allowance for a young person dies; and
- (b) another person (the *claimant*) makes a claim for family allowance for the young person within 13 weeks after the death of the former recipient;

the claimant's start day in relation to the family allowance is the first day on which the claimant was qualified for the allowance in

the period starting on the day of the former recipient's death and ending on the day on which the claim was made.

25 Family tax payment

If:

- (a) a person has an FTP child; and
- (b) the person makes a claim for a family tax payment; and
- (c) the claim is made within 13 weeks after the day on which the child became an FTP child of the person;

the person's start day in relation to the payment is the first day on which the person was qualified for the payment in the period starting on the day on which the child became an FTP child of the person and ending on the day on which the claim was made.

26 Family tax payment—carer allowance payable

(1) If:

- (a) a person who is qualified for family tax payment makes a claim for family tax payment within 13 weeks after the day on which he or she became so qualified; and
- (b) an FTP child of the person is also a disabled child, or one of 2 disabled children, in respect of whom the person is qualified for carer allowance under section 953 or 954 of the 1991 Act; and
- (c) either:
 - (i) the person's start day in relation to carer allowance is the day on which the person made a claim for carer allowance; or
 - (ii) child disability allowance was payable to the person for the child or children from a day determined in accordance with section 958 of the 1991 Act as in force at any time before 1 July 1999;

the person's start day in relation to the family tax payment is the first day on which the person was qualified for the payment.

(2) If:

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Clause 27

- (a) a person who is qualified for family tax payment makes a claim for family tax payment more than 13 weeks after the day on which the person became qualified for the payment; and
- (b) an FTP child of the person is also a disabled child, or one of 2 disabled children, in respect of whom the person is qualified for carer allowance under section 953 or 954 of the 1991 Act; and
- (c) either:
 - (i) the person's start day in relation to carer allowance is the day on which the person made a claim for carer allowance; or
 - (ii) child disability allowance was payable to the person for the child or children from a day determined in accordance with section 958 of the 1991 Act as in force at any time before 1 July 1999;

the person's start day in relation to the family tax payment is the first day on which the person was qualified for the payment in the period of 13 weeks ending immediately before the day on which the claim for family tax payment was made.

27 Family tax payment—claim following death of former recipient

If:

- (a) a person (the *former recipient*) who is receiving family tax payment for a young person dies; and
- (b) another person makes a claim for family tax payment in respect of the young person within 13 weeks after the death of the former recipient;

the claimant's start day in relation to the family tax payment is the first day on which the claimant was qualified for the payment in the period starting on the day of the former recipient's death and ending on the day on which the claim was made.

28 Newstart allowance—claimant for disability support pension

If:

- (a) a person makes a claim for a newstart allowance; and

(b) the person is qualified for a newstart allowance under subsection 593(1B) of the 1991 Act;
the person's start day in relation to the newstart allowance is the day on which the person made the claim for a disability support pension referred to in paragraph 593(1B)(d) of that Act.

29 Parenting payment

If:

- (a) a person has a PP child; and
- (b) the person makes a claim for parenting payment within 4 weeks after the day on which the child became a PP child of the person;

the person's start day in relation to the parenting payment is the first day on which the person was qualified for the payment in the period starting on the day on which the child became a dependent child of the person and ending on the day on which the claim was made.

30 Pensioner education supplement

If:

- (a) a person makes a claim for a pensioner education supplement; and
- (b) when the claim is made, the person is qualified for the supplement; and
- (c) the claim is made within 4 weeks after the person became qualified for the supplement;

the person's start day in relation to the pensioner education supplement is the day on which the person became qualified for the supplement.

31 Pensioner education supplement: claim before 1 April

If:

- (a) a person makes a claim for a pensioner education supplement after the beginning of a calendar year but before 1 April in that year; and

Schedule 2 Rules for working out start day

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Clause 32

(b) the person's course of education is a full year course that begins before 1 April in that year;
the person's start day in relation to the pensioner education supplement is 1 January in that year.

32 Pensioner education supplement: claim before 1 August

If:

- (a) a person makes a claim for a pensioner education supplement after the beginning of a calendar year but before 1 August in that year; and
- (b) the person's course of education is a full year course that starts in the month of July in that year;
the person's start day in relation to the pensioner education supplement is 1 July in that year.

33 Sickness allowance: incapacitated claimant

If:

- (a) a person stops receiving sickness allowance because the person fails to give the Secretary a certificate referred to in paragraph 669(5)(b) of the 1991 Act before the end of the person's maximum allowance period; and
- (b) the sole or principal cause of the person's failure is either:
 - (i) the person's medical condition; or
 - (ii) an act or omission of an officer of the Department; and
- (c) after the end of the person's maximum allowance period, the person makes a claim for sickness allowance in respect of the incapacity for which the allowance was previously granted;
the person's start day in relation to the sickness allowance is the first day on which the person was qualified for the allowance after the end of the person's maximum allowance period but not earlier than 4 weeks before the day on which the claim was made.

34 Youth allowance: incapacitated claimant

If:

- (a) a person who is undertaking a course of full-time study becomes incapacitated for study as a result of a medical condition; and
 - (b) the person makes a claim for a youth allowance within 5 weeks after the day on which the incapacity begins; and
 - (c) the person continues to suffer the medical condition from the day on which the incapacity begins until the claim is made;
- the person's start day in relation to the youth allowance is the first day on which the person was qualified for youth allowance in the period starting on the day on which the incapacity began and ending on the day on which the claim was made.

35 Youth allowance—claimant for disability support pension

If:

- (a) a person makes a claim for a youth allowance; and
- (b) the person is qualified for a youth allowance under subsection 540A(1) of the 1991 Act;

the person's start day in relation to the youth allowance is the day on which the person made the claim for a disability support pension referred to in paragraph 540A(1)(c) of that Act.

36 Youth allowance—initial claim for family allowance

If:

- (a) a claim is made for family allowance in respect of a person (the *initial claim*); and
- (b) on the day on which the initial claim is made, the person is qualified for youth allowance; and
- (c) the person afterwards makes a claim for youth allowance; and
- (d) the Secretary is satisfied that it is reasonable for this clause to apply to the person;

the person's start day in relation to youth allowance is the day on which the initial claim was made.

Clause 1

Schedule 3—Constitution and membership of the Social Security Appeals Tribunal

Note: See section 139.

Part 1—Membership of the SSAT

1 Composition of the SSAT

The SSAT consists of the following members:

- (a) an Executive Director; and
- (b) such number of Directors as are appointed in accordance with this Act; and
- (c) such number of other members as are appointed in accordance with this Act.

2 The Executive Director

- (1) The Executive Director is responsible for the overall operation and administration of the SSAT.
- (2) The Executive Director is to:
 - (a) monitor the operations of the SSAT; and
 - (b) take reasonable steps to ensure that decisions of the SSAT are consistent; and
 - (c) take reasonable steps to ensure that the SSAT efficiently and effectively performs its functions.
- (3) The Executive Director may give directions:
 - (a) for the purpose of increasing the efficiency of the operations of the SSAT; and
 - (b) as to the arrangement of the business of the SSAT.

3 Appointment of members

- (1) A member of the SSAT is to be appointed by the Governor-General.

- (2) The Executive Director is to be appointed as a full-time member.
- (3) Any other member may be appointed either as a full-time member or as a part-time member.

4 Period of appointment

- (1) Subject to this Schedule, a member holds office for such period as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) The period specified under subclause (1) must not exceed:
 - (a) in the case of the Executive Director—5 years; and
 - (b) in any other case—3 years.

5 Conditions of appointment

A member of the SSAT holds office on such terms and conditions (if any) in respect of matters not provided for by this Schedule as are determined by the Governor-General in writing.

6 Acting appointment: Executive Director

- (1) The Governor-General may appoint a person to act as Executive Director:
 - (a) during a vacancy in the office of Executive Director, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Executive Director is absent from duty or from Australia or is, for any reason, unable to perform the duties of his or her office.
- (2) The Minister may appoint a person to act as Executive Director:
 - (a) during a vacancy in the office of Executive Director, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Executive Director is absent from duty or from Australia or is, for any reason, unable to perform the duties of his or her office.

Clause 7

7 Acting appointments: Directors and other members

- (1) The Governor-General may appoint a person to act as a Director or a member referred to in paragraph 1(c) of this Schedule:
 - (a) in the place of a person who has ceased to be a Director or such a member; or
 - (b) in the place of a Director or such a member during any period, or during all periods, when the Director or member is absent from duty or from Australia or is, for any reason, unavailable to perform the duties of his or her office.
- (2) The Minister may appoint a person to act as a Director or a member referred to in paragraph 1(c) of this Schedule:
 - (a) in the place of a person who has ceased to be a Director or such a member; or
 - (b) in the place of a Director or such a member during any period, or during all periods, when the Director or member is absent from duty or from Australia or is, for any reason, unavailable to perform the duties of his or her office.
- (3) A person appointed to act under subclause (1) or (2) must not continue to act for more than 12 months.

8 Extension of acting appointments

- (1) If a person has been appointed under subclause 6(1) or paragraph 7(1)(b), the Governor-General may direct that the person is to continue to act in the appointment after the normal terminating event occurs.
- (2) If a person has been appointed under subclause 6(2) or paragraph 7(2)(b), the Minister may direct that the person is to continue to act in the appointment after the normal terminating event occurs.
- (3) A direction under subclause (1) or (2) must specify the period during which the person may continue to act in the appointment.
- (4) The period specified in accordance with subclause (3) may be specified by reference to the happening of a particular event or the existence of particular circumstances.

- (5) A direction under subclause (1) or (2):
 - (a) is to be given only if there is a pending review or other special circumstances justifying the giving of the direction; and
 - (b) may only be given before the normal terminating event occurs.
- (6) A person continuing to act in accordance with a direction under subclause (1) or (2) must not continue to act for more than 12 months after the normal terminating event occurs.
- (7) For the purposes of this clause, the normal terminating event for an appointment under clause 6 or 7 is:
 - (a) if the appointment is made under paragraph 6(1)(a) or (2)(a)—the filling of the vacancy in the office of Executive Director; or
 - (b) if the appointment is made under paragraph 6(1)(b) or (2)(b)—the Executive Director ceasing to be absent or ceasing to be unable to perform the duties of his or her office; or
 - (c) if the appointment is made under paragraph 7(1)(b)—the Director or member ceasing to be absent or ceasing to be unable to perform the duties of his or her office; or
 - (d) if the appointment is made under paragraph 7(2)(b)—the Director or member ceasing to be absent or ceasing to be unable to perform the duties of his or her office.

9 Effect of acts done by persons appointed to act

- (1) If the SSAT as constituted for the purposes of a review includes a person acting or purporting to act by virtue of an appointment under clause 6 or 7, any decision of, or any direction given or any other act done by, the SSAT as so constituted is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or

Clause 9

- (d) the occasion for the person to act had not arisen or had ceased.
- (2) Anything done by or in relation to a person purporting to act by virtue of an appointment under clause 6 or 7 is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Part 2—Organisation of the business of the SSAT

10 Constitution of SSAT for each hearing

- (1) Subject to clause 11, the Executive Director may give written directions as to the members who are to constitute the SSAT for the purposes of:
 - (a) a particular review; or
 - (b) reviews of a particular kind.
- (2) Without limiting subclause (1), the Executive Director may give a direction under that subclause as to the members who are to constitute the SSAT for the purposes of all reviews, or reviews of a particular kind, that are listed for hearing at a particular place during a particular period or during particular periods.
- (3) For the purposes of a review, the SSAT is to be constituted by the members ascertained in accordance with the directions given under subclause (1).

11 Number of members for hearings

The maximum number of members to constitute the SSAT for the purposes of a review is 4.

12 Member unavailable to complete review

- (1) If the hearing of a review of a decision has been commenced or completed by the SSAT constituted by 2 or more members but, before the matter to which the proceeding relates has been determined, one of the members constituting the SSAT for the purposes of the review has:
 - (a) ceased to be a member; or
 - (b) ceased to be available for the purposes of the review;the following provisions have effect:
 - (c) if the SSAT was constituted by 2 or more members and the Executive Director does not give a direction under clause 7

Clause 12

reconstituting the SSAT for the purposes of the review—the hearing and determination, or the determination, of the review may be completed by the SSAT constituted by the remaining member or members;

- (d) in any other case—the proceeding must be reheard by the SSAT as constituted in accordance with the directions of the Executive Director under clause 11.
- (2) If a review is reheard by the SSAT, the SSAT may, for the purposes of that review, have regard to any record of the proceedings before the SSAT as previously constituted.
- (3) The reference in subclause (2) to a record of proceedings includes a reference to a record of any evidence taken in the proceeding.

Part 3—Administrative matters

13 Remuneration and allowances of members

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of a member's remuneration by the Remuneration Tribunal is in operation, the member is to be paid such remuneration as is prescribed.
- (3) This clause has effect subject to the *Remuneration Tribunal Act 1973*.

14 Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, a member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Executive Director leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (3) The Executive Director may grant another full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (4) A determination under subclause (2) or (3) must be in writing.

15 Approval to engage in outside employment

- (1) The Executive Director may approve another full-time member's engaging in paid employment outside the duties of the member's office.

Clause 16

- (2) The Minister may give the Executive Director directions as to the exercise of the Executive Director's power under subclause (1), and the Executive Director must comply with any such directions.
- (3) A direction under subclause (2) must be in writing.

16 Resignation

A member may resign his or her office by writing signed by the member and delivered to the Minister.

17 Removal from office

- (1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.
- (2) The Minister may suspend a member from office on the ground of proved misbehaviour or physical or mental incapacity.
- (3) If the Minister suspends a member from office, the Governor-General may, on the recommendation of the Minister:
 - (a) remove the member from office; or
 - (b) direct that the suspension continue for such further period as the Governor-General specifies; or
 - (c) direct that the suspension terminate.
- (4) The suspension of a member from office under this clause does not affect any entitlement of the member to be paid remuneration and allowances.
- (5) The Governor-General may remove a member from office if:
 - (a) the member becomes bankrupt; or
 - (b) the member applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) the member compounds with the member's creditors; or
 - (d) the member makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (e) the member is a full-time member and:

- (i) engages, except in accordance with an approval under clause 15, in paid employment outside the duties of the member's office; or
 - (ii) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; or
 - (f) the member fails, without reasonable excuse, to comply with the member's obligations under clause 18.
- (6) If a member is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
- the Governor-General may, with the consent of the member, by signed instrument, retire the member from office on the ground of physical or mental incapacity on a date specified in the instrument.
- (7) The date specified under subclause (6) must not be earlier than the date on which the instrument is signed.
- (8) A member must not be suspended, removed or retired from office except as provided by this clause.
- (9) In spite of anything in this clause, a member (including the Executive Director) who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (10) In spite of anything in this clause, a member (including the Executive Director) who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
-

Clause 18

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

18 Disclosure of interests

- (1) If:
- (a) a member is, or is to be, a member of the SSAT as constituted for the purposes of a review; and
 - (b) the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review;
- the following provisions have effect:
- (c) the member must disclose the interest to the applicant and to the Secretary;
 - (d) except with the consent of the applicant and the Secretary, the member must not take part in the review or exercise any powers in relation to the review by the SSAT of the relevant decision.
- (2) If the Executive Director becomes aware that:
- (a) a member is, or is to be, a member of the SSAT as constituted for the purposes of a review; and
 - (b) the member has, in relation to that review, an interest of the kind referred to in paragraph (1)(b) of this clause;
- the following provisions have effect:
- (c) if the Executive Director considers that the member should not take part, or should not continue to take part, in the review—the Executive Director must give a direction to the member accordingly;
 - (d) in any other case—the Executive Director must cause the interest of the member to be disclosed to the applicant and the Secretary.

19 Disclosure of confidential information

- (1) This clause applies to a person who is or has been:
-

- (a) a member of the SSAT; or
 - (b) a person acting as a member of the SSAT; or
 - (c) a person (other than a member of the staff of the SSAT) providing interpreting services at the hearing of a review by the SSAT.
- (2) This clause applies to information or a document if the information or document concerns a person and is obtained by a person to whom this clause applies in the course of performing functions or duties, or exercising powers, under the social security law, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*.
- (3) A person to whom this clause applies must not:
- (a) make a record of any information to which this clause applies; or
 - (b) divulge or communicate to any person any information to which this clause applies;
- unless the record is made or the information is divulged or communicated:
- (c) for the purposes of the social security law, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*; or
 - (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under the social security law, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*.
- (4) Subclause (3) applies to the divulging or communicating of information, whether directly or indirectly.
- (5) A person to whom this clause applies is not to be required:
- (a) to produce to a court any document to which this clause applies; or
 - (b) to divulge or communicate to a court any information to which this clause applies;

Clause 20

except where it is necessary to do so for the purpose of carrying into effect the provisions of the social security law, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*.

- (6) A person to whom this clause applies must make an oath or declaration in a form approved by the Minister if required by the Minister to do so.
- (7) For the purposes of this clause, a person who is providing interpreting services at the hearing of a review by the SSAT is to be taken to be performing a function under the social security law, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*.
- (8) In this clause:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

20 Delegation by the Executive Director

The Executive Director may, in writing, delegate to a member of the SSAT all or any of the powers and functions of the Executive Director under this Act, the *Student and Youth Assistance Act 1973*, the *Child Care Payments Act 1997* or the *Employment Services Act 1994*.

21 Protection of members and witnesses

- (1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.
- (2) A person representing a party at a hearing of a review before the SSAT has the same protection and immunity as a barrister has in appearing before the Administrative Appeals Tribunal on behalf of a party.

- (3) A person appearing before the SSAT as a witness has the same protection as a person appearing before the Administrative Appeals Tribunal as a witness.

22 Fees for witnesses

- (1) If a person appears before the SSAT as a witness at the request of the Executive Director, the person is entitled to be paid, in respect of the person's attendance, fees and allowances ascertained in accordance with a determination under subclause (2).
- (2) The Minister may determine the amounts of fees and allowances to be paid under subclause (1).
- (3) A determination under subclause (2):
- (a) must be in writing; and
 - (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The fees and allowances referred to in subclause (1) are to be paid by the Commonwealth.

23 Oath or affirmation of office

- (1) A person who is appointed as a member, or to act as a member, of the SSAT must not discharge the duties of the office unless the person has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 4.
- (2) The oath or affirmation must be taken or made before a justice of the peace or a commissioner for taking affidavits.

24 Staff of the SSAT

Any staff required to assist the SSAT are to be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary.

Clause 25

25 Annual report

- (1) The Executive Director must, as soon as practicable after the end of a financial year, give to the Minister a report of the operations of the SSAT during that year.
- (2) The Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Part 4—Saving provisions

26 Saving of appointments

- (1) Subject to subclauses (2) and (3), an appointment of a person as a member of the SSAT that was:
 - (a) made before the commencement of this Schedule; and
 - (b) in force immediately before that commencement;has the same effect (if any) after the commencement of this Schedule as it would have had if:
 - (c) this Schedule had been in force when the appointment was made; and
 - (d) the appointment had been made under this Act.
- (2) If, because of subclause (1), the appointment of a person as National Convenor has effect after the commencement of this Schedule, the person holds office after that commencement as Executive Director.
- (3) If, because of subclause (1), the appointment of a person as a senior member of the SSAT has effect after the commencement of this Schedule, the person holds office after that commencement as a Director.

27 Saving of acts done

- (1) Anything done before the commencement of this Schedule by, or in relation to, a person holding office as National Convenor has the same effect (if any) after that commencement as it would have had if:
 - (a) this Schedule had been in force when the thing was done; and
 - (b) the thing had been done under, or for the purposes of, this Act by, or in relation to, the Executive Director.
- (2) Anything done before the commencement of this Schedule by, or in relation to, a senior member of the SSAT has the same effect (if any) after that commencement as it would have had if:

Clause 28

- (a) this Schedule had been in force when the thing was done; and
 - (b) the thing had been done under, or for the purposes of, this Act by, or in relation to, a Director.
- (3) Anything done before the commencement of this Schedule by, or in relation to, a member of the SSAT, other than the National Convenor or a senior member, has the same effect (if any) after that commencement as it would have had if:
- (a) this Schedule had been in force when the thing was done; and
 - (b) the thing had been done under, or for the purposes of this Act, by, or in relation to, a member of the SSAT, other than the Executive Director or a Director.

28 Saving of reviews in progress

- (1) A review by the SSAT that commenced before the commencement of this Schedule may be continued, after that commencement, as if:
- (a) this Act had not been enacted; and
 - (b) the 1991 Act continued in force as it was in force immediately before the commencement of this Schedule.
- (2) For the purposes of subclause (1), the SSAT, as constituted under this Act, is taken to be the SSAT as constituted under the 1991 Act as in force immediately before the commencement of this Schedule.

Schedule 4—Forms of oath and affirmation

Note: See clause 23, Schedule 3.

OATH

I, _____, swear that I will faithfully and impartially perform the duties of the office of Executive Director (*or* Director *or* member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will. So help me God.

AFFIRMATION

I, _____, solemnly and sincerely promise and declare that I will faithfully and impartially perform the duties of the office of Executive Director (or Director or member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will.

Schedule 5—Provisions consequential on the enactment of the Commonwealth Services Delivery Agency Act 1997

1 References to the Secretary and the Department—requirements etc. by delegate

- (1) If the Secretary delegates to the CEO or an employee of the Agency a power under the social security law to require or request a person to give the Secretary a document or information, the delegate may, in exercising the power, require or request the person to give the document or information to the CEO instead of the Secretary.
- (2) If the Secretary delegates to the CEO or an employee of the Agency a power under the social security law to require or request a person to give or send to, or lodge with, the Department a document or information, the delegate may, in exercising the power, require or request the person to give or send the document or information to the Agency, or lodge it with the Agency, instead of the Department.
- (3) A person who:
 - (a) gives a document or information to the CEO; or
 - (b) gives or sends a document or information to the Agency, or lodges it with the Agency;in compliance with a requirement or a request by a delegate of the Secretary is to be treated for all purposes as if the person had:
 - (c) given the document or information to the Secretary; or
 - (d) given or sent the document or information to the Department, or lodged it with the Department;as the case may be, in compliance with a requirement or request by the Secretary.

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- (4) A person who:
- (a) does not give a document or information to the CEO; or
 - (b) does not give or send a document or information to the Agency, or lodge it with the Agency;
- in compliance with a requirement or request by a delegate of the Secretary is to be treated for all purposes as if the person:
- (c) had not given the document or information to the Secretary; or
 - (d) had not given or sent the document or information to the Department, or lodged it with the Department;
- as the case may be, in compliance with a requirement or request by the Secretary.

2 References to the Secretary and the Department—directions by Secretary

- (1) Subject to subclause (3), if:
- (a) the Secretary delegates to the CEO or an employee of the Agency all or any of the Secretary's powers under the social security law; and
 - (b) the delegation makes a reference to the Secretary, the Department, or an officer of the Department, in another provision of the social security law inappropriate, whether for administrative reasons or any other reason;
- the provision has effect as if:
- (c) the reference to the Secretary were a reference to the CEO; or
 - (d) the reference to the Department were a reference to the Agency; or
 - (e) the reference to an officer of the Department were a reference to an employee of the Agency;
- as the case requires.
- (2) The Secretary may direct that a provision to which subclause (1) applies is to have an operation different from that provided for by that subclause.

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- (3) If the Secretary gives a direction under subclause (2) in relation to a provision, the provision has effect in accordance with the direction while the direction is in force.
 - (4) A direction under subclause (2) comes into force on the day on which it is notified in the *Gazette*, or on such later day as is specified in it, and remains in force until it is revoked.
 - (5) A direction under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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[*Minister's second reading speech made in—
House of Representatives on 3 June 1999
Senate on 20 September 1999*]

(106/99)