



Employment Services Act 1994

No. 176 of 1994

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Employment Services Act 1994

No. 176 of 1994

An Act relating to employment services

[Assented to 19 December 1994]

The Parliament of Australia enacts:

CHAPTER 1—PRELIMINARY

Short title

1. This Act may be cited as the *Employment Services Act 1994*.

Commencement

2.(1) This Chapter, Chapters 2 and 3, Part 4.6 and Chapter 5 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.

(3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Aim and objects

Aim

3.(1) The aim of this Act is to promote full employment by providing employment services that are free of charge to job seekers.

Objects

(2) The objects of this Act are:

- (a) to establish the Commonwealth Employment Service (see Chapter 2); and
- (b) to establish Employment Assistance Australia (see Chapter 3); and
- (c) to set up and regulate the case management system (see Chapter 4).

Definitions

4. In this Act, unless the contrary intention appears:

“accreditation” means accreditation under the accreditation scheme;

“accreditation scheme” means the scheme in force under section 49;

“accredited case manager” means an entity accredited under the accreditation scheme;

“authorised review officer” means a person authorised under section 146;

“Case Management Activity Agreement” has the meaning given by section 38;

“case management services” has the meaning given by section 37;

“case management system” means the system under which case managers:

- (a) provide case management services to people referred to them under Part 4.3; and
- (b) perform functions conferred on case managers under this Act;

“case manager” means:

- (a) Employment Assistance Australia; or
- (b) a contracted case manager;

“CES” means the Commonwealth Employment Service established by section 8;

“contracted case manager” means an accredited case manager engaged under section 58;

“document” has the meaning given by section 5;

“Employment Assistance Australia” means the organisation established by section 18;

“Employment Secretary” means the Secretary to the Department;

“entity” means:

- (a) an individual; or
- (b) a body corporate; or

- (c) a partnership; or
- (d) an unincorporated association; or
- (e) an authority of the Commonwealth, a State or a Territory; or
- (f) a Department of the government of the Commonwealth, a State or a Territory;

“ESRA” means the Employment Services Regulatory Authority established by section 68;

“ESRA Board” means the Board of ESRA referred to in section 74;

“ESRA Board member” means a member of the ESRA Board;

“ESRA Chairperson” means the Chairperson of the ESRA Board referred to in section 74;

“ESRA Chief Executive Officer” means the Chief Executive Officer of ESRA referred to in section 91;

“inspector” means a person appointed as an inspector under section 131;

“participant in the case management system” has the meaning given by section 25;

“Social Security Secretary” means the Secretary to the Department administering the *Social Security Act 1991*.

Documents

Basic meaning of “document”

5.(1) In this Act:

“document” means any record of information, and includes:

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

Extended meaning of “document”

(2) A reference in this Act to a document includes a reference to:

- (a) any part of the document; or
- (b) any copy, reproduction or duplicate of the document or of any part of the document; or
- (c) any part of such a copy, reproduction or duplicate.

Continuity of partnerships

6. For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

Crown to be bound

7.(1) This Act binds the Crown in the right of the Commonwealth, of each of the States, of the Northern Territory and of the Australian Capital Territory.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

CHAPTER 2—THE COMMONWEALTH EMPLOYMENT SERVICE

PART 2.1—THE COMMONWEALTH EMPLOYMENT SERVICE

Commonwealth Employment Service

8. There is to be, within the Department, a Commonwealth Employment Service.

National Director

9.(1) There is to be a National Director of the Commonwealth Employment Service.

(2) The Employment Secretary is to be the National Director.

Attribution of acts of Departmental officers

10. For the purposes of this Act, anything done in the name of, or on behalf of, the Commonwealth Employment Service by an officer of the Department is taken to have been done by the Commonwealth Employment Service.

PART 2.2—ADVISORY COMMITTEES

Division 1—National committee

Establishment of national committee

11. The Minister may establish a national committee.

Function of national committee

12. The function of the national committee established under section 11 is to advise the National Director of the CES on the operations of the Commonwealth Employment Service in Australia.

Provisions relating to the national committee

Provisions relating to the national committee

13.(1) This section applies to the national committee established under section 11.

Composition of the committee

(2) The committee consists of such members as are appointed by the Minister by written instrument.

Period of appointment

(3) A member of the committee holds office for such period as is specified in the instrument of appointment.

Resignation

(4) A member of the committee may resign from the committee by writing signed by him or her and sent to the Minister.

Termination of appointment

(5) The Minister may, at any time, terminate the appointment of a member of the committee.

Division 2—Area committees

Establishment of area committees

14. The National Director of the CES may establish a committee for a specified area.

Function of area committees

15. The function of a committee established under section 14 for an area is to advise the National Director of the CES about the following matters, to the extent to which they relate to the area:

- (a) the creation of employment opportunities and training opportunities;
- (b) increasing the responsiveness of the CES to regional labour markets;
- (c) linking DEET programs with regional development.

For this purpose, a “**DEET program**” is a program administered by the Department.

Provisions relating to area committees

Committee to be established in accordance with guidelines

16.(1) The establishment of a committee under section 14 is to be in accordance with written guidelines formulated by the National Director of the CES. The guidelines may deal with, but are not limited to, the following matters:

- (a) the appointment of members of the committee;
- (b) the resignation of members of the committee;
- (c) the termination of the appointment of members of the committee.

Composition of committee

(2) In formulating guidelines under subsection (1), the National Director of the CES is to have regard to the desirability of ensuring that, as far as practicable, the membership of each committee includes people with experience of, or expertise in, matters of concern to the following sectors:

- (a) employers;
- (b) trade unions or other organisations of employees;
- (c) community organisations;
- (d) regional organisations;
- (e) the Commonwealth government and State and Territory governments;
- (f) local government bodies;
- (g) major providers of education or training.

Division 3—Disclosure of interests

Disclosure of interests

When this section applies

17.(1) This section applies to a committee established under this Part.

Member to disclose pecuniary interests

(2) If a member of the committee has a direct or indirect pecuniary interest in a matter being considered by the committee, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee. The disclosure must be recorded in the minutes of the meeting.

Member not to be present during deliberations unless committee otherwise determines

(3) A member who makes a disclosure under subsection (2) must not, unless the committee otherwise determines:

- (a) be present during any deliberation of the committee with respect to that matter; or
- (b) take any part in any decision of the committee with respect to that matter.

Member not to be present during deliberations about determinations under subsection (3)

(4) For the purposes of the making of a determination by the committee under subsection (3) in relation to a disclosure under subsection (2), the member who made the disclosure must not:

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
- (b) take part in the making of the determination by the committee.

CHAPTER 3—EMPLOYMENT ASSISTANCE AUSTRALIA

Employment Assistance Australia

18. There is to be, within the Department, an organisation to be known as Employment Assistance Australia.

Functions of Employment Assistance Australia

19. The functions of Employment Assistance Australia are:

- (a) to provide case management services to participants in the case management system referred to it under Part 4.3; and
- (b) to perform functions conferred on case managers under this Act.

Note: Employment Assistance Australia is a case manager—see the definition of “case manager” in section 4.

National Director

20.(1) There is to be a National Director of Employment Assistance Australia.

(2) The Employment Secretary is to be the National Director.

Attribution of acts of Departmental officers

21. For the purposes of this Act, anything done in the name of, or on behalf of, Employment Assistance Australia by an officer of the Department is taken to have been done by Employment Assistance Australia.

ESRA to monitor Employment Assistance Australia etc.

Functions

22.(1) The functions of ESRA include:

- (a) monitoring the operations of Employment Assistance Australia; and
- (b) making recommendations to the Minister about those operations.

Note: “ESRA” means the Employment Services Regulatory Authority (see section 4).

Financial arrangements—recommendations

(2) Without limiting subsection (1), ESRA may make recommendations to the Minister about the payment arrangements relating to Employment Assistance Australia.

CHAPTER 4—THE CASE MANAGEMENT SYSTEM

PART 4.1—OBJECT AND OUTLINE

Object

23. The object of this Chapter is to set up and regulate the case management system.

Note: “Case management system” is defined by section 4.

Outline

24. The following is a simplified outline of this Chapter:

- people registered with the CES may become **participants in the case management system** (Part 4.2)
- the CES will refer participants in the case management system to **case managers** (Part 4.3)
- case managers provide **case management services** to people referred to them
- **contracted case managers** are **engaged** to provide case management services (Part 4.5)
- only **accredited case managers** can be engaged to provide case management services (Part 4.5)
- the **Employment Services Regulatory Authority (ESRA)** is established to regulate the case management system (Part 4.6).

PART 4.2—PARTICIPANTS IN THE CASE MANAGEMENT SYSTEM

When a person becomes a participant in the case management system

Determinations about participants—general

25.(1) The Minister may make a written determination that a person included in a specified class of persons becomes a participant in the case management system at a specified time if, at that time:

- (a) persons included in that class are registered with the CES; or
- (b) unemployment benefits (within the meaning of paragraph 51(xxiiiA) of the Constitution) are being provided by the Commonwealth to or in respect of persons included in that class.

A determination has effect accordingly.

Determinations about participants—special

(2) If the Employment Secretary is satisfied that there are special circumstances, the Employment Secretary may make a written determination that a specified person becomes a participant in the case management system at a specified time if, at that time:

- (a) the person is registered with the CES; or
- (b) unemployment benefits (within the meaning of paragraph 51(xxiiiA) of the Constitution) are being provided by the Commonwealth to or in respect of the person.

A determination has effect accordingly.

Registration with the CES

(3) For the purposes of this section, a person is registered with the CES if, and only if, the person is registered by the CES as being unemployed.

Disallowable instrument

(4) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Delegation

(5) The Employment Secretary may, by writing, delegate all or any of his or her powers under subsection (2) to an officer of the Department.

When a person ceases to be a participant in the case management system

Person remains participant until terminating event happens

26.(1) If a person becomes a participant in the case management system, the person remains a participant in the case management system until a terminating event happens.

Note: “Terminating event” is defined by subsections (2) and (3).

Determinations about terminating events

(2) The Minister may make a written determination that a specified event or circumstance is a terminating event for the purposes of subsection (1). A determination has effect accordingly.

Terminating event—Constitutional requirements

(3) A particular event or circumstance is a terminating event for the purposes of subsection (1) if a failure to make a determination under subsection (2) specifying the event or circumstance would result in the invalidity, in whole or in part, of this Act.

Note: Under paragraph 51(xxiiiA) of the Constitution, the Parliament may make laws with respect to the provision of unemployment benefits.

Cessation of “participant” status terminates referral to case manager

(4) If a person ceases to be a participant in the case management system, the cessation terminates any referral of the person to a case manager under Part 4.3.

Disallowable instrument

(5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 4.3—REFERRAL OF PARTICIPANTS IN THE CASE MANAGEMENT SYSTEM TO CASE MANAGERS

CES to notify and interview participants in the case management system

Notification and interview before a person becomes a participant

27.(1) If the CES forms the opinion that it is reasonably likely that a person will become a participant in the case management system on a particular day, the CES may, not earlier than 28 days before that day:

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- (a) notify the person (in writing or otherwise) of that opinion; and
- (b) ask the person:
 - (i) to attend an interview with the CES; or
 - (ii) to take part in an interview with the CES by telephone, video-link or similar means.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a written notice given under this subsection.

Notification after person becomes a participant

(2) As soon as practicable after a person becomes a participant in the case management system, the CES must give the person a written notice stating that he or she has become a participant in the case management system.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Interview after person becomes a participant—no waiting list

- (3) If:
- (a) the CES is of the opinion that a person given a notice under subsection (2) about becoming a participant could reasonably be referred to a case manager within 24 days after the day on which the notice was given to the person; and
 - (b) the person has not already been interviewed under subsection (1) in connection with so becoming a participant;

the CES must ask the person:

- (c) to attend an interview with the CES; or
- (d) to take part in an interview with the CES by telephone, video-link or similar means.

Interview after person becomes a participant—waiting list

(4) If the CES is of the opinion that a person given a notice under subsection (2) could not reasonably be referred to a case manager within 24 days after the day (the “**notice day**”) on which the notice was given to the person:

- (a) the notice must contain a statement to that effect; and
- (b) if, on a day (the “**later day**”) later than the notice day, the CES becomes of the opinion that the person could reasonably be referred to a case manager within 24 days after the later day—the CES must ask the person:
 - (i) to attend an interview with the CES; or
 - (ii) to take part in an interview with the CES by telephone, video-link or similar means.

Further request for interview

- (5) If:
- (a) the CES asks a person to attend or take part in an interview under subsection (3) or (4) or under this subsection; and
 - (b) the person does not attend or take part in the interview, as the case requires; and
 - (c) the person is a participant in the case management system;
- the CES may ask the person to attend or take part in another interview.

Consequences of failure to attend interview

28. If a person refuses or fails to comply with a request under subsection 27(3), (4) or (5) of this Act, sections 546C and 630C of the *Social Security Act 1991* have effect, in relation to the person, as if:

- (a) the conditions set out in paragraphs (1)(b), (c), (d) and (e) of each of those sections were satisfied; and
- (b) the reference in subsection (2) of each of those sections to the requirement were a reference to the request.

Note: This means that job search allowance or newstart allowance would cease to be payable to the person for a period unless the person had a reasonable excuse for not complying with the request.

CES to refer participants in the case management system to case managers

When section applies

29.(1) This section applies to a person if the CES has asked the person to attend or take part in an interview under section 27.

Information to be provided by CES

- (2) At or before the interview, the CES must:
- (a) give the person such information about the case management system as ESRA approves in writing; and
 - (b) if the CES considers that the person could reasonably be referred to one of a number of case managers—tell the person that he or she may nominate a preferred case manager in accordance with subsection (3).

Nomination of preferred case manager

- (3) The nomination of a preferred case manager must be:
- (a) in writing; and
 - (b) given to the CES within 14 days after the date of the interview.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a nomination given under this subsection.

CES to refer person to case manager

(4) The CES must, within 24 days after the date of the interview, decide to refer the person to a specified case manager. The decision takes effect on the day on which the decision is made or the day on which the person becomes a participant in the case management system, whichever is later. However, the decision does not take effect if the person does not become a participant in the case management system within 28 days after the decision is made.

Matters to be taken into account by CES

(5) In making a decision under this section to refer the person to a case manager, the CES must:

- (a) take into account the following matters:
 - (i) any nomination of a preferred case manager given by the person in accordance with subsection (3);
 - (ii) such other matters (if any) as are specified in a written determination made by the Minister for the purposes of this subsection;
 - (iii) such other matters (if any) as the CES considers appropriate; and
- (b) give the greatest weight to the matter mentioned in subparagraph (a)(i).

Disallowable instrument

(6) A determination under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Termination of referrals

When section applies

30.(1) This section applies to a person:

- (a) who is a participant in the case management system; and
- (b) who has been referred to a case manager (the “**original case manager**”) under this Part.

CES may terminate referral to case manager

(2) The CES may decide to terminate the person’s referral to the original case manager.

Notification after decision to terminate

(3) As soon as practicable after the CES decides to terminate the person’s referral to the original case manager, the CES must give the person a written notice stating that the referral has been terminated.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Procedure after termination—no waiting list

(4) If the CES is of the opinion that a person given a notice under subsection (3) could reasonably be referred to another case manager within 24 days after the day on which the notice is given to the person:

- (a) the notice must contain a statement to the effect that:
 - (i) the CES proposes to refer the person to a new case manager; and
 - (ii) if the CES considers that the person could reasonably be referred to one of a number of other case managers—the person may nominate a preferred case manager in accordance with subsection 32(2); or
- (b) the CES must ask the person:
 - (i) to attend an interview with the CES; or
 - (ii) to take part in an interview with the CES by telephone, video-link or similar means.

Procedure after termination—waiting list

(5) If the CES is of the opinion that a person given a notice under subsection (3) could not reasonably be referred to another case manager within 24 days after the day (the “**notice day**”) on which the notice was given to the person:

- (a) the notice must contain a statement to that effect; and
- (b) if, on a day (the “**later day**”) later than the notice day, the CES becomes of the opinion that the person could reasonably be referred to a new case manager within 24 days after the later day—the CES must:
 - (i) give the person a written notice containing a statement to the effect that:
 - (A) the CES proposes to refer the person to a new case manager; and
 - (B) if the CES considers that the person could reasonably be referred to one of a number of other case managers—the person may nominate a preferred case manager in accordance with subsection 32(2); or
 - (ii) ask the person:
 - (A) to attend an interview with the CES; or
 - (B) to take part in an interview with the CES by telephone, video-link or similar means.

Further requests for interview

- (6) If:
 - (a) the CES asks a person to attend or take part in an interview under subsection (4) or (5) or under this subsection; and

- (b) the person does not attend or take part in the interview, as the case requires; and
 - (c) the person is a participant in the case management system;
- the CES may ask the person to attend or take part in another interview.

Consequences of failure to attend interview

31. If a person refuses or fails to comply with a request under paragraph 30(4)(b), subparagraph 30(5)(b)(ii) or subsection 30(6) of this Act, sections 546C and 630C of the *Social Security Act 1991* have effect, in relation to the person, as if:

- (a) the conditions set out in paragraphs (1)(b), (c), (d) and (e) of each of those sections were satisfied; and
- (b) the reference in subsection (2) of each of those sections to the requirement were a reference to the request.

Note: This means that job search allowance or newstart allowance would cease to be payable to the person for a period unless the person had a reasonable excuse for not complying with the request.

Referral to new case manager—no interview

When section applies

32.(1) This section applies to a person if the CES has given the person a notice, in accordance with paragraph 30(4)(a) or (5)(b), stating that it proposes to refer the person to a new case manager.

Nomination of preferred case manager

(2) If the notice states that the person may nominate a preferred case manager, the nomination must be:

- (a) in writing; and
- (b) given to the CES within 14 days after the day on which the notice was given to the person.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a nomination given under this subsection.

CES to refer person to case manager

(3) The CES must, within 24 days after the day on which the notice was given to the person, decide to refer the person to a specified case manager. The decision takes effect on the day on which the decision is made.

Matters to be taken into account by CES

(4) In making a decision under this section to refer the person to a case manager, the CES must:

- (a) take into account the following matters:
 - (i) any nomination of a preferred case manager given by the person in accordance with subsection (2);

- (ii) such other matters (if any) as are specified in a written determination made by the Minister for the purposes of this subsection;
 - (iii) such other matters (if any) as the CES considers appropriate; and
- (b) give the greatest weight to the matter mentioned in subparagraph (a)(i).

Disallowable instrument

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

Referral to new case manager—interview

When section applies

33.(1) This section applies to a person if the CES has asked the person to attend or take part in an interview under section 30.

Information to be provided by CES

(2) If the CES considers that the person could reasonably be referred to one of a number of case managers, the CES must, at or before the interview, tell the person that he or she may nominate a preferred case manager in accordance with subsection (3).

Nomination of preferred case manager

- (3) The nomination of a preferred case manager must be:
- (a) in writing; and
 - (b) given to the CES within 14 days after the date of the interview.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a nomination given under this subsection.

CES to refer person to case manager

(4) The CES must, within 24 days after the date of the interview, decide to refer the person to a specified case manager. The decision takes effect on the day on which the decision is made.

Matters to be taken into account by CES

- (5) In making a decision under this section to refer the person to a case manager, the CES must:
- (a) take into account the following matters:
 - (i) any nomination of a preferred case manager given by the person in accordance with subsection (3);
 - (ii) such other matters (if any) as are specified in a written determination made by the Minister for the purposes of this subsection;

- (iii) such other matters (if any) as the CES considers appropriate; and
- (b) give the greatest weight to the matter mentioned in subparagraph (a)(i).

Disallowable instrument

(6) A determination under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Referral by CES to be consistent with accreditation

34. A decision of the CES to refer a person to a case manager must be consistent with the conditions of accreditation that apply to that case manager.

CES to notify participant and case manager of decision to refer

CES to notify person and case manager of decision

35.(1) If the CES makes a decision to refer a person to a case manager, the CES must give the person and the case manager notice of the decision. The CES must also notify the original case manager (within the meaning of section 30) if the CES makes a decision to refer the person to a new case manager under section 32 or 33.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Notice to be in writing

- (2) The notice must be in writing.

Note: Section 25 of the *Acts Interpretation Act 1901* defines “writing” sufficiently broadly to include electronic transmission.

Notice to be given as soon as practicable after decision

(3) The notice must be given as soon as practicable after the date of the decision.

PART 4.4—WHAT HAPPENS WHEN PEOPLE ARE REFERRED TO CASE MANAGERS

Division 1—Outline

Outline

Provision of case management services

36.(1) If a person is referred to a case manager under Part 4.3, the case manager will provide **case management services** to the person:

- “**Case management services**” is defined by section 37

- If the case manager is a **contracted case manager** engaged under section 58, those services will be provided in accordance with an agreement under that section
- If the case manager is **Employment Assistance Australia**, those services will be provided by way of the performance of the function mentioned in paragraph 19(a).

Case Management Activity Agreements

(2) A person who is referred to a case manager under Part 4.3 will be required to enter into an agreement with the case manager, to be known as a **Case Management Activity Agreement** (see section 38). If the person fails to enter into such an agreement, the person could lose his or her qualification for job search allowance, or newstart allowance, under the *Social Security Act 1991*.

Division 2—Case management services

Case management services

Basic meaning

37.(1) For the purposes of this Act, the provision of **case management services** consists of assisting a participant in the case management system to obtain sustainable employment.

Extended meaning

(2) The ESRA Board may make a written determination providing that the provision of specified services to participants in the case management system is taken to be the provision of case management services for the purposes of this Act. A determination has effect accordingly.

Contracted meaning

(3) The ESRA Board may make a written determination providing that the provision of specified services to participants in the case management system is taken not to be the provision of case management services for the purposes of this Act. A determination has effect accordingly.

Disallowable instrument

(4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 3—Case Management Activity Agreements

Case Management Activity Agreements

Persons to whom this section applies

38.(1) This section applies to a person who has been referred to a case manager under Part 4.3.

Agreement

(2) The person is to have a written agreement with the case manager. The agreement is to be known as a **Case Management Activity Agreement**. The agreement is to be in a form approved by the Employment Secretary.

Requirement to enter into agreement

(3) If the person is not a party to a Case Management Activity Agreement, the Employment Secretary must require the person to enter into such an agreement.

Replacement agreement

(4) If the person is already a party to a Case Management Activity Agreement, the Employment Secretary may require the person to enter into another such agreement instead of the existing one.

Notification of requirement to enter into agreement

(5) If the person is required to enter into a Case Management Activity Agreement under subsection (3) or (4), the Employment Secretary must give the person written notice of:

- (a) the requirement; and
- (b) the places and times at which the agreement is to be negotiated.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Delegation

(6) The Employment Secretary may, by writing, delegate all or any of his or her powers under subsection (3), (4) or (5) in relation to agreements with a particular case manager to:

- (a) if the case manager is an individual—the case manager; or
- (b) if the case manager is a body corporate—a director or employee of the case manager; or
- (c) if the case manager is a partnership—an individual who is a partner in, or an employee of, the case manager; or
- (d) in any other case—an officer or employee of the case manager.

Note: Section 34AA of the *Acts Interpretation Act 1901* (which deals with delegations to people holding specified offices or positions) applies to delegations under this subsection.

Delegated power to be treated as a function conferred on a case manager

(7) A reference in this Act or any other law of the Commonwealth to a function conferred on a case manager under this Act includes a reference to a power delegated under subsection (6) in relation to the case manager.

Terms of Case Management Activity Agreements

Terms

39.(1) A Case Management Activity Agreement between a case manager and a person is to be directed to securing employment for the person. The agreement is to require the person to undertake one or more of the following activities approved by the Employment Secretary:

- (a) a job search;
- (b) a vocational training course;
- (c) training that would help in searching for work;
- (d) paid work experience;
- (e) measures designed to eliminate or reduce any disadvantage the person has in the labour market (other than measures compelling the person to work in return for payment of job search allowance, or newstart allowance, under the *Social Security Act 1991*);
- (f) subject to section 40, development of self-employment;
- (g) subject to section 41, development of, and/or participation in, group enterprises or co-operative enterprises;
- (h) participation in a labour market program;
- (i) participation in a rehabilitation program (within the meaning of the *Social Security Act 1991*);
- (j) an activity proposed by the person (such as unpaid voluntary work proposed by the person).

Job Compact

(2) A Case Management Activity Agreement between a case manager and a person is taken to include a term to the effect that, at any time when the person is eligible for the Job Compact, the person is required to:

- (a) accept any offer of paid work, other than work that is unsuitable to be undertaken by the person; or
- (b) accept any offer of a placement under the New Work Opportunities Program administered by the Department; or
- (c) accept any offer of a placement under the New Enterprise Incentive Scheme administered by the Department; or
- (d) accept any offer of a placement under the Landcare and Environment Action Program administered by the Department; or
- (e) accept any offer of a placement under Jobskills (within the meaning of the *Social Security Act 1991*).

Note 1: "Eligibility for the Job Compact" is defined by subsections (10), (12) and (13).

Note 2: See section 42 on what paid work is unsuitable.

Attendance at offices of the CES or the case manager etc.

(3) A Case Management Activity Agreement between a case manager and a person may include terms requiring the person (on request or otherwise) to:

- (a) attend an office of the CES or of the case manager; or
- (b) contact the CES or the case manager; or
- (c) give information to the CES or to the case manager.

Substantiation of compliance with agreement

(4) A Case Management Activity Agreement between a case manager and a person must include terms requiring the person (on request or otherwise) to substantiate his or her compliance with the terms of the agreement.

Approval of terms by Employment Secretary

(5) The terms of an agreement (which include the specification of the activities that the person is to be required to undertake) are to be approved by the Employment Secretary.

Matters relevant to approval

(6) In considering whether to approve the terms of an agreement between a case manager and a person, the Employment Secretary is to have regard to the person's capacity to comply with the proposed agreement and the person's needs.

Matters relevant to capacity to comply with proposed agreement

(7) In having regard to a person's capacity to comply with an agreement and the person's needs, the Employment Secretary is to take into account:

- (a) the person's education, experience, skills, age and physical condition; and
- (b) the state of the labour market in the locality where the person resides; and
- (c) the training opportunities available to the person; and
- (d) any other matters that the Employment Secretary considers relevant in the circumstances.

Delegation

(8) The Employment Secretary may, by writing, delegate all or any of his or her powers under this section in relation to agreements with a particular case manager to:

- (a) if the case manager is an individual—the case manager; or
- (b) if the case manager is a body corporate—a director or employee of the case manager; or

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- (c) if the case manager is a partnership—an individual who is a partner in, or an employee of, the case manager; or
- (d) in any other case—an officer or employee of the case manager.

Note: Section 34AA of the *Acts Interpretation Act 1901* (which deals with delegations to people holding specified offices or positions) applies to delegations under this subsection.

Delegated power to be treated as a function conferred on a case manager

(9) A reference in this Act or any other law of the Commonwealth to a function conferred on a case manager under this Act includes a reference to a power delegated under subsection (8) in relation to the case manager.

Becoming eligible for the Job Compact—long-term recipient of job search allowance or newstart allowance

(10) For the purposes of this section, a person becomes eligible for the Job Compact at a particular time if:

- (a) at that time, the person is receiving a job search allowance, or a newstart allowance, under the *Social Security Act 1991*; and
- (b) throughout the period of 18 months ending at that time, the person received a job search allowance, or a newstart allowance, under that Act.

Gaps in receipt of job search allowance or newstart allowance

(11) For the purposes of paragraph (10)(b), if:

- (a) a person is in receipt of job search allowance, or newstart allowance, under the *Social Security Act 1991*; and
- (b) either:
 - (i) the person ceases for a period of not longer than 6 weeks to be in receipt of job search allowance; or
 - (ii) the person ceases for a period of not longer than 13 weeks to be in receipt of newstart allowance; and
- (c) at the end of that period, the person begins to receive such an allowance;

the person is taken to have been in receipt of such an allowance throughout that period.

Becoming eligible for the Job Compact—Ministerial determination

(12) For the purposes of this section, the Minister may make a written determination that a person included in a specified class of persons becomes eligible for the Job Compact at a specified time. A determination has effect accordingly.

Ceasing to be eligible for the Job Compact

(13) For the purposes of this section, if a person becomes eligible for the Job Compact, the person remains eligible for the Job Compact until a terminating event happens.

Note: "Terminating event" is defined by subsection (14).

Determinations about terminating events

(14) The Minister may make a written determination that a specified event or circumstance is a terminating event for the purposes of subsection (13). A determination has effect accordingly.

Disallowable instrument

(15) A determination under subsection (12) or (14) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Case Management Activity Agreements—self-employment

Prior receipt of allowance and commercial viability of self-employment

40.(1) A Case Management Activity Agreement must not require a person to undertake as an activity any development of self-employment unless:

- (a) at all times during the 6 months immediately preceding the undertaking of the activity, the person has been, or will have been, receiving either of the following:
 - (i) a job search allowance under the *Social Security Act 1991*;
 - (ii) a newstart allowance under that Act; and
- (b) the Employment Secretary is satisfied that the activity:
 - (i) will be commercially viable 12 months after the person begins the activity; and
 - (ii) is likely to provide the person with sustainable full-time employment that will provide the person with a level of income at least equivalent to the person's maximum basic rate.

Maximum basic rate

(2) For the purposes of subparagraph (1)(b)(ii), a person's maximum basic rate is:

- (a) if the person has not turned 18—the person's maximum basic rate worked out under Module B of Benefit Rate Calculator A (within the meaning of the *Social Security Act 1991*); or
- (b) if the person has turned 18—the person's maximum basic rate worked out under Module B of Benefit Rate Calculator B (within the meaning of the *Social Security Act 1991*).

Other conditions

(3) A Case Management Activity Agreement must not require a person to undertake as an activity any development of self-employment if:

- (a) the person is to undertake the activity for more than 12 months; or
- (b) subject to subsection (4), the person has previously been subject to a requirement under:

- (i) that agreement; or
- (ii) any other Case Management Activity Agreement; or
- (iii) a Job Search Activity Agreement; or
- (iv) a Newstart Activity Agreement;

to undertake the same activity or a similar activity; or

- (c) at any time during the 6 months immediately preceding the time at which the activity is to start, the person has been subject to a requirement under:

- (i) that agreement; or
- (ii) any other Case Management Activity Agreement; or
- (iii) a Job Search Activity Agreement; or
- (iv) a Newstart Activity Agreement;

to undertake as an activity other development of self-employment.

Special circumstances

(4) Paragraph (3)(b) does not apply if the Employment Secretary determines in writing that there are special circumstances that justify inclusion of the activity in the Case Management Activity Agreement.

Activities to which section does not apply

(5) This section does not apply to an activity to which a paragraph of subsection 39(1) other than paragraph 39(1)(f) or (g) applies.

Definitions

(6) In this section:

“Job Search Activity Agreement” has the same meaning as in the *Social Security Act 1991*;

“Newstart Activity Agreement” has the same meaning as in the *Social Security Act 1991*.

Case Management Activity Agreements—group enterprises and co-operative enterprises

Development

41.(1) A Case Management Activity Agreement must not require a person to undertake as an activity any development of a group enterprise or co-operative enterprise unless:

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- (a) at all times during the 6 months immediately preceding the undertaking of the activity, the person has been, or will have been, receiving either of the following:
 - (i) a job search allowance under the *Social Security Act 1991*;
 - (ii) a newstart allowance under that Act; and
- (b) the Employment Secretary is satisfied that the activity:
 - (i) will be viable 12 months after the person begins the activity; and
 - (ii) is likely to provide the person with skills, training or work experience that will assist the person to obtain paid employment, being paid employment that will provide the person with a level of income at least equivalent to the person's maximum basic rate.

Participation

(2) A Case Management Activity Agreement must not require a person to undertake as an activity any participation in a group enterprise or co-operative enterprise unless:

- (a) at all times during the 6 months immediately preceding the undertaking of the activity, the person has been, or will have been, receiving either of the following:
 - (i) a job search allowance under the *Social Security Act 1991*;
 - (ii) a newstart allowance under that Act; and
- (b) the Employment Secretary is satisfied that the activity is likely to provide the person with skills, training or work experience that will assist the person to obtain self-employment or paid employment, being self-employment or paid employment that will provide the person with a level of income at least equivalent to the person's maximum basic rate.

Maximum basic rate

- (3) For the purposes of this section, a person's maximum basic rate is:
 - (a) if the person has not turned 18—the person's maximum basic rate worked out under Module B of Benefit Rate Calculator A (within the meaning of the *Social Security Act 1991*); or
 - (b) if the person has turned 18—the person's maximum basic rate worked out under Module B of Benefit Rate Calculator B (within the meaning of the *Social Security Act 1991*).

Other conditions

(4) A Case Management Activity Agreement must not require a person to undertake as an activity any development of, or participation in, a group enterprise or co-operative enterprise if:

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- (a) the person is to undertake the activity for more than 12 months; or
- (b) the person has previously been subject to a requirement under:
 - (i) that agreement; or
 - (ii) any other Case Management Activity Agreement; or
 - (iii) a Job Search Activity Agreement; or
 - (iv) a Newstart Activity Agreement;to undertake the same activity or a similar activity; or
- (c) at any time during the 6 months immediately preceding the time at which the activity is to start, the person has been subject to a requirement under:
 - (i) that agreement; or
 - (ii) any other Case Management Activity Agreement; or
 - (iii) a Job Search Activity Agreement; or
 - (iv) a Newstart Activity Agreement;to undertake as an activity other development of, or participation in, a group enterprise or co-operative enterprise.

Activities to which section does not apply

(5) This section does not apply to an activity to which a paragraph of subsection 39(1) other than paragraph 39(1)(f) or (g) applies.

Definitions

(6) In this section:

“Job Search Activity Agreement” has the same meaning as in the *Social Security Act 1991*;

“Newstart Activity Agreement” has the same meaning as in the *Social Security Act 1991*.

When particular paid work is unsuitable

Unsuitable work

42.(1) For the purposes of paragraph 39(2)(a), particular paid work is taken to be unsuitable for a person if, and only if, in the Employment Secretary’s opinion:

- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work; or
- (b) the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
- (c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

- (d) the work would involve the person being self-employed; or
- (e) the work would be covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award confers on employees; or
- (f) the work would not be covered by an industrial award and the remuneration for the work would be lower than the minimum applicable rate of remuneration for comparable work that is covered by an industrial award; or
- (g) commuting between the person's home and the place of work would be unreasonably difficult; or
- (h) for any other reason, the work is unsuitable for the person.

Commuting—unreasonable difficulty

(2) For the purposes of paragraph (1)(g), commuting is taken not to be unreasonably difficult if:

- (a) both:
 - (i) apart from this subsection, commuting would be unreasonably difficult; and
 - (ii) the sole or principal reason for the difficulty is that the commuting involves a journey, either from the person's home to the place of work or from the place of work to the person's home, that does not normally exceed 90 minutes in duration; or
- (b) in the Employment Secretary's opinion, a substantial number of people living in the same area as the person regularly commute to their places of work in circumstances similar to those of the person.

Remuneration

(3) A reference in subsection (1) to remuneration for work is a reference to any income derived from the work that is income from personal exertion.

Definition

(4) In this section:

“income from personal exertion” has the same meaning as in the *Social Security Act 1991*.

Cancellation or review etc. of Case Management Activity Agreement
Agreement may be varied, suspended, cancelled or reviewed

43.(1) A Case Management Activity Agreement between a case manager and a person:

- (a) may be varied or suspended; and

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- (b) if another Case Management Activity Agreement is made with the person—may be cancelled; and
- (c) may be reviewed from time to time at the request of either party to the agreement.

Cancellation resulting from termination of referral

- (2) If:
 - (a) a Case Management Activity Agreement between a case manager and a person is in force; and
 - (b) a decision of the CES under section 30 to terminate the person's referral to the case manager takes effect;

the agreement is taken to be cancelled when the decision takes effect.

Note: The effect of sections 513 and 593 of the *Social Security Act 1991* is that, as a general rule, a person is not qualified for job search allowance or newstart allowance unless the person satisfies the activity test.

Failure to negotiate a Case Management Activity Agreement

When this section applies

- 44.(1) This section applies if:
 - (a) a person has been given notice under subsection 38(5) of a requirement to enter into a Case Management Activity Agreement; and
 - (b) the Employment Secretary is satisfied that the person is unreasonably delaying entering into the agreement.

Reasons for delay

- (2) The Employment Secretary may be so satisfied:
 - (a) because of the person's failure to:
 - (i) attend the negotiation of the agreement; or
 - (ii) respond to correspondence about the agreement; or
 - (iii) agree to terms of the agreement proposed by the case manager;or
 - (b) for any other reason.

Notification

(3) The Employment Secretary may give the person a written notice stating that the person is being taken to have failed to enter into the agreement. If such a notice is given, the person is taken to have failed to have entered into the agreement.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Rules about notice

- (4) A notice under subsection (3) must:

- (a) set out the reasons for the decision to give the notice; and
- (b) include a statement describing the rights of the person to apply for a review of the decision.

Case Management Activity Agreements to supersede Job Search Activity Agreements and Newstart Activity Agreements

Persons to whom this section applies

45.(1) This section applies to a person who is a participant in the case management system throughout a particular period (the “**participation period**”).

Case management period

(2) For the purposes of this section, the person’s **case management period** is the period:

- (a) beginning on the first occasion during the participation period when a decision under Part 4.3 referring the person to a case manager took effect; and
- (b) ending at the end of the participation period.

Job Search Activity Agreement and Newstart Activity Agreement superseded

(3) If:

- (a) the person was a party to a Job Search Activity Agreement or a Newstart Activity Agreement that was in force immediately before the beginning of the person’s case management period; and
- (b) the person enters into a Case Management Activity Agreement with a case manager;

the Job Search Activity Agreement or the Newstart Activity Agreement, as the case requires, ceases to be in force immediately before the Case Management Activity Agreement comes into force.

Participant not to be required to enter into a Job Search Activity Agreement or a Newstart Activity Agreement

(4) The person is not to be required to enter into a Job Search Activity Agreement or a Newstart Activity Agreement during the person’s case management period.

Qualification for job search allowance or newstart allowance

(5) The person is not qualified for a job search allowance or a newstart allowance in respect of a period unless (in addition to meeting any other requirements set out in the *Social Security Act 1991*):

- (a) when the person is required under section 38 to enter into a Case Management Activity Agreement in relation to the period, the person enters into that agreement; and

- (b) while the agreement is in force, the person satisfies the Employment Secretary that the person is taking reasonable steps to comply with the terms of the agreement; and
- (c) at all times during the period when the person is a party to the agreement, the person is prepared to enter into another such agreement instead of the existing agreement if required to do so under section 38.

Compliance with Case Management Activity Agreement

(6) For the purposes of paragraph (5)(b), a person is taking reasonable steps to comply with the terms of a Case Management Activity Agreement unless the person has failed to comply with the terms of the agreement and:

- (a) the main reason for failing to comply involved a matter that was within the person's control; or
- (b) the circumstances that prevented the person from complying were reasonably foreseeable by the person.

Modification of power to treat person as unemployed for the purposes of the Social Security Act 1991

(7) During the person's case management period, sections 516 and 595 of the *Social Security Act 1991* have effect, in relation to the person, as if a reference in those sections to a Job Search Activity Agreement or a Newstart Activity Agreement were a reference to a Case Management Activity Agreement.

Modification of activity test requirements under the Social Security Act 1991

(8) During the person's case management period, sections 522 and 601 of the *Social Security Act 1991* have effect, in relation to the person, as if a reference in those sections to:

- (a) a Job Search Activity Agreement between the CES and the person;
- or

(b) a Newstart Activity Agreement between the CES and the person; were a reference to a Case Management Activity Agreement between a case manager and the person.

Modification of rules in the Social Security Act 1991 relating to failure to enter into, or to comply with, agreements

(9) During the person's case management period, sections 542A, 542B, 608, 625 and 626 of the *Social Security Act 1991* have effect, in relation to the person, as if a reference in those sections to a Job Search Activity Agreement or a Newstart Activity Agreement were a reference to a Case Management Activity Agreement.

Modification of rules in the Social Security Act 1991 relating to enrolment in a full-time course of education etc.

(10) During the person's case management period, section 613 of the *Social Security Act 1991* has effect, in relation to the person, as if a reference in that section to a Newstart Activity Agreement were a reference to a Case Management Activity Agreement.

This section has effect despite the Social Security Act 1991

(11) This section has effect despite anything contained in the *Social Security Act 1991*.

Definitions

(12) In this section:

“**case management period**” has the meaning given by subsection (2);

“**Job Search Activity Agreement**” has the same meaning as in the *Social Security Act 1991*;

“**job search allowance**” has the same meaning as in the *Social Security Act 1991*;

“**newstart allowance**” has the same meaning as in the *Social Security Act 1991*;

“**Newstart Activity Agreement**” has the same meaning as in the *Social Security Act 1991*;

“**participation period**” has the meaning given by subsection (1).

Information about compliance with Case Management Activity Agreement

When this section applies

46.(1) This section applies if a Case Management Activity Agreement between a case manager and a person is in force.

Notification requirements—allowees under the Social Security Act 1991

(2) If the person is an allowee (within the meaning of Part 2.11 or 2.12 of the *Social Security Act 1991*), the person must notify the Employment Secretary of any circumstances preventing or affecting the person's compliance with the agreement.

Requirements to provide information about compliance

(3) The Employment Secretary may, by written notice given to the person or the case manager, require the person or the case manager, as the case requires, to give the Employment Secretary such information about the person's compliance with the agreement as is specified in the notice.

Note 1: Section 53 deals with a case manager who contravenes the notice.

Note 2: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Manner in which information is to be given

(4) The information is to be given within the period and in the manner specified in the notice.

Person to comply

(5) If the person refuses or fails to comply with subsection (2) or with a notice under subsection (3), sections 546C and 630C of the *Social Security Act 1991* have effect, in relation to the person, as if:

- (a) the conditions set out in paragraphs (1)(b), (c), (d) and (e) of each of those sections were satisfied; and
- (b) the reference in subsection (2) of each of those sections to the requirement were a reference to the requirement arising under subsection (2) of this section or to the requirement set out in the notice under subsection (3) of this section, as the case requires.

Note: This means that job search allowance or newstart allowance would cease to be payable to the person for a period unless the person had a reasonable excuse for not complying.

Delegation

47.(1) The Employment Secretary may, by writing, delegate all or any of his or her powers under section 40, 41, 42, 44, 45 or 46 to an officer of the Department.

(2) The Employment Secretary may, by writing, delegate all or any of his or her powers under section 45 or 46 to an officer of the Department of Social Security.

Failure to comply with this Division may result in expulsion from the case management system

48. Without limiting subsection 26(2), a determination under that subsection may specify that a person's failure to comply with a requirement made of the person by or under this Division is a terminating event for the purposes of subsection 26(1).

Note: If such a determination were made, the person would cease to be a participant in the case management system.

PART 4.5—CASE MANAGERS

Division 1—Accreditation

Accreditation of case managers

Accreditation scheme

49.(1) The ESRA Board must, by written instrument, formulate a scheme for the accreditation of entities as case managers. The scheme is to be known as the **accreditation scheme**.

Note 1: "Entity" is defined by section 4.

Note 2: Accreditation means that the entity is eligible to be engaged as a contracted case manager under section 58.

Accreditation decisions

- (2) The accreditation scheme must empower ESRA to make decisions:
- (a) accrediting entities; and
 - (b) varying or cancelling the accreditation of entities.

Application fees etc.

(3) The accreditation scheme may make provision for fees to be charged by ESRA in respect of the making of applications under the scheme.

Surrender of accreditation

(4) The accreditation scheme may make provision for an entity to surrender its accreditation to ESRA.

Register of accredited case managers

(5) The accreditation scheme must make provision for and in relation to the keeping of a register by ESRA of entities accredited under the accreditation scheme. In particular, the accreditation scheme may make provision for the following:

- (a) the register to be kept in such form and manner as ESRA directs;
- (b) persons to inspect the register;
- (c) persons to obtain information contained in the register;
- (d) fees to be charged by ESRA for such an inspection or for providing such information.

Copies of scheme to be made available

(6) ESRA must give a free copy of the accreditation scheme to any person who requests a copy.

Disallowable instrument

(7) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Conditions of accreditation

Conditions of accreditation

50.(1) The accreditation scheme must empower ESRA to accredit an entity subject to one or more conditions specified in the instrument of accreditation. The accreditation scheme may also empower ESRA to:

- (a) impose one or more further conditions to which the accreditation is subject; and
- (b) revoke or vary any condition:
 - (i) specified in the instrument of accreditation; or
 - (ii) imposed under paragraph (a).

Conditions applicable to contracted case managers

(2) A condition may be expressed to have effect only if the entity is engaged under section 58.

Conditions may confer discretionary powers on ESRA

(3) A condition of an accreditation may make provision for or in relation to a matter by conferring a power on ESRA. For example, a condition could require that case management services be provided at premises approved by ESRA.

Cancellation of accreditation for breach of condition

(4) Without limiting paragraph 49(2)(b), the accreditation scheme may empower ESRA to make a decision cancelling the accreditation of an entity if the entity contravenes a condition of the accreditation.

Formal warnings—breach of condition

(5) The accreditation scheme may empower ESRA to issue a formal warning if an entity contravenes a condition of its accreditation.

Fees not to be charged to participants for provision of case management services

Additional condition of accreditation

51.(1) In addition to the conditions to which an entity's accreditation is subject under the accreditation scheme, the accreditation is subject to the condition mentioned in subsection (2).

No fees

(2) It is a condition of the accreditation of an entity that the entity must not demand or receive any fee or other consideration from a participant in the case management system referred to it under Part 4.3, where the fee or consideration is in respect of the provision of case management services to the participant.

Condition has effect only if the entity is a contracted case manager

(3) The condition mentioned in subsection (2) has effect only if the entity is a contracted case manager.

This section does not limit accreditation scheme

(4) This section does not, by implication, limit the generality of section 50 (which deals with conditions under the accreditation scheme). In particular, a condition of accreditation may deal with the entering into, or carrying out, of arrangements for the purpose of avoiding the application of this section.

Compliance with rules of conduct

Additional condition of accreditation

52.(1) In addition to the conditions to which an entity's accreditation is subject under the accreditation scheme, the accreditation is subject to the condition mentioned in subsection (2).

Compliance with rules of conduct

(2) It is a condition of the accreditation of an entity that the entity must comply with any rules of conduct formulated under section 62.

Condition has effect only if the entity is a contracted case manager

(3) The condition mentioned in subsection (2) has effect only if the entity is a contracted case manager.

This section does not limit accreditation scheme

(4) This section does not, by implication, limit the generality of section 50 (which deals with conditions under the accreditation scheme).

Case Management Activity Agreements

Additional conditions of accreditation

53.(1) In addition to the conditions to which an entity's accreditation is subject under the accreditation scheme, the accreditation is subject to the conditions mentioned in subsections (2) and (3).

Copies of agreements to be sent to the CES

(2) It is a condition of accreditation of an entity that, if the entity enters into a Case Management Activity Agreement, the entity will send a copy of the agreement to the CES as soon as practicable after the terms of the agreement have been approved under section 39.

Information about compliance with agreements

(3) It is a condition of accreditation of an entity that the entity must comply with a notice given to the entity under section 46 (which deals with information about compliance with Case Management Activity Agreements).

This section does not limit accreditation scheme

(4) This section does not, by implication, limit the generality of section 50 (which deals with conditions under the accreditation scheme).

Guarantees and security deposits relating to compliance with obligations of accredited case managers

Possible condition of accreditation

54.(1) A condition of an entity's accreditation under the accreditation scheme may relate to the giving of:

- (a) one or more guarantees; or
- (b) one or more security deposits;

in respect of compliance by the entity with the entity's obligations under, or arising out of, this Act.

Examples of cases where guarantees or security deposits could be given

(2) The following are examples of cases where a guarantee or security deposit might be given:

- (a) each of the directors of a company give ESRA a guarantee that the company will pay any case management debts (within the meaning of section 170) owed by the company;
- (b) a holding company gives ESRA a guarantee that a subsidiary of the holding company will pay any case management debts (within the meaning of section 170) owed by the subsidiary;
- (c) an entity gives ESRA a security deposit in respect of compliance by the entity with the entity's obligations to pay any case management debts (within the meaning of section 170).

This section does not limit accreditation scheme

(3) This section does not, by implication, limit the generality of section 50 (which deals with conditions under the accreditation scheme).

Limits relating to client referrals etc.

Maximum number of client referrals

55.(1) A condition of an entity's accreditation under the accreditation scheme may relate to the acceptance of client referrals and, in particular, may relate to the maximum number of client referrals that the entity can be required, or is permitted, to accept. For this purpose, a "**client referral**" is a referral of a person to the entity under Part 4.3.

Maximum workloads

(2) A condition of an entity's accreditation under the accreditation scheme may relate to the maximum case management workload of any of the following individuals:

- (a) if the entity is a body corporate—a director or employee of the entity;
or
- (b) if the entity is a partnership—an individual who is a partner in, or an employee of, the partnership; or
- (c) in any other case—an officer or employee of the entity.

For this purpose, a "**case management workload**" is so much of an individual's workload as relates to the provision of case management services.

This section does not limit accreditation scheme

(3) This section does not, by implication, limit the generality of section 50 (which deals with conditions under the accreditation scheme).

Classes of case management specialisation

Classes of specialisation

56.(1) The accreditation scheme may specify a special class of case management services.

Accreditation as generalist or specialist case manager

(2) The accreditation scheme may empower ESRA to accredit an entity:

(a) generally; or

(b) in relation to one or more classes specified under subsection (1);

or both.

Disqualification for fraud, dishonesty etc.

Disqualified individuals or bodies corporate not to be accredited

57.(1) ESRA must not accredit an individual or a body corporate under the accreditation scheme at a particular time if the individual or body corporate is a disqualified person at that time.

Note: “Disqualified person” is defined by subsection (6).

Disqualified company directors etc.

(2) ESRA must not accredit a body corporate under the accreditation scheme at a particular time if any of the following individuals is a disqualified person at that time:

(a) a director of the body corporate;

(b) the secretary of the body corporate;

(c) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Note: “Disqualified person” is defined by subsection (6).

Disqualified partners

(3) ESRA must not accredit a partnership under the accreditation scheme at a particular time if:

(a) in a case where a partner is an individual—the partner is a disqualified person at that time; or

(b) in a case where a partner is a body corporate—any of the following individuals is a disqualified person at that time:

(i) a director of the body corporate;

(ii) the secretary of the body corporate;

- (iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Note: "Disqualified person" is defined by subsection (6).

Disqualified members of the executive committees of unincorporated associations etc.

(4) ESRA must not accredit an unincorporated association under the accreditation scheme at a particular time if any of the following individuals is a disqualified person at that time:

- (a) a member of the executive committee of the unincorporated association;
- (b) a person (by whatever name called and whether or not a member of the executive committee of the unincorporated association) who is concerned in, or takes part in, the management of the unincorporated association.

Note: "Disqualified person" is defined by subsection (6).

Cancellation of accreditation

(5) ESRA must cancel the accreditation of an entity under the accreditation scheme at a particular time if, assuming that the entity had not been accredited at that time, ESRA would have been prevented by this section from accrediting the entity at that time.

Disqualified person

(6) For the purposes of this section, a person is a **disqualified person** at a particular time if:

- (a) the person has been convicted (whether before or after the commencement of this section):
 - (i) of an offence against section 60 (which deals with false or misleading statements in connection with claims for payments); or
 - (ii) of an offence that:
 - (A) is an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and
 - (B) involves fraud or dishonesty; and
 - (C) is punishable by imprisonment for life or for a period, or maximum period, of at least 2 years; or
 - (iii) on indictment of an offence that:
 - (A) is an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

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- (B) is in connection with the promotion, formation or management of a body corporate; or
- (iv) of an offence for a contravention of any of the following provisions of the Corporations Law of a State or an internal Territory:
 - (A) section 232;
 - (B) section 590;
 - (C) section 591;
 - (D) section 592;
 - (E) section 595;
 - (F) section 996;
 - (G) section 1307;
 - (H) Part 6.6;
 - (I) Division 2 of Part 7.11; or
- (v) of an offence of which the person is guilty because of subsection 1317FA(1) of the Corporations Law of a State or an internal Territory; and
- (b) the time occurs during whichever of the following periods is applicable:
 - (i) if the person was sentenced to imprisonment—the period:
 - (A) beginning when the person was convicted; and
 - (B) ending 5 years after the person’s release from prison;
 - (ii) in any other case—the period:
 - (A) beginning when the person was convicted; and
 - (B) ending 5 years after the conviction.

Note 1: Section 232 of the Corporations Law deals with duties of directors and other company officers.

Note 2: Sections 590, 591, 592 and 595 of the Corporations Law deal with fraud etc. in relation to the winding-up of a company etc.

Note 3: Section 996 of the Corporations Law deals with false or misleading prospectuses.

Note 4: Section 1307 of the Corporations Law deals with falsification of the books of a company.

Note 5: Part 6.6 of the Corporations Law deals with misleading statements relating to company takeovers etc.

Note 6: Division 2 of Part 7.11 of the Corporations Law deals with fraud etc. in relation to dealing in securities.

Note 7: Section 1317FA of the Corporations Law deals with criminal contraventions of civil penalty provisions. Civil penalty provisions include provisions relating to the following:

- (a) the duties of directors and other company officers;
- (b) financial benefits to directors etc.;
- (c) financial statements and directors’ reports;
- (d) trading while insolvent.

Extended meaning of “conviction”—orders under section 19B of the Crimes Act 1914 etc.

(7) A reference in this section to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to a person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

This section does not limit accreditation scheme

(8) This section does not, by implication, limit the generality of sections 49 and 50 (which deal with the accreditation scheme).

Spent convictions scheme not affected by this section

(9) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

Transitional—previous company law

(10) A reference in this section to a section, Division or Part of the Corporations Law of a State or an internal Territory includes a reference to a corresponding previous law, within the meaning of that Corporations Law, in relation to that section, Division or Part.

Division 2—Contracted case managers

Contracted case managers

Engagement

58.(1) ESRA may engage an accredited case manager to:

- (a) provide case management services to participants in the case management system referred to the accredited case manager under Part 4.3; and
- (b) perform functions conferred on case managers under this Act.

An accredited case manager engaged under this section is to be known as a **contracted case manager**.

Terms and conditions—general

(2) The terms and conditions of the engagement are to be set out in a written agreement between ESRA and the contracted case manager. The terms and conditions must be consistent with the accreditation scheme.

Conditions of accreditation taken to be conditions of engagement

(3) Without limiting subsection (2), each condition of the accreditation of the contracted case manager is taken to be a condition of the engagement.

Cancellation or surrender of accreditation terminates the engagement

(4) Without limiting subsection (2), the cancellation or surrender of the accreditation of the contracted case manager terminates the engagement without giving the case manager any entitlement to compensation or damages.

Payments to contracted case managers

Amounts to be payable to contracted case managers

59.(1) Without limiting subsection 58(2), an agreement under that subsection may provide for amounts to be paid by ESRA to a contracted case manager.

ESRA to deal with claims for payments

- (2) A payment referred to in subsection (1) must not be paid unless:
- (a) a claim for the payment is given to ESRA; and
 - (b) ESRA accepts the claim.

Claims may be made in electronic form

(3) ESRA may authorise a claim for a payment to be given to ESRA, in accordance with specified software requirements:

- (a) on a specified kind of data processing device; or
- (b) by way of a specified kind of electronic transmission.

This section has effect subject to section 32 of the Navigation Act 1912

(4) This section has effect subject to section 32 of the *Navigation Act 1912* (which deals with payments in relation to providing seamen with employment on ships).

Definition

(5) In this section:

“**data processing device**” means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

Claims for payments—false or misleading statements

False statements not to be made

60.(1) A person must not make a false statement to a person who is exercising powers or performing functions under, or in connection with, subsection 59(2).

Note: Subsection 59(2) deals with claims for payments.

Offence

(2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

Definition

(3) In this section:

“**false statement**” means a statement (whether made orally, in a document or in any other way) that:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading in a material particular.

Repayments by contracted case managers

Repayments

61.(1) If:

- (a) an amount is paid to an entity as mentioned in subsection 59(1); and
- (b) the amount is paid subject to a condition (whether a condition precedent or a condition subsequent); and
- (c) the condition was contravened;

the entity is liable to repay the amount to ESRA.

Condition about false or misleading statements

(2) A payment to an entity as mentioned in subsection 59(1) is taken to be made subject to a condition that a false or misleading statement has not been made by or on behalf of the entity in connection with a claim for the payment.

This section does not limit terms of engagement

(3) This section does not, by implication, limit the generality of subsection 58(2) (which deals with the terms and conditions of the engagement of contracted case managers).

Division 3—Rules of conduct

Rules of conduct

Rules of conduct

62.(1) The ESRA Board may, by written instrument, formulate rules of conduct relating to the provision of case management services.

Rules of conduct have effect only for the purposes of section 52

(2) Rules of conduct formulated under subsection (1) have effect only for the purposes of section 52.

Note: Section 52 provides that compliance with rules of conduct is a condition of an entity's accreditation.

Disallowable instrument

(3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 4—Codes of practice

Codes of practice

Codes of practice

63.(1) The ESRA Board may, by written instrument, declare codes of practice relating to the provision of case management services.

Codes to be advisory

(2) A code of practice declared under subsection (1) is an instrument of an advisory character.

Publication of codes of practice

(3) A code of practice is to be published in such manner as the ESRA Board determines.

Monitoring and evaluation by ESRA

- (4)** The functions of ESRA include:
- (a) monitoring and evaluating codes of practice; and
 - (b) monitoring compliance with codes of practice; and
 - (c) telling a case manager about a contravention by the case manager of a code of practice; and
 - (d) giving reports to the Minister about the operation of this section.

Division 5—Assistance to case managers

CES to assist case managers

General

64.(1) The Minister may give written directions to the National Director of the CES about the provision of assistance by the CES to case managers.

CES to comply with direction

(2) The National Director of the CES must take all reasonable steps to ensure that the CES complies with the direction.

Disallowable instrument

(3) A direction under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Directions additional to other requirements

(4) The power conferred by subsection (1) is in addition to, and not instead of, a power conferred otherwise than under this section.

Monitoring and evaluation by ESRA

- (5)** The functions of ESRA include:

- (a) monitoring and evaluating directions under subsection (1); and
- (b) monitoring compliance with directions under subsection (1); and
- (c) making recommendations to the Minister about action to be taken by the Minister under this section.

Department to provide information technology assistance to case managers

General

65.(1) The Minister may, by written instrument, formulate a scheme for the provision of information technology assistance by the Department to case managers. The scheme is to be known as the **Departmental information technology assistance scheme**.

Specific matters

(2) Without limiting subsection (1), the Departmental information technology assistance scheme may:

- (a) provide for the Minister to give directions to the Employment Secretary; and
- (b) provide for amounts to be payable by case managers to the Commonwealth in respect of the provision of information technology assistance under the scheme; and
- (c) set out guidelines about terms and conditions relating to information technology which it is desirable to include in agreements made under section 58 (which deals with the engagement of case managers).

Disallowable instrument

(3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Department to comply with scheme

(4) The Employment Secretary must take all reasonable steps to ensure that the Department complies with the Departmental information technology assistance scheme.

ESRA may make recommendations to the Minister about schemes etc.

- (5)** The functions of ESRA include:
- (a) monitoring and evaluating the operation of this section and the Departmental information technology assistance scheme; and
 - (b) making recommendations to the Minister about action to be taken by the Minister under this section or under the Departmental information technology assistance scheme.

Scheme requirements additional to other requirements

(6) An obligation imposed on the Employment Secretary, or a power conferred on the Minister, by the Departmental information technology assistance scheme is in addition to, and not instead of, an obligation imposed on the Employment Secretary or a power conferred on the Minister, as the case requires, otherwise than under the scheme.

Charges not to amount to imposition of taxation

(7) An amount payable as mentioned in paragraph (2)(b) must not be such as to amount to the imposition of taxation within the meaning of section 55 of the Constitution.

Recovery of charges

(8) If an entity is liable to pay an amount to the Commonwealth as mentioned in paragraph (2)(b):

- (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; or
- (b) the amount may be deducted from one or more other amounts that are payable to the entity as mentioned in subsection 59(1) and, if the amount is so deducted, the other amounts are taken to have been paid in full to the entity.

Commonwealth to be reimbursed for deducted amounts

(9) If an amount is deducted under paragraph (8)(b), an amount equal to that amount is payable by ESRA to the Commonwealth.

Division 6—Control of case management documents

Control of case management documents

Documents to which this section applies

66.(1) This section applies to a document that:

- (a) is connected with the provision, or anticipated provision, of case management services by a case manager to a person referred to the case manager under Part 4.3; and
- (b) relates to the affairs of a person who is or has been so referred to the case manager.

Case management documents

(2) The ESRA Board may make a written determination that specified documents are case management documents for the purposes of this section.

Case management document rules

(3) The ESRA Board may, by written instrument, formulate rules about any or all the following:

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- (a) the provision of case management documents by the CES to case managers;
- (b) the creation of case management documents by case managers;
- (c) the handling, copying and storage of case management documents;
- (d) the amendment of case management documents;
- (e) the return of case management documents to the CES;
- (f) the destruction of, or of copies of, case management documents held by case managers;
- (g) the retention of case management documents by case managers;
- (h) the giving of information relating to rules about any of the above-mentioned matters, where the information is provided to a person who is or has been referred to a case manager under Part 4.3.

The rules are to be known as the **case management document rules**.

Consent necessary for transfer of certain personal records

(4) Without otherwise limiting paragraph (3)(a), rules made for the purposes of that paragraph must provide that a document that consists of, or contains information extracted from:

- (a) a sensitive personal record relating to a person; or
- (b) a person's criminal record;

is to be provided by the CES to a case manager only with the person's consent. For this purpose, consent must be given in writing in a form specified in the case management document rules.

Note: "Sensitive personal record" is defined by subsection (11).

Offence

(5) A person who intentionally or recklessly contravenes the case management document rules is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

Case management document rules to comply with the Archives Act 1983

(6) The case management document rules must not be inconsistent with the provisions of the *Archives Act 1983*.

Case management documents deemed to be Commonwealth records for the purposes of the Archives Act 1983

(7) A case management document is taken to be a Commonwealth record for the purposes of the *Archives Act 1983*.

Case management document rules to comply with the Privacy Act 1988

(8) The case management document rules must not be inconsistent with the provisions of the *Privacy Act 1988*.

Consultation with Privacy Commissioner

(9) Before an instrument is made under subsection (2) or (3), the ESRA Board must consult the Privacy Commissioner.

Disallowable instrument

(10) An instrument under subsection (2) or (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definition

(11) In this section:

“**sensitive personal record**”, in relation to a person, means a record about the person that:

- (a) is made by any of the following other persons:
 - (i) a medical practitioner or other health worker;
 - (ii) a psychologist;
 - (iii) a social worker; and
- (b) is made by the other person acting in his or her professional capacity.

Division 7—Secrecy

Secrecy

Duties of non-disclosure

67.(1) The ESRA Board may make a written determination creating duties of non-disclosure for the purposes of the application of section 70 of the *Crimes Act 1914* to case managers.

Note: Section 70 of the *Crimes Act 1914* deals with disclosure of information by “Commonwealth officers”. Under paragraph (c) of the definition of “Commonwealth officer” in subsection 3(1) of the *Crimes Act 1914*, a person, such as a case manager, who performs services for or on behalf of a public authority under the Commonwealth (such as ESRA) is treated as a Commonwealth officer.

Limitation on creation of duties of non-disclosure

(2) A duty created under subsection (1) must relate to facts or documents that:

- (a) are connected with the provision, or anticipated provision, of case management services by a case manager to a person referred to the case manager under Part 4.3; and
- (b) relate to the affairs of a person who is or has been so referred to the case manager.

Disallowable instrument

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**PART 4.6—THE EMPLOYMENT SERVICES REGULATORY
AUTHORITY (ESRA)**

Division 1—Establishment of ESRA

Establishment of ESRA

Establishment

68.(1) The Employment Services Regulatory Authority is established.

Body corporate

(2) ESRA:

- (a) is a body corporate, with perpetual succession; and
- (b) is to have a seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Seal

(3) The seal of ESRA is to be kept in such custody as ESRA directs and must not be used except as authorised by ESRA.

Imprint of seal

- (4)** All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of the seal of ESRA appearing on a document; and
 - (b) presume that the imprint was duly affixed.

Note: Section 4 provides that “ESRA” means the Employment Services Regulatory Authority.

Division 2—Functions and powers of ESRA

Functions

69. The functions of ESRA are as follows:

- (a) to regulate, in accordance with the provisions of this Chapter, the case management system;
- (b) to promote competition in the provision of case management services;
- (c) to monitor and evaluate the operation of the case management system;
- (d) to report to the Minister on the operation of the case management system;
- (e) such other functions as are conferred on ESRA by this Act or any other law;
- (f) to do anything incidental to or conducive to the performance of any of the preceding functions.

Powers

General powers

70.(1) ESRA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Specific powers

(2) The powers of ESRA under subsection (1) include, but are not limited to, the following powers:

- (a) to enter into contracts and agreements;
- (b) to appoint agents and attorneys and act as an agent for other persons;
- (c) to accept gifts, grants, bequests and devises made to it;
- (d) to act as trustee of money and other property vested in it on trust;
- (e) to charge for the provision of services by it.

Trusts

(3) Despite anything contained in this Act, any money or other property held by ESRA on trust must be dealt with in accordance with the powers and duties of ESRA as trustee.

Ministerial directions

Directions

71.(1) The Minister may give written directions to the ESRA Board about:

- (a) the performance of ESRA's functions and the exercise of ESRA's powers; or
- (b) the performance of the ESRA Board's functions and the exercise of the ESRA Board's powers.

Gazettal

(2) A direction under this section must be published in the *Gazette*.

Compliance with directions

(3) The ESRA Board and ESRA must comply with a direction under this section.

Minister may notify ESRA of general policies of the Commonwealth Government

Notification of policies

72.(1) The Minister may notify the ESRA Board, in writing, of general policies of the Commonwealth Government that are to apply in relation to the ESRA Board and ESRA.

Policies to be carried out

(2) The ESRA Board and ESRA must ensure that the policies are carried out.

Minister may ask for information

Request for information

73.(1) The Minister may, from time to time, ask the ESRA Board for information about:

- (a) the operation of the case management system; or
- (b) the operation of ESRA.

Information to be given

(2) The ESRA Board must give the Minister the information requested.

Division 3—ESRA Board

ESRA Board

ESRA Board

74.(1) There is to be a Board of ESRA.

Composition of Board

(2) The ESRA Board consists of the following members:

- (a) a Chairperson;
- (b) not more than 5, but not fewer than 2, other members.

Vacancy not to affect performance of functions etc.

(3) The performance of the functions, or the exercise of the powers, of the ESRA Board is not affected only because of there being a vacancy or vacancies in the membership of the ESRA Board.

Functions of ESRA Board

Functions

75.(1) The functions of the ESRA Board are as follows:

- (a) to determine the policy of ESRA with respect to any matter;
- (b) to give directions to the ESRA Chief Executive Officer;
- (c) such other functions as are conferred on the ESRA Board by this Act.

Responsibility

(2) It is the responsibility of the ESRA Board to ensure the proper and efficient performance of the functions of ESRA.

Division 4—Administrative provisions

Appointment of ESRA Board members

76. An ESRA Board member is to be appointed by the Governor-General by written instrument.

Period of appointment

77. An ESRA Board member holds office for such period as is specified in the instrument of appointment. The period must not exceed 3 years.

Basis on which ESRA Board members hold office

78. The instrument of appointment of an ESRA Board member may declare that the member holds office on a full-time basis or on a part-time basis.

Remuneration and allowances—ESRA Board members

Remuneration to be determined by Remuneration Tribunal

79.(1) An ESRA Board member is to be paid such remuneration as is determined by the Remuneration Tribunal.

Remuneration to be prescribed if no determination in operation

(2) If no determination of that remuneration is in operation, an ESRA Board member is to be paid such remuneration as is prescribed.

Allowances

(3) An ESRA Board member is to be paid such allowances as are prescribed.

Section has effect subject to the Remuneration Tribunal Act 1973

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Outside employment—part-time ESRA Board members

ESRA Board members to whom this section applies

80.(1) This section applies to an ESRA Board member who holds office on a part-time basis.

No conflicting outside employment

(2) An ESRA Board member must not engage in any paid employment that, in the Minister's opinion, conflicts, or may conflict, with the proper performance of the member's duties.

Outside employment—full-time ESRA Board members

ESRA Board members to whom this section applies

81.(1) This section applies to an ESRA Board member who holds office on a full-time basis.

No outside employment

(2) An ESRA Board member must not engage in any paid employment outside the duties of his or her office without the Minister's written approval.

Leave of absence—part-time ESRA Board members

ESRA Board members to whom this section applies

82.(1) This section applies to an ESRA Board member if the member holds office on a part-time basis.

Leave for ESRA Chairperson

(2) The Minister may, by writing, grant leave of absence to the ESRA Chairperson from a meeting of the ESRA Board.

Leave for other ESRA Board members

(3) The ESRA Chairperson may, by writing, grant leave of absence to another ESRA Board member from a meeting of the ESRA Board.

Leave of absence—full-time ESRA Board members

ESRA Board members to whom this section applies

83.(1) This section applies to an ESRA Board member if the member holds office on a full-time basis.

Recreation leave

(2) Subject to section 87E of the *Public Service Act 1922*, an ESRA Board member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

Leave for ESRA Chairperson

(3) The Minister may grant the ESRA Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Leave for other ESRA Board members

(4) The ESRA Chairperson may grant another ESRA Board member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the ESRA Chairperson determines in writing.

Acting appointments

Acting Chairperson

84.(1) The Minister may appoint an ESRA Board member to act as the ESRA Chairperson:

- (a)** during a vacancy in the office of ESRA Chairperson, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the ESRA Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy is not to continue so to act for more than 12 months.

Acting member

(2) The Minister may appoint a person to act as an ESRA Board member (other than as the ESRA Chairperson):

- (a) during a vacancy in an office of member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy is not to continue so to act for more than 12 months.

Validation

(3) Anything done by or in relation to a person purporting to act under this section 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 to act had not arisen or had ceased.

Disclosure of interests

Disclosure

85.(1) An ESRA Board member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the ESRA Board must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.

Participation

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the ESRA Board and the member concerned must not:

- (a) be present during any deliberation of the Board in relation to that matter; or
- (b) take part in any decision of the Board in relation to that matter.

Notification of business interests to Minister

(3) An ESRA Board member who holds office on a full-time basis must give written notice to the Minister of all direct or indirect pecuniary interests that the member has or acquires in any business, or in any body corporate carrying on a business.

Resignation

86. An ESRA Board member may resign by writing signed by him or her and sent to the Governor-General.

Termination of appointment

Misbehaviour or incapacity

87.(1) The Governor-General may terminate the appointment of an ESRA Board member because of misbehaviour or physical or mental incapacity.

Bankruptcy, conflict of interest etc.

(2) If an ESRA Board member:

- (a) becomes bankrupt; or
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (e) fails, without reasonable excuse, to comply with section 85 (which deals with conflict of interest);

the Governor-General must terminate the appointment of the member.

Part-time ESRA Board members—unauthorised absence, paid employment

(3) If an ESRA Board member who holds office on a part-time basis:

- (a) is absent, except on leave granted under section 82, from 3 consecutive meetings of the ESRA Board; or
- (b) engages in paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's duties;

the Governor-General must terminate the appointment of the member.

Full-time ESRA Board members—unauthorised absence, paid employment

(4) If an ESRA Board member who holds office on a full-time basis:

- (a) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (b) engages, except with the Minister's approval, in paid employment outside the duties of his or her office;

the Governor-General must terminate the appointment of the member.

Unsatisfactory performance of individual ESRA Board member

(5) The Governor-General may terminate the appointment of an ESRA Board member if the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

Unsatisfactory performance—ESRA Board

(6) The Governor-General may terminate the appointment of all ESRA Board members or specified ESRA Board members if the Minister is of the opinion that the performance of the ESRA Board has been unsatisfactory for a significant period of time.

Other terms and conditions

88. An ESRA Board member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.

Division 5—Meetings of the ESRA Board

Meetings of the ESRA Board

Chairperson to convene meetings

89.(1) The ESRA Chairperson must convene such meetings of the ESRA Board as, in his or her opinion, are necessary for the efficient performance of the Board's responsibilities.

Quorum

(2) At a meeting of the ESRA Board, a quorum is constituted as follows:

No. of ESRA Board members entitled to be present at the meeting (ignoring section 85)	No. of ESRA Board members required to constitute a quorum
3	2
4	3
5	3
6	4

Quorum if member excluded under section 85

(3) If:

- (a) an ESRA Board member who is present at a meeting is required by section 85 not to be present during the deliberations, or to take part in any decision, of the ESRA Board with respect to a particular matter; and
- (b) when the member leaves the meeting there is no longer a quorum present;

the ESRA Board members remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Chairperson to preside at meetings

(4) The ESRA Chairperson is to preside at all meetings of the ESRA Board at which he or she is present.

Arrangements if Chairperson not present at a meeting

(5) If the ESRA Chairperson is not present at a meeting of the ESRA Board, the ESRA Board members present must elect one of their number to preside at the meeting.

Voting

(6) Questions arising at a meeting of the ESRA Board are to be determined by a majority of the votes of the ESRA Board members present and voting.

Deliberative vote

(7) The person presiding at a meeting of the ESRA Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Procedure and minutes

- (8) The ESRA Board:
- (a) may regulate the conduct of proceedings at its meetings as it thinks fit; and
 - (b) must cause minutes of those proceedings to be kept.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Resolutions without meetings

Agreement with resolution

90.(1) A resolution is taken to have been passed at a meeting of the ESRA Board if, without meeting, a sufficient number of ESRA Board members indicate agreement with a resolution in accordance with a method determined by the ESRA Board under subsection (2).

Note: "Sufficient number of ESRA Board members" is defined by subsection (3).

Determinations

- (2) Subsection (1) applies only if the ESRA Board:
- (a) determines that it applies; and
 - (b) determines the method by which ESRA Board members are to indicate agreement with the resolution.

Sufficient number of ESRA Board members

- (3) In this section:

“sufficient number of ESRA Board members”, in relation to a resolution, means a majority of the number of ESRA Board members who would have been entitled to vote on the resolution at a meeting of the ESRA Board if they had been present at the meeting.

Division 6—ESRA Chief Executive Officer

ESRA Chief Executive Officer

91. There is to be a Chief Executive Officer of ESRA.

Duties of ESRA Chief Executive Officer

Functions and powers of ESRA

92.(1) Subject to subsection (2), the ESRA Chief Executive Officer is to conduct the affairs of ESRA.

Board’s policies and directions

(2) The ESRA Chief Executive Officer must, in:

- (a) conducting the affairs of ESRA; and
- (b) exercising any powers conferred on the ESRA Chief Executive Officer by this Act;

act in accordance with any policies determined, and any directions given, by the ESRA Board in writing. However, if the ESRA Board has not determined a policy with respect to a particular matter, the ESRA Chief Executive Officer may determine a policy with respect to that matter.

Attribution of acts of ESRA Chief Executive Officer

(3) Anything done in the name of, or on behalf of, ESRA by the ESRA Chief Executive Officer is taken to have been done by ESRA.

Appointment of ESRA Chief Executive Officer

93. The ESRA Chief Executive Officer is to be appointed by the Governor-General by written instrument.

Full-time basis

94. The ESRA Chief Executive Officer holds office on a full-time basis.

Term of appointment

95. The ESRA Chief Executive Officer holds office for such period as is specified in the instrument of appointment. The period must not exceed 5 years.

Remuneration and allowances

Remuneration to be determined by Remuneration Tribunal

96.(1) The ESRA Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal.

Remuneration to be prescribed if no determination in operation

(2) If no determination of that remuneration is in operation, the ESRA Chief Executive Officer is to be paid such remuneration as is prescribed.

Allowances

(3) The ESRA Chief Executive Officer is to be paid such allowances as are prescribed.

Section has effect subject to the Remuneration Tribunal Act 1973

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Outside employment

97. The ESRA Chief Executive Officer must not engage in any paid employment outside the duties of his or her office without the Minister's written approval.

Leave of absence

Recreation leave

98.(1) Subject to section 87E of the *Public Service Act 1922*, the ESRA Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

Other leave

(2) The Minister may grant the ESRA Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Acting ESRA Chief Executive Officer

Acting appointment

99.(1) The Minister may appoint a person to act as the ESRA Chief Executive Officer:

- (a) during a vacancy in the office of the ESRA Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the ESRA Chief Executive Officer is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 12 months.

Validation

(2) Anything done by or in relation to a person purporting to act under this section 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 to act had not arisen or had ceased.

Disclosure of interests

100. The ESRA Chief Executive Officer must give written notice to the Minister of all direct or indirect pecuniary interests that the ESRA Chief Executive Officer has or acquires in any business, or in any body corporate carrying on any business.

Resignation

101. The ESRA Chief Executive Officer may resign by writing signed by him or her and sent to the Governor-General.

Termination of appointment

Misbehaviour or incapacity

102.(1) The Governor-General may terminate the appointment of the ESRA Chief Executive Officer because of misbehaviour or physical or mental incapacity.

Unauthorised absence, bankruptcy etc.

- (2)** If the ESRA Chief Executive Officer:
- (a) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (b) becomes bankrupt; or
 - (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (d) compounds with his or her creditors; or
 - (e) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (f) fails, without reasonable excuse, to comply with section 100 (which deals with disclosure of interests); or
 - (g) engages, except with the Minister's approval, in paid employment outside the duties of his or her office;

the Governor-General must terminate the appointment of the ESRA Chief Executive Officer.

Unsatisfactory performance

(3) The Governor-General may terminate the appointment of the ESRA Chief Executive Officer if the Minister is of the opinion that the performance of the ESRA Chief Executive Officer has been unsatisfactory for a significant period of time.

Other terms and conditions

103. The ESRA Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

Division 7—Finances

Money payable to ESRA

Appropriation

104.(1) There is payable to ESRA such money as is appropriated from time to time by the Parliament for the purposes of ESRA.

Directions

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to ESRA.

Estimates

Preparation of estimates

105.(1) The ESRA Board must prepare estimates, in such form as the Minister directs, of the expenditure of ESRA, out of money payable to ESRA under section 104, for:

- (a) each financial year; and
- (b) if the Minister so directs—for any other period specified by the Minister.

Submission of estimates to Minister

(2) The ESRA Board must submit those estimates to the Minister not later than such date as the Minister directs.

Compliance with estimates

(3) Money paid to ESRA under section 104 must not be spent by ESRA otherwise than in accordance with estimates of expenditure approved by the Minister.

Pre-1 July 1995 period taken to be a financial year

- (4)** For the purposes of this section, the period:
- (a) beginning at the commencement of this section; and
 - (b) ending at the end of 30 June 1995;

is taken to be a financial year.

Application of money held by ESRA

106. Money held by ESRA must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by ESRA in the performance of its functions or the exercise of its powers under this Act or any other law; and
- (b) in payment of any remuneration and allowances payable to any person under this Act or any other law; and
- (c) in making investments under section 108; and
- (d) in making any other payments which ESRA is authorised or required to make under this Act or any other law.

Application of the *Audit Act 1901* to ESRA

Application

107.(1) ESRA is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

Modifications

- (2)** Division 3 of Part XI of the *Audit Act 1901* applies to ESRA as if:
- (a) the report referred to in section 63M of that Act relating to ESRA's operations during a financial year were also required to include:
 - (i) particulars of any directions given by the Minister under section 71 during the financial year; and
 - (ii) particulars of any policies of the Commonwealth Government notified under section 72 during the financial year; and
 - (iii) such additional information (if any) as is specified in the regulations; and
 - (b) the period:
 - (i) beginning at the commencement of this section; and
 - (ii) ending at the end of 30 June 1995;were a financial year.

Investment of money

Investment

108.(1) Money of ESRA not immediately required for the purposes of ESRA may be invested:

- (a) on deposit with an approved bank; or
- (b) in Commonwealth securities; or
- (c) in any other manner approved by the Treasurer.

Approved bank

- (2)** In subsection (1):

“approved bank” means:

- (a) a bank as defined by subsection 5(1) of the *Banking Act 1959*; or
- (b) another bank approved by the Treasurer, or by a person authorised by the Treasurer to give approvals under section 63E of the *Audit Act 1901*.

Exemption from taxation

General exemption

109.(1) ESRA is not subject to taxation under a law of the Commonwealth or of a State or Territory.

Sales tax

(2) Sales tax is not payable by ESRA, or by any other person, on goods that are for use by ESRA.

Excise duty

(3) Excise duty is not payable by ESRA, or by any other person, on goods that are for use by ESRA.

Division 8—Staff of ESRA

Staff of ESRA

Staff to be public servants

110.(1) The staff required for the purposes of ESRA are to be persons appointed or employed under the *Public Service Act 1922*.

ESRA Chief Executive Officer to have the same staff powers as a Secretary of a Department

(2) The ESRA Chief Executive Officer has all the powers of a Secretary under the *Public Service Act 1922* as they relate to the branch of the Australian Public Service comprising ESRA's staff.

Arrangements with authorities of the Commonwealth

Arrangements

111.(1) ESRA may make an arrangement with an authority of the Commonwealth:

- (a) for the services of officers or employees of the authority to be made available for the purposes of ESRA; or
- (b) for the services of officers or employees of ESRA to be made available for the purposes of the authority.

Note: “Authority of the Commonwealth” is defined by subsection (2).

Definition

- (2)** In this section:

“authority of the Commonwealth” means:

- (a) a Department; or
- (b) a body (whether incorporated or unincorporated) established for a public purpose by or under a law of the Commonwealth; or
- (c) any other body corporate in which:
 - (i) the Commonwealth; or
 - (ii) a body corporate referred to in paragraph (b);
has a controlling interest.

Consultants

Engagement of consultants

112.(1) ESRA may engage as consultants to ESRA persons having suitable qualifications and experience.

Terms and conditions

(2) The terms and conditions on which consultants are engaged are as determined by the ESRA Board in writing.

Division 9—Delegation

Delegation

ESRA’s functions and powers

113.(1) The ESRA Chief Executive Officer may, by writing, delegate any or all of ESRA’s functions and powers to a member of the staff of ESRA.

ESRA Chief Executive Officer’s functions and powers

(2) The ESRA Chief Executive Officer may, by writing, delegate any or all of his or her functions and powers to a member of the staff of ESRA.

Division 10—Committees

Committees

Establishment of committees

114.(1) The ESRA Board may, by writing, establish committees to assist it in performing any of its functions.

Composition of committees

(2) A committee consists of such persons as the ESRA Board from time to time appoints to the committee.

Directions to committees

(3) The ESRA Board may give a committee written directions about:

- (a) the way in which the committee is to carry out its functions; and
- (b) procedures to be followed in relation to meetings.

Division 11—Corporate plans

Corporate plan

ESRA Board to prepare corporate plan

115.(1) The ESRA Board must prepare, and revise from time to time, a plan to be known as the corporate plan.

Corporate plan to be revised annually

(2) The ESRA Board must revise the corporate plan on at least one occasion during each financial year. However, this rule does not apply to a financial year earlier than the financial year beginning on 1 July 1995.

Contents of corporate plan

(3) The corporate plan must include, but is not limited to, the following matters:

- (a) a financial plan;
- (b) a statement of the objectives of ESRA;
- (c) a statement of the strategies and policies proposed to achieve those objectives.

Period to which corporate plan is to relate

(4) The corporate plan must relate to a period of at least 3 years and not more than 5 years.

Corporate plan to be given to Minister

(5) If the ESRA Board prepares or revises the corporate plan, it must give the plan or revised plan to the Minister as soon as practicable.

First corporate plan to be given to Minister before 1 July 1995

(6) The ESRA Board must give its first corporate plan to the Minister before 1 July 1995.

PART 4.7—INVESTIGATIONS BY ESRA

Object of Part

116. The object of this Part is to empower ESRA to investigate certain matters relating to the operation of the case management system.

Matters to which this Part applies

117. This Part applies to the following matters:

- (a) the performance of functions, and the exercise of powers, by the CES under Part 4.3 (which deals with the referral of people to case managers);
- (b) the provision of case management services by a case manager to a person referred to the case manager under Part 4.3;
- (c) a contravention of a condition of the accreditation of an entity;
- (d) a breach of an agreement under section 58 (which deals with the engagement of accredited case managers);
- (e) a contravention of a code of practice declared under section 63;
- (f) a contravention of a direction under section 64 (which deals with the provision by the CES of assistance to case managers);
- (g) a contravention of, or of a direction under, a scheme under section 65 (which deals with the provision by the Department of information technology assistance to case managers);
- (h) a contravention of the case management document rules in force under section 66;
- (i) a contravention of a duty of non-disclosure in force under section 67.

Complaints to ESRA

Complaints to ESRA

118.(1) A person may complain to ESRA about a matter.

Note: "Matter" is defined by section 117.

Complaints to be in writing

(2) A complaint must be in writing.

Respondent to be specified in complaint

(3) A complaint must specify, as the respondent in relation to the complaint, the entity against whom the complaint is made.

Investigations by ESRA

Investigations to be in response to a complaint or to be undertaken on ESRA's own initiative

119.(1) ESRA may investigate a matter if:

- (a) a complaint is made under section 118; or
- (b) ESRA considers that it is desirable to investigate the matter.

Note: "Matter" is defined by section 117.

Minister may require ESRA to investigate a matter

(2) ESRA must investigate a matter if the Minister asks ESRA to investigate the matter.

Note: "Matter" is defined by section 117.

Preliminary inquiries

120. If a complaint has been made, or purportedly made, to ESRA under section 118, ESRA may make inquiries of the respondent for the purposes of determining:

- (a) whether ESRA has power to investigate the matter to which the complaint relates; or
- (b) whether ESRA should, in its discretion, investigate the matter.

Reference of certain matters to Departmental Secretaries

When this section applies

121.(1) This section applies if:

- (a) a complaint has been made, or purportedly made, to ESRA under section 118; and
- (b) ESRA decides that:
 - (i) it does not have power to investigate the matter to which the complaint relates; or
 - (ii) it should not investigate the matter; and
- (c) ESRA forms the opinion that the matter could be more conveniently dealt with by the Employment Secretary or by the Social Security Secretary.

Transfer of complaints to Departmental Secretaries

(2) ESRA must refer the complaint to the Employment Secretary or to the Social Security Secretary, as the case requires.

Conduct of investigations

Respondent to be told about investigation

122.(1) Before beginning an investigation of a matter to which a complaint relates, ESRA must tell the respondent that the matter is to be investigated. However, this rule does not apply if ESRA considers that, because of special circumstances, the investigation could be prejudiced if the respondent were to be told at that stage.

Manner of conduct of investigation

(2) An investigation under this Part is to be conducted as ESRA thinks fit.

Inquiries

(3) ESRA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.

Appearances before ESRA

(4) Subject to subsection (5), it is not necessary for a complainant or a respondent to be given an opportunity to appear before ESRA in connection with an investigation.

Submissions to ESRA

(5) ESRA must not, as a result of an investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent, as the case requires, an opportunity to make submissions about the matter to which the investigation relates.

Complainant and certain other persons to be told about decision not to investigate

When this section applies

123.(1) This section applies if ESRA decides not to investigate, or not to investigate further, a matter to which a complaint relates.

Complainant and respondent to be told about decision

(2) ESRA must inform the complainant and the respondent of the decision and of the reasons for the decision.

When complainant and respondent to be told etc.

- (3) ESRA must so inform the complainant and the respondent:
- (a) as soon as practicable after ESRA makes the decision; and
 - (b) in such manner as ESRA thinks fit.

Reference of matters to Ombudsman

ESRA may decide not to investigate

124.(1) If, before ESRA starts, or after it has started, an investigation of a matter to which a complaint relates, ESRA forms the opinion that:

- (a) a complaint relating to that matter has been, or could have been, made by the complainant to the Ombudsman under the *Ombudsman Act 1976*; and
- (b) the matter could be more conveniently or effectively dealt with by the Ombudsman;

ESRA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.

ESRA may transfer complaint to Ombudsman

- (2) If ESRA so decides, it must:
- (a) transfer the complaint to the Ombudsman; and
 - (b) give written notice to the complainant stating that the complaint has been so transferred; and
 - (c) give to the Ombudsman any information or documents that relate to the complaint and that are in ESRA's possession or under its control.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Complaint treated as if it were made under the Ombudsman Act 1976

(3) A complaint transferred under this section to the Ombudsman is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

Reference of matters to Trade Practices Commission

ESRA may decide not to investigate

125.(1) If, before ESRA starts, or after it has started, an investigation of a matter to which a complaint relates, ESRA forms the opinion that the matter could be more conveniently or effectively dealt with by the Trade Practices Commission, ESRA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.

Transfer of complaint to Trade Practices Commission

- (2) If ESRA so decides, it must:
- (a) transfer the complaint to the Trade Practices Commission; and
 - (b) give written notice to the complainant stating that the complaint has been so transferred; and
 - (c) give to the Trade Practices Commission any information or documents that relate to the complaint and that are in ESRA's possession or under its control.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Investigation by Trade Practices Commission

(3) The Trade Practices Commission may hold an investigation into the matter and, if it decides to do so, it must report to ESRA on:

- (a) the conduct of the investigation; and
- (b) any findings it has made as a result of the investigation.

ESRA to be notified if Trade Practices Commission decides not to investigate

(4) If the Trade Practices Commission decides not to hold an investigation into the matter, it must give to ESRA a written notice informing ESRA of its decision and of the reasons for its decision.

Reference of matters to Privacy Commissioner

ESRA may decide not to investigate

126.(1) If, before ESRA starts, or after it has started, an investigation of a matter to which a complaint relates, ESRA forms the opinion that the matter could be more conveniently or effectively dealt with by the Privacy Commissioner, ESRA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.

Transfer of complaint to Privacy Commissioner

- (2) If ESRA so decides, it must:
- (a) transfer the complaint to the Privacy Commissioner; and
 - (b) give written notice to the complainant stating that the complaint has been so transferred; and
 - (c) give to the Privacy Commissioner any information or documents that relate to the complaint and that are in ESRA's possession or under its control.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Complaint treated as if it were made under the Privacy Act 1988

(3) A complaint transferred under this section to the Privacy Commissioner is taken to be a complaint made to the Privacy Commissioner under the *Privacy Act 1988*.

Effect of investigation by Auditor-General

When section applies

127.(1) This section applies if ESRA becomes aware that a matter being investigated by it is, or is related to, a matter that is under investigation by the Auditor-General.

Suspension of investigation by ESRA

(2) Except with the consent of the Auditor-General, ESRA must not continue to investigate the matter until the investigation by the Auditor-General has been completed.

Reports on investigations

Investigations in response to complaints and investigations undertaken on ESRA's own initiative

128.(1) After concluding an investigation under subsection 119(1), ESRA may prepare and give to the Minister a report under this section.

Investigations requested by the Minister

(2) After concluding an investigation under subsection 119(2), ESRA must prepare and give to the Minister a report under this section.

Contents of report

- (3) A report under this section must cover:
- (a) the conduct of the investigation concerned; and
 - (b) any findings that ESRA has made as a result of the investigation.

Protection from civil actions

129. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint under section 118;
- (b) the making of a statement to, or the giving of a document or information to, ESRA in connection with an investigation under section 119.

Public register of information about investigations

Register

130.(1) ESRA must keep a register of its investigations under this Part.

Register to be open to public inspection

(2) The register must be open to public inspection.

Investigation of complaints

(3) For each complaint under section 118, the register must set out the following:

- (a) a short summary of the nature of the complaint;
- (b) if ESRA has decided to investigate the complaint:
 - (i) when the investigation began; and
 - (ii) when it ended; and
 - (iii) a summary of its outcome;
- (c) if ESRA has decided not to investigate the complaint—that ESRA has so decided.

Identifying information

(4) A summary referred to in subsection (3) must not include information that is likely to enable the identification of an individual unless the individual has given his or her written consent to the inclusion of the information.

Other investigations

(5) For each matter that ESRA investigates otherwise than because of a complaint, the register must set out the following:

- (a) a short summary of the nature of the matter;
- (b) when the investigation began;
- (c) when it ended;
- (d) a summary of its outcome.

PART 4.8—MONITORING OF COMPLIANCE

Appointment of inspectors

131. The ESRA Chief Executive Officer may, by written instrument, appoint members of the staff of ESRA to be inspectors for the purposes of this Act.

Identity cards for inspectors

Issue of card

132.(1) The ESRA Chief Executive Officer must cause an identity card to be issued to each person appointed as an inspector under section 131.

Card to specify inspector's name and appointment

(2) The identity card must specify the name and appointment of the person.

Inspector's photograph to be attached to card

(3) A recent photograph of the person must be attached to the card.

Return of identity cards issued to inspectors

When section applies

133.(1) This section applies if a person appointed as an inspector under section 131 ceases to be an inspector.

Return of identity card

(2) The person must not, upon so ceasing to be an inspector, fail to return to the ESRA Chief Executive Officer the identity card issued to him or her under section 132.

Offence

(3) A person who, without reasonable excuse, contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit.

Searches to monitor compliance

Searches

134.(1) Subject to this section, an inspector may enter, at any time between the hours of 9 a.m. and 5 p.m. on a business day, any premises that the inspector has reasonable cause to believe are premises to which this section applies and:

- (a) search the premises; or
- (b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or
- (c) inspect any document kept at the premises; or
- (d) remove, or make copies of, any such document.

Purpose of search

(2) An inspector may exercise powers conferred by subsection (1) only to the extent that it is reasonably necessary for the purpose of ascertaining whether any or all of the following have been complied with:

- (a) a condition to which the accreditation of an entity is subject;
- (b) an agreement under section 58 (which deals with the engagement of accredited case managers).

Limitations on search powers

(3) An inspector may exercise powers conferred by subsection (1) for the purpose of ascertaining whether a particular condition or agreement has been complied with only if the inspector has reasonable grounds to believe that:

- (a) ESRA has already made reasonable efforts to exercise other powers for that purpose, but the result of the exercise of those powers was not sufficient to achieve that purpose; or
- (b) the exercise by ESRA of other powers to achieve that purpose would not be effective.

Searches of residential premises

(4) An inspector must not exercise the power conferred by subsection (1) to enter premises if:

- (a) the premises are a residence; and
- (b) the occupier of the premises has not consented to the entry.

Production of identity card by inspector

(5) An inspector must not exercise the powers conferred by subsection (1) in relation to premises if:

- (a) the occupier of the premises has asked the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the request.

Premises to which this section applies

- (6) This section applies to the following premises:
 - (a) premises at which a case manager provides case management services to participants in the case management system referred to the case manager under Part 4.3;
 - (b) premises at which records relating to any such services are kept.

Definition

(7) In this section:

“**business day**” means a day that is not a Saturday, Sunday or a public holiday in the place concerned.

Offence-related searches and seizures

Offences to which this section applies

135.(1) This section applies to:

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- (a) an offence against section 60 or 66; or
- (b) an offence that:
 - (i) is created by section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*; and
 - (ii) relates to section 60 or 66.

Note 1: Section 60 deals with false or misleading statements made in connection with claims for payments.

Note 2: Section 66 deals with the case management document rules.

Searches

(2) If an inspector has reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence, the inspector may:

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under subsection (3);

enter the premises and:

- (c) search the premises for the thing; and
- (d) if the inspector finds the thing in or on the premises—seize the thing.

Warrants

(3) If:

- (a) an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence; and
- (b) the information sets out those grounds;

the Magistrate may issue a search warrant, in accordance with the form prescribed for the purposes of this subsection, authorising an inspector named in the warrant, with such assistance, and by such force, as are necessary and reasonable, to:

- (c) enter the premises; and
- (d) search the premises for the thing; and
- (e) if the inspector finds the thing in or on the premises—seize the thing.

Restrictions on issue of warrant

- (4) A Magistrate must not issue a warrant under subsection (3) unless:
 - (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Matters to be stated in warrants

- (5) There must be stated in a warrant issued under subsection (3):
- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry, search and seizure are authorised; and
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) a description of the kind of things to be seized; and
 - (d) a day, not being later than one week after the day of issue of the warrant, upon which the warrant ceases to have effect.

Seizure

- (6) If:
- (a) in the course of searching, under a warrant issued under subsection (3), for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be:
 - (i) a thing that will afford evidence as to the commission of the offence, although not the thing specified in the warrant; or
 - (ii) a thing that will afford evidence as to the commission of another offence; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent:
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence or the other offence;

the warrant is taken to authorise the inspector to seize that thing.

Retention of seized items

- (7) If an inspector seizes any thing under this section, the inspector may retain the thing until:
- (a) the end of 60 days after the seizure; or
 - (b) if proceedings for an offence in respect of which the thing may afford evidence are brought within that period—until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

Release of seized items

- (8) ESRA may authorise any thing seized under this section to be released to the owner, or the person from whom the thing was seized, either:
- (a) unconditionally; or
 - (b) on such conditions as ESRA thinks fit.

Information-gathering powers—searches of premises

Inspector may obtain information

136.(1) Subject to this section, an inspector who has entered premises under section 134 or 135 may require a person to:

- (a) answer any questions put by the inspector; and
- (b) produce any documents requested by the inspector.

Purpose for which information may be obtained

(2) An inspector may exercise powers conferred by subsection (1) only to the extent that it is reasonably necessary for the purpose of ascertaining whether any or all of the following have been complied with:

- (a) a condition to which the accreditation of an entity is subject;
- (b) an agreement under section 58 (which deals with the engagement of accredited case managers);
- (c) section 60 (which deals with false or misleading statements);
- (d) section 66 (which deals with the case management document rules).

Production of identity card by inspector

(3) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces his or her identity card for inspection by the person.

Offence

(4) A person who, without reasonable excuse, refuses or fails to comply with a requirement made of the person under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Excuse of self-incrimination

(5) A person is excused from complying with a requirement made of the person under subsection (1) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

Retention of documents

When section applies

137.(1) This section applies if:

- (a) an inspector removes a document from premises under subsection 134(1); or
- (b) an inspector seizes a document under section 135; or
- (c) a person produces a document to an inspector in accordance with a requirement under subsection 136(1).

Retention of document

(2) The inspector may retain possession of the document for such period as is necessary and reasonable for the purpose of ascertaining whether any or all of the following have been complied with:

- (a) a condition to which the accreditation of an entity is subject;
- (b) an agreement under section 58 (which deals with the engagement of accredited case managers);
- (c) section 60 (which deals with false or misleading statements);
- (d) section 66 (which deals with the case management document rules).

Inspection of retained document

(3) During that period, the inspector must permit a person who would be entitled to inspect the document if it were not in the inspector's possession to inspect the document at all reasonable times.

PART 4.9—ESRA'S GENERAL INFORMATION-GATHERING POWERS

Power to obtain information and documents

When section applies

138.(1) This section applies if ESRA has reason to believe that a person is capable of:

- (a) giving information which ESRA has reason to believe is relevant to a designated matter; or
- (b) producing documents which ESRA has reason to believe are relevant to a designated matter; or
- (c) giving evidence which ESRA has reason to believe is relevant to a designated matter.

Note: "Designated matter" is defined by subsection (4).

Requirement to give information or produce documents etc.

- (2) ESRA may, by written notice given to the person, require the person:
 - (a) to give to ESRA, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to ESRA, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to ESRA, within the period and in the manner specified in the notice, those copies; or
 - (d) to appear before ESRA at a time and place specified in the notice to give any such evidence, either orally or in writing, and to produce any such documents.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Explanation

(3) A notice under this section must set out the effects of sections 140, 141 and 142.

Designated matters

(4) For the purposes of this section, each of the following matters is a **designated matter**:

- (a) ascertaining whether there has been a contravention of a condition of the accreditation of an entity;
- (b) the performance of any of ESRA's functions or the exercise of any of its powers under:
 - (i) the accreditation scheme; or
 - (ii) a condition of accreditation; or
 - (iii) section 57 (which deals with disqualification for fraud, dishonesty etc.);
- (c) the performance of any of ESRA's functions or the exercise of any of its powers under section 59 (which deals with claims for payments);
- (d) ascertaining whether there has been a contravention of the case management document rules in force under section 66;
- (e) the performance of any of ESRA's functions or the exercise of any of its powers under Part 4.7 (which deals with investigations);
- (f) the performance of any of ESRA's functions or the exercise of any of its powers under Part 4.12 (which deals with recovery of case management debts).

Copying documents—reasonable compensation

139. A person is entitled to be paid by ESRA reasonable compensation for complying with a requirement covered by paragraph 138(2)(c).

Failure to comply with section 138 notice

Offence

140.(1) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a notice under section 138.

Penalty: Imprisonment for 6 months.

Excuse of self-incrimination

(2) A person is excused from giving information or evidence or producing a document or a copy of a document under section 138 if the information, evidence or production of the document or copy might tend to incriminate the person or expose the person to a penalty.

Giving false or misleading information or evidence

141. A person must not, in purported compliance with a notice under section 138, intentionally or recklessly give information or evidence that is false or misleading.

Penalty: Imprisonment for 12 months.

Provision of false or misleading documents

No false or misleading documents

142.(1) A person must not, in compliance with a notice under section 138, produce a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Exception

(2) Subsection (1) does not apply to a person who produces a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular if the document or copy is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document or copy is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the first-mentioned person, false or misleading.

Copies of documents

143.(1) ESRA may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

(2) ESRA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 138(2)(c).

ESRA may retain documents

Retention

144.(1) ESRA may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, possession of a document produced under this Part.

Certified copy

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by ESRA to be a true copy.

Evidence

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

Access

(4) Until a certified copy is supplied, ESRA must, at such times and places as ESRA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

PART 4.10—REVIEW OF DECISIONS RELATING TO PARTICIPATION IN THE CASE MANAGEMENT SYSTEM, DECISIONS RELATING TO REFERRALS TO CASE MANAGERS AND DECISIONS RELATING TO CASE MANAGEMENT ACTIVITY AGREEMENTS

Division 1—Preliminary

Reviewable decision

145. In this Part:

“**reviewable decision**” means a decision of the CES or the Employment Secretary under Part 4.2, 4.3 or 4.4.

Authorised review officers

146. The Employment Secretary may, by writing, authorise an officer of the Department to perform duties for the purposes of this Part. A person authorised under this section is called an **authorised review officer**.

Division 2—Internal review

Employment Secretary may review decisions

Decisions which Employment Secretary may review

147.(1) The Employment Secretary may review a reviewable decision if the Employment Secretary is satisfied that there is sufficient reason to review the decision.

Note: “Reviewable decision” is defined by section 145.

Pending Tribunal applications

(2) The Employment Secretary may review a decision even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.

Employment Secretary may affirm, vary or substitute

(3) The Employment Secretary may:

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- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

Notice to National Convenor of the Social Security Appeals Tribunal

- (4) If:
- (a) the Employment Secretary makes a decision under subsection (3);
and
 - (b) at the time when the Employment Secretary makes that decision, a person has applied to the Social Security Appeals Tribunal for review of the decision that was reviewed by the Employment Secretary;

the Employment Secretary must give the National Convenor of the Social Security Appeals Tribunal written notice of the Employment Secretary's decision under subsection (3).

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Notice to AAT Registrar

- (5) If:
- (a) the Employment Secretary makes a decision under subsection (3);
and
 - (b) at the time when the Employment Secretary makes that decision, a person has applied to the Administrative Appeals Tribunal for review of the decision that was reviewed by the Employment Secretary;

the Employment Secretary must give the Registrar of the Administrative Appeals Tribunal written notice of the Employment Secretary's decision under subsection (3).

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Event deemed to have occurred

- (6) If:
- (a) the Employment Secretary sets a decision aside under subsection (3);
and
 - (b) the Employment Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Employment Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Application for review

Persons affected by decisions may apply for review

148.(1) A person affected by a reviewable decision may apply to the Employment Secretary for review of the decision.

Note: “Reviewable decision” is defined by section 145.

No review of decisions made by Employment Secretary personally

(2) Subsection (1) does not apply to a decision made by the Employment Secretary himself or herself.

Note: This means that decisions made by delegates may be reviewed.

Review

(3) If a person applies under subsection (1) for review of a decision, the Employment Secretary or an authorised review officer may review the decision under section 150.

Deemed application—reviews by Social Security Appeals Tribunal

(4) If:

- (a) a person who may apply to the Employment Secretary for review of a decision under subsection (1) has not so applied; and
- (b) the person applies to the Social Security Appeals Tribunal for review of the decision;

the person is taken to apply to the Employment Secretary for review of the decision under subsection (1) on the day on which the person applies to the Social Security Appeals Tribunal.

Automatic payment of job search allowance or newstart allowance if review of section 44 terms decision sought

When section applies

149.(1) This section applies to a decision of the Employment Secretary to give a notice under section 44 because of a person’s failure to agree to terms of a Case Management Activity Agreement proposed by the case manager concerned (subparagraph 44(2)(a)(iii)).

Effect on payments

(2) If:

- (a) a person applies to the Employment Secretary under subsection 148(1) for review of the decision; and
- (b) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (c) payment of job search allowance or newstart allowance, as the case requires, is to be made pending the determination of the review, as if the Case Management Activity Agreement had not been required;

- (d) if payments of the allowance had ceased for a period before the person applied for the review—arrear payments of allowance are payable to the person for the period despite section 589 or 660L of the *Social Security Act 1991*;
- (e) this Act and the *Social Security Act 1991* apply as if the Case Management Activity Agreement had not been required.

Review withdrawn or determined

- (3) Subsection (2) ceases to have effect if:
 - (a) the application for review is withdrawn; or
 - (b) the review of the decision is determined.

Definitions

- (4) In this section:

“**job search allowance**” has the same meaning as in the *Social Security Act 1991*;

“**newstart allowance**” has the same meaning as in the *Social Security Act 1991*.

Employment Secretary’s powers where application for review is made

Employment Secretary may affirm, vary or substitute

150.(1) If an application for review of a decision is made under subsection 148(1), the Employment Secretary or an authorised review officer must:

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

Notice to applicant

(2) If a person makes a decision under subsection (1), the person must give the applicant written notice of the decision.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Event deemed to have occurred

- (3) If:
 - (a) a person sets a decision aside under subsection (1); and
 - (b) the Employment Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Employment Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Notification of further rights of review

Contents of notice

151.(1) If a person gives an applicant a notice under subsection 150(2), the notice must include:

- (a) a statement about the person's decision that sets out the reasons for the decision; and
- (b) a statement to the effect that the applicant may, subject to this Act, apply to the Social Security Appeals Tribunal for review of the person's decision; and
- (c) a statement to the effect that, if the person is dissatisfied with the Social Security Appeals Tribunal's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the Social Security Appeals Tribunal's decision.

Note: Section 25D of the *Acts Interpretation Act 1901* deals with the contents of statements of reasons.

Validity of decisions not affected

(2) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

Division 3—Review by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal

Subdivision A—Object of Division

Object of Division

152. The object of this Division is to enable a person who is affected by a reviewable decision:

- (a) to have the decision reviewed by the Social Security Appeals Tribunal; and
- (b) if dissatisfied with the Social Security Appeals Tribunal's decision, to have the decision of the Social Security Appeals Tribunal reviewed by the Administrative Appeals Tribunal.

Note: "Reviewable decision" is defined by section 145.

Subdivision B—Review by the Social Security Appeals Tribunal

Application for review

Persons who may apply for review

153.(1) If:

- (a) a decision has been reviewed by the Employment Secretary or an authorised review officer under section 150; and
- (b) the decision has been affirmed, varied or set aside;

a person whose interests are affected by the decision of the Employment Secretary or the authorised review officer may apply to the Social Security Appeals Tribunal for review of that decision.

Decision made by Employment Secretary or review officer

(2) For the purposes of subsection (1), the decision made by the Employment Secretary or the authorised review officer is taken to be:

- (a) if the Employment Secretary or the authorised review officer affirms a decision—the decision as affirmed; and
- (b) if the Employment Secretary or the authorised review officer varies a decision—the decision as varied; and
- (c) if the Employment Secretary or the authorised review officer sets a decision aside and substitutes a new decision—the new decision.

Application requirement for certain section 39 decisions

154. The Social Security Appeals Tribunal may only review a decision under section 39 (to the extent that it relates to the terms of a Case Management Activity Agreement that is in force) if the application is expressed to be an application for review of that decision.

Automatic payment of job search allowance or newstart allowance if review of section 44 terms decisions sought

When section applies

155.(1) This section applies to a decision of the Employment Secretary to give a notice under section 44 because of a person's failure to agree to terms of a Case Management Activity Agreement proposed by the case manager concerned (subparagraph 44(2)(a)(iii)).

Effect on payments

(2) If:

- (a) a person applies to the Social Security Appeals Tribunal under subsection 153(1) for review of the decision; and
- (b) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (c) payment of job search allowance or newstart allowance, as the case requires, is to be made pending the determination of the review, as if the Case Management Activity Agreement had not been required;
- (d) if payment of the allowance had ceased for a period before the person applied for the review—despite section 589 or 660L of the *Social Security Act 1991*, arrears of allowance are payable to the person for the period;

- (e) this Act and the *Social Security Act 1991* apply as if the Case Management Activity Agreement had not been required.

When payment stops

- (3) Subsection (2) ceases to have effect if:
- (a) the application for review is withdrawn; or
 - (b) the review of the decision is determined.

Definitions

- (4) In this section:

“**job search allowance**” has the same meaning as in the *Social Security Act 1991*;

“**newstart allowance**” has the same meaning as in the *Social Security Act 1991*.

Social Security Appeals Tribunal review powers

Powers of Social Security Appeals Tribunal

156.(1) If a person applies to the Social Security Appeals Tribunal under subsection 153(1) for review of a decision (other than a decision referred to in subsection (4) of this section), the Social Security Appeals Tribunal 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 Employment Secretary for reconsideration in accordance with any directions or recommendations of the Social Security Appeals Tribunal.

Tribunal may exercise Employment Secretary's powers

(2) The Social Security Appeals Tribunal may, for the purposes of reviewing a decision, exercise all the powers and discretions that are conferred by this Act on the CES or on the Employment Secretary.

Event taken to have occurred

- (3) If:
- (a) the Social Security Appeals Tribunal sets a decision aside under subsection (1); and
 - (b) the Employment Secretary, or the Social Security Appeals Tribunal, is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Employment Secretary or the Social Security Appeals Tribunal, as the case requires, may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Application

(4) This section does not apply to a decision under section 39 to the extent to which it relates to the terms of a Case Management Activity Agreement that is in force.

Social Security Appeals Tribunal review powers (Case Management Activity Agreement decision)

157. If a person applies to the Social Security Appeals Tribunal for review of a decision under section 39 to the extent to which it relates to the terms of a Case Management Activity Agreement that is in force, the Social Security Appeals Tribunal must:

- (a) affirm the decision; or
- (b) set the decision aside and send the matter back to the Employment Secretary for reconsideration in accordance with any recommendations of the Tribunal.

Date of effect of Social Security Appeals Tribunal decisions

General rule

158.(1) Subject to subsections (2) and (3), a decision by the Social Security Appeals Tribunal under this Act comes into operation immediately on the giving of the decision.

Social Security Appeals Tribunal may specify later date

(2) The Social Security Appeals Tribunal 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.

Decision varied or substituted

- (3) Subject to subsection (4), if the Social Security Appeals Tribunal:
- (a) varies the decision under review; or
 - (b) sets aside the decision under review and substitutes a new decision for the decision under review;

the decision as varied or the new decision, as the case requires, has effect, or is to be taken to have had effect, on and after the day on which the decision under review has or had effect.

Social Security Appeals Tribunal may vary rule under subsection (3)

- (4) The Social Security Appeals Tribunal may order:
- (a) that subsection (3) not apply to a decision by the Social Security Appeals Tribunal on a review; and
 - (b) that subsections (1) and (2) apply instead.

Application

(5) This section does not apply to a decision under section 39 to the extent to which it relates to the terms of a Case Management Activity Agreement that is in force.

**Date of effect of Social Security Appeals Tribunal decision
(Case Management Activity Agreement decision)**

Application

159.(1) This section applies to a decision under section 39 to the extent to which it relates to the terms of a Case Management Activity Agreement that is in force.

Decision of Social Security Appeals Tribunal applies immediately

(2) Subject to subsection (3), a decision by the Social Security Appeals Tribunal in relation to such a decision comes into operation immediately on the giving of the decision.

Social Security Appeals Tribunal may specify later date

(3) The Social Security Appeals Tribunal 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.

Application requirements

Methods of applying for review

160.(1) A person may apply to the Social Security Appeals Tribunal under subsection 153(1) for review of a decision by:

- (a) sending or delivering a written application to:
 - (i) an office of the Social Security Appeals Tribunal; or
 - (ii) an office of the Department of Employment, Education and Training; or
 - (iii) an office of the Department of Social Security; or
- (b) going to an office of the Social Security Appeals Tribunal and making an oral application; or
- (c) telephoning an office of the Social Security Appeals Tribunal and making an oral application.

Written record of oral application

(2) If a person makes an oral application under 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 date on which the application is made.

Written record taken to be application

(3) If a written record of an oral application is made under subsection (2), the written record is to be taken to be a written application by the applicant and to be delivered to an office of the Social Security Appeals Tribunal on the day on which the oral application is made.

Statement of reasons

(4) An application may include a statement of the reasons for seeking a review of the decision.

Variation of decision before review completed

Application for review of decision as varied

161.(1) If a decision under this Act is varied after an application has been made to the Social Security Appeals Tribunal 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.

Application for review of substitute decision

(2) If a decision under this Act is set aside and a new decision is substituted after an application has been made to the Social Security Appeals Tribunal for review of the decision set aside but before determination of the review, the application for review is to be treated as if it were an application for review of the new decision.

Procedure where variation or substitution before determination

(3) If:

- (a) a person applies to the Social Security Appeals Tribunal for review of a decision under this Act; and
- (b) before determination of the review:
 - (i) the decision is varied; or
 - (ii) the decision is set aside and a new decision is substituted;

the person may either:

- (c) proceed with the application for review of the decision as varied or the new decision; or
- (d) withdraw the application under section 1274 of the *Social Security Act 1991*.

Parties to Social Security Appeals Tribunal review

Parties to review

162.(1) The parties to a review by the Social Security Appeals Tribunal of a decision under this Act are:

- (a) the applicant; and

- (b) the Employment Secretary; and
- (c) any other person who has been made a party to the review under subsection (4).

Application to be made a party

(2) If a person has applied under subsection 153(1) for review of a decision, any other person whose interests are affected by the decision may apply to the National Convenor of the Social Security Appeals Tribunal to be made a party to the review.

Written application

- (3) An application under subsection (2) must be in writing.

National Convenor of the Social Security Appeals Tribunal may make order

(4) The National Convenor of the Social Security Appeals Tribunal may order that a person who has applied under subsection (2) be made a party to the review.

Social Security Appeals Tribunal's objectives

163. The Social Security Appeals Tribunal must, in carrying out its functions under this Act, pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

Subdivision C—Additional provisions relating to review of decisions

Application of Parts 6.3 and 6.4 of the Social Security Act 1991

Application

164.(1) Subject to the changes set out below, the provisions of Parts 6.3 and 6.4 of the *Social Security Act 1991* apply in relation to:

- (a) applications to the Social Security Appeals Tribunal under subsection 153(1) of this Act for review of decisions under this Act; and
- (b) reviews under this Act by the Social Security Appeals Tribunal; and
- (c) decisions that have been reviewed by the Social Security Appeals Tribunal under this Act;

in a corresponding way to the way in which they apply in relation to:

- (d) applications to the Social Security Appeals Tribunal under the *Social Security Act 1991* for review of decisions under that Act; and
- (e) reviews under that Act by the Social Security Appeals Tribunal; and
- (f) decisions that have been reviewed by the Social Security Appeals Tribunal under that Act.

References to the Social Security Secretary

(2) The first change is that each reference to the Social Security Secretary (other than each reference in section 1269 of the *Social Security Act 1991*) is to be replaced by a reference to the Employment Secretary.

References to the Social Security Act 1991

(3) The second change is that each reference in subsections 1279(2) and (5) and 1283(4) of the *Social Security Act 1991* to that Act is to be replaced by a reference to:

- (a) in the case of subsections 1279(2) and (5) of the *Social Security Act 1991*—that Act and this Act; and
- (b) in the case of subsection 1283(4) of the *Social Security Act 1991*—this Act.

References to Department of Social Security

(4) The third change is that each reference to the Department of Social Security is to be replaced by a reference to the Department of Employment, Education and Training.

Reference to section 1260

(5) The fourth change is that the reference in subsection 1264(2) of the *Social Security Act 1991* to section 1260 of that Act is to be replaced by a reference to section 162 of this Act.

Note: This subsection deals with advice about a person's right to apply to the National Convenor of the Social Security Appeals Tribunal to be added as a party to a review.

References to section 1246

(6) The fifth change is that each reference to section 1246 of the *Social Security Act 1991* is to be replaced by a reference to section 163 of this Act.

Note: This subsection deals with the Social Security Appeals Tribunal's objectives.

References to officer in section 1284

(7) The sixth change is that each reference in section 1284 of the *Social Security Act 1991* to an officer is to be replaced by a reference to the Employment Secretary.

Note: This subsection deals with the variation etc. of decisions.

PART 4.11—REVIEW OF ESRA DECISIONS

Reviewable decisions

165. In this Part:

“**reviewable decision**” means a decision made by ESRA under:

- (a) the accreditation scheme; or

- (b) a condition of accreditation; or
- (c) section 57 (which deals with disqualification for fraud, dishonesty etc.).

Reconsideration of reviewable decisions

Request for reconsideration

166.(1) An entity who is affected by a reviewable decision may, if dissatisfied with the decision, request ESRA to reconsider the decision.

Note: “Reviewable decision” is defined by section 165.

How request must be made

(2) The request must be made by written notice given to ESRA within the period of 21 days after the day on which the entity first receives notice of the decision, or within such further period as ESRA allows.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Request must set out reasons

(3) The request must set out the reasons for making the request.

ESRA to reconsider decision

(4) Upon receipt of the request, ESRA must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as ESRA thinks fit.

Deemed confirmation of decision if delay

(5) If ESRA does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which ESRA received the request under subsection (1) to reconsider the decision, ESRA is taken, at the end of that period, to have confirmed the decision under subsection (4).

Notice of ESRA’s action

(6) If ESRA confirms, revokes or varies a decision before the end of the period referred to in subsection (5), ESRA must give written notice to the entity telling the entity:

- (a) the result of the reconsideration of the decision; and
- (b) the reasons for confirming, varying or revoking the decision, as the case may be.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this subsection.

Review of decisions by Administrative Appeals Tribunal

167. Applications may be made to the Administrative Appeals Tribunal for review of decisions that have been confirmed or varied under subsection 166(4).

Modification of the *Administrative Appeals Tribunal Act 1975*

Period for making certain AAT applications

168.(1) If a decision is taken to be confirmed because of subsection 166(5), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

Section 41 of AAT Act

(2) If a request is made under subsection 166(1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* (which deals with the operation etc. of a decision subject to review) applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

Statements to accompany notification of reviewable decisions

Original decision

169.(1) If written notice is given to an entity affected by a reviewable decision telling the entity that the reviewable decision has been made, that notice is to include a statement to the effect that:

- (a) the entity may, if dissatisfied with the decision, seek a reconsideration of the decision by ESRA in accordance with subsection 166(1); and
- (b) the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by ESRA upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

Note: “Reviewable decision” is defined by section 165.

Reconsidered decision

- (2)** If:
- (a) ESRA confirms or varies a reviewable decision under subsection 166(4); and
 - (b) gives to an entity written notice of the confirmation or variation of the decision;

that notice is to include a statement to the effect that the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

Note: “Reviewable decision” is defined by section 165.

Validity of decision

(3) A failure to comply with this section does not affect the validity of a decision.

PART 4.12—RECOVERY OF OVERPAYMENTS ETC.

Case management debts

170. For the purposes of this Part, the following amounts are **case management debts**:

- (a) so much of an amount paid, or purportedly paid, to an entity as mentioned in subsection 59(1) as represents an overpayment;
- (b) an amount that is repayable as mentioned in section 61 (which deals with conditional payments).

Case management debts are debts due to ESRA

171. A case management debt is a debt due to ESRA.

Note: “Case management debt” is defined by section 170.

Recovery by legal proceedings

172. A case management debt may be recovered by ESRA by action in a court of competent jurisdiction.

Note: “Case management debt” is defined by section 170.

Recovery by set-off

173. If an entity is liable to pay a case management debt, the case management debt may be deducted from one or more other amounts that are payable to an entity as mentioned in subsection 59(1), and if it is so deducted, the other amounts are taken to have been paid in full to the entity.

Note: “Case management debt” is defined by section 170.

ESRA may collect money from a person who owes money to an entity

What this section does

174.(1) This section allows ESRA to collect money from a person who owes money to an entity that has a case management debt.

Note: “Case management debt” is defined by section 170.

ESRA may give direction

(2) ESRA may direct a person (the “**third party**”) who owes, or may later owe, money (the “**available money**”) to the entity to pay some or all of the available money to ESRA in accordance with the direction. ESRA must give a copy of the direction to the entity.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a copy given under this subsection.

Limit on directions

(3) The direction cannot require an amount to be paid to ESRA at a time before it becomes owing by the third party to the entity.

Third party to comply

(4) The third party must comply with the direction, so far as the third party is able to do so.

Penalty: 20 penalty units.

Court orders

(5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to ESRA an amount up to the amount involved in the refusal or failure of the third party.

Indemnity

(6) Any payment made by the third party under this section is taken to have been made with the authority of the entity and of all other persons concerned, and the third party is indemnified for the payment.

Notice

(7) If the whole of the case management debt of the entity is discharged before any payment is made by the third party, ESRA must immediately give notice to the third party of that fact.

When third party is taken to owe money

- (8) The third party is taken to owe money to the entity if:
- (a) money is due or accruing by the third party to the entity; or
 - (b) the third party holds money for or on account of the entity; or
 - (c) the third party holds money on account of some other person for payment to the entity; or
 - (d) the third party has authority from some other person to pay money to the entity;

whether or not the payment of the money to the entity is dependent on a pre-condition that has not been fulfilled.

Building societies—withdrawable shares

(9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:

- (a) if the money is payable on demand—money due by the building society to the person; or

- (b) if the money is repayable on demand—money that may become due by the building society to the person.

Definition

(10) In this section:
“**building society**” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory.

PART 4.13—INJUNCTIONS

Injunctions granted on the application of ESRA

Restraining injunctions

175.(1) If an entity has engaged, is engaging or is proposing to engage in any conduct in contravention of:

- (a) this Act; or
- (b) if the entity is accredited under the accreditation scheme—a condition of that accreditation; or
- (c) if the entity is engaged under section 58—an agreement under that section; or
- (d) the case management document rules in force under section 66; or
- (e) a duty of non-disclosure in force under section 67;

the Federal Court of Australia may, on the application of ESRA, grant an injunction:

- (f) restraining the entity from engaging in the conduct; and
- (g) if, in the court’s opinion, it is desirable to do so—requiring the entity to do something.

Performance injunctions

- (2) If:
- (a) an entity has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of:
 - (i) this Act; or
 - (ii) if the entity is accredited under the accreditation scheme—a condition of that accreditation; or
 - (iii) if the entity is engaged under section 58—an agreement under that section; or
 - (iv) the case management document rules in force under section 66; or
 - (v) a duty of non-disclosure in force under section 67;

the Federal Court of Australia may, on the application of ESRA, grant an injunction requiring the person to do that act or thing.

Interim injunctions

Grant of interim injunction

176.(1) If an application is made to the court for an injunction under section 175, the court may, before considering the application, grant an interim injunction restraining an entity from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

(2) The court is not to require an applicant for an injunction under section 175, as a condition of granting an interim injunction, to give any undertakings as to damages.

Discharge etc. of injunctions

177. The court may discharge or vary an injunction granted under this Part.

Certain limits on granting injunctions not to apply

Restraining injunctions

178.(1) The power of the court under this Part to grant an injunction restraining an entity from engaging in conduct of a particular kind may be exercised:

- (a) if the court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the entity engages in conduct of that kind.

Performance injunctions

(2) The power of the court to grant an injunction requiring an entity to do an act or thing may be exercised:

- (a) if the court is satisfied that the entity has refused or failed to do that act or thing—whether or not it appears to the court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the entity will refuse or fail to do that act or thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the entity refuses or fails to do that act or thing.

Other powers of the court unaffected

179. The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

PART 4.14—PROSECUTIONS

Prosecutions of corporations

State of mind

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

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

Conduct

(2) If:

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

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

Extended meaning of “state of mind”

(3) A reference in subsection (1) 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.

Extended meaning of “director”

(4) A reference in this section to a director of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Extended meaning of “engaging in conduct”

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Extended meaning of “offence against this Act”

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

Prosecutions of persons other than corporations

State of mind

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

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

Conduct

(2) 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 employee’s or agent’s actual or apparent authority;

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

Limitation on imprisonment

(3) Despite any other provision in this Act, if:

- (a) a person is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (1) and (2) had not been in force;

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

Extended meaning of “state of mind”

(4) A reference in this section 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.

Extended meaning of “engaging in conduct”

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Extended meaning of “offence against this Act”

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

PART 4.15—SERVICE OF DOCUMENTS

Giving of documents to partnerships

182. For the purposes of this Chapter, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

Giving of documents to unincorporated associations

183. For the purposes of this Chapter, if a document is given to a member of the executive committee of an unincorporated association in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the unincorporated association.

CHAPTER 5—REGULATIONS

Regulations

General

184.(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Write-off and waiver of debts

(2) In particular, the regulations may provide for ESRA to write off or waive a debt due to ESRA under Chapter 4.

Penalties

(3) The regulations may make provision for penalties by way of a fine not exceeding 10 penalty units for offences against the regulations.

Employment Services No. 176, 1994

*[Minister's second reading speech made in—
House of Representatives on 24 August 1994
Senate on 10 November 1994]*