



# **Employment Services (Consequential Amendments) Act 1994**

**No. 177 of 1994**

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AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING TO  
DEFERMENT PERIODS



# **Employment Services (Consequential Amendments) Act 1994**

**No. 177 of 1994**

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**An Act to amend the statute law of the Commonwealth in consequence of the enactment of the *Employment Services Act 1994*, and for other purposes**

*[Assented to 19 December 1994]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Employment Services (Consequential Amendments) Act 1994*.

### **Commencement**

**2.(1)** This Part (other than subsection (2) of this section) and Part 2 commence, or are taken to have commenced, on the day on which the *Employment Services Act 1994* receives the Royal Assent.

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(2) This subsection and Division 4 of Part 6 commence on the day on which this Act receives the Royal Assent.

(3) The remaining provisions of this Act commence on the day on which the provisions referred to in subsection 2(2) of the *Employment Services Act 1994* commence.

**PART 2—AMENDMENT OF THE EMPLOYMENT,  
EDUCATION AND TRAINING ACT 1988**

**Object of Part**

3. The Commonwealth Employment Service, which is currently established under Part VI of the *Employment, Education and Training Act 1988*, is being re-established by the *Employment Services Act 1994*. The object of this Part is to repeal Part VI of the *Employment, Education and Training Act 1988*.

**Principal Act**

4. In this Part, “**Principal Act**” means the *Employment, Education and Training Act 1988*<sup>1</sup>.

**Repeal of Part VI**

5. Part VI of the Principal Act is repealed.

**Disclosure of interests**

6. Section 60 of the Principal Act is amended:

- (a) by adding at the end of paragraph (a) of the definition of “prescribed body” in subsection (4) “or”;
- (b) by omitting “or 50” from paragraph (c) of the definition of “prescribed body” in subsection (4);
- (c) by adding at the end of paragraphs (a) and (b) of the definition of “relevant authority” in subsection (4) “or”;
- (d) by omitting “committee; or” from paragraph (c) of the definition of “relevant authority” in subsection (4) and substituting “committee.”;
- (e) by omitting paragraph (d) of the definition of “relevant authority” in subsection (4).

**Transitional provision—Commonwealth Employment Service**

7. The Commonwealth Employment Service established under section 8 of the *Employment Services Act 1994* is taken, for all purposes, to be a continuation of the Commonwealth Employment Service established under section 48 of the Principal Act.

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**Transitional provision—continuation of national committee**

*When section applies*

**8.(1)** This section applies to a committee (the “**old national committee**”) that was established under paragraph 50(1)(a) of the Principal Act and that was in existence immediately before the commencement of this section.

*Establishment of new national committee*

**(2)** The *Employment Services Act 1994* has effect as if the Minister had established a national committee (the “**new national committee**”) under section 11 of that Act immediately after the commencement of this section.

*Appointment of members of new national committee*

- (3)** The *Employment Services Act 1994* has effect as if:
- (a) the Minister had, by instrument (the “**notional instrument of appointment**”), appointed each member of the old national committee to the new national committee immediately after the commencement of this section; and
  - (b) the period of appointment specified in a particular member’s notional instrument of appointment were the period:
    - (i) beginning immediately after the commencement of this section; and
    - (ii) ending at the end of the period specified in the member’s instrument of appointment to the old national committee.

**PART 3—AMENDMENT OF THE FREEDOM OF  
INFORMATION ACT 1982**

**Object of Part**

**9.** The object of this Part is to give members of the public rights of access to certain documents held by contracted case managers.

**Principal Act**

**10.** In this Part, “**Principal Act**” means the *Freedom of Information Act 1982*.

**Interpretation**

- 11.** Section 4 of the Principal Act is amended:
- (a) by omitting “or a prescribed authority” from the definition of “agency” in subsection (1) and substituting “, a prescribed authority or an eligible case manager”;

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- (b) by omitting “and” from paragraph (a) of the definition of “principal officer” in subsection (1) and substituting “or”;
- (c) by adding at the end of the definition of “principal officer” in subsection (1) the following word and paragraph:
  - “or (c) in relation to an eligible case manager:
    - (i) if the eligible case manager is an individual—the individual; or
    - (ii) in any other case—the individual who has primary responsibility for the management of the eligible case manager;”;
- (d) by adding at the end of paragraphs (a) and (b) of the definition of “responsible Minister” in subsection (1) “or”;
- (e) by adding at the end of the definition of “responsible Minister” in subsection (1) the following word and paragraph:
  - “or (e) in relation to an eligible case manager—the Minister administering the *Employment Services Act 1994*;”;
- (f) by inserting in subsection (1) the following definition:
  - “**‘eligible case manager’** means an entity (within the meaning of the *Employment Services Act 1994*):
    - (a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and
    - (b) that is not:
      - (i) a Department; or
      - (ii) a prescribed authority;”.

**Insertion of new section**

12. After section 6A of the Principal Act the following section is inserted:

**Eligible case managers**

“6B. This Act only applies to a request for access to a document of an eligible case manager if the document is in respect of:

- (a) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to a person referred to the eligible case manager under Part 4.3 of that Act; or
- (b) the performance of a function conferred on the eligible case manager under that Act.”.

**PART 4—AMENDMENT OF THE OMBUDSMAN ACT 1976**

**Objects of Part**

13. The objects of this Part are:

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- (a) to empower the Ombudsman to investigate complaints about contracted case managers; and
- (b) to empower the Ombudsman to refer complaints about contracted case managers to ESRA (the Employment Services Regulatory Authority).

**Principal Act**

**14.** In this Part, “**Principal Act**” means the *Ombudsman Act 1976*<sup>3</sup>.

**Interpretation**

**15.** Section 3 of the Principal Act is amended:

- (a) by omitting “and” from paragraph (a) of the definition of “officer” in subsection (1) and substituting “or”;
- (b) by inserting “(other than an eligible case manager)” after “authority” (first occurring) in paragraph (b) of the definition of “officer” in subsection (1);
- (c) by adding at the end of the definition of “officer” in subsection (1) the following word and paragraph:
  - “or (c) in relation to a prescribed authority that is an eligible case manager:
    - (i) if the eligible case manager is an individual—the individual; or
    - (ii) if the eligible case manager is a body corporate—a director, the secretary or an employee of the body corporate; or
    - (iii) if the eligible case manager is a partnership—a partner in, or an employee of, the partnership; or
    - (iv) if the eligible case manager is an unincorporated association—a member of the executive committee, or an employee, of the unincorporated association; or
    - (v) in any other case—an officer or employee of the eligible case manager;”;
- (d) by adding at the end of paragraphs (a), (b), (ba), (bb) and (c) of the definition of “prescribed authority” in subsection (1) “or”;
- (e) by adding at the end of the definition of “prescribed authority” in subsection (1) the following word and paragraph:
  - “or (e) an eligible case manager;”;
- (f) by omitting “and” from paragraph (a) of the definition of “principal officer” in subsection (1) and substituting “or”;



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- (g) by inserting “(other than an eligible case manager)” after “authority” (first occurring) in paragraph (c) of the definition of “principal officer” in subsection (1);
- (h) by adding at the end of the definition of “principal officer” in subsection (1) the following word and paragraph:
  - “or (d) in relation to a prescribed authority that is an eligible case manager:
    - (i) if the eligible case manager is an individual—the individual; or
    - (ii) in any other case—the individual primarily responsible for the management of the eligible case manager;”;
- (i) by adding at the end of paragraphs (a) and (c) of the definition of “responsible Minister” in subsection (1) “or”;
- (j) by inserting after paragraph (d) of the definition of “responsible Minister” in subsection (1) the following paragraph:
  - “(da) if a prescribed authority referred to in paragraph (e) of that definition is responsible for dealing with the matter—the Minister administering the *Employment Services Act 1994*; or”;
- (k) by inserting in subsection (1) the following definitions:
  - “‘**case manager**’ has the same meaning as in the *Employment Services Act 1994*;
  - ‘**eligible case manager**’ means an entity (within the meaning of the *Employment Services Act 1994*):
    - (a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and
    - (b) that is not:
      - (i) a Department; or
      - (ii) covered by paragraph (a), (b), (ba), (bb), (c) or (d) of the definition of ‘prescribed authority’;
  - ‘**ESRA**’ means the Employment Services Regulatory Authority established under the *Employment Services Act 1994*.”.

## Functions of Ombudsman

16. Section 5 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (2)(a), (aa), (b), (ba) and (c) “or”;
- (b) by adding at the end of subsection (2) the following word and paragraph:

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“; or (h) action taken by an eligible case manager that is not connected with:

- (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
- (ii) the performance of functions conferred on the eligible case manager under that Act.”.

**Discretion not to investigate certain complaints**

17. Section 6 of the Principal Act is amended by inserting after subsection (4F) the following subsections:

“(4G) If, before the Ombudsman begins, or after the Ombudsman has begun, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint; the Ombudsman forms the opinion that:

- (a) a complaint with respect to the action has been, or could have been, made by the complainant to ESRA under Part 4.7 of the *Employment Services Act 1994*; and
- (b) the action could be more conveniently or effectively dealt with by ESRA;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman must:

- (c) transfer the complaint to ESRA; and
- (d) forthwith give written notice to the complainant stating that the complaint has been so transferred; and
- (e) give to ESRA any information or documents that relate to the complaint and are in the possession, or under the control, of the Ombudsman.

“(4H) A complaint transferred under subsection (4G) is taken to be a complaint made to ESRA under Part 4.7 of the *Employment Services Act 1994*.”.

**Disclosure of information by Ombudsman**

18. Section 35A of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) If:

- (a) the Ombudsman has information about a particular case manager; and
- (b) the information is relevant to the performance of the functions, or the exercise of the powers, of ESRA; and

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- (c) in the opinion of the Ombudsman, it is:
- (i) in the interests of ESRA, the case manager or a complainant;  
or
  - (ii) otherwise in the public interest;
- to disclose the information to ESRA or to make a statement about the information to ESRA;

this Act does not prevent the Ombudsman from disclosing the information, or making the statement, to ESRA.

“(3B) Subsection (3A) does not, by implication, limit the generality of subsection (1).

“(3C) The Ombudsman must not disclose information, or make a statement about information, under subsection (3A) if:

- (a) the information was obtained in the course of a particular investigation; and
- (b) the disclosure of the information, or the making of the statement, is likely to interfere with:
  - (i) the carrying out of that or any other investigation under this Act; or
  - (ii) the making of a report under this Act.

“(3D) The Ombudsman must not disclose information, or make a statement about information, under subsection (3A) if:

- (a) the information was obtained as a result of the making of inquiries under section 7A; and
- (b) the disclosure of the information, or the making of the statement, is likely to interfere with:
  - (i) the making of those or any other inquiries under section 7A;  
or
  - (ii) the carrying out of an investigation under this Act; or
  - (iii) the making of a report under this Act.

“(3E) The Ombudsman must not, in disclosing information, or making a statement, under subsection (3A):

- (a) set out opinions that are, either expressly or impliedly, critical of a case manager or person unless the Ombudsman has given the case manager or the person an opportunity to make submissions, either orally or in writing, in relation to the information or statement, as the case requires; or
- (b) disclose the name of a complainant or any matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.”.

## PART 5—AMENDMENT OF THE PRIVACY ACT 1988

### Object of Part

19. The object of this Part is to require contracted case managers to comply with the provisions of the *Privacy Act 1988* in providing case management services.

### Principal Act

20. In this Part, “**Principal Act**” means the *Privacy Act 1988*<sup>4</sup>.

### Interpretation

21. Section 6 of the Principal Act is amended:

- (a) by omitting “and” (last occurring) from paragraph (g) of the definition of “agency” in subsection (1);
- (b) by adding at the end of paragraphs (a), (b), (c), (d), (e), (f) and (g) of the definition of “agency” in subsection (1) “or”;
- (c) by adding at the end of the definition of “agency” in subsection (1) the following word and paragraph:  
“or (i) an eligible case manager;”;
- (d) by inserting in subsection (1) the following definition:  
“**‘eligible case manager’** means an entity (within the meaning of the *Employment Services Act 1994*):
  - (a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and
  - (b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of the definition of ‘agency’;”.

### Acts and practices of agencies etc.

22. Section 7 of the Principal Act is amended:

- (a) by inserting in paragraphs (1)(a), (d) and (e) “(other than an eligible case manager)” after “agency” (first occurring);
- (b) by adding “or” at the end of paragraphs (1)(a), (b), (c) and (e);
- (c) by inserting before paragraph (1)(d) the following paragraph:  
“(cb) an act done, or a practice engaged in, as the case may be, by an eligible case manager in connection with:
  - (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
  - (ii) the performance of functions conferred on the eligible case manager under that Act; or”;

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- (d) by inserting after paragraph (1)(e) the following paragraphs:
- “(ea) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an eligible case manager, being affairs in connection with:
    - (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
    - (ii) the performance of functions conferred on the eligible case manager under that Act; or
  - (eb) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister’s possession in his or her capacity as a Minister and relates to the affairs of an eligible case manager, being affairs in connection with:
    - (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
    - (ii) the performance of functions conferred on the eligible case manager under that Act;”.

**Principal executive of agency**

23. Section 37 of the Principal Act is amended by inserting in the table the following items:

“6	An eligible case manager that is an individual	The individual
7	An eligible case manager that is not an individual	The individual primarily responsible for the management of the eligible case manager”.

**Registration of determination**

24. Section 54 of the Principal Act is amended by adding at the end the following subsection:

“(5) In this section:  
‘agency’ does not include an eligible case manager.”.

**Application of Division**

25. Section 57 of the Principal Act is amended by adding at the end the following subsection:

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“(2) In this section:  
‘agency’ does not include an eligible case manager.”.

**Consequential amendment of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994***

26. Schedule 3 to the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* is amended by omitting the modifications of the definition of “agency” in subsection 6(1) of the *Privacy Act 1988* and substituting the following modifications:

**“Subsection 6(1) (definition of ‘agency’):**

- (a) After paragraph (b) insert the following paragraph:  
‘(ba) an ACT agency; or’.
- (b) Omit paragraph (g) and substitute the following paragraph:  
‘(g) a federal court and a court of the Australian Capital Territory; or’.

**PART 6—AMENDMENT OF THE SOCIAL SECURITY  
ACT 1991**

*Division 1—Principal Act*

**Principal Act**

27. In this Part, “**Principal Act**” means the *Social Security Act 1991*<sup>5</sup>.

*Division 2—Secrecy*

**Object of Division**

28. The object of this Division is to allow the Secretary to the Department of Social Security to disclose information to contracted case managers for the purposes of the *Employment Services Act 1994*.

**Secretary’s certificate**

29. Section 1314 of the Principal Act is amended by inserting after paragraph (1)(b) the following paragraph:

“(ba) disclose any such information to a contracted case manager within the meaning of the *Employment Services Act 1994* for the purposes of that Act; or”.

*Division 3—Insertion of Notes referring readers of the Principal Act to relevant provisions of the Employment Services Act 1994*

**Object of Division**

30. The object of this Division is to insert Notes into the Principal Act referring readers to relevant provisions of the *Employment Services Act 1994*.

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**Insertion of Notes**

**31.(1)** Sections 546C and 630C of the Principal Act are amended by adding at the end the following Note:

*\*\*Note: The operation of this section is modified for participants in the case management system by sections 28, 31 and 46 of the *Employment Services Act 1994*.\*\**

**(2)** Subsection 513(1) of the Principal Act is amended by adding at the end the following Note:

*\*\*Note 14: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.\*\**

**(3)** Subsection 593(1) of the Principal Act is amended by adding at the end the following Note:

*\*\*Note 18: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.\*\**

**(4)** Sections 516, 522, 542A, 542B, 595, 608, 613, 625 and 626 of the Principal Act are amended by adding at the end the following Note:

*\*\*Note: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.\*\**

**(5)** Section 595A of the Principal Act is amended by adding at the end of Note 1 “or a Case Management Activity Agreement”.

**(6)** Section 601 of the Principal Act is amended:

**(a)** by omitting “Note” (last occurring) and substituting “Note 1”;

**(b)** by adding at the end the following Note:

*\*\*Note 2: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.\*\**

***Division 4 — Deferment periods for job search allowance and newstart allowance***

**Object of Division**

**32.** The object of this Division is to make amendments of the Principal Act relating to deferment periods for job search allowance and newstart allowance.

**Repeal of section and substitution of new sections**

**33.** Section 546B of the Principal Act is repealed and the following sections are substituted:

**Commencement of activity test deferment periods**

“546B.(1) Subject to subsection 546BA(2), if an automatic deferment provision of this Subdivision applies to a person, the Secretary must give to the person a written notice informing the person of the commencement of the activity test deferment period applicable to the person.

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“(2) Subject to subsections (3) and (6) of this section and sections 546BA and 546BB, the activity test deferment period commences on the day on which the notice is given to the person.

“(3) Subject to sections 546BA and 546BB, if, at the time of the application of the automatic deferment provision, the person is already subject to a deferment period (the ‘**pre-existing deferment period**’) that has not yet ended, the activity test deferment period referred to in subsection (1) commences on the day after the day on which the pre-existing deferment period ends.

“(4) If, at the time of the application of the automatic deferment provision, the person is already subject to more than one pre-existing deferment period that has not yet ended, the reference in subsection (3) to the day on which the pre-existing deferment period ends is a reference to the day on which the last occurring of those pre-existing deferment periods ends.

“(5) Subsections (3) and (4) apply in respect of a pre-existing deferment period whether or not it has commenced, and whether or not it is the subject of a notice under this section.

“(6) Subject to sections 546BA and 546BB, if:

- (a) on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, job search allowance ceases to be payable to the person; and
- (b) it has not ceased to be payable because of the application of a deferment period;

the activity test deferment period referred to in subsection (1) commences on the day on which the job search allowance ceases to be payable to the person.

Note: For ‘activity test deferment period’, ‘automatic deferment provision’ and ‘deferment period’ see subsection 23(1).

**Application of activity test deferment periods before claims for job search allowance**

“546BA.(1) Subject to subsection (2) of this section and section 546BB, if:

- (a) at a time when the person was not qualified for a job search allowance, an event occurred that resulted in an automatic deferment provision of this Subdivision applying to the person; and
- (b) before the end of the resulting activity test deferment period that would have applied to the person (assuming that the deferment period had commenced on the day on which the event occurred), the person made a claim for a job search allowance;

the deferment period is taken to have commenced on the day after the day on which the event occurred.



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“(2) Subsections 546B(3), (4) and (5) apply in relation to an activity test deferment period referred to in subsection (1) of this section in the same way that they apply to an activity test deferment period referred to in subsection (1) of that section.

“(3) Subject to section 546BB, if:

- (a) at a time when the person was not qualified for a job search allowance, an event occurred that resulted in an automatic deferment provision of this Subdivision applying to the person; and
- (b) the person made a claim for a job search allowance after the end of the resulting activity test deferment period that would have applied to the person (assuming that the deferment period had commenced on the day on which the event occurred);

then:

- (c) the deferment period is taken to have commenced and to have ended before the claim was made; and
- (d) the Secretary is not obliged to give to the person a written notice under subsection 546B(1) in respect of the deferment period.

Note: For ‘activity test deferment period’ and ‘automatic deferment provision’ see subsection 23(1).

### **Waiting periods**

“546BB.(1) If, under this Subdivision, an activity test deferment period that applies to a person would (apart from this subsection) commence at the same time as, or during, a waiting period that applies to the person, the deferment period is taken to commence immediately after the end of the waiting period.

“(2) If a waiting period that applies to a person commences during an activity test deferment period that applies to the person:

- (a) the deferment period is taken to be suspended for the duration of the waiting period; and
- (b) the remainder of the deferment period continues immediately after the end of the waiting period.

“(3) If a waiting period applies to a person and:

- (a) another waiting period commences during that waiting period and continues after the end of that waiting period; or
- (b) another waiting period commences immediately after the end of that waiting period;

a reference in subsection (1) or (2) to the end of that waiting period is taken to be a reference to the end of the other waiting period.

“(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 519.

Note: For ‘activity test deferment period’ and ‘waiting period’ see subsection 23(1).

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**Effect of sections 546B, 546BA and 546BB**

“546BC. For the avoidance of doubt:

- (a) the application of an automatic deferment provision of this Subdivision cannot cause a job search allowance to cease being payable unless the activity test deferment period arising from the application of that provision has commenced under section 546B, 546BA or 546BB; and
- (b) those sections do not prevent a job search allowance ceasing to be payable in circumstances that do not involve the application of an automatic deferment provision of this Subdivision.

Note: For ‘activity test deferment period’ and ‘automatic deferment provision’ see subsection 23(1).”.

**Repeal of section and substitution of new sections**

**34.** Section 547B of the Principal Act is repealed and the following sections are substituted:

**Commencement of administrative breach deferment periods**

“547B.(1) If an automatic deferment provision of this Subdivision applies to a person, the Secretary must give to the person a written notice informing the person of the commencement of the administrative breach deferment period applicable to the person.

“(2) Subject to subsections (3) and (6) of this section and section 547C, the administrative breach deferment period commences on the day on which the notice is given to the person.

“(3) Subject to section 547C, if, at the time of the application of the automatic deferment provision, the person is already subject to a deferment period (the ‘**pre-existing deferment period**’) that has not yet ended, the administrative breach deferment period referred to in subsection (1) commences on the day after the day on which the pre-existing deferment period ends.

“(4) If, at the time of the application of the automatic deferment provision, the person is already subject to more than one pre-existing deferment period that has not yet ended, the reference in subsection (3) to the day on which the pre-existing deferment period ends is a reference to the day on which the last occurring of those pre-existing deferment periods ends.

“(5) Subsections (3) and (4) apply in respect of a pre-existing deferment period whether or not it has commenced, and whether or not it is the subject of a notice under this section.

“(6) Subject to section 547C, if:

- (a) on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, job search allowance ceases to be payable to the person; and

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(b) it has not ceased to be payable because of the application of a deferment period;  
the administrative breach deferment period referred to in subsection (1) commences on the day on which the job search allowance ceases to be payable to the person.

Note: For 'administrative breach deferment period', 'automatic deferment provision' and 'deferment period' see subsection 23(1).

**Waiting periods**

“547C.(1) If, under this Subdivision, an administrative breach deferment period that applies to a person would (apart from this subsection) commence at the same time as, or during, a waiting period that applies to the person, the deferment period is taken to commence immediately after the end of the waiting period.

“(2) If a waiting period that applies to a person commences during an administrative breach deferment period that applies to the person:

- (a) the deferment period is taken to be suspended for the duration of the waiting period; and
- (b) the remainder of the deferment period continues immediately after the end of the waiting period.

“(3) If a waiting period applies to a person and:

- (a) another waiting period commences during that waiting period and continues after the end of that waiting period; or
- (b) another waiting period commences immediately after the end of that waiting period;

a reference in subsection (1) or (2) to the end of that waiting period is taken to be a reference to the end of the other waiting period.

“(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 519.

Note: For 'administrative breach deferment period' and 'waiting period' see subsection 23(1).

**Effect of sections 547B and 547C**

“547D. For the avoidance of doubt:

- (a) the application of an automatic deferment provision of this Subdivision cannot cause a job search allowance to cease being payable unless the administrative breach deferment period arising from the application of that provision has commenced under section 547B or 547C; and
- (b) those sections do not prevent a job search allowance ceasing to be payable in circumstances that do not involve the application of an automatic deferment provision of this Subdivision.

Note: For 'administrative breach deferment period' and 'automatic deferment provision' see subsection 23(1).”

### **Repeal of section and substitution of new sections**

**35.** Section 630B of the Principal Act is repealed and the following sections are substituted:

#### **Commencement of activity test deferment periods**

“630B.(1) Subject to subsection 630BA(2), if an automatic deferment provision of this Subdivision applies to a person, the Secretary must give to the person a written notice informing the person of the commencement of the activity test deferment period applicable to the person.

“(2) Subject to subsections (3) and (6) of this section and sections 630BA and 630BB, the activity test deferment period commences on the day on which the notice is given to the person.

“(3) Subject to sections 630BA and 630BB, if, at the time of the application of the automatic deferment provision, the person is already subject to a deferment period (the ‘**pre-existing deferment period**’) that has not yet ended, the activity test deferment period referred to in subsection (1) commences on the day after the day on which the pre-existing deferment period ends.

“(4) If, at the time of the application of the automatic deferment provision, the person is already subject to more than one pre-existing deferment period that has not yet ended, the reference in subsection (3) to the day on which the pre-existing deferment period ends is a reference to the day on which the last occurring of those pre-existing deferment periods ends.

“(5) Subsections (3) and (4) apply in respect of a pre-existing deferment period whether or not it has commenced, and whether or not it is the subject of a notice under this section.

“(6) Subject to sections 630BA and 630BB, if:

- (a) on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, newstart allowance ceases to be payable to the person; and
- (b) it has not ceased to be payable because of the application of a deferment period;

the activity test deferment period referred to in subsection (1) commences on the day on which the newstart allowance ceases to be payable to the person.

Note: For ‘activity test deferment period’, ‘automatic deferment provision’ and ‘deferment period’ see subsection 23(1).

#### **Application of activity test deferment periods before claims for newstart allowance**

“630BA.(1) Subject to subsection (2) of this section and section 630BB, if:

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- (a) at a time when the person was not qualified for a newstart allowance, an event occurred that resulted in an automatic deferment provision of this Subdivision applying to the person; and
- (b) before the end of the resulting activity test deferment period that would have applied to the person (assuming that the deferment period had commenced on the day on which the event occurred), the person made a claim for a newstart allowance;

the deferment period is taken to have commenced on the day after the day on which the event occurred.

“(2) Subsections 630B(3), (4) and (5) apply in relation to an activity test deferment period referred to in subsection (1) of this section in the same way that they apply to an activity test deferment period referred to in subsection (1) of that section.

“(3) Subject to section 630BB, if:

- (a) at a time when the person was not qualified for a newstart allowance, an event occurred that resulted in an automatic deferment provision of this Subdivision applying to the person; and
- (b) the person made a claim for a newstart allowance after the end of the resulting activity test deferment period that would have applied to the person (assuming that the deferment period had commenced on the day on which the event occurred);

then:

- (c) the deferment period is taken to have commenced and to have ended before the claim was made; and
- (d) the Secretary is not obliged to give to the person a written notice under subsection 630B(1) in respect of the deferment period.

Note: For ‘activity test deferment period’ and ‘automatic deferment provision’ see subsection 23(1).

### **Waiting periods**

“630BB.(1) If, under this Subdivision, an activity test deferment period that applies to a person would (apart from this subsection) commence at the same time as, or during, a waiting period that applies to the person, the deferment period is taken to commence immediately after the end of the waiting period.

“(2) If a waiting period that applies to a person commences during an activity test deferment period that applies to the person:

- (a) the deferment period is taken to be suspended for the duration of the waiting period; and
- (b) the remainder of the deferment period continues immediately after the end of the waiting period.

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“(3) If a waiting period applies to a person and:

- (a) another waiting period commences during that waiting period and continues after the end of that waiting period; or
- (b) another waiting period commences immediately after the end of that waiting period;

a reference in subsection (1) or (2) to the end of that waiting period is taken to be a reference to the end of the other waiting period.

“(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 598.

Note: For ‘activity test deferment period’ and ‘waiting period’ see subsection 23(1).

**Effect of sections 630B, 630BA and 630BB**

“630BC. For the avoidance of doubt:

- (a) the application of an automatic deferment provision of this Subdivision cannot cause a newstart allowance to cease being payable unless the activity test deferment period arising from the application of that provision has commenced under section 630B, 630BA or 630BB; and
- (b) those sections do not prevent a newstart allowance ceasing to be payable in circumstances that do not involve the application of an automatic deferment provision of this Subdivision.

Note: For ‘activity test deferment period’ and ‘automatic deferment provision’ see subsection 23(1).”.

**Repeal of section and substitution of new sections**

**36.** Section 631B of the Principal Act is repealed and the following sections are substituted:

**Commencement of administrative breach deferment periods**

“631B.(1) If an automatic deferment provision of this Subdivision applies to a person, the Secretary must give to the person a written notice informing the person of the commencement of the administrative breach deferment period applicable to the person.

“(2) Subject to subsections (3) and (6) of this section and section 631C, the administrative breach deferment period commences on the day on which the notice is given to the person.

“(3) Subject to section 631C, if, at the time of the application of the automatic deferment provision, the person is already subject to a deferment period (the ‘**pre-existing deferment period**’) that has not yet ended, the administrative breach deferment period referred to in subsection (1) commences on the day after the day on which the pre-existing deferment period ends.

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“(4) If, at the time of the application of the automatic deferment provision, the person is already subject to more than one pre-existing deferment period that has not yet ended, the reference in subsection (3) to the day on which the pre-existing deferment period ends is a reference to the day on which the last occurring of those pre-existing deferment periods ends.

“(5) Subsections (3) and (4) apply in respect of a pre-existing deferment period whether or not it has commenced, and whether or not it is the subject of a notice under this section.

“(6) Subject to section 631C, if:

(a) on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, newstart allowance ceases to be payable to the person; and

(b) it has not ceased to be payable because of the application of a deferment period;

the administrative breach deferment period referred to in subsection (1) commences on the day on which the newstart allowance ceases to be payable to the person.

Note: For ‘administrative breach deferment period’, ‘automatic deferment provision’ and ‘deferment period’ see subsection 23(1).

### **Waiting periods**

“631C.(1) If, under this Subdivision, an administrative breach deferment period that applies to a person would (apart from this subsection) commence at the same time as, or during, a waiting period that applies to the person, the deferment period is taken to commence immediately after the end of the waiting period.

“(2) If a waiting period that applies to a person commences during an administrative breach deferment period that applies to the person:

(a) the deferment period is taken to be suspended for the duration of the waiting period; and

(b) the remainder of the deferment period continues immediately after the end of the waiting period.

“(3) If a waiting period applies to a person and:

(a) another waiting period commences during that waiting period and continues after the end of that waiting period; or

(b) another waiting period commences immediately after the end of that waiting period;

a reference in subsection (1) or (2) to the end of that waiting period is taken to be a reference to the end of the other waiting period.

“(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 598.

Note: For ‘administrative breach deferment period’ and ‘waiting period’ see subsection 23(1).

**Effect of sections 631B and 631C**

“631D. For the avoidance of doubt:

- (a) the application of an automatic deferment provision of this Subdivision cannot cause a newstart allowance to cease being payable unless the administrative breach deferment period arising from the application of that provision has commenced under section 631B or 631C; and
- (b) those sections do not prevent a newstart allowance ceasing to be payable in circumstances that do not involve the application of an automatic deferment provision of this Subdivision.

Note: For ‘administrative breach deferment period’ and ‘automatic deferment provision’ see subsection 23(1).”.

**Secretary may continue payment pending outcome of application for review**

**37.** Section 1241 of the Principal Act is amended by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) the adverse decision:

- (i) depends on the exercise of a discretion by a person or the holding of an opinion by a person; or
- (ii) would result in the application of a deferment period; and

Note: For ‘deferment period’ see section 23.”.

**Insertion of new section**

**38.** After section 1241 of the Principal Act the following section is inserted:

**Guidelines for exercise of Secretary’s power to continue payment**

“1241A.(1) The Minister, by determination in writing:

- (a) is to set guidelines for the exercise of the Secretary’s power to make declarations under subsection 1241(1) in relation to social security payments to persons who are subject to deferment periods; and
- (b) may revoke or vary those guidelines.

Note: For ‘deferment period’ see section 23.

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

**Further amendments relating to deferment periods**

**39.** The Principal Act is further amended as set out in the Schedule.



**SCHEDULE**

Section 39

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING  
TO DEFERMENT PERIODS**

**1. Section 3:**

Omit from the Index:

“NS automatic deferment provision	23(1)
NS discretionary deferment provision	23(1)”.

**2. Section 3:**

Insert in the Index the following entries in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“activity test deferment period	23(1)
administrative breach deferment period	23(1)
deferment period	23(1)
discretionary deferment provision	23(1)
NS allowance automatic deferment provision	23(1)
NS allowance discretionary deferment provision	23(1)”.

**3. Subsection 23(1):**

Insert:

“ ‘**deferment period**’ means an activity test deferment period or an administrative breach deferment period;”.

**4. Subsection 542(1):**

Omit the subsection, substitute:

“(1) A job search allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to satisfy the activity test in order to qualify, or to continue to qualify, for a job search allowance; and
- (b) the person fails to satisfy the activity test.”.

**5. Subsection 542A(1):**

Omit the subsection, substitute:

“(1) A job search allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to enter into a Job Search Activity Agreement in order to qualify, or to continue to qualify, for a job search allowance; and
- (b) the person fails to enter into a Job Search Activity Agreement.”.

**SCHEDULE—continued**

**6. Subsection 542B(1):**

Omit the subsection, substitute:

“(1) A job search allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to take reasonable steps to comply with the terms of a Job Search Activity Agreement in order to qualify, or to continue to qualify, for a job search allowance; and
- (b) the person fails to take reasonable steps to comply with the terms of the Job Search Activity Agreement.”.

**7. Subsection 624(1):**

Omit the subsection, substitute:

“(1) A newstart allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to satisfy the activity test in order to qualify, or to continue to qualify, for a newstart allowance; and
- (b) the person fails to satisfy the activity test.”.

**8. Subsection 625(1):**

Omit the subsection, substitute:

“(1) A newstart allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to enter into a Newstart Activity Agreement in order to qualify, or to continue to qualify, for a newstart allowance; and
- (b) the person fails to enter into a Newstart Activity Agreement.”.

**9. Subsection 626(1):**

Omit the subsection, substitute:

“(1) A newstart allowance is not payable to a person for the activity test deferment period if:

- (a) the person is required to take reasonable steps to comply with the terms of a Newstart Activity Agreement in order to qualify, or to continue to qualify, for a newstart allowance; and
- (b) the person fails to take reasonable steps to comply with the terms of the Newstart Activity Agreement.”.

**10. Paragraph 630A(6)(b):**

Omit “job start allowance”, substitute “job search allowance”.

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**SCHEDULE—continued**

**11. Subdivision F of Division 1 of Part 2.12 (Heading):**

Omit “F”, substitute “G”.

Note: This item amends the second occurring reference to Subdivision F in Division 1 of Part 2.12.

**12. Subdivision G of Division 1 of Part 2.12 (Heading):**

Omit “G”, substitute “H”.

**13. Section 630C:**

Reposition at the beginning of Subdivision G (immediately before section 631).

**14. Items 70 and 71 of Schedule 1A (as enacted by item 73 of Schedule 3 of the *Social Security Legislation Amendment Act (No. 2) 1994*):**

Renumber as Items 69A and 69B.

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**NOTES**

*Employment, Education and Training Act 1988*

1. No. 80, 1988, as amended. For previous amendments, see Nos. 1, 2, 13, 170 and 179, 1989; Nos. 47, 122 and 131, 1991; and No. 5, 1993.

*Freedom of Information Act 1982*

2. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; No. 187, 1985; Nos. 102 and 111, 1986; Nos. 6, 87, 109, 119, 121, 126, 127 and 129, 1988; Nos. 66 and 150, 1989; Nos. 26, 75, 77 and 118, 1990; Nos. 99, 137, 149 and 180, 1991; Nos. 118, 143, 165, 196 and 219, 1992; and Nos. 33 and 64, 1994.

*Ombudsman Act 1976*

3. No. 181, 1976, as amended. For previous amendments, see No. 63, 1978; Nos. 107 and 155, 1979; No. 61, 1981; No. 61, 1983; No. 63, 1984 (as amended by No. 193, 1985); No. 65, 1985; No. 168, 1986; Nos. 109 and 199, 1988; No. 63, 1989; Nos. 99, 122 and 199, 1991; No. 94, 1992; and No. 33, 1994.

*Privacy Act 1988*

4. No. 199, 1988, as amended. For previous amendments, see Nos. 11, 75 and 115, 1990; Nos. 20, 28, 122, 136 and 194, 1991; Nos. 143 and 165, 1992; No. 28, 1993; and No. 13, 1994.

*Social Security Act 1991*

5. No. 46, 1991, as amended. For previous amendments, see Nos. 68, 69, 70, 73, 74, 115, 116, 141, 175, 194 and 208, 1991; Nos. 12, 69, 81, 94, 118, 133, 134, 138, 228, 229, 230, 233 and 241, 1992; Nos. 25, 36, 61, 120 and 121, 1993; and Nos. 55, 63 and 68, 1994.

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*[Minister's second reading speech made in—  
House of Representatives on 24 August 1994  
Senate on 10 November 1994]*