



# **Social Security Legislation Amendment (Employment Services Reform) Act 2009**

**No. 7, 2009**

**An Act to amend the law relating to social security,  
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Social Security Legislation Amendment (Employment Services Reform) Act 2009**

**No. 7, 2009**

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## **An Act to amend the law relating to social security, and for related purposes**

*[Assented to 24 February 2009]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Social Security Legislation Amendment (Employment Services Reform) Act 2009*.

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*Social Security Legislation Amendment (Employment Services Reform) Act 2009* No. 7, 2009

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	24 February 2009
2. Schedules 1 to 3	1 July 2009.	1 July 2009
3. Schedule 4, item 1	1 July 2009.	1 July 2009
4. Schedule 4, items 2 to 5	Immediately after the commencement of the provisions covered by table item 2.	1 July 2009
5. Schedule 4, items 6 and 7	1 July 2009.	1 July 2009
6. Schedule 4, items 8 and 9	Immediately after the commencement of the provisions covered by table item 2.	1 July 2009
7. Schedule 4, items 10 to 14	1 July 2009.	1 July 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Compliance with obligations in relation to participation payments**

### **Part 1—Compliance with obligations in relation to participation payments**

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

#### **1 After Division 3 of Part 3**

Insert:

### **Division 3A—Compliance with obligations in relation to participation payments**

#### **Subdivision A—Object of this Division**

#### **42A Simplified outline**

The following is a simplified outline of this Division:

- The Secretary may determine that a person commits a no show no pay failure, a connection failure, a reconnection failure or a serious failure.
- A person commits such a failure by failing to comply with his or her obligations in relation to a participation payment. The participation payments are newstart allowance, and for some people, youth allowance, parenting payment and special benefit.
- For a no show no pay failure, a penalty amount is deducted from the person's participation payment.
- For a connection failure, a requirement may be imposed on the person (and if the person fails to comply with the requirement, the person commits a reconnection failure).



- For a reconnection failure, generally a penalty amount is deducted from the person's participation payment until the person complies with a requirement imposed on the person.
- For a serious failure, a participation payment is not payable to the person for 8 weeks. The 8 week period may be ended in certain circumstances.
- The Secretary may also determine that a person is unemployed as a result of a voluntary act or misconduct. If the Secretary does so, a participation payment is not payable to the person for 8 weeks.

#### **42B Object of this Division**

- (1) The object of this Division is to encourage people to participate in employment and engage with employment services. It is also the object of this Division to secure compliance with a person's obligations and requirements in relation to participation payments, and to ensure that those who do not comply are re-engaged with employment services as quickly as possible.
- (2) However, this Division is not intended to punish a person who has a reasonable excuse for failing to comply with such obligations.

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

##### **42C No show no pay failures**

- (1) The Secretary may determine that a person commits a *no show no pay failure* on a day if:
  - (a) the person commits any of the following failures:
    - (i) the person fails to participate, on the day, in an activity that the person is required to undertake by an employment pathway plan that is in force in relation to the person;
    - (ii) the person fails to comply, on the day, with a serious failure requirement imposed on the person;
    - (iii) the person commits misconduct, on the day, while participating in an activity referred to in

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**Part 1** Compliance with obligations in relation to participation payments

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subparagraph (i) or while purporting to comply with a serious failure requirement imposed on the person;

(iv) the person intentionally acts in a manner on the day (including by failing to attend a job interview), and it is reasonably foreseeable that acting in that manner could result in an offer of employment not being made to the person; and

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

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

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

(a) the person fails to attend the activity at all; or

(b) the person is not punctual in attending the activity.

*Limitations on determining no show no pay failures*

(3) If:

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

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

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

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

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

(a) both of the following apply:

(i) subparagraph (1)(a)(i), (ii) or (iv) applies;

(ii) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or

(b) the person is a new apprentice.

Note: The Secretary must take certain matters into account for the purposes of paragraph (4)(a) (see section 42U).

*Determining an instalment period*

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

**42D Deducting the penalty amount**

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

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

**Subdivision C—Connection and reconnection failures**

**42E Connection failures**

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

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

- (2) For the purposes of subsection (1), the failures are the following:
- (a) the person fails to comply with a requirement that was notified to the person under subsection 63(2) or (4), and the notice did not inform the person of the effect of section 64;

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**Part 1** Compliance with obligations in relation to participation payments

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- (b) the person fails to comply with a requirement, under section 501, 544A, 605 or 731L of the 1991 Act, to enter into an employment pathway plan;
  - (c) the person fails to attend an appointment that the person is required to attend by an employment pathway plan that is in force in relation to the person;
  - (d) the person is issued with a notice under subsection 42F(1) and fails to comply with it within the period specified in the notice;
  - (e) the person fails to comply with subsection 42F(2);
  - (f) the person fails to comply with a requirement included in an employment pathway plan that is in force in relation to the person to undertake a certain number of job searches per fortnight;
  - (g) the person fails to comply with a requirement included in an employment pathway plan that is in force in relation to the person:
    - (i) to keep a record of the person's job searches in a document referred to in the plan as a job seeker diary; and
    - (ii) to return the job seeker diary to the Department at the end of the period specified in the plan.
- (3) The Secretary may determine that a person commits 2 or more connection failures on a day.

*Limitations on determining connection failures*

- (4) Despite subsection (1), the Secretary must not determine that a person commits a connection failure if:
- (a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or
  - (b) both of the following apply:
    - (i) the person's failure is a failure to comply with a requirement under section 544A of the 1991 Act to enter into an employment pathway plan;
    - (ii) a youth allowance is not payable to the person for the instalment period in which the person commits the failure because of section 547AA of that Act; or
  - (c) both of the following apply:

- (i) the person's failure is a failure to comply with a requirement under section 605 of the 1991 Act to enter into an employment pathway plan;
- (ii) a newstart allowance is not payable to the person for the instalment period in which the person commits the failure because of section 615 of that Act; or
- (d) the person is a new apprentice; or
- (e) in the case of a failure under paragraphs (2)(d) to (g)—the person is receiving parenting payment.

Note: The Secretary must take certain matters into account for the purposes of paragraph (4)(a) (see section 42U).

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

- (1) The Secretary may notify a person that the person must apply for a particular number of advertised job vacancies in the period specified in the notice if:
  - (a) the person is required to satisfy the activity test; and
  - (b) the person is receiving a participation payment other than a parenting payment.
- (2) The person must give the Secretary a written statement from each employer whose job vacancy the person applied for during that period that confirms that the person applied for that job vacancy.
- (3) The statement from the employer must be in a form approved by the Secretary.
- (4) Subsection (2) does not apply to a person if the Secretary is satisfied that there are special circumstances in which it is not reasonable to expect the person to give the statement referred to in that subsection.

#### **42G Reconnection requirements**

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

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

## **42H Reconnection failures**

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

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

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

### *Limitation on determining reconnection failures*

- (3) Despite subsection (1), the Secretary must not determine that a person commits a reconnection failure if the person satisfies the Secretary that the person has a reasonable excuse for the failure.

Note: The Secretary must take certain matters into account for the purposes of subsection (3) (see section 42U).

### *Reconnection failure period*

- (4) If the Secretary determines that a person commits a reconnection failure, the person commits the failure during the period (the **reconnection failure period**) that:
- (a) begins on the day the person commits the failure; and
  - (b) ends on:
    - (i) the day before the person complies with any further reconnection requirement imposed on the person in relation to the reconnection failure; or
    - (ii) if the person fails to comply with a further reconnection requirement imposed on the person in relation to the reconnection failure, and the person satisfies the Secretary that the person has a reasonable excuse for the failure—the day before the person fails to comply with the requirement.

*Determining an instalment period*

- (5) The Secretary must include in a determination under this section the instalment period in which a penalty amount (see section 42T) for the reconnection failure is to be deducted from the person's instalment of a participation payment, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the reconnection failure.

**42J Further reconnection requirements**

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

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

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

**42K Notification requirements**

- (1) The Secretary must notify the person that a failure to comply with a reconnection requirement or a further reconnection requirement imposed on the person might result in a penalty amount being deducted from the person's participation payment.
- (2) The notification does not have to be in writing, but must occur before the day the person is required to comply with the reconnection requirement or the further reconnection requirement.

**42L Deduction of penalty amount**

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

of a participation payment for the instalment period determined under subsection 42H(5).

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

## **Subdivision D—Serious failures**

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

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

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

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

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

#### *Limitations on determining persistent non-compliance serious failures*

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



*Legislative instrument*

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

**42N Serious failure for refusing or failing to accept an offer of suitable employment**

- (1) The Secretary may determine that a person commits a *serious failure* if:
  - (a) the person is receiving a participation payment; and
  - (b) the person refuses or fails to accept an offer of suitable employment.

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

- (2) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if the person satisfies the Secretary that the person has a reasonable excuse for the failure.

Note: The Secretary must take certain matters into account for the purposes of subsection (2) (see section 42U).

**42NA Comprehensive compliance assessment**

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

- (a) the reasons why the person may have committed failures under this Division;
- (b) the reasons why the person may have failed to meet other requirements under the social security law;
- (c) whether the person has any barriers to employment;
- (d) whether the person's participation requirements are appropriate.

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

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

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

**42P Consequences of serious failure**

*Participation payment not payable during serious failure period*

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

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

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

- (2) The person's *serious failure period* is the period:
  - (a) beginning on the first day of the first instalment period that begins after the day the Secretary makes the determination; and
  - (b) ending:

- (i) if the Secretary ends the person's serious failure period under section 42Q—on the day mentioned in that section; or
- (ii) otherwise—8 weeks after the period begins.

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

#### *Serious failure requirements*

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

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

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

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

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

- (1A) The Secretary may make a determination under paragraph (1)(b) on request or on his or her own initiative.
- (2) The person's serious failure period ends on:
  - (a) if paragraph (1)(a) applies—the day before the person begins to comply with the requirement; or
  - (b) if the Secretary makes a determination under paragraph (1)(b) on request—the day before the request was made; or
  - (c) if the Secretary makes a determination under paragraph (1)(b) on his or her own initiative—the day before the Secretary makes the determination.

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**Part 1** Compliance with obligations in relation to participation payments

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

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

**42R Determining that participation payments payable**

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

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

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

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

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

*Limitations on determination*

- (2) Despite paragraph (1)(a), the Secretary must not make a determination under that paragraph if the Secretary is satisfied that the voluntary act was reasonable.

*Period of non-payment*

- (3) The participation payment is not payable to the person for the period (the **unemployment non-payment period**) of 8 weeks beginning on:
- (a) the day that the person becomes unemployed as a result of the person's voluntary act or misconduct; or
  - (b) if the person is receiving a participation payment at the time of the voluntary act or misconduct—the first day of the first instalment period that begins after the day the Secretary makes the determination, if the Secretary considers that day is more appropriate than the day mentioned in paragraph (a).

Note 1: The Secretary may end an unemployment non-payment period under subsection (4).

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

*Ending unemployment non-payment periods*

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

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

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

## **Subdivision F—General provisions**

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

- (1) The Minister must, by legislative instrument, determine a method for working out a person's penalty amount for a no show no pay failure or a reconnection failure.
- (2) The method determined for a no show no pay failure that a person commits on a day must not provide for a penalty amount for the person that is more than the following:
$$1.4 \times \frac{\text{Amount of the person's instalment of participation payment for the instalment period in which the day occurs}}{\text{Number of days in the person's instalment period}}$$
- (3) The method determined for a reconnection failure that a person commits must not provide for a penalty amount for the person that is more than the total of the daily rates of the participation payment payable to the person during the reconnection failure period (before deducting a penalty amount).
- (4) In addition, the method determined for a no show no pay failure or a reconnection failure must relate to:
  - (a) for a person's no show no pay failure—the amount of the participation payment paid to the person on the day on which the person commits the no show no pay failure; or
  - (b) for a person's reconnection failure—the amount of the participation payment paid to the person during the reconnection failure period.
- (5) The method determined by the Minister for working out a person's penalty amount must not affect any rent assistance, pharmaceutical allowance or youth disability supplement payable to the person.
- (6) The method determined may provide for a penalty amount that is nil.
- (7) The legislative instrument may also deal with the amount of a penalty amount to be deducted from an instalment of a participation payment.

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

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

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

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

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

#### **42W Penalty amount not a debt**

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

#### **42X Payability**

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

#### **42Y Day of determination**

For the purposes of paragraph 42M(1)(a), 42P(2)(a), 42Q(2)(c) or 42S(3)(b), the day the Secretary makes the determination is the day

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the Secretary originally makes the determination (even if another decision in relation to the determination is later made on review).

#### **42Z Relationship with section 80**

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

#### **Subdivision G—Review**

##### **42ZA Review of impact of compliance regime**

- (1) The Minister must cause an independent review of the impact of the amendments made by this Division to be undertaken as soon as possible after 30 June 2010.
- (2) The review must report on:
  - (a) the effectiveness of the compliance regime in:
    - (i) meeting job seeking requirements;
    - (ii) reducing financial hardship;
    - (iii) reducing compliance costs for job seekers, employment services providers and the Government; and
    - (iv) using the ‘no show, no pay’ provision to increase compliance with job seeking requirements;
  - (b) the impact on vulnerable job seekers including Indigenous job seekers;
  - (c) the impact of the compliance regime on employment participation and long-term unemployment;
  - (d) the number of complaints made with the departmental hotline, Social Security Appeals Tribunal or Ombudsman’s office in relation to the new arrangements;
  - (e) the gaps between federal policy and state service provision for persons with non-vocational special needs or barriers;
  - (f) the adequacy of non-vocational support services in regional areas;
  - (g) the effectiveness of training for and consistency of understanding of Centrelink staff, employment providers and departmental contract managers in the new arrangements;



- (h) the adequacy of information and education provided to new and existing clients about the new system;
  - (i) the adequacy of resourcing for Centrelink to implement the new arrangements and deal with related complaints;
  - (j) the effectiveness and use of criteria such as hardship, vulnerability and reasonable exclusion within Comprehensive Compliance Assessments; and
  - (k) any other related matter.
- (3) The review must be conducted by an independent panel, chaired by a person with expertise in social security and employment services matters.
- (4) The Minister must provide the panel with adequate resources to undertake the review.
- (5) The panel must give the Minister a written report of the review, and the Minister must cause a copy of the report to be made public and tabled in each House of the Parliament by 30 September 2010.

## Part 2—Consequential amendments

### *Social Security Act 1991*

#### **2 Subsection 14A(1)**

Omit “In Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A”, substitute “For the purposes of Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A and Division 3A of Part 3 of the Administration Act”.

#### **3 Subsection 14A(2)**

After “2.23A”, insert “and Division 3A of Part 3 of the Administration Act”.

#### **4 At the end of section 14A**

Add:

- (7) For the purposes of Division 3A of Part 3 of the Administration Act, a person is *in severe financial hardship* if the value of the person’s liquid assets does not exceed the person’s maximum reserve.

#### **5 Subsection 23(1) (definition of *compliance penalty period*)**

Repeal the definition, substitute:

*compliance penalty period*, in relation to a person, means:

- (a) a period during which a participation payment (within the meaning of the Administration Act) is not payable because of subsection 42P(1) (serious failures) or 42S(1) (unemployment non-payment periods) of that Act; or
- (b) a period during which youth allowance is not payable to the person because of section 550B or 551 of this Act; or
- (c) a period during which austudy payment is not payable to the person because of section 576A or 577 of this Act.

#### **6 Subsection 23(1) (definition of *newstart participation failure*)**

Repeal the definition.

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**7 Subsection 23(1) (definition of *parenting payment participation failure*)**

Repeal the definition.

**8 Subsection 23(1) (definition of *participation failure instalment period*)**

Repeal the definition, substitute:

*participation failure instalment period:*

- (a) in relation to the payability of youth allowance—has the meaning given by subsection 550B(3); and
- (b) in relation to the payability of austudy payment—has the meaning given by subsection 576A(3).

**9 Subsection 23(1) (definition of *special benefit participation failure*)**

Repeal the definition.

**10 Subdivisions C and CA of Division 1 of Part 2.10**

Repeal the Subdivisions.

**11 Before section 550**

Insert:

**549G Application of Subdivision**

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3A of Part 3 of the Administration Act might apply.

**12 Paragraphs 550(1)(c) to (j)**

Repeal the paragraphs.

**13 Subsections 550(5), (7) and (8)**

Repeal the subsections.

**14 Section 550A**

Repeal the section.

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**15 Subsection 550B(1)**

Omit “However, paragraphs (b) and (c) do not apply in relation to a youth allowance participation failure of a kind referred to in paragraph 550(1)(h), (i) or (j).”.

**16 Subsection 550B(3)**

Repeal the subsection, substitute:

*Meaning of participation failure instalment period*

- (3) The *participation failure instalment period* for the youth allowance participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

**17 Subdivision E of Division 2 of Part 2.11 (heading)**

Repeal the heading, substitute:

**Subdivision E—Situations where allowance not payable because of repeated failure**

**18 Before section 551**

Insert:

**550E Application of Subdivision**

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3A of Part 3 of the Administration Act might apply.

**19 Subsections 551(1) to (1B)**

Repeal the subsections, substitute:

*General*

- (1) A youth allowance is not payable to a person, for the period of 8 weeks starting in accordance with section 551A, if the person commits a youth allowance participation failure (the *repeated failure*), having committed youth allowance participation failures

(the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure.

Note: The heading to section 551 is altered by omitting “**or more serious**”.

## **20 Subsection 551(2)**

Omit “For the purposes of paragraph (1)(a), disregard”, substitute “Disregard”.

## **21 Subsections 551(4) to (6)**

Repeal the subsections.

## **22 Section 551A**

Repeal the section, substitute:

### **551A When the period of non-payment starts**

The period for which youth allowance is not payable to the person because of subsection 551(1) is taken to start, or to have started:

- (a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 550B(3).

## **23 Subdivisions F and FA of Division 1 of Part 2.12**

Repeal the Subdivisions.

## **24 Paragraph 729(2)(bd)**

Repeal the paragraph, substitute:

- (bd) if the person is qualified for parenting payment but the payment is not payable to the person for the period—that result is not produced because of the operation of subsection 42P(1) (serious failures) or 42S(1) (unemployment non-payment periods) of the Administration Act; and

## **25 Subparagraphs 729(2)(d)(i) to (ix)**

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Repeal the subparagraphs, substitute:

- (i) subsection 42P(1) of the Administration Act (serious failures);
- (ii) subsection 42S(1) of the Administration Act (unemployment non-payment periods);
- (iii) section 631 of this Act (person failing to comply with notification requirement);
- (iv) section 633 of this Act (seasonal workers);
- (v) section 634 of this Act (move to area of lower employment prospects); and

**26 Subparagraph 729(2)(dc)(ia)**

Omit “or more serious”.

**27 Subparagraph 729(2)(dc)(iii)**

Omit “section 81”, substitute “subsection 42P(1) (serious failures) or 42S(1) (unemployment non-payment periods) or section 81”.

**28 Subdivisions C and CA of Division 1 of Part 2.15**

Repeal the Subdivisions.

**29 Subparagraph 1046(2)(b)(i)**

After “of this Act”, insert “, or subsection 42P(1) or 42S(1)”.

**30 Subparagraph 1046(2)(b)(ii)**

Omit “this Act”, substitute “this Act, or subsection 42P(1) or 42S(1)”.

**31 Subparagraph 1046(2B)(b)(i)**

After “of this Act”, insert “, or subsection 42P(1) or 42S(1)”.

**32 Subparagraph 1046(2B)(b)(ii)**

Omit “this Act”, substitute “this Act, or subsection 42P(1) or 42S(1)”.

**33 Subparagraph 1046(2B)(b)(ia)**

Omit “section 500J, 500ZB or 500ZE of this Act or section 81”, substitute “section 500J of this Act, or subsection 42P(1) or 42S(1) or section 81”.

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

### **34 Paragraph 110A(b)**

Repeal the paragraph, substitute:

- (b) the payment had been suspended because it was not payable because of:
  - (i) subsection 42P(1) or 42S(1) (if the payment was a participation payment); or
  - (ii) section 550B or 551 of the 1991 Act (if the payment was a youth allowance); or
  - (iii) section 576A or 577 of the 1991 Act (if the payment was an austudy payment);

### **35 Section 110A**

Omit “because of that section”, substitute “because of section 550B, 551, 576A or 577 of the 1991 Act, or on the day after the serious failure period or unemployment non-payment period ends under subsection 42P(1) or 42S(3) or section 42Q of this Act, as the case requires”.

### **36 Paragraph 118(12C)(b)**

Repeal the paragraph, substitute:

- (b) the determination was made because of the application of:
  - (i) subsection 42P(1) or 42S(1) (if the payment is a participation payment); or
  - (ii) section 550B or 551 of the 1991 Act (if the payment is a youth allowance); or
  - (iii) section 576A or 577 of the 1991 Act (if the payment is an austudy payment);

### **37 After subsection 131(5)**

Insert:

(5A) If:

- (a) an adverse decision results in a serious failure period or an unemployment non-payment period; and
- (b) a declaration in relation to the decision ceases to have effect under subsection (5); and

- (c) after the declaration ceases, the serious failure period or the unemployment non-payment period, or the balance of that period, remains to be served;  
the period or the balance of the period continues from the day the declaration ceases.

**38 After paragraph 144(f)**

Insert:

- (fa) a decision under subsection 42P(3) of this Act;

**39 After subsection 145(4)**

Insert:

(4A) If:

- (a) an adverse decision results in a serious failure period or an unemployment non-payment period; and
- (b) a declaration in relation to the decision ceases to have effect under subsection (4); and
- (c) after the declaration ceases, the serious failure period or the unemployment non-payment period, or the balance of that period, remains to be served;  
the period or the balance of the period continues from the day the declaration ceases.

**40 After paragraph 192(d)**

Insert:

- (daa) the operation of Division 3A of Part 3;

**41 Subclause 1(1) of Schedule 1**

Insert:

*connection failure* has the meaning given by subsection 42E(1).

**42 Subclause 1(1) of Schedule 1**

Insert:

*further reconnection requirement* has the meaning given by section 42J.

**43 Subclause 1(1) of Schedule 1**

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Insert:

*no show no pay failure* has the meaning given by subsection 42C(1).

#### **44 Subclause 1(1) of Schedule 1**

Insert:

*participation payment* is any of the following payments that are paid to a person:

- (a) newstart allowance;
- (b) if the person is neither undertaking full-time study (see section 541B of the 1991 Act) nor is a new apprentice—youth allowance;
- (c) if the person is subject to participation requirements—parenting payment;
- (d) if the person is a nominated visa holder—special benefit.

#### **45 Subclause 1(1) of Schedule 1**

Insert:

*penalty amount* for a person for a no show no pay failure or a reconnection failure means the amount worked out for the person in accordance with the legislative instrument made under section 42T.

#### **46 Subclause 1(1) of Schedule 1**

Insert:

*reconnection failure* has the meaning given by subsection 42H(1).

#### **47 Subclause 1(1) of Schedule 1**

Insert:

*reconnection failure period* has the meaning given by subsection 42H(4).

#### **48 Subclause 1(1) of Schedule 1**

Insert:

*reconnection requirement* has the meaning given by section 42G.

**49 Subclause 1(1) of Schedule 1**

Insert:

*serious failure* has the meanings given by subsections 42M(1) and 42N(1).

**50 Subclause 1(1) of Schedule 1**

Insert:

*serious failure period* has the meaning given by subsection 42P(2).

**51 Subclause 1(1) of Schedule 1**

Insert:

*serious failure requirement* has the meaning given by subsection 42P(3).

**52 Subclause 1(1) of Schedule 1**

Insert:

*unemployment non-payment period* has the meaning given by subsection 42S(3).

**53 At the end of subclause 5(1A) of Schedule 2**

Add:

Note: Clause 5A deals with the start day of parenting payment where one member of a couple commits a serious failure or is unemployed as a result of a voluntary act or misconduct.

**54 After subclause 5(1A) of Schedule 2**

Insert:

(1B) If the exclusion period to which a person is subject is a serious failure period or an unemployment non-payment period, subclause (1) applies only in relation to a start day for a participation payment to the person.

**55 After clause 5 of Schedule 2**

Insert:

**5A Start day for parenting payment where one member of a couple commits a serious failure or is unemployed as a result of a voluntary act or misconduct**

If:

- (a) one member of a couple is receiving parenting payment; and
- (b) the other member of the couple is receiving a participation payment; and
- (c) either:
  - (i) the Secretary determines that the other member of the couple commits a serious failure; or
  - (ii) the Secretary makes a determination under subsection 42S(1) (unemployment as a result of a voluntary act or misconduct) in relation to the other member of the couple; and
- (d) the other member of the couple claims parenting payment; then, the other member's start day under this Schedule in relation to the parenting payment is the first day after the end of the person's serious failure period or unemployment non-payment period.

## **Part 3—Application provision**

### **56 Application of amendments**

- (1) The amendments made by this Schedule apply to failures, voluntary acts or misconduct committed after the Schedule commences.
- (2) If, immediately before the commencement of this Schedule, a payment that would be a participation payment is not payable to a person under section 500ZB, 500ZE, 550B, 551, 626, 629, 742 or 745 of the *Social Security Act 1991*, that Act (as in force immediately before the commencement) continues to apply, after that commencement, in relation to the payment.
- (3) Subject to subitem (4), if, immediately before the commencement of this Schedule, a payment that would be a participation payment is not payable to a person under section 500ZE, 551, 629 or 745 of the *Social Security Act 1991*, section 42Q of the *Social Security (Administration) Act 1999* (as inserted by item 1 of this Schedule) applies, after that commencement, as if the 8 week period referred to in section 500ZE, 551, 629 or 745 were a serious failure period.
- (4) Section 42Q of the *Social Security (Administration) Act 1999* (as inserted by item 1 of this Schedule) does not apply in relation to a person under subitem (3) if the person's participation payment is not payable to the person under paragraph 500ZE(1)(b) or (c), 551(1)(b) or (c), 629(1)(b) or (c) or 745(1)(b) or (c) of the *Social Security Act 1991*.

## **Schedule 2—Amendments relating to employment pathway plans**

### *Social Security Act 1991*

#### **1 Subsection 23(1)**

Insert:

*employment pathway plan* means:

- (a) a Parenting Payment Employment Pathway Plan; or
- (b) a Youth Allowance Employment Pathway Plan; or
- (c) a Newstart Employment Pathway Plan; or
- (d) a Special Benefit Employment Pathway Plan.

#### **2 Subsection 23(1) (definition of *Parenting Payment Activity Agreement*)**

Repeal the definition.

#### **3 Subsection 23(1) (definition of *Youth Allowance Activity Agreement*)**

Repeal the definition.

#### **4 Paragraph 500A(a)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

#### **5 Paragraph 500A(b)**

Repeal the paragraph, substitute:

- (b) while the plan is in force, the person must comply with the requirements in the plan;

#### **6 Paragraph 500A(c)**

Omit “agreement” (wherever occurring), substitute “plan”.

#### **7 Division 2 of Part 2.10 of Chapter 2 (heading)**

Repeal the heading, substitute:

## **Division 2—Parenting Payment Employment Pathway Plans**

### **8 Subsection 501(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 501 is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

### **9 Subsection 501(2)**

Repeal the subsection, substitute:

- (2) If a Parenting Payment Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

### **10 Subsection 501(5)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

### **11 Paragraph 501(5)(b)**

Omit “agreement”, substitute “plan”.

### **12 Subsection 501(6)**

Repeal the subsection, substitute:

- (6) A Parenting Payment Employment Pathway Plan must be in a form approved by the Secretary.

### **13 Subsection 501A(1)**

Repeal the subsection, substitute:

#### *Suitable requirements*

- (1) Subject to subsections (2) and (3) and sections 501B to 501E, a Parenting Payment Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the **requirements**) that:
- (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.

Note: The heading to section 501A is altered by omitting “**Activity Agreement**” and substituting “**Employment Pathway Plan**”.

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**14 Subsection 501A(2)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**15 Subsection 501A(2)**

Omit “agreement”, substitute “plan”.

**16 Subsection 501A(3)**

Omit “An agreement”, substitute “A plan”.

**17 Subsection 501A(4)**

Omit “agreements”, substitute “plans”.

**18 Subsection 501A(4A)**

Omit “agreement”, substitute “plan”.

**19 After subsection 501A(4A)**

Insert:

*Optional terms*

- (4B) A plan may also contain one or more terms that the person may, but is not required to, comply with.

**20 Subsection 501A(5)**

Repeal the subsection, substitute:

*Approval of requirements*

- (5) The requirements in a plan are to be approved by the Secretary.

**21 Subsection 501A(6)**

Repeal the subsection, substitute:

- (6) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
- (a) the person’s capacity to comply with the requirements; and
  - (b) the person’s needs.

**22 Subsection 501A(7)**

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Omit “an agreement”, substitute “the requirements in a plan”.

**23 Paragraph 501A(7)(f)**

Omit “for compliance with the agreement”, substitute “to comply with the requirements”.

**24 Paragraph 501A(7)(g)**

Repeal the paragraph, substitute:

- (g) the financial costs (such as travel costs) of complying with the requirements, and the person’s capacity to pay for such costs;

**25 Subsection 501A(8)**

Omit “An agreement with”, substitute “A plan that is in force in relation to”.

Note: The following heading to subsection 501A(8) is inserted “*Variation, suspension, cancellation and review*”.

**26 Paragraphs 501A(8)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
- (b) must be cancelled by the Secretary if the person enters into another Parenting Payment Employment Pathway Plan; and
- (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

**27 Subsection 501A(9)**

Repeal the subsection, substitute:

*Circumstances preventing or affecting compliance*

- (9) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person’s capacity to comply with the requirements in the plan.

**28 Subsection 501B(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 501B is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

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### **29 Subsection 501C(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 501C is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

### **30 Paragraph 501C(1)(a)**

Omit “is between the Secretary and”, substitute “is in force in relation to”.

### **31 Subsection 501D(1)**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

Note: The heading to section 501D is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

### **32 Subsection 501D(2)**

Omit “The Secretary may, by notice given to a person whom a Parenting Payment Activity Agreement requires to participate in an approved program of work for income support payment,”, substitute “If a Parenting Payment Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person,”.

### **33 Subsection 501D(4)**

Repeal the subsection, substitute:

- (4) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Parenting Payment Employment Pathway Plan under this section:
- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety Act 1991*;
  - (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
  - (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;

(d) an employee for the purposes of the *Workplace Relations Act 1996*.

**34 Section 501E**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

Note: The heading to section 501E is altered by omitting “**Activity Agreements—suspension of agreements**” and substituting “**Employment Pathway Plans—suspension of plans**”.

**35 Subsection 502(2)**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

**36 Subsection 502(3)**

Repeal the subsection, substitute:

- (3) The person can be taken not to have complied with requirements notified to the person under subsection (1) whether or not the person has complied with:
- (a) any requirement to enter into a Parenting Payment Employment Pathway Plan; and
  - (b) the requirements in the plan.

**37 Paragraph 502J(2)(a)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**38 Paragraph 502J(2)(b)**

Omit “an agreement”, substitute “a plan”.

**39 Paragraph 540(c)**

Omit “Activity Agreements”, substitute “Employment Pathway Plans”.

**40 Paragraphs 540AB(3)(a) and (b)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**41 Paragraph 541(1)(c)**

Omit “terms of a Youth Allowance Activity Agreement”, substitute “requirements in a Youth Allowance Employment Pathway Plan”.

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**42 Subsection 541(2A)**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

**43 Paragraph 541A(b)**

Omit “terms of a Youth Allowance Activity Agreement”, substitute “requirements in a Youth Allowance Employment Pathway Plan”.

**44 Paragraph 542BA(2)(a)**

Omit “Activity Agreement but has failed to enter that agreement”, substitute “Employment Pathway Plan but has failed to enter that plan”.

**45 Paragraph 542BA(2)(b)**

Omit “an agreement”, substitute “a plan”.

**46 Subparagraph 542FB(4)(b)(i)**

Omit “Activity Agreement but has failed to enter that agreement”, substitute “Employment Pathway Plan but has failed to enter that plan”.

**47 Subparagraph 542FB(4)(b)(ii)**

Omit “an agreement”, substitute “a plan”.

**48 Paragraph 543A(2)(c)**

Omit “activity agreement”, substitute “Employment Pathway Plan”.

**49 Subdivision E of Division 1 of Part 2.11 of Chapter 2 (heading)**

Repeal the heading, substitute:

**Subdivision E—Youth Allowance Employment Pathway Plans**

**50 Subsection 544(1)**

Omit “Activity Agreements”, substitute “Employment Pathway Plans”.

Note: The heading to section 544 is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**51 Paragraph 544(1)(a)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

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**52 Paragraphs 544(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) while the plan is in force, the person must comply with the requirements in the plan; and
- (c) at all times when the plan is in force, the person must be prepared to enter into another such plan instead of the existing plan, if required to do so by the Secretary.

**53 Paragraph 544(3)(b)**

Omit “the person was a party to a Special Benefit Activity Agreement”, substitute “a Special Benefit Employment Pathway Plan was in force in relation to the person”.

**54 Subsection 544(3)**

Omit “agreement” (wherever occurring), substitute “plan”.

**55 Subsection 544(3)**

Omit “Activity Agreement” (second occurring), substitute “Employment Pathway Plan”.

**56 Paragraph 544(4)(b)**

Omit “the person was a party to a Parenting Payment Activity Agreement”, substitute “a Parenting Payment Employment Pathway Plan was in force in relation to the person”.

**57 Subsection 544(4)**

Omit “agreement” (wherever occurring), substitute “plan”.

**58 Subsection 544(4)**

Omit “Activity Agreement” (second occurring), substitute “Employment Pathway Plan”.

**59 Subsection 544A(1)**

Omit “Subject to this section, the Secretary may require a person who is not a party to a Youth Allowance Activity Agreement to enter into such an agreement if”, substitute “If a Youth Allowance Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if”.

Note 1: The heading to section 544A is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

Note 2: The heading to subsection 544A(1) is altered by omitting “*agreement*” and substituting “*plan*”.

### **60 Subsections 544A(2) and (2A)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to subsection 544A(2) is altered by omitting “*agreements*” and substituting “*plans*”.

### **61 Subsection 544A(3)**

Repeal the subsection, substitute:

*Requirement to enter another plan*

- (3) If a Youth Allowance Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

### **62 Subsection 544A(4)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

### **63 Paragraph 544A(4)(b)**

Omit “agreement”, substitute “plan”.

### **64 Subsection 544A(5)**

Repeal the subsection, substitute:

*Form of plan*

- (5) A Youth Allowance Employment Pathway Plan must be in a form approved by the Secretary.

### **65 Subsection 544B(1)**

Repeal the subsection, substitute:

*Suitable requirements*

- (1) Subject to sections 544C and 544D, a Youth Allowance Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the **requirements**) that:

- (a) the person is required to comply with; and
- (b) the Secretary regards as suitable for the person.

Note: The heading to section 544B is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**66 Subsection 544B(1A)**

Repeal the subsection, substitute:

- (1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).

**67 Subsection 544B(1B)**

Repeal the subsection, substitute:

- (1B) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.

**68 Subsection 544B(1C)**

Omit “agreement”, substitute “plan”.

**69 After subsection 544B(1C)**

Insert:

*Optional terms*

- (1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

**70 Subsection 544B(2)**

Repeal the subsection, substitute:

*Approval of requirements*

- (2) The requirements in a plan are to be approved by the Secretary.

**71 Subsection 544B(3)**

Repeal the subsection, substitute:

- (3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:

- (a) the person's capacity to comply with the requirements; and
- (b) the person's needs.

**72 Subsection 544B(4)**

Omit "an agreement", substitute "the requirements in a plan".

**73 Paragraph 544B(4)(e)**

Omit "for compliance with the agreement", substitute "to comply with the requirements".

**74 Paragraph 544B(4)(f)**

Repeal the paragraph, substitute:

- (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and

**75 Subsection 544B(5)**

Omit "An agreement with", substitute "A plan that is in force in relation to".

**76 Paragraph 544B(5)(b)**

Repeal the paragraph, substitute:

- (b) must be cancelled by the Secretary if the person enters into another Youth Allowance Employment Pathway Plan; and

**77 Paragraph 544B(5)(c)**

Omit "either party to the agreement", substitute "the Secretary or the person".

**78 Subsection 544B(6)**

Repeal the subsection, substitute:

*Circumstances preventing or affecting compliance*

- (6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

**79 Subsection 544B(7)**

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Omit “Activity Agreement with”, substitute “Employment Pathway Plan that is in force in relation to”.

**80 Subsection 544B(7A)**

Omit “The Secretary may, by notice given to a person whom a Youth Allowance Activity Agreement requires to participate in an approved program of work for income support payment,”, substitute “If a Youth Allowance Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person,”.

**81 Subsection 544B(8)**

Repeal the subsection, substitute:

*Activities that do not give rise to employment under certain industrial relations legislation*

- (8) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Youth Allowance Employment Pathway Plan under this section:
- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety Act 1991*;
  - (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
  - (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
  - (d) an employee for the purposes of the *Workplace Relations Act 1996*.

**82 Subsection 544C(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 544C is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**83 Paragraph 544C(1)(a)**

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Omit “is between the Secretary and”, substitute “is in force in relation to”.

**84 Subsection 544D(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 544D is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**85 Paragraph 544D(1)(a)**

Omit “is between the Secretary and”, substitute “is in force in relation to”.

**86 Section 544E**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

Note: The heading to section 544E is altered by omitting “**Activity Agreements—suspension of agreements**” and substituting “**Employment Pathway Plans—suspension of plans**”.

**87 Subparagraph 547AA(1)(b)(ii)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**88 Paragraph 556A(d)**

Omit “the terms of a Youth Allowance Activity Agreement to which the person is subject”, substitute “a requirement in a Youth Allowance Employment Pathway Plan that is in force in relation to the person”.

**89 Paragraph 593(1)(c)**

Omit “the person is not a party to a Newstart Activity Agreement”, substitute “a Newstart Employment Pathway Plan is not in force in relation to the person”.

**90 Paragraph 593(1)(c)**

Omit “an agreement”, substitute “a plan”.

**91 Paragraph 593(1)(d)**

Omit “the person is a party to a Newstart Activity Agreement”, substitute “a Newstart Employment Pathway Plan is in force in relation to the person”.

**92 Paragraph 593(1)(d)**

Omit “agreement” (wherever occurring), substitute “plan”.

**93 Paragraph 593(1)(e)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**94 Paragraph 593(1)(e)**

Omit “agreement”, substitute “plan”.

**95 Paragraph 593(1)(f)**

Omit “agreement” (first occurring), substitute “plan”.

**96 Paragraph 593(1)(f)**

Omit “terms of the agreement”, substitute “requirements in the plan”.

**97 Subsection 593(1) (note 3)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**98 Paragraphs 593(1F)(a) and (b)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**99 Subsection 595(2)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**100 Paragraph 595(3)(a)**

Omit “Newstart Activity Agreement”, substitute “requirement in a Newstart Employment Pathway Plan”.

**101 Subsection 601(1B)**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

**102 Subsection 601(4)**

Omit “terms of a Newstart Activity Agreement between the Secretary and”, substitute “requirements in a Newstart Employment Pathway Plan that is in force in relation to”.

**103 Subsection 601(5)**

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Omit “the terms of a Newstart Activity Agreement between the Secretary and”, substitute “a requirement in a Newstart Employment Pathway Plan that is in force in relation to”.

**104 Paragraph 603(3)(c)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**105 Paragraph 603(3)(c)**

Omit “agreement”, substitute “plan”.

**106 Paragraph 603(3)(d)**

Omit “an agreement”, substitute “a plan”.

**107 Subsection 603(4)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**108 Paragraph 603D(2)(a)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**109 Paragraph 603D(2)(b)**

Omit “an agreement”, substitute “a plan”.

**110 Subdivision C of Division 1 of Part 2.12 of Chapter 2 (heading)**

Repeal the heading, substitute:

**Subdivision C—Newstart Employment Pathway Plans**

**111 Subsection 605(1)**

Omit “Subject to this section, the Secretary may require a person who is not a party to a Newstart Activity Agreement to enter into such an agreement if”, substitute “If a Newstart Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if”.

Note: The heading to section 605 is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**112 Subsection 605(2)**

Repeal the subsection, substitute:

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

**113 Subsection 605(3)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**114 Paragraph 605(3)(b)**

Omit “agreement”, substitute “plan”.

**115 Subsection 605(4)**

Repeal the subsection, substitute:

- (4) A Newstart Employment Pathway Plan must be in a form approved by the Secretary.

**116 Paragraph 605(5)(b)**

Omit “the person was a party to a Parenting Payment Activity Agreement”, substitute “a Parenting Payment Employment Pathway Plan was in force in relation to the person”.

**117 Subsection 605(5)**

Omit “agreement” (wherever occurring), substitute “plan”.

**118 Subsection 605(5)**

Omit “Newstart Activity Agreement”, substitute “Newstart Employment Pathway Plan”.

**119 Paragraph 605(6)(b)**

Omit “the person was a party to a Youth Allowance Activity Agreement”, substitute “a Youth Allowance Employment Pathway Plan was in force in relation to the person”.

**120 Subsection 605(6)**

Omit “agreement” (wherever occurring), substitute “plan”.

**121 Subsection 605(6)**

Omit “Newstart Activity Agreement”, substitute “Newstart Employment Pathway Plan”.

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**122 Paragraph 605(7)(b)**

Omit “the person was a party to a Special Benefit Activity Agreement”, substitute “a Special Benefit Employment Pathway Plan was in force in relation to the person”.

**123 Subsection 605(7)**

Omit “agreement” (wherever occurring), substitute “plan”.

**124 Subsection 605(7)**

Omit “Newstart Activity Agreement”, substitute “Newstart Employment Pathway Plan”.

**125 Subsection 606(1)**

Repeal the subsection, substitute:

*Suitable requirements*

- (1) Subject to sections 607 to 607B, a Newstart Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the *requirements*) that:
  - (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.

Note: The heading to section 606 is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**126 Subsection 606(1A)**

Omit “an agreement”, substitute “a plan”.

**127 Subsection 606(1B)**

Omit “agreements”, substitute “plans”.

**128 Subsection 606(1C)**

Omit “agreement”, substitute “plan”.

**129 After subsection 606(1C)**

Insert:

*Optional terms*

- (1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

**130 Subsections 606(2) and (3)**

Repeal the subsections, substitute:

*Approval of requirements*

- (2) The requirements in a plan are to be approved by the Secretary.
- (3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
- (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.

**131 Subsection 606(4)**

Omit "an agreement", substitute "the requirements in a plan".

**132 Paragraph 606(4)(e)**

Omit "for compliance with the agreement", substitute "to comply with the requirements".

**133 Paragraph 606(4)(f)**

Repeal the paragraph, substitute:

- (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and

**134 Subsection 606(5)**

Omit "An agreement with", substitute "A plan that is in force in relation to".

Note: The following heading to subsection 606(5) is inserted "*Variation, suspension, cancellation and review*".

**135 Paragraphs 606(5)(a) to (c)**

Repeal the paragraphs, substitute:

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- (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
- (b) must be cancelled by the Secretary if the person enters into another Newstart Employment Pathway Plan; and
- (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

**136 Subsection 606(6)**

Repeal the subsection, substitute:

*Circumstances preventing or affecting compliance*

- (6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

**137 Subsection 607(1)**

Omit "Activity Agreement", substitute "Employment Pathway Plan".

Note: The heading to section 607 is altered by omitting "Activity Agreements" and substituting "Employment Pathway Plans".

**138 Paragraph 607(1)(a)**

Omit "is between the Secretary and", substitute "is in force in relation to".

**139 Subsection 607A(1)**

Omit "Activity Agreement", substitute "Employment Pathway Plan".

Note: The heading to section 607A is altered by omitting "Activity Agreements" and substituting "Employment Pathway Plans".

**140 Paragraph 607A(1)(a)**

Omit "is between the Secretary and", substitute "is in force in relation to".

**141 Subsection 607B(1)**

Omit "Activity Agreement between the Secretary and", substitute "Employment Pathway Plan that is in force in relation to".

Note: The heading to section 607B is altered by omitting "Activity Agreements" and substituting "Employment Pathway Plans".

**142 Subsection 607B(2)**

Omit “The Secretary may, by notice given to a person whom a Newstart Activity Agreement requires to participate in an approved program of work for income support payment,”, substitute “If a Newstart Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person,”.

**143 Section 607C**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

Note: The heading to section 607C is altered by omitting “**Activity Agreements—suspension of agreements**” and substituting “**Employment Pathway Plans—suspension of plans**”.

**144 Paragraph 613(2)(b)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**145 Subsection 613(2) (note 1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**146 Subparagraph 615(1)(b)(ii)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**147 Subdivision GA of Division 1 of Part 2.12 of Chapter 2**

Repeal the Subdivision, substitute:

**Subdivision GA—Activities that do not give rise to employment under certain industrial relations legislation**

**631C Activities that do not give rise to employment under certain industrial relations legislation**

A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Newstart Employment Pathway Plan under section 606:



- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety Act 1991*;
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (d) an employee for the purposes of the *Workplace Relations Act 1996*.

**148 Paragraph 644AAA(d)**

Omit “the terms of a Newstart Activity Agreement to which the person is subject”, substitute “a requirement in a Newstart Employment Pathway Plan that is in force in relation to the person”.

**149 Subparagraph 665U(1)(c)(ii)**

Omit “Newstart Activity Agreement”, substitute “requirement in a Newstart Employment Pathway Plan”.

**150 Subparagraph 729(2)(da)(ii)**

Omit “Activity Agreements”, substitute “Employment Pathway Plans”.

**151 Paragraph 729(2B)(b)**

Omit “the person is not a party to a Special Benefit Activity Agreement”, substitute “a Special Benefit Employment Pathway Plan is not in force in relation to the person”.

**152 Paragraph 729(2B)(b)**

Omit “an agreement”, substitute “a plan”.

**153 Paragraph 729(2B)(c)**

Omit “the person is a party to a Special Benefit Activity Agreement”, substitute “a Special Benefit Employment Pathway Plan is in force in relation to the person”.

**154 Paragraph 729(2B)(c)**

Omit “agreement” (wherever occurring), substitute “plan”.

**155 Paragraph 729(2B)(d)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

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**156 Paragraph 729(2B)(d)**

Omit “agreement”, substitute “plan”.

**157 Paragraph 729(2B)(e)**

Omit “Activity Agreement is in force”, substitute “Employment Pathway Plan is in force in relation to the person”.

**158 Paragraph 729(2B)(e)**

Omit “terms of the agreement”, substitute “requirements in the plan”.

**159 Subsection 731A(8)**

Omit “Activity Agreement between the Secretary and”, substitute “Employment Pathway Plan that is in force in relation to”.

**160 Subsection 731A(11)**

Omit “terms of a Special Benefit Activity Agreement between the Secretary and”, substitute “requirements in a Special Benefit Employment Pathway Plan that is in force in relation to”.

**161 Subsection 731A(12)**

Omit “the terms of a Special Benefit Activity Agreement between the Secretary and”, substitute “a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to”.

**162 Subparagraph 731DC(4)(b)(i)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**163 Subparagraph 731DC(4)(b)(i)**

Omit “agreement”, substitute “plan”.

**164 Subparagraph 731DC(4)(b)(ii)**

Omit “an agreement”, substitute “a plan”.

**165 Paragraph 731KA(2)(a)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**166 Paragraph 731KA(2)(a)**

Omit “agreement”, substitute “plan”.

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**167 Paragraph 731KA(2)(b)**

Omit “an agreement”, substitute “a plan”.

**168 Subdivision AB of Division 1 of Part 2.15 of Chapter 2 (heading)**

Repeal the heading, substitute:

**Subdivision AB—Special Benefit Employment Pathway Plans for persons who are nominated visa holders**

**169 Subsection 731L(1)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 731L is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**170 Subsection 731L(2)**

Repeal the subsection, substitute:

- (2) If a Special Benefit Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

**171 Subsection 731L(4)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**172 Paragraph 731L(4)(b)**

Omit “agreement”, substitute “plan”.

**173 Subsection 731L(5)**

Repeal the subsection, substitute:

- (5) A Special Benefit Employment Pathway Plan must be in a form approved by the Secretary.

**174 Subsection 731M(1)**

Repeal the subsection, substitute:

*Suitable requirements*

- (1) Subject to subsection (2) and to sections 731N to 731Q, a Special Benefit Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the *requirements*) that:
  - (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.

Note: The heading to section 731M is altered by omitting “**Activity Agreements**” and substituting “**Employment Pathway Plans**”.

**175 Subsection 731M(1A)**

Repeal the subsection, substitute:

- (1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).

**176 Subsection 731M(1B)**

Omit “activities that agreements must not require persons to undertake”, substitute “requirements that plans must not contain”.

**177 Subsection 731M(1C)**

Omit “agreement”, substitute “plan”.

**178 Subsection 731M(2)**

Omit “An agreement”, substitute “A plan”.

**179 After subsection 731M(2)**

Insert:

*Optional terms*

- (2A) A plan may also contain one or more terms that the person may, but is not required to, comply with.

**180 Subsection 731M(3)**

Repeal the subsection, substitute:

*Approval of requirements*

- (3) The requirements in a plan are to be approved by the Secretary.
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**181 Subsection 731M(4)**

Repeal the subsection, substitute:

- (4) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
  - (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.

**182 Subsection 731M(5)**

Omit "an agreement", substitute "the requirements in a plan".

**183 Paragraph 731M(5)(e)**

Omit "for compliance with the agreement", substitute "to comply with the requirements".

**184 Paragraph 731M(5)(f)**

Repeal the paragraph, substitute:

- (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs;

**185 Subsection 731M(6)**

Omit "An agreement with", substitute "A plan that is in force in relation to".

Note: The following heading to subsection 731M(6) is inserted "*Variation, suspension, cancellation and review*".

**186 Paragraphs 731M(6)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
- (b) must be cancelled by the Secretary if the person enters into another Special Benefit Employment Pathway Plan; and
- (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

**187 Subsection 731M(7)**

Repeal the subsection, substitute:

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*Circumstances preventing or affecting compliance*

- (7) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

**188 Subsection 731N(1)**

Omit "Activity Agreement", substitute "Employment Pathway Plan".

Note: The heading to section 731N is altered by omitting "**Activity Agreements**" and substituting "**Employment Pathway Plans**".

**189 Paragraph 731N(1)(a)**

Omit "is between the Secretary and", substitute "is in force in relation to".

**190 Subsection 731P(1)**

Omit "Activity Agreement", substitute "Employment Pathway Plan".

Note: The heading to section 731P is altered by omitting "**Activity Agreements**" and substituting "**Employment Pathway Plans**".

**191 Paragraph 731P(1)(a)**

Omit "is between the Secretary and", substitute "is in force in relation to".

**192 Subsection 731Q(1)**

Omit "The Secretary may, by notice given to a person whom a Special Benefit Activity Agreement requires to participate in an approved program of work for income support payment,", substitute "If a Special Benefit Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person,".

Note: The heading to section 731Q is altered by omitting "**Activity Agreements**" and substituting "**Employment Pathway Plans**".

**193 Section 731R**

Omit "Activity Agreement between the Secretary and", substitute "Employment Pathway Plan that is in force in relation to".

Note: The heading to section 731R is altered by omitting "**Activity Agreements—suspension of agreements**" and substituting "**Employment Pathway Plans—suspension of plans**".

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**194 Paragraph 737(3)(b)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**195 Subdivision E of Division 1 of Part 2.15 of Chapter 2**

Repeal the Subdivision, substitute:

**Subdivision E—Activities that do not give rise to employment under certain industrial relations legislation**

**745L Activities that do not give rise to employment under certain industrial relations legislation**

A person who is a nominated visa holder is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Special Benefit Employment Pathway Plan under section 731M:

- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety Act 1991*;
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (d) an employee for the purposes of the *Workplace Relations Act 1996*.

**196 Paragraph 747(d)**

Omit “the terms of a Special Benefit Activity Agreement to which the person is subject”, substitute “a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to the person”.

**197 Subparagraphs 1035A(3)(b)(ii) and (6)(b)(ii)**

After “and the person”, insert “, or an employment pathway plan that is in force in relation to the person,”.

**198 Subparagraph 1046(2)(b)(iv)**

After “and the person”, insert “or an employment pathway plan that is in force in relation to the person”.

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**199 Subparagraph 1061ZAAA(1)(b)(ii)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

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

**200 Subparagraphs 140(1)(a)(i) and (ii)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**201 Paragraphs 140(1)(aa) and (b)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

**202 Section 143**

Omit “Activity Agreement” (wherever occurring), substitute “Employment Pathway Plan”.

**203 Subsection 149(5)**

Omit “Activity Agreement” (wherever occurring), substitute “Employment Pathway Plan”.

**204 Paragraphs 150(aa), (b), (c) and (ca)**

Omit “Activity Agreement”, substitute “Employment Pathway Plan”.

Note: The heading to section 150 is altered by omitting “**Activity Agreement**” and substituting “**Employment Pathway Plan**”.

**205 Subsection 151(4)**

Omit “Activity Agreement” (wherever occurring), substitute “Employment Pathway Plan”.

**206 Subsection 152(6)**

Omit “Activity Agreement” (wherever occurring), substitute “Employment Pathway Plan”.

Note: The heading to section 152 is altered by omitting “**Activity Agreement**” and substituting “**Employment Pathway Plan**”.

**207 Subsection 153(1)**

Omit “Activity Agreement” (wherever occurring), substitute “Employment Pathway Plan”.

Note: The heading to section 153 is altered by omitting “**Activity Agreement**” and substituting “**Employment Pathway Plan**”.

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**208 Saving of activity agreements**

- (1) This item applies to an activity agreement of a kind referred to in column 1 of the table in subitem (2) that was in force immediately before the commencement of this item.
- (2) The activity agreement has effect, after the commencement of this item, as if it were an employment pathway plan of the kind referred to in the corresponding table item in column 2 of the table.

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**Activity agreements in force immediately before commencement**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
1	Parenting Payment Activity Agreement	Parenting Payment Employment Pathway Plan
2	Youth Allowance Activity Agreement	Youth Allowance Employment Pathway Plan
3	Newstart Activity Agreement	Newstart Employment Pathway Plan
4	Special Benefit Activity Agreement	Special Benefit Employment Pathway Plan

## Schedule 3—Personal Support Programme and exemptions relating to youth allowance and newstart allowance

### *Social Security Act 1991*

#### **1 Subsection 23(1) (definition of PSP)**

Repeal the definition.

#### **2 Subsection 541(1A)**

Repeal the subsection.

#### **3 Paragraph 541(2B)(a)**

Omit “or (1A)”.

#### **4 Subsection 549A(5)**

Repeal the subsection, substitute:

*Exemption—person undertaking specified activity*

- (5) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (6); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (6) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (5)(a).

#### **5 Subsection 553B(2)**

Repeal the subsection, substitute:

*Exemption for person undertaking specified activity*

- (2) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (2A); and

(b) has been exempted from the application of subsection (1) by the Secretary.

(2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

## **6 Subsection 553C(4)**

Repeal the subsection, substitute:

*Exemption for person undertaking specified activity*

(4) Subsection (2) does not apply to a person who:

- (a) is undertaking an activity specified in an instrument made under subsection (5); and
- (b) has been exempted from the application of subsection (2) by the Secretary.

(5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

## **7 Subsection 598(8)**

Repeal the subsection, substitute:

(8) Subsection (1) does not apply to a person who:

- (a) is undertaking an activity specified in an instrument made under subsection (8A); and
- (b) has been exempted from the application of subsection (1) by the Secretary.

(8A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (8)(a).

## **8 Paragraph 601(2)(a)**

Omit “, (4) or (6A)”, substitute “or (4)”.

## **9 Subsection 601(6A)**

Repeal the subsection.

## **10 At the end of subsection 620(1)**

Add:

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Note: For *in severe financial hardship*, see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

### **11 Subsection 620(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (3); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

### **12 Subsection 633(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (5); and
  - (b) has been exempted from the application of subsection (2) by the Secretary.
- (5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

### **13 Subsection 634(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (2A); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

## **Schedule 4—Other amendments**

### *Social Security Act 1991*

**1 Subsection 23(1) (paragraph (b) of the definition of transitional DSP applicant)**

Omit “or 64(2)”, substitute “or (4)”.

**2 Paragraph 541(1)(b)**

Omit “person); or”, substitute “person).”.

**3 Paragraph 541(1)(c)**

Repeal the paragraph.

**4 After subsection 541(1)**

Insert:

*Persons who comply with Employment Pathway Plan*

(1AA) Subject to section 541A and subsection (3) of this section, a person also satisfies the activity test in respect of a period if:

(a) throughout the period, the person complies with the terms of a Youth Allowance Employment Pathway Plan that is in force in relation to the person; and

(b) either:

(i) the person is included in a class of persons specified in an instrument made under subsection (1AB); or

(ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.

(1AB) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (1AA)(b)(i).

**5 Paragraph 541(2B)(a)**

After “(1)”, insert “or (1AA)”.

**6 Subparagraph 550(1)(a)(i)**

Omit “or 64(2)”, substitute “or (4)”.

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**7 Subparagraph 576(1)(a)(i)**

Omit “or 64(2)”, substitute “or (4)”.

**8 Subsection 601(4)**

Repeal the subsection, substitute:

- (4) A person also satisfies the activity test in respect of a period if:
  - (a) throughout the period, the person complies with the terms of a Newstart Employment Pathway Plan that is in force in relation to the person; and
  - (b) either:
    - (i) the person is included in a class of persons specified in an instrument made under subsection (4A); or
    - (ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.
- (4A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (4)(b)(i).

**9 Subsection 731A(11)**

Repeal the subsection, substitute:

- (11) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if:
  - (a) throughout the period, the person complies with the terms of a Special Benefit Employment Pathway Plan that is in force in relation to the person; and
  - (b) either:
    - (i) the person is included in a class of persons specified in an instrument made under subsection (11A); or
    - (ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.
- (11A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (11)(b)(i).

**10 Subparagraph 1210(1)(b)(ii)**

Omit “section 1168”, substitute “section 1173”.

Note: The heading to section 1210 is altered by omitting “for income tax purposes”.

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

**11 Sections 63 and 64**

Repeal the sections, substitute:

**63 Requirement to attend Department etc.**

*Secretary may require person to attend Department etc.*

- (1) Subsection (2) applies to a person if:
- (a) the person is receiving, or has made a claim for, a social security payment; or
  - (b) the person is the holder of, or has made a claim for, a concession card; or
  - (c) the Department is contacted by or on behalf of the person in relation to a claim for:
    - (i) if the person is not undertaking full-time study and is not a new apprentice—youth allowance; or
    - (ii) in any case—newstart allowance;to be paid to the person.

- (2) If the Secretary is of the opinion that a person to whom this subsection applies should:
- (a) attend an office of the Department; or
  - (b) contact the Department; or
  - (c) attend a particular place for a particular purpose; or
  - (d) give information to the Secretary;

the Secretary may notify the person that he or she is required, within a specified time, to do that act or thing. However, the Secretary may not, under this subsection, notify a person that he or she is required to do an act or thing referred to in paragraph (4)(a) or (b).

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

- (3) Subsection (4) applies to a person if:
- (a) the person is receiving, or has claimed, any of the following social security payments:
    - (i) disability support pension;
    - (ii) parenting payment;

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

*Method for giving notice*

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

*Validity of notice not affected in certain circumstances*

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

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

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

Note: However, if:



- (a) the person who is notified is receiving, or has made a claim for, a participation payment; and
- (b) the notice does not inform the person of the effect of section 64; the person may commit a connection failure in relation to the payment: see section 42E.

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

*Person receiving, or claiming, social security payment*

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

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

- (2) Subsection (1) does not apply if:
  - (a) the person is receiving, or has made a claim for, youth allowance; and
  - (b) the notice included a statement to the effect that a failure to comply with the requirement in the notice could constitute a youth allowance participation failure.

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

- (3) Subsection (1) does not apply if:
  - (a) the person is receiving, or has made a claim for, an austudy payment; and

- (b) the notice included a statement to the effect that a failure to comply with the requirement in the notice could constitute an austudy participation failure.

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

- (4) If:
  - (a) a social security payment is not payable to a person because of subsection (1); and
  - (b) the Secretary is satisfied that it is no longer reasonable for that subsection to apply to the person in relation to the requirement in the notice given to the person under subsection 63(2) or (4);

the Secretary may determine that, on and after a day specified by the Secretary, subsection (1) ceases to apply to the person in relation to that requirement.

*Person holding, or claiming, concession card*

- (5) If:
  - (a) a person is the holder of, or has made a claim for, a concession card; and
  - (b) the Secretary notifies the person under subsection 63(2); and
  - (c) the requirement in the notice is reasonable; and
  - (d) the person does not comply with the requirement; and
  - (e) the Secretary is not satisfied that the person had a reasonable excuse for not complying with the requirement; and
  - (f) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person ceases to be, or is not, qualified for the concession card.

- (6) If:
  - (a) a person has ceased to be, or is not, qualified for a concession card because of subsection (5); and
  - (b) the Secretary is satisfied that it is no longer reasonable for that subsection to apply to the person in relation to the requirement in the notice given to the person under subsection 63(2);

the Secretary may determine that, on and after a day specified by the Secretary, subsection (5) ceases to apply to the person in relation to that requirement.

## **12 Transitional**

The amendment made by item 11 of this Schedule does not apply in relation to a notice given to a person under subsection 63(2) or 64(2) of the *Social Security (Administration) Act 1999* before the commencement of this item.

## **13 Paragraph 131(5)(b)**

Repeal the paragraph, substitute:

- (b) ceases to have effect:
  - (i) if the application for review is withdrawn—on the day the application is withdrawn; or
  - (ii) if a decision (the *review decision*) is made by the Secretary on the review of the adverse decision—at the end of the period of 13 weeks beginning on the day the review decision is made, or on such earlier day (if any) within that 13 week period as is specified by the Secretary; or
  - (iii) if the declaration is revoked by the Secretary—on the day the declaration is revoked.

## **14 Paragraph 145(4)(b)**

Repeal the paragraph, substitute:

- (b) ceases to have effect:
  - (i) if the application for review is withdrawn—on the day the application is withdrawn; or
  - (ii) if a decision (the *review decision*) is made by the SSAT on the review of the adverse decision—at the end of the period of 13 weeks beginning on the day the review decision is made, or on such earlier day (if any) within that 13 week period as is specified by the Secretary; or
  - (iii) if the declaration is revoked by the Secretary—on the day the declaration is revoked.

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*[Minister's second reading speech made in—  
House of Representatives on 24 September 2008  
Senate on 26 November 2008]*

(195/08)

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72      *Social Security Legislation Amendment (Employment Services Reform) Act 2009*  
No. 7, 2009