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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Business Services Wage Assessment Tool  
Payment Scheme Bill 2014**

**No.     , 2014**

*(Social Services)*

**A Bill for an Act to establish a scheme to make  
payments in relation to use of the Business Services  
Wage Assessment Tool, and for related purposes**



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1     **A Bill for an Act to establish a scheme to make**  
2     **payments in relation to use of the Business Services**  
3     **Wage Assessment Tool, and for related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *Business Services Wage Assessment*  
9                     *Tool Payment Scheme Act 2014*.

Section 2

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1     **2 Commencement**

2                     This Act commences on the day after this Act receives the Royal  
3                     Assent.

4     **3 Simplified outline of this Act**

5                     This Act establishes the BSWAT payment scheme, which is a  
6                     scheme for making payments in relation to use of the Business  
7                     Services Wage Assessment Tool.

8                     A person must make an application before 1 December 2015 if the  
9                     person wants a payment under the BSWAT payment scheme.  
10                    Applications can only be made on or after 1 May 2015 by persons  
11                    already registered for the scheme.

12                    The Secretary must determine an application, by making an offer  
13                    to make a payment to the person (if satisfied the person is eligible  
14                    for the scheme), or by refusing the application (if satisfied the  
15                    person is not eligible, or if the payment amount is nil).

16                    A person who is not satisfied with the Secretary's determination  
17                    may request a review of it, and this might result in a change to the  
18                    determination and a new offer or refusal.

19                    A person may accept an offer made to the person, or not, as the  
20                    person wishes.

21                    If the person accepts the offer:

- 22                    (a) the Secretary will make the payment to the person; and  
23                    (b) by force of this Act, the person will cease to have certain  
24                    legal rights.

25                    If the person does not accept the offer, the Secretary will not make  
26                    the payment to the person and the legal rights that would cease on  
27                    acceptance continue unchanged.



Offers will be made before 1 September 2016. While there might be some new offers after this date arising from reviews, all acceptances must be lodged by 31 December 2016.

Nominees appointed by the Secretary, at the request of a person or on the Secretary's own initiative, may act for a person in relation to the scheme.

#### 4 Definitions

In this Act:

**acceptance period** has the meaning given by paragraph 19(2)(e).

**actual wage** has the meaning given by subsection 8(5).

**alternative amount**: there is an **alternative amount** for a person if:

- (a) the person has accepted an amount of money, otherwise than under this Act, in settlement of a claim made in relation to a matter referred to in subsection 10(2); or
- (b) an amount of money is payable to the person in accordance with a court order that is in effect in connection with a claim made in relation to a matter referred to in subsection 10(2).

**approved form** means a form approved under section 101.

**Australian Disability Enterprise**: an organisation is an **Australian Disability Enterprise** in respect of a day if:

- (a) the organisation received funding in respect of the day under the program known as the Disability Employment Assistance Program, for the purposes of providing employment support to persons with disability; and
- (b) the funding was under the *Disability Services Act 1986*.

**BSWAT** means the Business Services Wage Assessment Tool referred to in subparagraph 14.4(b)(ii) of the Supported Employment Services Award 2010 as in force on 1 January 2010, or any earlier version of that Tool.

Section 4

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1            **BSWAT assessment** means an assessment conducted using the  
2            BSWAT.

3            **BSWAT payment scheme** means the scheme established by this  
4            Act.

5            **centrelink program** has the same meaning as in the *Human*  
6            *Services (Centrelink) Act 1997*.

7            **effective acceptance** has the meaning given by section 38.

8            **eligible day** has the meaning given by subsection 6(2).

9            **external reviewer** has the meaning given by subsection 27(1).

10           **Federal Court** means the Federal Court of Australia.

11           **finally determined** has the meaning given by subsection 18(3).

12           **financial counsellor** has the meaning given by subsection 37(2).

13           **financial institution** has the meaning given by subsection 88(5).

14           **group member** has the same meaning as in Part IVA of the *Federal*  
15           *Court of Australia Act 1976*.

16           **intellectual impairment** has the meaning given by section 7.

17           **legal practitioner** means a person who:

18                (a) is enrolled as a legal practitioner of the High Court, of  
19                another federal court or of the Supreme Court of a State or  
20                Territory; and

21                (b) holds a practising certificate (however described).

22           **medicare program** has the same meaning as in the *Human Services*  
23           *(Medicare) Act 1973*.

24           **nominee** means a person appointed as a nominee of a participant  
25           under section 50.

26           **officer** means an APS employee in the Department.

27           **participant** has the meaning given by section 43.

1            **payment amount** has the meaning given by subsection 8(1).

2            **productivity-scored wage** has the meaning given by  
3            subsection 8(5).

4            **protected information** means information about a person:

- 5            (a) that was obtained for the purposes of this Act; and  
6            (b) that is or was held in the records of the Department.

7            **register** means the register established for the purposes of  
8            section 13.

9            **relevant representative proceeding** has the meaning given by  
10           subsection 9(4).

11           **representative party** has the same meaning as in Part IVA of the  
12           *Federal Court of Australia Act 1976*.

13           **representative proceeding** has the same meaning as in Part IVA of  
14           the *Federal Court of Australia Act 1976*.

15           **rules** means the rules made under section 102.

16           **Secretary** means the Secretary of the Department.

1 **Part 2—Key elements of BSWAT payment scheme**

2

3 **5 Simplified outline of this Part**

4

The following key elements of the BSWAT payment scheme are set out in this Part:

5

6

(a) who is eligible to be offered a payment;

7

(b) how much will be offered to an eligible person;

8

(c) the legal consequences if the person accepts the offer.

9

Other important elements of the scheme (such as the need to register and apply for a payment under the scheme before the deadlines) are set out in Part 3.

10

11

12 **6 Eligibility**

13

*Eligibility*

14

- (1) A person is eligible for the BSWAT payment scheme if the person meets the conditions in subsections (2), (3) and (4).

15

16

*Eligible day*

17

- (2) The person meets the condition in this subsection if there is at least one day for the person in the period starting on 1 January 2004 and ending on 28 May 2014 in respect of which:

18

19

20

(a) the person had an intellectual impairment; and

21

(b) the person was employed by an Australian Disability Enterprise; and

22

23

(c) the person was provided with employment support by the Australian Disability Enterprise; and

24

25

(d) either:

26

(i) the person was paid a training wage while waiting for a BSWAT assessment to be completed; or

27

- 1 (ii) the minimum wage payable to the person was worked  
2 out using a BSWAT assessment of the person (for this  
3 purpose, it does not matter if the person was actually  
4 paid a higher wage).

5 Any such day is an *eligible day* for the person.

6 *Ongoing daily support in the workplace*

- 7 (3) The person meets the condition in this subsection if the person  
8 required ongoing daily support in the workplace in order to  
9 maintain the person's employment in the Australian Disability  
10 Enterprise.

11 *No alternative amount*

- 12 (4) The person meets the condition in this subsection if there is no  
13 alternative amount for the person.

## 14 **7 Definition of *intellectual impairment***

15 A person has an *intellectual impairment* if:

- 16 (a) the person has at least one of the following impairments:  
17 (i) an intellectual disability;  
18 (ii) autism spectrum disorder;  
19 (iii) dementia;  
20 (iv) impaired intellectual functioning as a consequence of an  
21 acquired brain injury; and  
22 (b) any conditions prescribed by the rules are satisfied.

## 23 **8 Payment amount**

- 24 (1) The *payment amount* for a person is the amount worked out for the  
25 person by a method prescribed by the rules.
- 26 (2) The rules may prescribe different methods for different  
27 circumstances.
- 28 (3) In making rules for the purposes of this section, the Minister must  
29 have regard to the following principles:

## Section 9

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- 1 (a) the amount a person should receive, if the person accepts an  
2 offer, should broadly reflect the amount that is 50% of the  
3 excess (if any) of a productivity-scored wage over an actual  
4 wage;
- 5 (b) to ensure that the person retains that amount after tax, the  
6 amount should be increased to take account of expected tax;
- 7 (c) the amount should be nil if a person's productivity-scored  
8 wage is the same or less than the person's actual wage.
- 9 (4) Despite subsection (3), the rules may have the following effect:
- 10 (a) if the amount worked out for a person is less than \$1—that  
11 the payment amount for the person is nil;
- 12 (b) if the amount worked out for the person is at least \$1 but less  
13 than \$100—that the amount the person should retain after tax  
14 is \$100.
- 15 (5) In this Act:
- 16 ***actual wage*** means a wage, worked out in accordance with the  
17 rules, that a person was paid in respect of an eligible day.
- 18 ***productivity-scored wage*** means a wage, worked out in accordance  
19 with the rules, that a person could reasonably have been expected  
20 to have been paid in respect of an eligible day, had the productivity  
21 component of a BSWAT assessment comprised the whole of the  
22 BSWAT assessment.

## 9 Effect on representative proceedings

- 23
- 24 (1) If:
- 25 (a) a person lodges an effective acceptance; and
- 26 (b) immediately before lodging the acceptance, the person was a  
27 group member in relation to a relevant representative  
28 proceeding;
- 29 then, at the time the acceptance is lodged and by force of this  
30 section, the person ceases to be a group member in relation to the  
31 relevant representative proceeding.
- 32 (2) Subsection (1) has effect despite the provisions of Part IVA of the  
33 *Federal Court of Australia Act 1976*. In particular, a group member

- 1 does not need to opt out of the proceeding in accordance with  
2 section 33J of that Act in order to cease to be a group member.
- 3 (3) For the purposes of section 33F of the *Federal Court of Australia*  
4 *Act 1976*, the lodging of an effective acceptance by a person or the  
5 doing of any other act under this Act or the rules does not  
6 constitute the taking of a step in a representative proceeding or  
7 conducting part of the proceeding.
- 8 (4) Any of the following is a ***relevant representative proceeding***:  
9 (a) the representative proceeding commenced by originating  
10 application in the Federal Court on 20 December 2013 as  
11 proceeding number VID 1367 of 2013;  
12 (b) any other representative proceeding in the Federal Court:  
13 (i) in which damages or compensation are claimed in  
14 connection with the use of a BSWAT assessment to  
15 work out a minimum wage payable to a person; or  
16 (ii) in relation to which a person may be a group member on  
17 the same, or substantially the same, basis as the  
18 conditions in section 6;  
19 (c) any appeal, application for leave to appeal or application for  
20 special leave to appeal from any judgment in a proceeding  
21 referred to in paragraph (a) or (b);  
22 (d) any appeal from any judgment in an appeal referred to in  
23 paragraph (c).

## 24 **10 Effect on certain claims**

- 25 (1) If a person lodges an effective acceptance, then, at the time the  
26 person lodges the acceptance and by force of this section:  
27 (a) the person releases and forever discharges the  
28 Commonwealth, each Australian Disability Enterprise and all  
29 other persons from all liability in relation to any matter  
30 referred to in subsection (2); and  
31 (b) the person cannot, whether as an individual, a representative  
32 party or a member of a group, bring or continue any claim  
33 against the Commonwealth or any other person in relation to  
34 any matter referred to in subsection (2).

Section 11

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- 1 (2) The matters are the following, to the extent to which they relate to  
2 the use of a BSWAT assessment to work out a minimum wage  
3 payable to a person:  
4 (a) unlawful discrimination;  
5 (b) a contravention or breach of, or failure to comply with, a law,  
6 whether written or unwritten, of the Commonwealth, a State  
7 or a Territory;  
8 (c) any other conduct or failure on the part of the  
9 Commonwealth, an Australian Disability Enterprise or any  
10 other person, that might give rise to a liability to the person.

11 **11 Evidence of eligibility**

- 12 The rules may prescribe matters relating to the evidence needed to  
13 do either or both of the following:  
14 (a) establish a person's eligibility under section 6;  
15 (b) work out the amount of the payment to be offered to a  
16 person.



1 **Part 3—How to obtain a payment under the**  
2 **BSWAT payment scheme**

3 **Division 1—Simplified outline of this Part**

4 **12 Simplified outline of this Part**

5 A person who wants a payment under the BSWAT payment  
6 scheme must make an application before 1 December 2015.  
7 Applications can only be made on or after 1 May 2015 by persons  
8 already registered for the scheme.

9 If a person makes an application before 1 December 2015, the  
10 Secretary must determine the application by deciding whether the  
11 person is eligible for the scheme, and if so, what amount (if any) to  
12 offer the person.

13 The Secretary must notify the person of the Secretary's  
14 determination, either by:

- 15 (a) offering to make a payment to the person; or  
16 (b) refusing the person's application if satisfied that the  
17 person is not eligible for the scheme or that the payment  
18 amount for the person is nil.

19 The offer or refusal must include certain information, including  
20 information about the person's right to apply for a review of the  
21 determination if the person is not satisfied with it.

22 A person may apply to the Secretary for review, and if not satisfied  
23 with the outcome of that review, may apply for review by an  
24 external reviewer. An offer or refusal ceases to be current when a  
25 person applies for review, and a new offer or refusal will follow  
26 from the review.

27 If a person decides to accept an offer, the person must lodge an  
28 effective acceptance (an acceptance that complies with this Act). If

**Part 3** How to obtain a payment under the BSWAT payment scheme

**Division 1** Simplified outline of this Part

**Section 12**

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an acceptance is effective, the Secretary will make the payment to a bank account nominated by the person.

The BSWAT payment scheme only operates until the end of 2016. Offers cannot be made on or after 1 September 2016, except as a consequence of a review of an earlier determination, and no offers at all can be made on or after 1 December 2016. A person who wants to accept an offer must do so on or before 31 December 2016.

1 **Division 2—Registration and application**

2 **13 Registration**

- 3 (1) The Secretary must establish a register for the purposes of this  
4 section.
- 5 (2) If a person contacts the Secretary before 1 May 2015 to register for  
6 the BSWAT payment scheme, the Secretary must include the  
7 person on the register by adding to it the following details:  
8 (a) the person's name and contact details;  
9 (b) any other details the Secretary considers appropriate.
- 10 (3) The contact may be made by any of the following means:  
11 (a) telephone;  
12 (b) email or other electronic means;  
13 (c) any other means approved by the Secretary.
- 14 (4) A person who makes an application for the BSWAT payment  
15 scheme before 1 May 2015 is taken to be on the register.

16 **14 When a person cannot be included on the register**

- 17 (1) The Secretary cannot include on the register a person for whom  
18 there is an alternative amount.
- 19 (2) The Secretary cannot include on the register a person who first  
20 contacts the Secretary to register for the BSWAT payment scheme  
21 on or after 1 May 2015.
- 22 (3) This section has effect despite anything else in this Act.

23 **15 Application**

- 24 (1) A person may make an application for the BSWAT payment  
25 scheme during the period:  
26 (a) starting on 1 July 2014; and  
27 (b) ending on 30 November 2015.

**Part 3** How to obtain a payment under the BSWAT payment scheme

**Division 2** Registration and application

**Section 16**

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- 1                   (2) The application must be:  
2                         (a) in an approved form; and  
3                         (b) lodged in a manner prescribed by the rules; and  
4                         (c) made before 1 December 2015.
- 5                   (3) The application must be accompanied by the information and  
6                         documents prescribed by the rules.

7                   **16 When a person cannot make an application**

- 8                   (1) A person cannot make an application if there is an alternative  
9                         amount for the person.
- 10                  (2) A person who is not on the register cannot make an application on  
11                         or after 1 May 2015.
- 12                  (3) An application cannot be made on or after 1 December 2015.
- 13                  (4) This section has effect despite anything else in this Act.

1 **Division 3—Determinations, offers and refusals**

2 **17 Determination of application**

- 3 (1) The Secretary must determine an application in accordance with  
4 this section.
- 5 (2) The Secretary must:  
6 (a) if satisfied that an applicant is eligible for the BSWAT  
7 payment scheme—make a determination that the applicant is  
8 eligible for the scheme; and  
9 (b) if satisfied that an applicant is not eligible for the BSWAT  
10 payment scheme—make a determination that the applicant is  
11 not eligible for the scheme.
- 12 (3) If a determination is made that an applicant is eligible for the  
13 BSWAT payment scheme, the Secretary must make a  
14 determination of the payment amount for the person.
- 15 (4) Despite subsection (1), if the Secretary makes a request or  
16 requirement for further information or a document under section 68  
17 or 69, a determination need not be made until the further  
18 information is given or the document produced.

19 **18 Certain applications must not be determined**

- 20 (1) The Secretary must not determine an application made by a person  
21 if:  
22 (a) the person has already lodged an effective acceptance; or  
23 (b) the person has made an application (the *earlier application*)  
24 that has not been finally determined; or  
25 (c) there is an alternative amount for the person.
- 26 (2) The Secretary must not determine an application made on or after  
27 1 December 2015.
- 28 (3) An earlier application made by a person has been *finally*  
29 *determined* if:

**Section 19**

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- 1 (a) the person is taken to have declined an offer made in  
2 response to the application (see section 41); or  
3 (b) the person has been given a refusal and the period for  
4 applying for a review of a determination included in the  
5 refusal has ended without the person making such an  
6 application; or  
7 (c) the person has been given a refusal that includes a  
8 determination made by an external reviewer.
- 9 (4) This section has effect despite anything else in this Act.

**19 Offer**

- 11 (1) If a determination is made under subsection 17(3) of a payment  
12 amount for an applicant that is more than nil, or such a  
13 determination is affirmed under subsection 24(6) or 28(1), the  
14 Secretary must, by written notice to the applicant, make an offer to  
15 pay the payment amount to the applicant.
- 16 (2) The offer must do the following:
- 17 (a) specify the date of the offer;
- 18 (b) include the determination that the applicant is eligible for the  
19 BSWAT payment scheme and explain the reasons for the  
20 determination;
- 21 (c) include the determination of the payment amount and explain  
22 the reasons for the determination;
- 23 (d) if the determination of the payment amount has been  
24 affirmed under subsection 24(6) or 28(1)—include the  
25 affirmation and the reasons for the affirmation;
- 26 (e) specify a period (the *acceptance period*) of at least 14 days,  
27 starting on the date of the offer, within which the offer can be  
28 accepted;
- 29 (f) explain how to accept the offer, should the applicant decide  
30 to do so (including the need to first obtain a legal advice  
31 certificate that complies with section 36 and a financial  
32 counselling certificate that complies with section 37);
- 33 (g) inform the applicant that the applicant does not have to  
34 accept the offer and explain that by doing nothing, the offer  
35 is taken to be declined at the end of the acceptance period;
-

- 1 (h) unless subsection (3) applies—inform the applicant that the  
2 applicant may, before the end of the acceptance period,  
3 request an extension of that period and explain how to make  
4 that request;
- 5 (i) unless subsection (3) applies—inform the applicant that the  
6 applicant may, before the end of the acceptance period, apply  
7 for a review of the payment amount and explain how to make  
8 that application and, broadly, what the review would involve;
- 9 (j) draw the applicant’s attention to sections 9 and 10.
- 10 (3) The offer must not inform the applicant as required by  
11 paragraphs (2)(h) and (i) if the offer includes a determination made  
12 by an external reviewer:
- 13 (a) of a payment amount for the applicant that is more than nil;  
14 or  
15 (b) affirming a determination made by the Secretary of a  
16 payment amount.
- 17 (4) Subsection (2) does not limit the matters that may be dealt with by  
18 the offer.

## 19 **20 Refusal**

- 20 (1) If:
- 21 (a) a determination is made under paragraph 17(2)(b) that an  
22 applicant is not eligible for the BSWAT payment scheme; or  
23 (b) a determination is made under subsection 17(3) that the  
24 payment amount for an applicant is nil; or  
25 (c) a determination referred to in paragraph (a) or (b) is affirmed  
26 under subsection 24(6) or 28(1);  
27 the Secretary must, by written notice to the applicant, refuse the  
28 application.
- 29 (2) The refusal must do the following:
- 30 (a) specify the date of the refusal;  
31 (b) include the determination under section 17 and explain the  
32 reasons for the determination;

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- 1 (c) if the determination under section 17 has been affirmed under  
2 subsection 24(6) or 28(1)—include the affirmation and the  
3 reasons for the affirmation;
- 4 (d) unless subsection (3) applies—inform the applicant that the  
5 applicant may, within the 21 day period starting on the date  
6 of the refusal, apply for a review of the determination and  
7 explain how to make that application and, broadly, what the  
8 review would involve;
- 9 (e) unless subsection (3) applies—inform the applicant that the  
10 applicant may request an extension of the 21 day period  
11 referred to in paragraph (d) and explain how to make that  
12 request.
- 13 (3) The refusal must not inform the applicant as required by  
14 paragraphs (2)(d) and (e) if the refusal includes a determination  
15 made by an external reviewer:
- 16 (a) that the applicant is not eligible for the BSWAT payment  
17 scheme; or  
18 (b) affirming a determination made by the Secretary.
- 19 (4) Subsection (2) does not limit the matters that may be dealt with by  
20 the refusal.

21 **21 Certain circumstances in which offers and refusals cannot be**  
22 **given**

- 23 (1) The Secretary must not make an offer or give a refusal to a person  
24 whose application has been determined if there is an alternative  
25 amount for the person.
- 26 (2) The Secretary must not make an offer or give a refusal to a person  
27 on or after 1 September 2016, except as a consequence of a review  
28 of a determination made before that day.
- 29 (3) The Secretary must not make an offer or give a refusal to a person  
30 on or after 1 December 2016.
- 31 (4) Subsections (2) and (3) prevent the Secretary from making an offer  
32 or giving a refusal after a date specified in those subsections even  
33 if, on the specified date, the Secretary is waiting for further



1 information to be provided in accordance with a request under  
2 section 68 or a requirement under section 69.

3 (5) This section has effect despite anything else in this Act.

## 4 **22 Extensions**

5 (1) The Secretary may, on request made in accordance with the rules  
6 (if any), extend, by no more than 28 days:

7 (a) the acceptance period for an offer; or

8 (b) the 21 day period referred to in subsection 24(3) or 26(3) for  
9 applying for a review in relation to a refusal.

10 If the Secretary does so, the period is the period as extended by the  
11 Secretary.

12 (2) A period extended under paragraph (1)(a) must end on or before  
13 31 December 2016.

14 (3) A period extended under paragraph (1)(b) must end on or before  
15 30 November 2016.

16 (4) A request to extend a period must be received before the end of the  
17 original period.

18 (5) The Secretary may only extend a period once.

1       **Division 4—Internal review**

2       **23 Internal review at Secretary’s initiative**

- 3               (1) The Secretary may, on his or her own initiative, review a  
4               determination made under section 17 if the Secretary is satisfied  
5               that there is enough reason to do so.
- 6               (2) The Secretary cannot review a determination:
- 7                     (a) after an application has been made for external review of the  
8                     determination under Division 5; or
- 9                     (b) after a person has accepted the offer in which the  
10                    determination was included; or
- 11                    (c) that is made or affirmed in an external review under  
12                    Division 5.
- 13               (3) On review of a determination, the Secretary may:
- 14                     (a) affirm the determination; or
- 15                     (b) set aside the determination and substitute a new  
16                     determination in accordance with Division 6.

17       **24 Internal review on application**

- 18               (1) A person may apply to the Secretary to review a determination  
19               made for the person under section 17, other than a determination  
20               that was made or affirmed under this Division or Division 5.
- 21               (2) If the determination was included in an offer, the application must  
22               be made:
- 23                     (a) before the end of the acceptance period; and  
24                     (b) before the offer is accepted.
- 25               (3) If the determination was included in a refusal, the application must  
26               be made before the end of the 21 day period starting on the date of  
27               the refusal, or that period as extended under section 22.
- 28               (4) The application must be made by:
- 29                     (a) sending or delivering a written application to the Secretary in  
30                     accordance with the rules (if any); or

- 1 (b) making an oral application, in person or by telephone or other  
2 means, to the Secretary in accordance with the rules (if any).
- 3 (5) If a person makes an oral application in accordance with  
4 paragraph (4)(b), the person receiving the oral application must:  
5 (a) make a written record of the details of the application; and  
6 (b) note on the record the day the application is made.
- 7 (6) The Secretary must, as soon as reasonably practicable:  
8 (a) review the determination; and  
9 (b) either:  
10 (i) affirm the determination; or  
11 (ii) set aside the determination and substitute a new  
12 determination in accordance with Division 6.

### 13 **25 Withdrawal of application for internal review**

- 14 (1) A person who has applied for review of a determination under  
15 section 24 may withdraw the application at any time before a  
16 decision is made under subsection 24(6), by:  
17 (a) sending or delivering a written notice to the Secretary in  
18 accordance with the rules (if any); or  
19 (b) contacting the Secretary and withdrawing the application  
20 orally, whether in person, by telephone or by other means in  
21 accordance with the rules (if any).
- 22 (2) If an application is withdrawn in accordance with paragraph (1)(b),  
23 the person receiving the oral withdrawal must make a written  
24 record of the details of the withdrawal and note on the record the  
25 day the withdrawal is made.
- 26 (3) If an application is withdrawn, the application is taken never to  
27 have been made.

1       **Division 5—External review**

2       **26 Application for external review**

- 3               (1) A person may apply to the Secretary for external review of a  
4               determination made for the person under section 17 that is:
- 5                     (a) made on an internal review under subsection 23(3) (internal  
6                     review at Secretary’s initiative); or  
7                     (b) a determination made or affirmed on an internal review under  
8                     subsection 24(6) (internal review on application).
- 9               (2) If the determination was included in an offer, the application must  
10              be made before:
- 11                     (a) the end of the acceptance period; and  
12                     (b) the offer is accepted.
- 13              (3) If the determination was included in a refusal, the application must  
14              be made before the end of the 21 day period starting on the date of  
15              the refusal, or that period as extended under section 22.
- 16              (4) The application must be made by:
- 17                     (a) sending or delivering a written application to the Secretary in  
18                     accordance with the rules (if any); or  
19                     (b) making an oral application, in person or by telephone or other  
20                     means, to the Secretary in accordance with the rules (if any).
- 21              (5) If a person makes an oral application in accordance with  
22              paragraph (4)(b), the person receiving the oral application must:
- 23                     (a) make a written record of the details of the application; and  
24                     (b) note on the record the day the application is made.

25       **27 Appointing external reviewer**

- 26              (1) If the Secretary receives an application for external review of a  
27              determination, the Secretary must, by writing, appoint a person (the  
28              ***external reviewer***) to review the determination.
- 29              (2) A person may only be appointed under subsection (1) if:

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- 1 (a) the person has been (but is no longer) a Justice of the High  
2 Court or a judge of another federal court or of a court of a  
3 State or Territory; or  
4 (b) the person is a legal practitioner who has been enrolled for at  
5 least 10 years.
- 6 (3) If a person appointed under subsection (1) is unable to complete  
7 the review of the determination, the Secretary must appoint another  
8 person under that subsection to review the determination.
- 9 (4) A person appointed under subsection (1) is to be paid the  
10 remuneration and allowances determined in writing by the  
11 Secretary in accordance with the rules (if any).

12 **28 External review**

- 13 (1) The external reviewer must, as soon as reasonably practicable:  
14 (a) review the determination; and  
15 (b) either:  
16 (i) affirm the determination; or  
17 (ii) set aside the determination and substitute a new  
18 determination in accordance with Division 6.
- 19 (2) The external reviewer must, in conducting the review, comply with  
20 any requirements prescribed by the rules.

21 **29 Material that may be considered by external reviewer**

- 22 (1) In completing the review, the external review may only consider:  
23 (a) a statement or document given to the external reviewer under  
24 this section; and  
25 (b) information or a document given to the external reviewer  
26 following a request made under section 30.

27 *Material given by Secretary at time of appointment*

- 28 (2) The Secretary must, as soon as reasonably practicable after  
29 appointing the external reviewer, give the reviewer:  
30 (a) a written statement about the determination under review  
31 that:
-

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- 1 (i) sets out the findings of fact made for the purposes of the  
2 determination; and  
3 (ii) refers to the evidence on which those findings were  
4 based; and  
5 (iii) gives the reasons for the determination; and  
6 (b) the original or a copy of every document or part of a  
7 document that:  
8 (i) is in the possession, or under the control, of the  
9 Secretary; and  
10 (ii) relates to the applicant; and  
11 (iii) is relevant to the review of the determination.

12 *Material given by applicant at time of application*

- 13 (3) The applicant may, within 14 days after applying for the external  
14 review, give the Secretary:  
15 (a) a written statement supporting the application; and  
16 (b) any other document that the applicant considers relevant to  
17 the review.
- 18 (4) The Secretary must give the external reviewer a copy of the  
19 material referred to in subsection (3) as soon as practicable after it  
20 is given to the Secretary.

21 *Additional material given by Secretary*

- 22 (5) If:  
23 (a) after the material mentioned in subsection (2) or (3) is given  
24 to the external reviewer, but before the completion of the  
25 review, a document comes into the possession or under the  
26 control of the Secretary; and  
27 (b) the Secretary considers that the document or a part of the  
28 document is relevant to the review; and  
29 (c) a copy of the document or the part of the document has not  
30 been given to the external reviewer in accordance with  
31 subsection (2) or (4);  
32 the Secretary must, as soon as practicable, give a copy of the  
33 document or the part of the document to the external reviewer.

- 1 (6) As soon as practicable after a statement or document is given to the  
2 external reviewer as mentioned in subsection (2) or (5), the  
3 Secretary must give the applicant for the external review a copy of  
4 the statement or document (unless the statement or document was  
5 given to the Secretary by the applicant).

6 **30 External reviewer may request Secretary to seek further**  
7 **information**

- 8 (1) The external reviewer may request the Secretary to exercise the  
9 Secretary's powers under section 68 or 69 if the external reviewer  
10 is satisfied that a person has information, or has custody or control  
11 of a document, that is relevant to the review of the determination.
- 12 (2) The Secretary must, as soon as practicable, either:  
13 (a) comply with the request, if the Secretary is satisfied that it is  
14 appropriate to do so, and give the information or document to  
15 the external reviewer; or  
16 (b) refuse the request and inform the external reviewer  
17 accordingly.

18 **31 Withdrawal of application for external review**

- 19 (1) A person who has applied for review of a determination under  
20 section 26 may withdraw the application at any time before a  
21 decision is made under subsection 28(1), by:  
22 (a) sending or delivering a written notice to the Secretary in  
23 accordance with the rules (if any); or  
24 (b) contacting the Secretary and withdrawing the application  
25 orally, whether in person, by telephone or by other means in  
26 accordance with the rules (if any).
- 27 (2) If an application is withdrawn in accordance with paragraph (1)(b),  
28 the person receiving the oral withdrawal must make a written  
29 record of the details of the withdrawal and note on the record the  
30 day the withdrawal is made.
- 31 (3) If an application is withdrawn, the application is taken never to  
32 have been made.

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1 **32 Notice of decision on external review**

2 The external reviewer must give the Secretary:

3 (a) a copy of the external reviewer's decision on the review; and

4 (b) reasons for the decision.



1 **Division 6—Determinations made on a review**

2 **33 Substituting determinations on a review**

- 3 (1) This section applies in relation to:  
4 (a) an internal review conducted by the Secretary (the *reviewer*)  
5 under Division 4; or  
6 (b) an external review conducted by a person (the *reviewer*)  
7 appointed under Division 5.

8 *Review of determination involving payment amount*

- 9 (2) If, on review of a determination of a payment amount under  
10 subsection 17(3), the reviewer is satisfied that the applicant is not  
11 eligible for the BSWAT payment scheme, the reviewer must:  
12 (a) set aside the determinations made under paragraph 17(2)(a)  
13 and subsection 17(3) for the applicant; and  
14 (b) substitute a new determination under paragraph 17(2)(b) that  
15 the applicant is not eligible for the BSWAT payment scheme.

16 Note: The Secretary will then be required to refuse the application for a  
17 payment under the BSWAT scheme (see section 20).

- 18 (3) Subsection (2) does not apply if a determination has been made  
19 under paragraph 17(2)(a) for the applicant in an external review  
20 under Division 5.  
21 (4) To avoid doubt, the reviewer may, on review of a determination of  
22 a payment amount, determine a lower payment amount for the  
23 applicant.

24 *Review of determination that applicant ineligible*

- 25 (5) If, on review of a determination made under paragraph 17(2)(b),  
26 the reviewer is satisfied that the applicant is eligible for the  
27 BSWAT payment scheme, the reviewer must set aside that  
28 determination and make a determination under paragraph 17(2)(a)  
29 for the applicant.

30 Note: The Secretary will then be required to determine a payment amount  
31 for the person under subsection 17(3).

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1       **34 Effect of review on previous offer or refusal**

2               (1) If a person applies for internal review under Division 4 or external  
3               review under Division 5 of a determination made under section 17,  
4               any offer under section 19 or refusal under section 20 made as a  
5               result of the determination ceases to be current.

6               Note:        An offer that is not current cannot be accepted (see section 38).

7               (2) If the Secretary substitutes a new determination in an internal  
8               review under section 23 (internal review at Secretary’s initiative),  
9               any offer under section 19 or refusal under section 20 made as a  
10              result of the determination under review ceases to be current.

11              Note:        An offer that is not current cannot be accepted (see section 38).

12              (3) If a person withdraws an application for review in accordance with  
13              section 25 or 31:

14                      (a) any offer or refusal that ceased to be current under  
15                      subsection (1) or (2) becomes current again from the time of  
16                      the withdrawal; and

17                      (b) for an offer—at the time of the withdrawal, the number of  
18                      days remaining in the acceptance period is taken to be the  
19                      number of days that remained immediately before the  
20                      application was made.

1 **Division 7—Accepting an offer**

2 **35 Accepting an offer**

3 (1) A person who wants to accept an offer must do so in accordance  
4 with this section.

5 (2) The acceptance must be:

- 6 (a) in an approved form; and  
7 (b) lodged in a manner prescribed by the rules; and  
8 (c) lodged before the end of the acceptance period for the offer.

9 (3) The acceptance must be accompanied by:

- 10 (a) a legal advice certificate that complies with section 36; and  
11 (b) a financial counselling certificate that complies with  
12 section 37; and  
13 (c) an acknowledgement that the person understands the effect of  
14 accepting the offer; and  
15 (d) any other information or documents prescribed by the rules.

16 Note: A nominee may do acts, including sign acknowledgements, on the  
17 person's behalf: see section 45.

18 **36 Legal advice certificate**

19 A certificate complies with this section if the certificate:

- 20 (a) is in an approved form; and  
21 (b) certifies, as required by the form, one or more of the matters  
22 specified in the form; and  
23 (c) is signed by a legal practitioner.

24 **37 Financial counselling certificate**

25 (1) A certificate complies with this section if the certificate:

- 26 (a) is in the approved form; and  
27 (b) certifies, as required by the form, one or more of the matters  
28 specified in the form; and

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1 (c) is signed by a financial counsellor or by the person's  
2 nominee, as applicable in relation to the matters certified.

3 (2) In this Act:

4 *financial counsellor* means a person who is a fully accredited  
5 member of a State or Territory association of financial counsellors  
6 prescribed by the rules.

7 **38 Effective acceptance**

8 An acceptance has effect, and is an *effective acceptance*, only if:

- 9 (a) the person accepts the offer in accordance with section 35;  
10 and  
11 (b) the acceptance is lodged before 1 January 2017; and  
12 (c) at the time the acceptance is lodged:  
13 (i) if the offer had ceased to be current as mentioned in  
14 subsection 34(1) or (2)—the offer has become current  
15 again as mentioned in subsection 34(3); and  
16 (ii) there is no alternative amount for the person; and  
17 (iii) the person is not the representative party in a relevant  
18 representative proceeding.

19 Note: If the representative party in a relevant representative proceeding first  
20 withdraws as the representative party, with the leave of the Court, that  
21 person could then accept an offer.

22 **39 Notice to Federal Court**

23 (1) The Secretary must notify the Federal Court if a person lodges an  
24 effective acceptance.

25 (2) The notice must:

- 26 (a) be in writing; and  
27 (b) be accompanied by copies of:  
28 (i) the acceptance; and  
29 (ii) the legal advice certificate that complies with section 36  
30 and the financial counselling certificate that complies  
31 with section 37.

- 1                   (3) Subsection (1) does not apply if all relevant representative  
2                   proceedings referred to in section 9 have been determined, settled  
3                   or discontinued.

4                   **40 Payment of amount**

- 5                   (1) If a person lodges an effective acceptance, the Secretary must pay  
6                   the payment amount offered to the person on the date that is  
7                   determined by the Secretary to be the earliest date on which it is  
8                   reasonably practicable for the payment to be made to the person.
- 9                   (2) The amount is to be paid to the credit of a bank account nominated  
10                  and maintained by the person. (The account may be maintained by  
11                  the person alone or jointly in common with another person.)
- 12                  (3) The Secretary may direct that the whole or a part of the amount is  
13                  to be paid to the person in a different way from that provided for  
14                  by subsection (2). If the Secretary gives a direction, the amount is  
15                  to be paid in accordance with the direction.

16                  **41 Declining an offer**

- 17                                If a person does not lodge an effective acceptance of an offer  
18                                before the end of the acceptance period for the offer, the person is  
19                                taken to have declined the offer.

1 **Part 4—Nominees**

2 **Division 1—Introduction**

3 **42 Simplified outline of this Part**

4 The Secretary may appoint nominees to act for persons in relation  
5 to the BSWAT payment scheme. Some appointments will be made  
6 on the Secretary's own initiative, and others at the request of the  
7 person, depending on the person's circumstances. Not everyone  
8 will have a nominee.

9 A nominee has a duty to ascertain the person's preferences in  
10 relation to the scheme, and to act in a way that gives effect to those  
11 preferences.

12 **43 Definition of *participant***

13 Any person who:

- 14 (a) might be eligible for the BSWAT payment scheme; or  
15 (b) has an intellectual impairment and wants to make or has  
16 made an application under section 15;

17 is a *participant*.

18 **44 Act that may be done**

19 A reference in this Part to an act that may be done by a participant  
20 includes a reference to refraining from doing an act in order to give  
21 effect to a decision.

1 **Division 2—Functions and responsibilities of nominee**

2 **45 Actions on behalf of participant**

3 (1) Any act that may be done by a participant under or for the purposes  
4 of this Act may be done by the participant's nominee, except to the  
5 extent specified in the instrument of appointment of the nominee.

6 Note: See section 50 for the appointment of nominees.

7 (2) Without limiting subsection (1), a request or application that may  
8 be made under this Act by a participant may be made by the  
9 person's nominee on behalf of the participant.

10 (3) An act done by a participant's nominee because of this section has  
11 effect for the purposes of this Act (other than this Part) as if it had  
12 been done by the participant.

13 (4) If the participant's nominee was appointed on the initiative of the  
14 Secretary, the nominee may only do an act if the nominee  
15 considers that the participant is not capable of doing, or being  
16 supported to do, the act.

17 **46 Duties of nominee to participant**

18 (1) It is the duty of a nominee of a participant to ascertain the  
19 preferences of the participant in relation to the BSWAT payment  
20 scheme and to act in a manner that gives effect to those  
21 preferences.

22 (2) A nominee does not breach the duty imposed by subsection (1) by  
23 doing an act if, when the act is done, the nominee reasonably  
24 believes that:

25 (a) the nominee has ascertained the preferences of the participant  
26 in relation to the act; and

27 (b) the doing of the act gives effect to those preferences.

28 (3) A nominee does not breach the duty imposed by subsection (1) by  
29 refraining from doing an act if, at the relevant time, the nominee  
30 reasonably believes that:

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**Division 2** Functions and responsibilities of nominee

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- 1 (a) the nominee has ascertained the preferences of the participant  
2 in relation to the act; and  
3 (b) not doing the act gives effect to those preferences.
- 4 (4) The rules may modify the duty of a nominee under subsection (1)  
5 in relation to participants who cannot formulate preferences.
- 6 (5) The rules may prescribe other duties of a nominee, including duties  
7 requiring the nominee:  
8 (a) to support decision-making by the participant personally; or  
9 (b) to have regard to, and give appropriate weight to, the views  
10 of the participant; or  
11 (c) to inform the Secretary and the participant if the nominee  
12 has, acquires, or is likely to acquire, any interest, pecuniary  
13 or otherwise, that conflicts or could conflict with the  
14 performance of the nominee's duties.

**47 Giving of notices to nominee**

- 15
- 16 (1) Any notice that the Secretary is authorised or required by this Act  
17 to give to a participant must be given by the Secretary to the  
18 participant's nominee.
- 19 (2) The notice:  
20 (a) must, in every respect, be in the same form, and in the same  
21 terms, as if it were being given to the participant; and  
22 (b) may be given to the nominee personally, by post or by any  
23 other means approved by the Secretary.
- 24 (3) If:  
25 (a) under subsection (1), the Secretary gives a notice (the  
26 ***nominee notice***) to a participant's nominee; and  
27 (b) the Secretary has already given, or afterwards gives, the  
28 participant a notice that:  
29 (i) is expressed to be given under the same provision of this  
30 Act as the nominee notice; and  
31 (ii) makes the same requirement of the participant as the  
32 nominee notice;



1 section 48 ceases to have effect, or does not come into effect, as  
2 the case requires, in relation to the nominee notice.

3 **48 Compliance by nominee**

- 4 (1) If, under section 47, a notice is given to a participant's nominee,  
5 the following paragraphs have effect:
- 6 (a) for the purposes of this Act, other than this Part, the notice is  
7 taken:
    - 8 (i) to have been given to the participant; and
    - 9 (ii) to have been so given on the day the notice was given to  
10 the nominee;
  - 11 (b) any requirement made of the person to:
    - 12 (i) inform the Secretary of a matter; or
    - 13 (ii) provide information or a document to the Secretary;14 may be satisfied by the nominee;
  - 15 (c) any act done by the nominee for the purposes of satisfying  
16 such a requirement has effect, for the purposes of this Act, as  
17 if it had been done by the participant;
  - 18 (d) if the nominee fails to satisfy such a requirement, the  
19 participant is taken, for the purposes of this Act, to have  
20 failed to comply with the requirement.
- 21 (2) To avoid doubt, for the purposes of this Act, the participant is  
22 taken to have complied with a requirement if:
- 23 (a) the requirement imposes an obligation on the participant to  
24 inform the Secretary of a matter, or provide information or a  
25 document, within a specified period; and
  - 26 (b) the nominee does so within that period.
- 27 (3) To avoid doubt, for the purposes of this Act, the participant is  
28 taken not to have complied with a requirement if:
- 29 (a) the requirement imposes an obligation on the participant to  
30 inform the Secretary of a matter, or provide information or a  
31 document, within a specified period; and
  - 32 (b) the nominee does not do so within that period.

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1 **49 Nominee to inform Secretary of matters affecting ability to act as**  
2 **nominee**

3 (1) The Secretary may give a nominee of a participant a written notice  
4 that requires the nominee to inform the Secretary if:

5 (a) either:

6 (i) an event or change of circumstances happens; or

7 (ii) the nominee becomes aware that an event or change of  
8 circumstances is likely to happen; and

9 (b) the event or change of circumstances is likely to affect:

10 (i) the ability of the nominee to act as the nominee of the  
11 participant; or

12 (ii) the ability of the Secretary to give notices to the  
13 nominee under this Act; or

14 (iii) the ability of the nominee to comply with notices given  
15 to the nominee by the Secretary under this Act.

16 (2) A notice under subsection (1) must specify:

17 (a) how the nominee is to inform the Secretary; and

18 (b) the period within which the nominee is to inform the  
19 Secretary, which must be a period of at least 14 days starting  
20 on whichever of the following days is applicable:

21 (i) the day on which the event or change of circumstances  
22 happens;

23 (ii) the day on which the nominee becomes aware that the  
24 event or change of circumstances is likely to happen.

25 (3) A notice under subsection (1) is not ineffective only because it  
26 does not comply with paragraph (2)(a).

27 (4) This section extends to:

28 (a) acts, omissions, matters and things outside Australia, whether  
29 or not in a foreign country; and

30 (b) all persons, irrespective of their nationality or citizenship.

1 **Division 3—Appointment and cancellation or suspension of**  
2 **appointment**

3 **50 Appointment of nominee**

- 4 (1) The Secretary may, in writing, appoint a person to be a nominee of  
5 a participant for the purposes of this Act.

6 Note: The Secretary must make the appointment in accordance with  
7 section 51.

- 8 (2) An appointment may be made:

- 9 (a) at the request of the participant; or  
10 (b) on the initiative of the Secretary.

- 11 (3) An appointment may limit the matters in relation to which the  
12 appointee is the nominee of the participant.

- 13 (4) An appointment may provide that it has effect for a specified term.

- 14 (5) Without limiting the manner of specifying a term for the purposes  
15 of subsection (4), it may be specified by reference to the expiry of  
16 a specified period or the occurrence of a specified event.

- 17 (6) To avoid doubt, the Secretary may appoint more than one person to  
18 be a nominee of a participant for the purposes of this Act.

19 **51 Provisions relating to appointments**

- 20 (1) The Secretary must not appoint a person as a nominee of a  
21 participant under section 50 except:

- 22 (a) with the written consent of the appointee; and  
23 (b) after taking into consideration the preferences (if any) of the  
24 participant regarding the making of the appointment.

- 25 (2) In appointing a person as a nominee of a participant under  
26 section 50, the Secretary must consider whether the person is able  
27 to comply with section 46.

**Part 4** Nominees

**Division 3** Appointment and cancellation or suspension of appointment

**Section 52**

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- 1 (3) In appointing a nominee of a participant under section 50, the  
2 Secretary must have regard to whether there is a person who, under  
3 a law of the Commonwealth, a State or a Territory:  
4 (a) has guardianship of the person; or  
5 (b) is a person appointed by a court, tribunal, board or panel  
6 (however described) who has power to make decisions for  
7 the participant and whose responsibilities in relation to the  
8 participant are relevant to the duties of a nominee.
- 9 (4) The Secretary must cause a copy of an appointment under  
10 section 50 to be given to:  
11 (a) the nominee; and  
12 (b) the participant.
- 13 (5) The rules may prescribe:  
14 (a) persons who must not be appointed as nominees; and  
15 (b) criteria the Secretary is to apply or matters to which the  
16 Secretary is to have regard in considering the appointment of  
17 a nominee.

18 **52 Circumstances in which the Secretary must cancel appointment**  
19 **of nominees**

20 *At the request of a participant*

- 21 (1) If:  
22 (a) a person is appointed as a nominee of a participant under  
23 section 50 at the request of the participant; and  
24 (b) the participant requests the Secretary to cancel the  
25 appointment;  
26 the Secretary must, as soon as practicable, cancel the appointment  
27 by written instrument.
- 28 (2) A request under paragraph (1)(b) need not be made in writing. If  
29 the request is not made in writing, the Secretary must make a  
30 written record of the request.

1 *Nominee no longer wishes to be a nominee*

- 2 (3) If:  
3 (a) a person is appointed as a nominee of a participant under  
4 section 50; and  
5 (b) the person informs the Secretary in writing that the person no  
6 longer wishes to be a nominee under that appointment;  
7 the Secretary must, as soon as practicable, cancel the appointment  
8 by written instrument.

9 *Copy of instrument of cancellation to be given*

- 10 (4) If the appointment of a person as a nominee of a participant is  
11 cancelled under this section, the Secretary must give the person  
12 and participant a copy of the instrument of cancellation.

13 **53 General circumstances in which Secretary may cancel or suspend**  
14 **appointment of nominees**

15 *At the request of a participant*

- 16 (1) If:  
17 (a) a person is appointed as a nominee of a participant under  
18 section 50 on the initiative of the Secretary; and  
19 (b) the participant requests the Secretary to cancel the  
20 appointment;  
21 the Secretary may, by written instrument, cancel the appointment.
- 22 (2) A request under paragraph (1)(b) need not be made in writing. If  
23 the request is not made in writing, the Secretary must make a  
24 written record of the request.
- 25 (3) If a request is made under paragraph (1)(b):  
26 (a) the Secretary must decide whether to cancel the appointment  
27 within 14 days after receiving the request; and  
28 (b) if the Secretary decides not to cancel the appointment—the  
29 Secretary must give the person and participant written notice  
30 of the Secretary's decision.

**Part 4** Nominees

**Division 3** Appointment and cancellation or suspension of appointment

**Section 54**

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1 *Ability to act as a nominee affected*

- 2 (4) The Secretary may, by written instrument, suspend or cancel one or  
3 more of a nominee's appointments if:  
4 (a) the Secretary gives the nominee a notice under section 49;  
5 and  
6 (b) in response to the notice, the nominee informs the Secretary  
7 that an event or change of circumstances has happened or is  
8 likely to happen; and  
9 (c) having regard to that response, the Secretary is satisfied that  
10 it is appropriate to do so.

11 *Failure to comply with a notice under section 49*

- 12 (5) The Secretary may, by written instrument, suspend or cancel one or  
13 more of a nominee's appointments if:  
14 (a) the Secretary gives the nominee a notice under section 49;  
15 and  
16 (b) the nominee does not comply with a requirement specified in  
17 the notice.

18 *Copy of instrument of cancellation or suspension to be given*

- 19 (6) If the appointment of a person as a nominee of a participant is  
20 cancelled or suspended under this section, the Secretary must give  
21 the person and participant a copy of the instrument of cancellation  
22 or suspension.

23 **54 Suspension etc. of appointment of nominees in cases of physical,  
24 mental or financial harm**

25 *Suspension of appointment*

- 26 (1) The Secretary may, by written instrument, suspend the  
27 appointment of a person as a nominee of a participant if the  
28 Secretary reasonably believes that:  
29 (a) the person has caused, or is likely to cause, physical, mental  
30 or financial harm to the participant; or

- 1 (b) the person has failed to fulfil the person's duty under  
2 subsection 46(1).
- 3 (2) Any financial harm that might be caused to the participant by the  
4 nominee acting in a manner that gives effect to the participant's  
5 preferences in relation to the BSWAT payment scheme is to be  
6 disregarded for the purposes of subsection (1).
- 7 (3) If the person's appointment is suspended under subsection (1), the  
8 Secretary must:
- 9 (a) give the person and participant a copy of the instrument of  
10 suspension; and
- 11 (b) by written notice given to the person, request the person to  
12 give the Secretary, within 28 days after the notice is given, a  
13 statement setting out reasons why the person's appointment  
14 should not be cancelled by the Secretary under this section.
- 15 *Cancellation of appointment following suspension*
- 16 (4) If the person gives the Secretary the statement within the 28 day  
17 period, the Secretary may, by written instrument, cancel the  
18 person's appointment.
- 19 (5) The Secretary must decide whether to cancel the person's  
20 appointment under subsection (4) as soon as practicable after  
21 receiving the statement.
- 22 (6) If the Secretary decides not to cancel the person's appointment  
23 under subsection (4):
- 24 (a) the suspension of the person's appointment ends; and  
25 (b) the Secretary must give the person and participant written  
26 notice of the Secretary's decision.
- 27 (7) If the person does not give the Secretary the statement within the  
28 28 day period, the Secretary must, by written instrument, cancel  
29 the person's appointment as soon as practicable after that period  
30 ends.

**Part 4** Nominees

**Division 3** Appointment and cancellation or suspension of appointment

**Section 55**

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1 *Copy of instrument of cancellation to be given*

2 (8) If the person's appointment is cancelled under this section, the  
3 Secretary must give the person and participant a copy of the  
4 instrument of cancellation.

5 **55 Other matters relating to cancellation or suspension of**  
6 **appointment**

7 (1) While a person's appointment as a nominee is suspended, the  
8 appointment has no effect for the purposes of this Act.

9 (2) If a person's appointment as a nominee of a participant is  
10 suspended under section 53 or 54, the Secretary may appoint  
11 another person under section 50 to be the nominee of the  
12 participant for a period specified in the instrument of appointment.

13 **56 Rules may prescribe requirements etc.**

14 The rules may prescribe:

15 (a) requirements with which the Secretary must comply relating  
16 to the appointment of nominees or the cancellation or  
17 suspension of the appointment of nominees; and

18 (b) criteria the Secretary is to apply or matters to which the  
19 Secretary is to have regard in appointing nominees or  
20 cancelling or suspending the appointment of nominees.

21 **57 Secretary's powers of revocation**

22 Nothing in this Part is an expression of a contrary intention for the  
23 purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.



1 **Division 4—Review of certain decisions about nominees**

2 **58 Review of certain decisions about nominees**

3 (1) The Secretary may, on his or her own initiative, review any of the  
4 following if the Secretary is satisfied that there is enough reason to  
5 do so:

- 6 (a) a decision under section 50 to appoint a person to be the  
7 nominee of a participant;  
8 (b) a decision under section 52, 53 or 54 to cancel or suspend, or  
9 not to cancel or suspend, the appointment of a nominee.

10 (2) On review of a decision, the Secretary must:

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

14 **59 Application for review**

15 (1) A person whose interests are affected by a decision referred to in  
16 subsection 58(1) may apply to the Secretary for review of the  
17 decision within 28 days, or such longer period as the Secretary  
18 allows, after the day on which the person first received notice of  
19 the decision.

20 (2) The person must give reasons for the application.

21 (3) The application must be made by:

- 22 (a) sending or delivering a written application to the Secretary in  
23 accordance with the rules (if any); or  
24 (b) making an oral application, in person or by telephone or other  
25 means, to the Secretary in accordance with the rules (if any).

26 (4) If a person makes an oral application in accordance with  
27 paragraph (3)(b), the person receiving the oral application must:

- 28 (a) make a written record of the details of the application; and  
29 (b) note on the record the day the application is made.

Section 60

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1       **60 Withdrawal of application**

2               (1) A person who has applied for review of a decision may withdraw  
3               the application at any time before a decision is made under  
4               section 61, by:

5                     (a) sending or delivering a written notice to the Secretary in  
6                     accordance with the rules (if any); or

7                     (b) contacting the Secretary and withdrawing the application  
8                     orally, whether in person, by telephone or by other means in  
9                     accordance with the rules (if any).

10              (2) If an application is withdrawn in accordance with paragraph (1)(b),  
11              the person receiving the oral withdrawal must make a written  
12              record of the details of the withdrawal and note on the record the  
13              day the withdrawal is made.

14              (3) If an application for review of a decision is withdrawn, the  
15              application is taken never to have been made.

16       **61 Review of decisions following application under section 59**

17               If a person applies under section 59 for review of a decision, the  
18               Secretary must:

19                     (a) review the decision; and

20                     (b) do one of the following:

21                         (i) affirm the decision;

22                         (ii) vary the decision;

23                         (iii) set the decision aside and substitute a new decision.

24       **62 Notice and date of effect**

25               (1) The Secretary's decision (the *decision on review*) to affirm, vary or  
26               set aside a decision takes effect:

27                     (a) on the day specified in the decision on review; or

28                     (b) if a day is not specified—on the day on which the decision on  
29                     review was made.

- 1                   (2) The Secretary must notify the applicant of the decision on review,  
2                   and the reasons for that decision, as soon as practicable after  
3                   making the decision on review.

1 **Division 5—Other matters relating to nominees**

2 **63 Secretary’s powers to give notices to participant**

3 Nothing in this Part is intended in any way to affect the Secretary’s  
4 powers under other provisions of this Act to give notices to a  
5 participant who has a nominee.

6 **64 Notification of nominee where notice is given to participant**

7 If, under this Act (other than this Part), the Secretary gives a notice  
8 to a participant who has a nominee, the Secretary must inform the  
9 nominee of the giving of the notice and of the terms of the notice.

10 **65 Protection of participant against liability for actions of nominee**

11 Nothing in this Part renders a participant guilty of an offence  
12 against this Act in relation to any act or omission of the  
13 participant’s nominee.

14 **66 Protection of nominee against criminal liability**

15 A nominee of a participant is not subject to any criminal liability  
16 under this Act in relation to:

- 17 (a) any act or omission of the participant; or  
18 (b) anything done, in good faith, by the nominee in his or her  
19 capacity as nominee.

1 **Part 5—Administration**

2 **Division 1—Introduction**

3 **67 Simplified outline of this Part**

4 The Secretary may require an applicant for the BSWAT payment  
5 scheme, or any other person, to give information for the purposes  
6 of determining an application or for any other purposes in relation  
7 to this Act.

8 Information can be obtained, recorded, used and disclosed for the  
9 purposes of this Act and for certain other limited purposes. There  
10 are criminal offences for misuse of information obtained for the  
11 purposes of this Act.

12 In certain cases where an amount is wrongly paid to a person, the  
13 amount becomes a debt to the Commonwealth that can be  
14 recovered through the courts, or through a payment arrangement  
15 the Commonwealth might enter into with the person.

1       **Division 2—Information gathering**

2       **68 Further information from applicant**

- 3               (1) The Secretary may, by written notice given to a person who has  
4               made an application for the BSWAT payment scheme, request the  
5               person to give further information to the Department if the  
6               Secretary considers that the information would assist in  
7               determining the application.
- 8               (2) The notice:
- 9                   (a) may be given personally or by post or in any other manner  
10                  approved by the Secretary; and
- 11                  (b) must specify:
- 12                   (i) the nature of the information that is requested; and  
13                   (ii) how the person is to give the information; and  
14                   (iii) the period within which the person is to give the  
15                   information; and  
16                   (iv) the officer or class of officer (if any) to whom the  
17                   information is to be given; and  
18                   (v) that the notice is given under this section.
- 19               (3) A notice is not invalid merely because it does not comply with  
20               subparagraph (2)(b)(ii) or (v).
- 21               (4) The period specified under subparagraph (2)(b)(iii) must not end  
22               earlier than 14 days after the notice is given.
- 23               (5) The application need not be determined until the further  
24               information is provided.

25       **69 General power to obtain information**

- 26               (1) The Secretary may, in accordance with section 72, require a person  
27               to give information, or produce a document that is in the person's  
28               custody or under the person's control, to the Department if the  
29               Secretary considers that the information or document may be  
30               relevant to one or more of the following matters:

- 1 (a) the determination of another person's application for the  
2 BSWAT payment scheme;  
3 (b) before the person lodges an effective acceptance—whether  
4 there is an alternative amount for the person;  
5 (c) whether a debt arises under Division 4 in relation to a  
6 payment made to a person.
- 7 (2) If the requirement is made in relation to the matter referred to in  
8 paragraph (1)(a), the application need not be determined until the  
9 further information is provided.

10 **70 Power to obtain information from a person who owes a debt to**  
11 **the Commonwealth**

12 The Secretary may, in accordance with section 72, require a person  
13 who owes a debt to the Commonwealth under section 84:

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

22 **71 Obtaining information about a person who owes a debt to the**  
23 **Commonwealth**

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

- 26 (a) that would help the Secretary locate another person (the  
27 *debtor*) who owes a debt to the Commonwealth under  
28 section 84; or  
29 (b) that is relevant to the debtor's financial situation;  
30 the Secretary may, in accordance with section 72, require the  
31 person to give the information, or produce the document, to the  
32 Secretary.

Section 72

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1       **72 Written notice**

2           (1) A requirement under section 69, 70 or 71 must be made by written  
3           notice given to the person of whom the requirement is made.

4           (2) The notice:

5               (a) may be given personally or by post or in any other manner  
6               approved by the Secretary; and

7               (b) must specify:

8                   (i) how the person is to give the information or produce the  
9                   document to which the requirement relates; and

10                  (ii) the period within which the person is to give the  
11                  information or produce the document to the  
12                  Department; and

13                  (iii) the officer or class of officer (if any) to whom the  
14                  information is to be given or the document is to be  
15                  produced; and

16                  (iv) that the notice is given under this section.

17           (3) A notice is not invalid merely because it does not comply with  
18           subparagraph (2)(b)(i) or (iv).

19           (4) The period specified under subparagraph (2)(b)(ii) must not end  
20           earlier than 14 days after the notice is given.

21       **73 Offence**

22           (1) A person commits an offence if:

23               (a) the person is required under section 69, 70 or 71 to give  
24               information or produce a document; and

25               (b) the person refuses or fails to comply with the requirement.

26           Penalty: 30 penalty units.

27           (2) Subsection (1) does not apply if the person has a reasonable  
28           excuse.

29           Note: A defendant bears an evidential burden in relation to the matter in  
30           subsection (2) (see subsection 13.3(3) of the *Criminal Code*).



1 **74 Obligations not affected by State or Territory laws**

2                   Nothing in a law of a State or Territory operates to prevent a  
3                   person from complying with a requirement made under this Act to  
4                   provide information or a document to the Department.

1 **Division 3—Privacy**

2 **75 Protection of information**

3 (1) A person may obtain protected information for the purposes of this  
4 Act.

5 (2) A person may:

6 (a) make a record of protected information; or

7 (b) disclose such information to any person; or

8 (c) otherwise use such information;

9 if the person is doing so:

10 (d) for the purposes of this Act; or

11 (e) for the purpose for which the information was disclosed to  
12 the person under section 81; or

13 (f) with the express or implied consent of the person to whom  
14 the information relates.

15 **76 Offence—unauthorised access to protected information**

16 A person commits an offence if:

17 (a) the person obtains information; and

18 (b) the person is not authorised or required by or under this Act  
19 to obtain the information; and

20 (c) the information is protected information.

21 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

22 **77 Offence—unauthorised use or disclosure of protected**  
23 **information**

24 A person commits an offence if:

25 (a) the person:

26 (i) makes a record of information; or

27 (ii) discloses information to any other person; or

28 (iii) otherwise makes use of information; and

- 1 (b) the person is not authorised or required by or under this Act  
2 to make the record, disclosure or use of the information that  
3 is made by the person; and  
4 (c) the information is protected information.

5 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

6 **78 Offence—soliciting disclosure of protected information**

7 A person (the *first person*) commits an offence if:

- 8 (a) the first person solicits the disclosure of information from an  
9 officer or another person, whether or not any protected  
10 information is actually disclosed; and  
11 (b) the disclosure would be in contravention of this Division; and  
12 (c) the information is protected information.

13 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

14 **79 Offence—offering to supply protected information**

15 (1) A person commits an offence if:

- 16 (a) the person offers to supply (whether to a particular person or  
17 otherwise) information about another person; and  
18 (b) the person knows the information is protected information.

19 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

20 (2) A person commits an offence if:

- 21 (a) the person holds himself or herself out as being able to  
22 supply (whether to a particular person or otherwise)  
23 information about another person; and  
24 (b) the person knows the information is protected information.

25 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

26 (3) Subsections (1) and (2) do not apply to an officer acting in the  
27 performance or exercise of his or her duties, functions or powers  
28 under this Act.

Section 80

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1 **80 Protection of certain documents etc. from production to court etc.**

2 A person must not, except for the purposes of this Act, be required:

- 3 (a) to produce any document in his or her possession because of  
4 the performance of his or her functions or duties or the  
5 exercise of his or her powers under this Act; or  
6 (b) to disclose any matter or thing of which he or she had notice  
7 because of the performance of such functions or duties or the  
8 exercise of such powers;

9 to a court, tribunal, authority or person that has power to require  
10 the production of documents or the answering of questions.

11 **81 Disclosure of information by Secretary**

12 (1) Despite sections 77 and 80, the Secretary may:

- 13 (a) if the Secretary certifies that it is necessary in the public  
14 interest to do so in a particular case or class of cases—  
15 disclose information acquired by a person in the performance  
16 of his or her functions or duties or in the exercise of his or  
17 her powers under this Act to such persons and for such  
18 purposes as the Secretary determines; or

19 (b) disclose any such information:

- 20 (i) to the Secretary of a Department of State of the  
21 Commonwealth, or to the head of an authority of the  
22 Commonwealth, for the purposes of that Department or  
23 authority; or  
24 (ii) to a person who has the express or implied consent of  
25 the person to whom the information relates to collect it;  
26 or  
27 (iii) to the Chief Executive Centrelink for the purposes of a  
28 centrelink program; or  
29 (iv) to the Chief Executive Medicare for the purposes of a  
30 medicare program.

31 (2) In certifying for the purposes of paragraph (1)(a) or disclosing  
32 information for the purposes of subparagraph (1)(b)(i), the  
33 Secretary must act in accordance with any rules made for the  
34 purposes of section 82.

- 1                   (3) Despite any other provision of this Division, the Secretary may  
2                   disclose protected information to a participant's nominee if the  
3                   protected information:  
4                   (a) relates to the participant; and  
5                   (b) is or was held in the records of the Department.

6                   **82 Rules for exercise of Secretary's disclosure powers**

- 7                   The rules may make provision for and in relation to the exercise of  
8                   either or both of the following:  
9                   (a) the Secretary's power to certify for the purposes of  
10                  paragraph 81(1)(a);  
11                  (b) the Secretary's power under subparagraph 81(1)(b)(i) to  
12                  disclose information to a person.

13                  **83 Part does not affect the operation of the *Freedom of Information***  
14                  ***Act 1982***

- 15                  The provisions of this Part that relate to the disclosure of  
16                  information do not affect the operation of the *Freedom of*  
17                  *Information Act 1982*.

1 **Division 4—Debt recovery**

2 **84 Debts due to the Commonwealth**

3 (1) If a payment amount has been paid in respect of a person, the  
4 amount (or an amount equivalent to the amount) is a debt due to  
5 the Commonwealth only to the extent expressly provided for by  
6 this section.

7 (2) If an amount is paid to a person (the *recipient*) but was not payable  
8 because:

9 (a) the amount was paid to the wrong person; or

10 (b) there is no determination of a payment amount, or no  
11 effective acceptance, that relates to the payment; or

12 (c) the amount exceeds the payment amount determined for a  
13 person;

14 the amount paid (or an amount equivalent to that amount), or the  
15 amount of the excess, is a debt due to the Commonwealth by the  
16 recipient.

17 (3) If:

18 (a) a payment amount is paid to a person (the *recipient*) under  
19 this Act; and

20 (b) the amount was paid wholly or partly because of a false or  
21 misleading statement, or a misrepresentation, by the recipient  
22 or another person;

23 then an amount equal to so much of the payment amount as is  
24 attributable to the false or misleading statement, or the  
25 misrepresentation, is a debt due to the Commonwealth by the  
26 recipient.

27 Note: See also section 85 (joint and several liability for debts arising because  
28 of false and misleading statements).

29 (4) A debt due by a person under this section in respect of an amount  
30 arises at the time the amount is paid to the person.

1     **85 Joint and several liability for debts arising because of false and**  
2             **misleading statements**

3             A person (the *recipient*) and another person are jointly and  
4             severally liable to pay a debt if:

- 5             (a) the recipient is liable under this Division to repay an amount  
6                 (the *unauthorised amount*) paid to the recipient (or an  
7                 amount equal to such an amount); and  
8             (b) the unauthorised amount was paid because the recipient  
9                 contravened Part 7.4 of the *Criminal Code* (which deals with  
10                 false and misleading statements); and  
11             (c) the other person is convicted of an offence:  
12                 (i) that is taken to have been committed in relation to that  
13                     contravention because of section 11.2 or 11.2A of the  
14                     *Criminal Code* (which deal with complicity, common  
15                     purpose and joint commission); or  
16                 (ii) in relation to that contravention against section 11.4 or  
17                     11.5 of the *Criminal Code* (which deal with incitement  
18                     and conspiracy).

19     **86 Legal proceedings**

20             A debt due to the Commonwealth under this Act is recoverable by  
21             the Commonwealth in a court of competent jurisdiction.

22     **87 Arrangement for payment of debt**

- 23             (1) The Secretary may, on behalf of the Commonwealth, enter into an  
24                 arrangement with a person under which the person is to pay a debt  
25                 owed by the person to the Commonwealth under this Act, or the  
26                 outstanding amount of such a debt, in a way set out in the  
27                 arrangement.  
28             (2) The arrangement has effect from the day specified in the  
29                 arrangement, which may be earlier than the day on which the  
30                 arrangement is entered into.  
31             (3) If the arrangement does not specify a day as mentioned in  
32                 subsection (2), it has effect on and after the day on which it is  
33                 entered into.

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- 1 (4) The Secretary may vary or terminate the arrangement:  
2 (a) at the debtor's request; or  
3 (b) after giving 28 days' notice to the debtor of the proposed  
4 variation or termination; or  
5 (c) if the Secretary is satisfied that the person has failed to  
6 disclose material information about his or her true capacity to  
7 repay the debt—without notice.

8 **88 Recovery of amounts from financial institutions**

- 9 (1) If:  
10 (a) an amount is paid under this Act to a financial institution for  
11 the credit of an account kept with the institution; and  
12 (b) the Secretary is satisfied that the payment was intended to be  
13 made to someone who was not the person or one of the  
14 persons in whose name or names the account was kept;  
15 the Secretary may give a written notice to the institution setting out  
16 the matters mentioned in paragraphs (a) and (b) and requiring the  
17 institution to pay to the Commonwealth, within a reasonable period  
18 stated in the notice, the lesser of the following amounts:  
19 (c) an amount specified in the notice that is equal to the amount  
20 that was paid as mentioned in paragraph (a);  
21 (d) the amount standing to the credit of the account when the  
22 notice is received by the institution.
- 23 (2) A financial institution must comply with a notice given to it under  
24 subsection (1).
- 25 Penalty: 300 penalty units.
- 26 (3) It is a defence to a prosecution of a financial institution for failing  
27 to comply with a notice given to it under subsection (1) if the  
28 financial institution proves that it was incapable of complying with  
29 the notice.
- 30 (4) If a notice is given to a financial institution under subsection (1) in  
31 respect of an amount paid under this Act, any amount recovered by  
32 the Commonwealth from the institution in respect of the payment



1                    reduces any debt owed to the Commonwealth by any other person  
2                    in respect of the amount.

3                    (5) In this Act:

4                    *financial institution* means a corporation that is an ADI for the  
5                    purposes of the *Banking Act 1959*.

## 6                    **89 Overseas application of debts**

7                    The operation of a provision creating a debt under this Part extends  
8                    to:

- 9                    (a) acts, omissions, matters and things outside Australia, whether  
10                    or not in a foreign country; and  
11                    (b) all persons, irrespective of their nationality or citizenship.

1 **Division 5—Non-recovery of debts**

2 **90 Secretary may write off debt**

- 3 (1) Subject to subsection (2), the Secretary may, on behalf of the  
4 Commonwealth, decide to write off a debt, for a stated period or  
5 otherwise.
- 6 (2) The Secretary may decide to write off a debt under subsection (1)  
7 if, and only if:
- 8 (a) the debt is irrecoverable at law; or
  - 9 (b) the debtor has no capacity to repay the debt; or
  - 10 (c) the debtor's whereabouts are unknown after all reasonable  
11 efforts have been made to locate the debtor; or
  - 12 (d) it is not cost effective for the Commonwealth to take action  
13 to recover the debt.
- 14 (3) For the purposes of paragraph (2)(a), a debt is irrecoverable at law  
15 if, and only if:
- 16 (a) the debt cannot be recovered by means of legal proceedings  
17 because the period during which such proceedings may be  
18 brought has ended; or
  - 19 (b) there is no proof of the debt capable of sustaining legal  
20 proceedings for its recovery; or
  - 21 (c) the debtor is discharged from bankruptcy and the debt was  
22 incurred before the debtor became bankrupt and was not  
23 incurred by fraud; or
  - 24 (d) the debtor has died leaving no estate or insufficient funds in  
25 the debtor's estate to repay the debt.
- 26 (4) A decision made under subsection (1) takes effect:
- 27 (a) if no day is specified in the decision—on the day the decision  
28 is made; or
  - 29 (b) if a day is specified in the decision—on the day so specified  
30 (whether that day is before, on or after the day the decision is  
31 made).

- 1 (5) Nothing in this section prevents anything being done at any time to  
2 recover a debt that has been written off under this section.

3 **91 Power to waive Commonwealth's right to recover debt**

- 4 (1) On behalf of the Commonwealth, the Secretary may waive the  
5 Commonwealth's right to recover the whole or a part of a debt  
6 from a debtor only in the circumstances described in section 92,  
7 93, 94 or 95.

- 8 (2) A waiver takes effect:

- 9 (a) on the day specified in the waiver (whether that day is before,  
10 on or after the day the decision to waive is made); or  
11 (b) if the waiver does not specify when it takes effect—on the  
12 day the decision to waive is made.

13 Note: If the Secretary waives the Commonwealth's right to recover all or  
14 part of a debt, this is a permanent bar to recovery of the debt or part of  
15 the debt and the debt or part of the debt effectively ceases to exist.

16 **92 Waiver of debt arising from error**

17 The Secretary must waive the right to recover the proportion of a  
18 debt that is attributable solely to an administrative error made by  
19 the Commonwealth if:

- 20 (a) the debtor received the payment that gave rise to that  
21 proportion of the debt in good faith; and  
22 (b) the debt is not raised within 8 weeks from the payment.

23 Note: This section does not allow waiver of a part of a debt that was caused  
24 partly by administrative error and partly by one or more other factors.

25 **93 Waiver of small debt**

26 The Secretary may waive the right to recover a debt if:

- 27 (a) the debt is, or is likely to be, less than \$200; and  
28 (b) it is not cost effective for the Commonwealth to take action  
29 to recover the debt.

Section 94

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1       **94 Waiver in relation to settlements**

- 2               (1) If the Commonwealth has agreed to settle a civil action against a  
3               debtor for recovery of a debt for less than the full amount of the  
4               debt, the Secretary must waive the right to recover the difference  
5               between the debt and the amount that is the subject of the  
6               settlement.
- 7               (2) If:
- 8                     (a) the Commonwealth has recovered at least 80% of the original  
9                     value of a debt from a debtor; and
- 10                    (b) the Commonwealth and the debtor agree that the recovery is  
11                    in full satisfaction for the whole of the debt; and
- 12                    (c) the debtor cannot repay a greater proportion of the debt;  
13               the Secretary must waive the remaining 20% or less of the value of  
14               the original debt.
- 15               (3) If the Secretary and a debtor agree that the debtor's debt will be  
16               fully satisfied if the debtor pays the Commonwealth an agreed  
17               amount that is less than the amount of the debt outstanding at the  
18               time of the agreement (the **unpaid amount**), the Secretary must  
19               waive the right to recover the difference between the unpaid  
20               amount and the agreed amount.
- 21               (4) The Secretary must not make an agreement described in  
22               subsection (3) unless the Secretary is satisfied that the agreed  
23               amount is at least the present value of the unpaid amount if it is  
24               repaid in instalments of amounts, and at times, determined by the  
25               Secretary.
- 26               (5) For the purposes of subsection (4), the present value of the unpaid  
27               amount is the amount worked out in accordance with the method  
28               prescribed by the rules.

29       **95 Waiver in special circumstances**

- 30               The Secretary may waive the right to recover a debt if:
- 31                     (a) the debt did not arise in whole or part as a result of:
- 32                         (i) a contravention of this Act or the rules; or



1 **Part 6—Miscellaneous**  
2

3 **96 Simplified outline of this Part**

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This Part deals with miscellaneous matters.
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5 **97 Effect of person's death**

- 6 (1) This Act continues to apply, with the modifications made by the  
7 rules, in relation to a person who dies:  
8 (a) after making an application under section 15; and  
9 (b) before lodging an effective acceptance.  
10 (2) An application cannot be made on behalf of a person who has died.

11 **98 No admissions**

- 12 None of the following:  
13 (a) the determination of a payment amount for a person;  
14 (b) the making of an offer to a person;  
15 (c) the paying of a payment amount to a person;  
16 (d) anything else done under this Act or the rules;  
17 (e) anything in this Act or the rules;  
18 constitutes an admission by the Commonwealth that it is liable for  
19 unlawful discrimination or any other matter referred to in  
20 subsection 10(2), or that a particular method should be adopted in  
21 assessing damages or compensation claimed by a person in  
22 connection with the use of a BSWAT assessment to work out a  
23 minimum wage payable to a person.

24 **99 Standing appropriation**

25 The Consolidated Revenue Fund is appropriated for the purposes  
26 of making:

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**Section 100**

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- 1 (a) payments that the Secretary is satisfied are required to be  
2 paid under section 40; and  
3 (b) payments of amounts under subsection 27(4).

**100 Delegation**

- 5 (1) The Secretary may, in writing, delegate to an officer any or all of  
6 the powers or functions of the Secretary under this Act.  
7 (2) In exercising powers or performing functions under a delegation,  
8 the delegate must comply with any directions of the Secretary.

**101 Approved forms**

10 The Secretary may, in writing, approve one or more forms for the  
11 purposes of a provision of this Act or the rules that provides for  
12 something to be done in an approved form.

**102 Rules**

- 14 The Minister may, by legislative instrument, make rules  
15 prescribing matters:  
16 (a) required or permitted by this Act to be prescribed by the  
17 rules; or  
18 (b) necessary or convenient to be prescribed for carrying out or  
19 giving effect to this Act.