A New Tax System (Family Assistance) (Administration) Act 1999

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Volume 1: **sections 1–152D**
Volume 2: sections 153–235
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *A New Tax System (Family Assistance) (Administration) Act 1999* that shows the text of the law as amended and in force on 21 February 2025 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to implement A New Tax System by providing assistance to families, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *A New Tax System (Family Assistance) (Administration) Act 1999*.

2 Commencement

(1) Sections 1 and 2 and subsection 235(5) commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence immediately after the commencement of the *A New Tax System (Family Assistance) Act 1999*.

2A Norfolk Island

This Act extends to Norfolk Island.

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Part 2—Interpretation

3 Definitions

(1) In this Act, unless the contrary intention appears:

ABN (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

advance assessment day**,** in relation to a family tax benefit advance, has the meaning given by subsection 35A(3) and paragraph 35B(3)(b).

agency means:

(a) the Department; or

(b) the Human Services Department.

allocation rules means the Minister's rules prescribed under section 198A.

appropriate State/Territory support agency has the meaning given by subsection 204K(7).

approved child care service has the meaning given by section 194G.

approved provider means a provider for which an approval is in effect under Division 1 of Part 8 (and does not include a provider whose approval as a provider under that Part is suspended).

ART means the Administrative Review Tribunal.

ART Act means the *Administrative Review Tribunal Act 2024*.

ART child care provider review has the meaning given by section 138.

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ART Principal Registrar means the Chief Executive Officer and Principal Registrar of the ART.

ART review has the meaning given by section 111.

audit team, in relation to an audit of an approved provider, means the expert engaged to carry out the audit of the provider and any person (other than an authorised person) assisting the expert.

Bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the meaning of the *Banking Act 1959*.

care percentage decision means a decision to the extent that the decision involves (wholly or partly):

(a) a determination of an individual's percentage of care for a child that was made, under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act, in relation to a claim for payment of family tax benefit; or

(b) a determination relating to an individual that has effect, under section 35T of that Act, as if it were a determination made under such a provision.

CCS quarter has the meaning given by subsection 67CE(3).

CCS reconciliation conditions has the meaning given by section 103A.

ceases to be enrolled has the meaning given by section 200B.

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

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

child care decision has the meaning given by section 103.

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child care provider decision has the meaning given by subsection 138(4).

child care service payment means:

(a) a fee reduction amount payable to a provider under section 67EB; or

(b) a payment prescribed by the Minister's rules that is made to approved providers under a scheme or program (however described) administered by the Department.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

complying written arrangement has the meaning given by subsection 200B(3).

decision has the same meaning as in the ART Act.

departure authorisation certificate means a certificate under Subdivision D of Division 5 of Part 4.

departure prohibition order means an order under Subdivision A of Division 5 of Part 4 (including such an order varied under Subdivision C of that Division).

early claim day, in relation to a claim for payment of family tax benefit by instalment, means the day occurring 97 days before the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant. It does not matter whether the child becomes such an FTB child on the expected day.

Education and Care Services National Law means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic.).

emergency or disaster has the meaning given by subsection 205C(2).

enrolled has the meaning given by section 200B.

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enrolment notice means a notice given under subsection 200A(1), (2) or (3).

entitled to be paid family tax benefit by instalment: a person is so entitled at a particular time if a determination under section 16 in relation to the person is in force at that time under which the person is entitled to be paid family tax benefit at or after that time.

estimated income basis: family tax benefit is worked out on an ***estimated income basis*** if it is worked out on the basis referred to in subsection 20(1), (2A) or (3).

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

family assistance law means any one or more of the following:

(a) this Act;
(b) the Family Assistance Act;
(c) any instrument (including regulations) made under this Act or the Family Assistance Act;
(d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

family tax benefit advance means the advance mentioned in Division 2 of Part 3.

fee reduction amount has the meaning given by subsection 67EB(2).

fee reduction decision has the meaning given by subsection 67EB(2).

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

first deadline has the meaning given by section 103B.

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flexible PPL day has the same meaning as in the *Paid Parental Leave Act 2010*.

FTB advance debt has the meaning given by section 71A.

guidance and appeals panel has the same meaning as in the ART Act.

guidance and appeals panel proceeding has the same meaning as in the ART Act.

head of an agency means:

(a) in the case of the Department—the Secretary; or

(b) in the case of the Human Services Department—the Chief Executive Officer of Services Australia.

Human Services Department means Services Australia.

immunisation grace period has the meaning given by subsection 67CD(9).

income tax refund means an amount payable to a person:

(a) in respect of an overpayment of income tax imposed by the *Income Tax Act 1986*; or

(b) in respect of an overpayment of Medicare levy payable in accordance with Part VIIB of the *Income Tax Assessment Act 1936*; or

(c) in respect of an overpayment of an amount payable by the person by an assessment made under Part IV of the *Income Tax Assessment Act 1936* because of:

(i) subsection 106U(1) of the *Higher Education Funding Act 1988*; or

(ii) section 154-60 of the *Higher Education Support Act 2003*; or

(iii) section 12ZN of the *Student Assistance Act 1973*; or

(iv) section 23FA of the *VET Student Loans Act 2016*; or

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(d) as a refund of a tax offset that is subject to the refundable tax offset rules (see Division 67 of the Income Tax Assessment Act).

income tax return has the same meaning as in the *Income Tax Assessment Act 1997*.

indexed actual income:

(a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20B(2); and

(b) for an individual in relation to child care subsidy—means the amount stated for the individual in a notice under subsection 67DD(2).

indexed estimate:

(a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20A(2); and

(b) for an individual in relation to child care subsidy—means the amount stated for the individual in a notice under subsection 67DC(2).

instalment amount, in relation to family tax benefit, has the meaning given by subsection 23(2).

instalment period, in relation to family tax benefit, has the meaning given by subsections 23(2) and (3).

large child care provider has the meaning given by section 4A.

listed child care information provision has the meaning given by section 219UB.

maximum amount, in relation to a family tax benefit advance, has the meaning given by section 35D.

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

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meets the information requirements has the meaning given by subsection 67CD(10).

minimum amount, in relation to a family tax benefit advance that is paid to an individual, means:

(a) 3.75% of the FTB child rate for one FTB child who is under 13 years of age worked out under clause 7 of Schedule 1 to the Family Assistance Act (disregarding clauses 8 to 11 of that Schedule); or

(b) if a determination under section 28 of that Act that the individual is eligible for a percentage (the ***section 28 percentage***) of the family tax benefit for FTB children of the individual is in force—the section 28 percentage of the paragraph (a) amount; or

(c) if the amount that would be the minimum amount under paragraph (a) or (b) is not a number of whole cents—the amount rounded down to the nearest cent.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

officer means an officer of an agency and includes:

(a) the head of the agency; and

(aa) if the agency is the Human Services Department:

(i) the Chief Executive Centrelink; and

(ii) the Chief Executive Medicare; and

(b) an employee of the agency; and

(c) any other person engaged by the agency, under contract or otherwise, to exercise powers, or perform duties or functions, of the agency.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

parental leave pay has the same meaning as in the *Paid Parental Leave Act 2010*.

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permissible staff discount has the meaning given by subsection 201BA(1).

personal information has the same meaning as in the *Privacy Act 1988*.

person with management or control has the meaning given by section 194F.

primary tax means any amount due to the Commonwealth directly under a taxation law (within the meaning of the *Taxation Administration Act 1953*), including any such amount that is not yet payable.

protected information means:

(a) information about a person that:
  (i) was obtained by an officer under the family assistance law; and
  (ii) is or was held in the records of the Department; or

(aaa) information about a person that:
  (i) was obtained by an officer under the family assistance law; and
  (ii) is or was held in the records of the Human Services Department within the meaning of this Act as in force at any time; or

(aa) information about a person that was held in the records of the Commonwealth Services Delivery Agency (within the meaning of the *Commonwealth Services Delivery Agency Act 1997* as in force before 1 July 2011); or

(b) information about a person that:
  (i) was obtained by an officer under the family assistance law; and
  (ii) was held in the records of Medicare Australia (within the meaning of the *Medicare Australia Act 1973* as in force before 1 July 2011); or

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(ba) information about a person obtained by an officer under the family assistance law that was held in the records of the Health Insurance Commission; or

(c) information to the effect that there is no information about a person held in the records of an agency.

provider:

(a) has the meaning given by subsection 194A(1); and

(b) is affected by sections 230A and 230B.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

related providers has the meaning given by subsection 4A(3).

relevant arrangement has the meaning given by subsection 200A(3).

second deadline has the meaning given by section 103C.

Secretary means the Secretary of the Department.

social security law has the same meaning as in the *Social Security Act 1991*.

starts to be enrolled has the meaning given by section 200B.

statement period has the meaning given by subsection 201D(7).

taxable income %, in respect of an individual, means the taxable income % calculated in respect of the individual under Part 4 of Schedule 2 to the Family Assistance Act.

tax file number has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

TFN claim person:

(a) in relation to a claim for family tax benefit under Subdivision A of Division 1 of Part 3, means:

(i) the claimant; and

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(ii) if the claim is for payment of family tax benefit by instalment—the claimant's partner (if any) at the time of the claim; and

(iii) if the claim is for payment of family tax benefit for a past period—any partner of the claimant during the past period; or

(b) in relation to a claim made by a claimant for CCS, means:

(i) the claimant; and

(ii) the claimant's partner (if any) at the time the claim is made; or

(c) in relation to a claim for a stillborn baby payment in normal circumstances under Division 3 of Part 3, means:

(i) the claimant; and

(ii) the claimant's partner (if any) at the time of the claim; or

(d) in relation to a claim for single income family supplement under Division 4E of Part 3, means:

(i) the claimant; and

(ii) if the claim is for payment of single income family supplement for a past period—any partner of the claimant during the past period.

TFN determination person means:

(a) in relation to family tax benefit and:

(i) a determination under which the claimant is entitled to be paid family tax benefit by instalment—the claimant or any partner of the claimant at any time since the determination was made; or

(ii) a determination under which the claimant is entitled to be paid family tax benefit for a past period—the claimant or any partner of the claimant during the past period; or

(b) for the purposes of a determination under Division 3 of Part 3A (payment of child care subsidy and additional child care subsidy) for an individual for a week—the individual and anyone who was the partner of the individual on the first

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Monday of the CCS fortnight to which the determination relates; or

(c) in relation to single income family supplement and a determination under which the claimant is entitled to be paid single income family supplement for a past period—the claimant or any partner of the claimant during the past period.

TFN substitution person, in relation to a claim:

(a) by an individual for payment of family tax benefit by single payment/in substitution because of the death of another individual based on eligibility for an amount of family tax benefit under section 33 of the Family Assistance Act; or

(b) by an individual for CCS in substitution for an individual who has died; or

(c) by an individual for payment of a stillborn baby payment in substitution because of the death of another individual; or

(d) by an individual for payment of single income family supplement by single payment/in substitution because of the death of another individual based on eligibility for an amount of single income family supplement under section 57GG of the Family Assistance Act;

means the deceased individual and any partner of the deceased individual during the period in respect of which the payment is claimed.

withholding amount has the meaning given by subsection 67EB(3).

(2) Expressions used in this Act that are defined in the Family Assistance Act have the same meaning as in that Act.

(4) A reference to a ***determination*** is a reference to a determination as originally made or, if the determination has been varied, as varied.

(5) For the purposes of the family assistance law:

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(a) a reference to the approved provider of a child care service or of an approved child care service is a reference to the provider approved in respect of the service; and

(b) a reference to the provider of a child care service is a reference to:

(i) the provider approved in respect of the service (if any); or

(ii) if a provider is not approved in respect of the service—the provider that operates the service.

(6) For the purposes of the family assistance law:

(a) a reference to an approved child care service of a provider or of an approved provider is a reference to a child care service in respect of which the provider is approved; and

(b) a reference to a child care service of a provider or of an approved provider is a reference to a child care service in respect of which the provider is approved or which is operated by the provider.

Note: A provider can only be approved in respect of a service it operates. See section 194B.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

4 Approval of use of electronic equipment etc. to do things for the purposes of the family assistance law

(1) If, under a provision of the family assistance law, the Secretary or another officer may approve the form, manner or way of:

(a) making or withdrawing any application or claim; or

(b) doing any other thing that is required or permitted to be done for the purposes of that law;

then, without limiting that provision, the Secretary or other officer may approve the making or withdrawing of the application or claim, or the doing of the other thing:

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(c) by the use of a telecommunications system or other electronic equipment; or

(d) by the use of software registered with the Secretary.

(2) A person may apply to have software registered by the Secretary for the purposes of a particular application, claim or other thing, or a class of applications, claims or other things.

(3) The Secretary may, at his or her discretion, register the software for the purposes of that application, claim or other thing, or class of applications, claims or other things.

4A Meaning of *large child care provider*

(1) A provider is a ***large child care provider***, for a financial year, if, at any time in the financial year:

(a) the provider operates 25 or more approved child care services; or

(b) the provider is one of 2 or more related providers who together operate 25 or more approved child care services; or

(c) the provider proposes to operate, or is one of 2 or more related providers who propose to together operate, 25 or more approved child care services.

Note: The approved child care services may be any of the types referred to in the table in subclause 2(3) of Schedule 2 to the Family Assistance Act.

(2) The Minister's rules may prescribe a number other than 25 for the purposes of paragraphs (1)(a), (b) and (c). If the Minister's rules do so, those paragraphs are taken to refer to the prescribed number.

(3) The providers in a group of 2 or more providers are ***related providers*** for a financial year for the purposes of subsection (1) if, at any time during the financial year, each provider in the group is related to at least one other provider in the group in any of the following ways:

(a) the providers have in common 25% or more of the persons who are concerned in, or take part in, their management;

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(b) one provider owns 15% or more of the other provider;
(c) one provider is entitled to receive 15% or more of any dividends paid by the other provider.

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Part 3—Payment of family assistance (other than child care subsidy and additional child care subsidy)

Division 1—Family tax benefit

Subdivision A—Making claims

5 Need for a claim

(1) The only way that a person can become entitled to be paid family tax benefit is to make a claim in accordance with this Subdivision.

(2) A claim is not required for an amount of family tax benefit under section 58AA of the Family Assistance Act.

6 Who can claim

The only persons who can make a claim in accordance with this Subdivision are individuals or approved care organisations.

7 How to claim

(1) An individual or approved care organisation (a ***claimant***) may make a claim:
  (a) for payment of family tax benefit by instalment; or
  (b) for payment of family tax benefit for a past period; or
  (c) in the case only of a claimant who is an individual—for payment of family tax benefit by single payment/in substitution because of the death of another individual.

Form etc. of claim

(2) To be effective:
  (a) a claim must:

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(i) be made in a form and manner; and
(ii) contain any information; and
(iii) be accompanied by any documents;

required by the Secretary; and

(aa) in the case of a claim for family tax benefit by instalment—the bank account requirement set out in section 7A must be satisfied in relation to the claim; and

(b) in the case of a claim by an individual for payment of family tax benefit by instalment or for a past period—the tax file number requirement in section 8 must be satisfied in relation to the claim; and

(c) in the case of a claim by an individual for payment of family tax benefit in substitution because of the death of another individual—the tax file number requirement in section 8A must be satisfied in relation to the claim.

(3) A claim is not effective if it is made before the early claim day.

7A Bank account details or statement to be provided for claims for family tax benefit by instalment to be effective

(1) This section sets out the bank account requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(aa) (which states what is required for certain claims to be effective).

Requirement concerning bank account details

(2) The requirement is that the claimant provide:

(a) details of a bank account maintained by the person alone or jointly or in common with someone else into which instalments of family tax benefit are to be paid; or

(b) a statement that the claimant will nominate, and provide details of, such a bank account within 28 days after the claim is made.

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How details or statement to be given

(3) The bank account details or statement must be provided in the claim.

Exemption from bank account requirement

(4) The Secretary may determine that the requirement in subsection (2) does not apply to a claimant if the Secretary considers that it is appropriate to exempt the claimant from the requirement.

8 Tax file number requirement to be satisfied for claims for family tax benefit by instalment or for a past period to be effective

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(b) (which states what is required for certain claims to be effective).

(2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

Statement that TFN claim person does not know what his or her tax file number is etc.

(4) The second kind of statement that can be made is a statement by the TFN claim person that the person:

(a) has a tax file number but does not know what it is; and

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(b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

(c) authorises the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by the TFN claim person that the person:

(a) has an application for a tax file number pending; and

(b) authorises the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—that number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:

(a) the person is, or was, the claimant's partner; and

(b) the claimant cannot obtain from the person:

(i) the person's tax file number; or

(ii) a statement by the person under subsection (4) or (5).

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Section 8A

8A Tax file number requirement to be satisfied for claim in substitution because of the death of another individual to be effective

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(c) (which states what is required for claims in substitution because of the death of another individual to be effective).

(2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN substitution person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of whom the TFN substitution person is, this kind of statement can be made by the claimant only.

Statement that TFN substitution person does not know what his or her tax file number is

(4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
  (a) has a tax file number but does not know what it is; and
  (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  (c) authorises the Commissioner of Taxation to tell the Secretary:
    (i) whether the person has a tax file number; and
    (ii) if the person has a tax file number—that number.

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Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by the TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

(a) has an application for a tax file number pending; and

(b) authorises the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—that number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's TFN.

(8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement referred to in subsection (4) or (5) in respect of the person.

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9 Restrictions on claims for payment of family tax benefit by instalment

A claim for payment of family tax benefit by instalment is not effective if, at the time (the ***determination time***) when the claim would be determined:

(a) the claimant has previously made a claim for payment of family tax benefit by instalment and that claim has not yet been determined; or

(b) the claimant is already entitled to be paid family tax benefit by instalment; or

(c) the following apply:

(i) a determination under section 16 is in force under which the claimant is not, because of a variation of the determination under subsection 27(5), 27A(3), 28A(2), 28B(2), 28B(3), 29(2), 30(2), 30A(2) or 30B(2), entitled to be paid family tax benefit at the determination time or at any later time;

(ii) the determination time is before the end of the income year following the one in which the variation mentioned in that subsection took effect.

10 Restrictions on claims for payment of family tax benefit for a past period

Restriction where previous claim or instalment determination

(1) A claim for payment of family tax benefit for a past period is not effective if:

(a) the claimant has previously made a claim for payment of family tax benefit for any of the past period (whether or not the claim has yet been determined); or

(b) the claimant was entitled to be paid family tax benefit by instalment at any time in the past period; or

(c) the following apply:

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(i) a determination under section 16 was in force at any time in the past period under which the claimant was not, because of a variation of the determination under subsection 27(5), 27A(3), 28A(2), 28B(2), 28B(3), 29(2), 30(2), 30A(2) or 30B(2), entitled to be paid family tax benefit;

(ii) the claim is made before the end of the income year following the one in which the variation mentioned in that subsection took effect.

Claim must relate to one income year and be made within a certain period

(2) A claim for payment of family tax benefit for a past period is not effective if:

(a) the period does not fall wholly within one income year; or

(b) the period does fall wholly within one income year (the ***relevant income year***) but the claim is made after the end of:

(i) the first income year after the relevant income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from making the claim before the end of that first income year.

(2A) The further period referred to in subparagraph (2)(b)(ii) must end no later than the end of the second income year after the relevant income year.

Claim must be accompanied by instalment claim in some circumstances

(3) A claim for payment of family tax benefit for a past period is not effective if:

(a) the period occurs in the income year in which the claim is made; and

(b) at the time the claim is made, the claimant is eligible for family tax benefit; and

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(c) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and

(d) the claim is not accompanied by a claim for payment of family tax benefit by instalment.

(4) A claim for payment of family tax benefit for a past period is not effective if:

(a) the period occurs in either of the 2 income years before the one in which the claim is made; and

(b) if the claimant is an individual—at any time during the past period, the claimant, or the claimant's partner, received a social security benefit, social security pension, service pension, income support supplement or veteran payment; and

(c) at the time the claim is made, the claimant is eligible for family tax benefit; and

(d) if the claimant is an individual—at the time the claim is made, the claimant, or the claimant's partner, is receiving a social security benefit, social security pension, service pension, income support supplement or veteran payment; and

(e) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and

(f) the claim is not accompanied by a claim for payment of family tax benefit by instalment.

(5) Paragraph (4)(f) does not apply if, at the time the claim for payment of family tax benefit for a past period is made, subsection 32AE(2) applies in respect of the claimant or subsection 32AE(5) applies in respect of the claimant's partner.

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11 Restrictions on bereavement claims

Entitlement must not already have been determined, or be awaiting determination, on a previous claim

(1) A claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is not effective if the claimant has previously made a claim for payment of family tax benefit because of the death of that individual (whether or not the claim has yet been determined).

Single payment/substitution claims must relate to current or previous income year

(2) If a claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is based on eligibility for an amount of family tax benefit under subsection 32(2) or section 33 of the Family Assistance Act, the claim is not effective if it is made after the end of the income year following the one in which the death mentioned in that provision occurred.

12 Claim may be withdrawn or varied

(1) A claimant may withdraw or vary a claim before the claim is determined.

(2) The claimant may only do so in a manner determined by the Secretary.

(3) If a claim is withdrawn, it is taken never to have been made.

Subdivision B—Determination of claims etc.

13 Secretary must determine claim

(1) If an effective claim is made, the Secretary must determine the claim in accordance with this Subdivision. If a claim is not effective, it is taken not to have been made.

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14 Restriction on determining claim where income tax assessment not made

(1) If, in relation to a claim for payment of family tax benefit made by an individual:

(a) the claim is for payment of that benefit for a past period; and

(b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and

(c) either or both of subsections (2) and (3) apply;

the Secretary can only determine the claim if each assessment concerned has been made.

(2) This subsection applies if:

(a) the claimant is required to lodge an income tax return for the past period income year; and

(b) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the claimant's taxable income for the past period income year.

(3) This subsection applies if:

(a) at the time the claim is made, a person is the claimant's partner and that person was the claimant's partner at any time during the past period; and

(b) that person is required to lodge an income tax return for the past period income year; and

(c) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on that person's taxable income for the past period income year.

14A Restriction on determining claim where income tax return not lodged

(1) If, in relation to a claim for payment of family tax benefit made by an individual:

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(a) the claim is for payment of that benefit for a past period; and

(b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and

(c) one or more of subsections (2) to (3A) apply;

then the claim is taken never to have been made.

(2) This subsection applies if:

(a) the claimant is required to lodge an income tax return for the past period income year; and

(b) the claimant has not lodged the return before the end of:

(i) the first income year after the past period income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the return before the end of that first income year.

(3) This subsection applies if:

(a) at the time the claim is made, a person is the claimant's partner, and that person was the claimant's partner at any time during the past period; and

(b) that person is required to lodge an income tax return for the past period income year; and

(c) that person has not lodged the return before the end of:

(i) the first income year after the past period income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the income tax return before the end of that first income year.

(3A) This subsection applies if:

(a) the claimant, or any other individual whose adjusted taxable income is relevant in working out the claimant's entitlement to, or rate of, family tax benefit for the past period, is not

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required to lodge an income tax return for the past period income year; and

(b) the claimant does not notify the Secretary of the amount of the claimant's adjusted taxable income for the past period income year before the end of:

(i) the first income year after the past period income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from making that notification before the end of that first income year.

(4) The further period referred to in subparagraph (2)(b)(ii), (3)(c)(ii) or (3A)(b)(ii) must end no later than the end of the second income year after the past period income year.

15 Restriction on determining claim where tax file number not provided etc.

Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.

(1) If:

(a) a TFN claim person makes a statement of the kind set out in subsection 8(4); or

(b) a TFN substitution person makes a statement of the kind set out in subsection 8A(4);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

Statement that an application for a tax file number is pending

(2) If:

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(a) a TFN claim person makes a statement of the kind set out in subsection 8(5); or

(b) a TFN substitution person makes a statement of the kind set out in subsection 8A(5);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:

(i) the person has not applied for a tax file number; or

(ii) an application by the person for a tax file number has been refused; or

(iii) the person has withdrawn an application for a tax file number.

(3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

15A Restriction on determining claim where bank account details not provided

(1) If a person makes a statement of the kind set out in paragraph 7A(2)(b), the Secretary can only determine the claim concerned if, within 28 days after the claim is made, the person nominates, and provides details of, a bank account of a kind referred to in paragraph 7A(2)(a) into which instalments of family tax benefit are to be paid.

(2) If, after the 28 days mentioned in subsection (1) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

15B Deferral of determination of early claims

If:

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(a) an individual makes a claim for payment of family tax benefit by instalment in respect of a child before the child is an FTB child of the claimant; and

(b) the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant would be likely to be eligible for family tax benefit in respect of the child if the child were to become an FTB child of the claimant;

the Secretary must not determine the claim for family tax benefit until the earlier of the following:

(c) the time when the child becomes an FTB child of the claimant, or is stillborn;

(d) 28 days after the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant.

16 Determination of instalment entitlement claim

(1) This section applies if the claim is one for payment of family tax benefit by instalment.

(2) If the Secretary is satisfied that the claimant is, at the time the Secretary makes the determination on the claim, eligible for family tax benefit in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act, the Secretary must determine that the claimant is entitled to be paid family tax benefit for each day on which the determination is in force at the daily rate at which the Secretary considers the claimant to be eligible.

Additional entitlement in subsection (2) cases

(4) If:

(a) the Secretary is satisfied as mentioned in subsection (2); and

(b) the Secretary is also satisfied that the claimant was eligible for family tax benefit in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act during the whole or part of the period since the claim was made;

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the Secretary must determine that the claimant is entitled to be paid that amount of family tax benefit.

Instalments where bereavement eligibility—remaining FTB or regular care children

(5) If the Secretary is satisfied that, at the time of making the determination on the claim:

(a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and

(b) assuming subsection (4) of that section were disregarded, the claimant would be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;

the Secretary must determine that:

(c) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:

(i) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and

(ii) for each day, before the determination came into force, that occurred during that period; and

(d) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant would be eligible, on the assumption in paragraph (b) of this subsection, for each day while the determination is in force that occurs after the last day on which the claimant is entitled to be paid family tax benefit in accordance with paragraph (c) of this subsection.

Instalments where bereavement eligibility—no remaining FTB or regular care children

(6) If the Secretary is satisfied that, at the time of making the determination on the claim:

(a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and

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(b) assuming subsection (4) of that section were disregarded, the claimant would not be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;

the Secretary must determine that the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:

(c) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and

(d) for each day, before the determination came into force, that occurred during that period.

17 Determination of past period entitlement claim

If:

(a) the claim is one for payment of family tax benefit for a past period; and

(b) the Secretary is satisfied that the claimant was eligible for family tax benefit:

(i) for the whole of the period in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act; or

(ii) for part of the period in accordance with Subdivision A of that Division and for the remainder of the period in accordance with section 31 of that Act;

the Secretary must determine that the claimant is entitled to be paid family tax benefit for the past period.

18 Determination of bereavement entitlement claim

If:

(a) the claim is one for payment of family tax benefit by single payment/in substitution because of the death of another individual; and

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(b) the Secretary is satisfied that the claimant is eligible for family tax benefit under section 32 or 33 of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the family tax benefit.

19 Determination that no entitlement

If the Secretary is not satisfied as mentioned in section 16, 17 or 18, the Secretary must determine:

(a) if the determination is on a claim for payment of family tax benefit by instalment—that the claimant is not entitled to be paid family tax benefit for each day on which the determination is in force; or

(b) in any other case—that the claimant is not entitled to be paid family tax benefit for the past period or because of the death of the other individual, as the case requires.

20 Determination of rate may be based on estimate, indexed estimate or indexed actual income

(1) If:

(a) an individual's eligibility for, or rate of, family tax benefit is required to be determined for the purposes of this Division or Division 3; and

(b) information about the amount of adjusted taxable income needed for the determination of the eligibility or rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and

(c) the individual or, if the individual has died, another individual making a claim under this Division or Division 3 gives the Secretary an estimate of the amount needed; and

(d) the Secretary considers the estimate to be reasonable; and

(e) since the estimate was given, the Secretary has not given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed;

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the Secretary may determine the individual's eligibility for, or rate of, family tax benefit on the basis of the estimate.

(2) If:

(a) an estimate is given to the Secretary for the purposes of subsection (1); and

(b) the Secretary does not consider the estimate reasonable;

the following paragraphs apply:

(c) the eligibility or rate cannot be determined; and

(d) if the determination of the eligibility or rate is required for the purposes of this Division, section 19 applies.

(2A) If:

(a) an individual's eligibility for, or rate of, family tax benefit is required to be determined for the purposes of this Division or Division 3; and

(b) information about the amount of adjusted taxable income needed for the determination of the eligibility or rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and

(c) the Secretary has given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed; and

(d) since the notice was given, the individual has not given the Secretary an estimate of the individual's adjusted taxable income that the Secretary considers to be reasonable;

the Secretary may determine the individual's eligibility for, or rate of, family tax benefit on the basis of the indexed estimate or indexed actual income stated in the notice (or, if the Secretary has given the individual more than one such notice—the notice with the most recent start day).

Note: Section 20C affects the meaning of this provision for members of couples.

(3) If:

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(a) an individual's rate of family tax benefit is required to be calculated for the purpose of making a determination under this Division; and

(b) information about the amount of maintenance income needed for the calculation of the rate is not available;

the Secretary may determine the individual's rate of family tax benefit on the basis of an estimate by the Secretary of the amount needed.

Note: If family tax benefit is worked out on the basis referred to in subsection (1), (2A) or (3), it is referred to in this Act as being worked out on an ***estimated income basis*** (see the definition of this term in subsection 3(1)).

20A Indexed estimates

(1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:

(a) the individual is a claimant, or the partner of a claimant, for family tax benefit; and

(b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and

(c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant.

Note: Section 20C affects the meaning of paragraph (c) for members of couples.

(2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:

(a) stating the indexed estimate for the individual; and

(b) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).

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(3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.

(4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 20B(2) stating an indexed actual income for the same individual. Any such notice under subsection 20B(2) must specify a start day that is no earlier than the start day specified in the superseded notice.

(5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

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reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

(6) For the purposes of subsection (5), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20B(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

(7) A notice under subsection (2) is not a legislative instrument.

20B Indexed actual incomes

(1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:

(a) the individual is a claimant for, or the partner of a claimant for, family tax benefit; and

(b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and

(c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of an

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indexed estimate for the claimant or an indexed actual income for the claimant; and

(d) since the claimant was last given a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and

(e) the adjusted taxable income for an income year (***actual income***) of the individual (disregarding the effect for couples of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

Note: Section 20C affects the meaning of paragraph (1)(c) for members of couples.

(2) If:

(a) the Secretary calculates an indexed actual income for the individual; and

(b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));

the Secretary may give the claimant a notice:

(c) stating the indexed actual income for the individual; and

(d) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).

(3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 20A(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.

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(4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

(5) For the purposes of paragraph (2)(b), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not

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arrived—the indexed estimate or indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

(6) A notice under subsection (2) is not a legislative instrument.

20C Indexed estimates and indexed actual incomes of members of couples

Section applies to couples

(1) This section applies in relation to any individual who is a member of a couple.

Family tax benefit Part A

(2) For the purposes of the Family Assistance Act other than Part 4 of Schedule 1, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).

(3) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:

(a) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)); or

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(b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

Family tax benefit Part B

(4) For the purposes of Part 4 of Schedule 1 to the Family Assistance Act, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (5).

(5) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the lower of these:

(a) the indexed estimate or indexed actual income for that individual or stated in that notice;

(b) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)) or, if there is no such indexed estimate or indexed actual income, a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

If the amounts in paragraphs (a) and (b) are equal, the reference is taken to be a reference to:

(c) if the individual is the claimant for family tax benefit—the amount in paragraph (a); or

(d) if the individual is the partner of the claimant for family tax benefit—the amount in paragraph (b).

Most recent indexed estimate or indexed actual income for individual's partner

(6) In subsections (3) and (5), the ***most recent indexed estimate or indexed actual income for the individual's partner*** is the indexed

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estimate or indexed actual income for the individual's partner stated in a notice given to:

(a) if the individual is the claimant for family tax benefit—the individual; or

(b) if the individual is the partner of the claimant for family tax benefit—the individual's partner;

under subsection 20A(2) or 20B(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day).

21 When determination is in force

(1) Subject to this section, a determination under this Division comes into force when it is made and remains in force at all times afterwards.

(1A) A determination under paragraph 19(a) may be expressed to come into force on a day before it is made (but not earlier than the day the claim concerned is made).

Effect of later determination on certain instalment determinations

(2) If, on a particular day, a determination is in force:

(a) under section 16, where under the determination the claimant is not entitled to be paid family tax benefit on the particular day or any later day; or

(b) under paragraph 19(a);

the determination ceases to be in force on the particular day if either:

(c) another determination is made on the particular day on a claim by the claimant for payment of family tax benefit by instalment; or

(d) another determination is made after the particular day on a claim by the claimant for payment of family tax benefit for a past period, where the particular day occurs within the past period.

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Request for cessation of instalment determination

(3) A determination in force under section 16 on a particular day ceases to be in force if:

(a) under the determination, the claimant is entitled to be paid family tax benefit on the particular day or any later day; and

(b) on the particular day, the claimant is not receiving a social security pension, social security benefit, service pension, income support supplement or veteran payment; and

(c) on the particular day, the claimant advises the Secretary, in the form and manner required by the Secretary, that the claimant wishes the determination:

(i) to cease to be in force from the particular day or from a specified later day; or

(ii) to have ceased to be in force at the end of the most recent instalment period before the particular day.

The determination ceases to be in force in accordance with the advice.

22 Notice of determination

(1) The Secretary must give notice of a determination under this Subdivision (except subsection 23(3B)) to the claimant, stating:

(a) whether the claimant is entitled to be paid family tax benefit under the determination; and

(b) if the claimant is so entitled:

(i) if the claimant is entitled to be paid family tax benefit by instalment—the daily rate of the benefit, the days on which the entitlement arises and how it is to be paid; or

(ii) in any other case—the amount of the benefit and how it is to be paid; and

(c) that the claimant may apply for review of the determination in the manner set out in Part 5.

(2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

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Section 23

23 Payment of family tax benefit by instalment

(1) Subject to this section, if the claimant is entitled to be paid family tax benefit by instalment, the Secretary must, after each instalment period ending after the determination is made, pay the instalment amount to the claimant, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

Instalment amount and instalment period

(2) In subsection (1):

instalment amount means the amount accruing for the days in the instalment period for which an entitlement to be paid family tax benefit arose under the determination.

instalment period means, subject to subsection (3):

(a) the period of 14 days beginning on the day the Secretary considers appropriate in relation to the claimant, or class of claimants in which the claimant is included, and each successive period of 14 days; or

(b) if the claimant:

(i) is included in a class of persons specified under subsection (3A); and

(ii) is the subject of a determination in force under subsection (3B);

the period of 7 days beginning on the day the Secretary considers appropriate, and each successive period of 7 days.

Changing the day on which later instalment periods begin

(3) The Secretary may change the day on which successive instalment periods are to begin in relation to a claimant or class of claimants. If the Secretary does so, the last instalment period before the first day on which the new instalment periods are to begin is shortened so that it ends immediately before that day.

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Persons who may have 7-day instalment periods

(3A) The Minister may by legislative instrument specify a class of persons any of whom the Secretary may determine to have 7-day instalment periods.

(3B) The Secretary may determine that a claimant who is a member of a class of persons specified under subsection (3A) has instalment periods of 7 days.

(3C) The Secretary must revoke a determination made under subsection (3B) if he or she is satisfied that the claimant is no longer a member of a class of persons specified under subsection (3A).

(3D) Subsection (3C) does not limit the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to subsection (3B) of this section.

Secretary may make direction as to the manner of making payments

(5) The Secretary may direct that the whole or a part of an amount which is to be paid for the purposes of this section is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.

Early payment of FTB instalment in particular cases

(5A) If the Secretary is satisfied that an instalment amount that would, apart from this subsection, be paid under this section on a particular day cannot reasonably be paid on that day, the Secretary may direct that the instalment amount be paid on an earlier day.

(6) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

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24 Payments of family tax benefit for a past period or by single payment/in substitution because of the death of another individual

(1) If the claimant is entitled to be paid family tax benefit under a determination on a claim for payment of family tax benefit:

(a) for a past period; or

(b) by single payment/in substitution because of the death of another individual;

the Secretary must pay the amount to the claimant, at such time and in such manner as the Secretary considers appropriate.

(4) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

24A Other payments of family tax benefit

(1) If an individual is entitled to be paid an amount of family tax benefit under section 58AA of the Family Assistance Act, the Secretary must pay the amount to the individual in a single lump sum, at such time and in such manner as the Secretary considers appropriate.

(2) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

25 Obligation to notify change of circumstances

(1) If, after a claimant becomes entitled to be paid family tax benefit by instalment:

(a) anything happens that causes the claimant to cease to be eligible for family tax benefit on the days for which the claimant will become entitled to be paid the benefit under the determination concerned, or to become eligible for a daily rate of family tax benefit that is less than that specified in the determination; or

(b) the claimant becomes aware that anything is likely to happen that will have that effect;

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the claimant must, in the manner set out in a written notice given to the claimant under section 25A, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

(2) Strict liability applies to the element of an offence against subsection (1) that a notice is a notice given under section 25A.

(3) If, after the Secretary determines under subsection 23(3B) that a claimant has instalment periods of 7 days:

(a) anything happens that causes the claimant to cease to be a member of a class of persons specified under subsection 23(3A); or

(b) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 25A, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

(4) If a thing that is described in both subsections (1) and (3) happens or is likely to happen, subsection (1) applies in relation to the thing but subsection (3) does not.

25A Secretary's power to approve a manner of notification

(1) The Secretary must approve a manner of notification that a claimant is to use when notifying the Secretary of a thing under section 25.

(2) The Secretary must, by written notice, notify the claimant of the approved manner of notification.

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Section 26

26 Secretary's power to request tax file numbers

(1) If:

(a) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; or

(b) a determination is in force under which the claimant is entitled to be paid family tax benefit for a past period;

the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a written statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsection (2), (3) or (4) the claimant chooses.

Statement of tax file number

(2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

Statement that TFN person does not know what his or her tax file number is etc.

(3) The second kind of statement that can be made is a statement by the TFN determination person that the person:

(a) has a tax file number but does not know what it is; and

(b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

(c) authorises the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(4) The third kind of statement that can be made is a statement by the TFN determination person that the person:

(a) has an application for a tax file number pending; and

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(b) authorises the Commissioner of Taxation to tell the Secretary:
  (i) if a tax file number is issued to the person—that number; or
  (ii) if the application is refused—that the application has been refused; or
  (iii) if the application is withdrawn—that the application has been withdrawn.

26A Secretary's power to require bank account details

If:
(a) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and
(b) the claimant has not nominated a bank account into which instalments of family tax benefit are to be paid;

the Secretary may require the claimant to give the Secretary, within 28 days of the requirement being made, details of a bank account maintained by the claimant alone, or jointly or in common with someone else, into which instalments of family tax benefit are to be paid.

Subdivision C—Variation of determinations

27 Variation of instalment and past period determinations where failure to provide tax file number

Non-compliance with request

(1) If:
(a) the Secretary makes a request under subsection 26(1); and
(b) the claimant does not comply with the request within 28 days of the request being made;

then, subject to subsection (2), the consequence in subsection (5) applies.

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Exemption from request under subsection 26(1)

(2) The Secretary may determine that the consequence in subsection (5) does not apply if:

(a) the TFN determination person concerned is or was the claimant's partner; and

(b) the claimant cannot obtain from the person:

(i) the person's tax file number; or

(ii) a statement by the person under subsection 26(3) or (4).

Statement made by TFN determination person under subsection 26(3)

(3) If:

(a) the Secretary makes a request under subsection 26(1); and

(b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(3); and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has no tax file number;

the consequence in subsection (5) applies.

Statement made by TFN determination person under subsection 26(4)

(4) If:

(a) the Secretary makes a request under subsection 26(1); and

(b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(4); and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;

the consequence in subsection (5) applies.

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Statement made by TFN claim person under subsection 8(4)

(4A) If:

(a) a TFN claim person has made a statement of the kind set out in subsection 8(4); and

(b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment or for a past period; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number;

the consequence in subsection (5) applies.

Statement made by TFN claim person under subsection 8(5)

(4B) If:

(a) a TFN claim person has made a statement of the kind set out in subsection 8(5); and

(b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment or for a past period; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;

the consequence in subsection (5) applies.

Variation of determination

(5) For the purposes of subsection (1), (3), (4), (4A) or (4B), the consequence is that the Secretary may:

(a) if the determination is one under which the claimant is entitled to be paid family tax benefit by instalment—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place; or

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(b) if the determination is one under which the claimant is entitled to be paid family tax benefit for a past period—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day in the past period.

Consequence of Secretary later becoming aware of tax file number

(6) If:

(a) under subsection (5), the Secretary varies the determination; and

(b) the Secretary finds out the tax file number of the TFN determination person or TFN claim person, as the case requires:

(i) if paragraph (5)(a) applies—before the end of the income year following the one in which the variation took effect; or

(ii) if paragraph (5)(b) applies—at any time after the variation took place;

the Secretary must vary the determination to undo the effect mentioned in subsection (5).

27A Variation of instalment entitlement determination where failure to provide bank account details

Non-compliance with requirement

(1) If:

(a) the claimant is subject to a requirement under section 26A; and

(b) the claimant does not comply with the requirement within 28 days of the requirement being made;

then, subject to subsection (2), the consequence in subsection (3) applies.

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Exemption from requirement under section 26A

(2) The Secretary may determine that the consequence in subsection (3) does not apply if the Secretary considers that it is appropriate to exempt the claimant from the consequence.

Variation of determination

(3) For the purposes of subsection (1), the consequence is that the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

Consequence of Secretary later becoming aware of bank account details

(4) If:

(a) under subsection (3), the Secretary varies the determination; and

(b) the Secretary finds out the bank account details of the claimant concerned before the end of the income year following the one in which the variation took effect;

the Secretary must vary the determination to undo the effect mentioned in subsection (3).

28 Variation of instalment and past period entitlement determinations where income tax return not lodged

(1) This section applies if:

(a) a determination under section 16 or 17 is in force at, or was in force before, a particular time; and

(b) there are one or more days (the ***cancellation days*****)** before the particular time in respect of which the following conditions are satisfied:

(i) the cancellation days occur in the income year (the ***cancellation income year***) that began 2 years before the

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beginning of the income year in which the particular time occurs;

(ii) the claimant is entitled to be paid family tax benefit under the determination for the cancellation days;

(iii) the claimant, or the claimant's partner at the particular time (if he or she was also the claimant's partner at some time in the cancellation income year), or both, are required to lodge an income tax return for the cancellation income year but have not done so by the particular time;

(iv) by the particular time, an assessment has not been made under the *Income Tax Assessment Act 1936* of the taxable income for the cancellation income year of everyone to whom subparagraph (iii) applies.

Consequence of section applying

(2) If this section applies, the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

Consequence where income tax returns are later lodged

(3) If:

(a) after the Secretary varies the determination under subsection (2) or (6), an assessment is made under the *Income Tax Assessment Act 1936* for the cancellation income year for everyone (the ***taxpayers involved***):

(i) who was required to lodge an income tax return as mentioned in subparagraph (1)(b)(iii); and

(ii) in respect of whom an assessment had not been made before the determination was varied; and

(b) the Secretary is satisfied that the claimant was eligible for an amount (the ***recalculated amount***) of family tax benefit for the cancellation days; and

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(ba) subsection (4) (which is about when the claimant and the claimant's partner separate after the determination is varied) does not apply;

the Secretary must again vary the determination so that it has the effect that, for the cancellation days, the claimant is entitled to be paid:

(c) if each of the taxpayers involved lodged an income tax return with the Commissioner of Taxation:

(i) before the end of the income year after the cancellation income year; or

(ii) within such further period as the taxpayer is allowed under Subdivision D of Division 1 of this Part;

the recalculated amount; or

(d) in any other case—the lesser of:

(i) the recalculated amount; and

(ii) the amount that the claimant was entitled to be paid before the variation under subsection (2) was made.

Consequence where claimant and partner separate after determination varied

(4) After the Secretary varies the determination under subsection (2) or (6), the Secretary must again vary the determination if the following conditions are met:

(a) the claimant and the partner mentioned in subparagraph (1)(b)(iii) (the ***ex-partner***) ceased to be members of the same couple during the further period that the Secretary has allowed, under Subdivision D of Division 1 of this Part, within which the ex-partner may lodge an income tax return;

(b) at the time when the Secretary would vary the determination under this subsection, the claimant and the ex-partner are not members of the same couple;

(c) if the claimant was required to lodge an income tax return for the cancellation income year:

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(i) the claimant has lodged an income tax return for the cancellation income year before the end of the first income year after the cancellation income year, or of the further period that the Secretary has allowed, under Subdivision D of Division 1 of this Part, within which the claimant may lodge an income tax return; and

(ii) an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;

(d) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by:

(i) if paragraph (c) applies—the later of the time when the claimant and the ex-partner last ceased to be members of the same couple and the time when the assessment of the claimant's taxable income is made; or

(ii) otherwise—the time when the claimant and the ex-partner last ceased to be members of the same couple;

(e) the Secretary is satisfied that the claimant was eligible for an amount (the ***recalculated amount***) of family tax benefit for the cancellation days.

(5) The Secretary must vary the determination under subsection (4) so that it has the effect that, for the cancellation days, the claimant is entitled to be paid the recalculated amount.

Consequence where claimant and ex-partner reconcile after separation

(6) If:

(a) after the Secretary varies the determination under subsection (4), the claimant and the ex-partner become members of the same couple again; and

(b) the ex-partner has still not lodged an income tax return for the cancellation income year by the time when the claimant and the ex-partner become members of the same couple;

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the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

28AA Effect of section 28 on newborn upfront payment of family tax benefit

(1) If:

(a) an individual is entitled to be paid an amount (the ***upfront amount***) of family tax benefit under section 58AA of the Family Assistance Act because an amount of newborn supplement is added in relation to the individual under Division 1A of Part 5 of Schedule 1 to that Act for one or more days; and

(b) a variation under subsection 28(2) or (6) of this Act has the effect that the individual never was entitled to family tax benefit for those days;

then the individual is taken not to have been entitled to the upfront amount.

(2) If a variation under subsection 28(3) or (4) of this Act has the effect that the individual is entitled to be paid family tax benefit for those days, then subsection (1) of this section ceases to apply to the individual.

(3) Subsection (2) does not prevent subsection (1) again applying to the individual.

28A Variation of instalment entitlement determination where estimate of an amount is not reasonable

(1) This section applies if:

(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and

(b) the claimant gives the Secretary an estimate of the amount of adjusted taxable income needed by the Secretary to

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determine the claimant's eligibility for, or rate of, family tax benefit; and

(c) the Secretary does not consider the estimate to be reasonable.

Consequence of section applying

(2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

Consequence of later provision of reasonable estimate or Secretary finding out the actual amount

(3) If:

(a) under subsection (2), the Secretary varies the determination; and

(b) either:

(i) the claimant provides an estimate of the amount that the Secretary considers reasonable by the end of the income year following the one in which the variation took effect; or

(ii) the Secretary finds out the actual amount needed to determine the claimant's eligibility for, or rate of, family tax benefit (whether from the claimant or someone else) by the end of the income year following the one in which the variation took effect;

the Secretary must vary the determination to undo the effect mentioned in subsection (2).

28B Variation of instalment entitlement determination where claim made for another payment type

(1) This section applies if:

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(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment in respect of an individual; and

(b) the individual is any of the following:

(i) an FTB child of the claimant;

(ii) a regular care child who is also a rent assistance child of the claimant;

(iii) an individual in respect of whom an approved care organisation is the claimant; and

(c) the individual makes a claim for one of the following:

(i) a social security pension;

(ii) a social security benefit;

(iii) payments under a program included in the programs known as Labour Market Programs;

(iv) if the individual is aged 16 or more—payments under a prescribed educational scheme, unless subsection (1A) applies to the individual.

(1A) This subsection applies to an individual if:

(a) the claim is for payments under the ABSTUDY scheme; and

(b) the individual is seeking the payments to be paid on the basis of the individual:

(i) undertaking full-time study at a secondary school (within the meaning of the *Student Assistance Act 1973*); and

(ii) being, in accordance with the ABSTUDY scheme, a student approved to live away from home; and

(iii) boarding away from home for the purposes of attending the school.

Note: For ***undertaking full-time study***, see subsection 3(1) of the Family Assistance Act.

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Consequence of section applying if the individual is the claimant's only FTB or regular care child or the claimant is an approved care organisation

(2) If:

(a) this section applies because the individual is an individual in respect of whom the claimant is an approved care organisation; or

(b) this section applies because the individual is the only individual who is either an FTB child, or a regular care child who is a rent assistance child, of the claimant;

the Secretary must vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day on which the determination was or will be in force, after the end of the last instalment period before the variation takes place or from a later day determined by the Secretary.

Consequence of section applying if the individual is not the claimant's only FTB or regular care child

(3) If:

(a) this section applies because the individual is an FTB child, or a regular care child who is also a rent assistance child, of the claimant; and

(b) the individual is not the claimant's only FTB child, or regular care child who is also a rent assistance child;

the Secretary must vary the determination so that it has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the child who has made a claim for a payment listed in paragraph (1)(c). The determination takes effect from the day after the end of the claimant's last instalment period before the variation takes place or from a later day determined by the Secretary.

Consequence of later rejection etc. of individual's claim

(4) If:

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(a) under subsection (2) or (3), the Secretary varies the determination; and

(b) the individual's claim for the payment is rejected, withdrawn or taken not to have been made;

the Secretary must vary the determination to undo the effect mentioned in subsection (2) or (3), as the case may be.

29 Variation of instalment entitlement determination where failure to provide information

(1) This section applies if:

(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and

(b) the Secretary, in order to make a decision about the eligibility, or daily rate of eligibility, of the claimant for family tax benefit on either or both of the following:

(i) the particular day or any later day;

(ii) any day or days in the past when the determination was in force;

requires the claimant or the claimant's partner under Division 1 of Part 6 to give information or produce documents; and

(c) the claimant or the claimant's partner refuses or fails to comply with the requirements.

Consequences of section applying

(2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

(2A) Without limiting subsection (2), if the information or documents required relate to:

(a) the claimant's eligibility for rent assistance; or

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(b) the amount of rent assistance to be added in calculating the claimant's rate of family tax benefit;

the Secretary may vary the determination so as to establish a different rate of family tax benefit that does not have the amount of rent assistance added for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place or from a later day determined by the Secretary.

(2B) Without limiting subsection (2), if the Secretary considers that the information or document is relevant to whether an individual is a senior secondary school child, the Secretary may vary the determination so as to disregard the individual for the purposes of working out whether the claimant is entitled to be paid family tax benefit, and if so the rate at which it is to be paid:

(a) for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place; or

(b) for any later day on which the determination was or will be in force specified by the Secretary in the variation.

Consequence of later provision of information or documents

(3) If:

(a) under subsection (2), (2A) or (2B), the Secretary varies the determination; and

(b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;

the Secretary must vary the determination to undo the effect mentioned in subsection (2), (2A) or (2B).

30 Variation of instalment entitlement determination where failure to notify change of address

(1) This section applies if:

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(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and

(b) the Secretary has reason to believe that the claimant's address has changed since it was last known to the Secretary but the Secretary does not know the claimant's new address; and

(c) the Secretary, after taking reasonable steps, is not able to find out whether the claimant's address has changed or, if it has, what the claimant's new address is.

Consequence of section applying

(2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

Consequence of Secretary later becoming aware of address etc.

(3) If:

(a) under subsection (2), the Secretary varies the determination; and

(b) before the end of the income year following the one in which the variation took effect, the Secretary finds out:

(i) that the claimant's address has not changed; or

(ii) what the claimant's new address is;

the Secretary must vary the determination to undo the effect mentioned in subsection (2).

30A Variation of instalment entitlement determination where failure to notify claimant's departure from Australia

(1) This section applies if:

(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and

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(b) the claimant leaves Australia without having notified the Secretary that the claimant proposed to leave or is leaving; and

(c) less than 6 weeks have passed since the claimant left Australia.

(2) The Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place.

(3) If the Secretary varies the determination under subsection (2), and later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for a day described in that subsection, the Secretary must vary the determination to undo the effect mentioned in that subsection.

30B Variation of instalment entitlement determination where failure to notify FTB or regular care child's departure from Australia

(1) This section applies if:

(a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and

(b) an FTB child, or a regular care child who is also a rent assistance child, of the claimant leaves Australia without the claimant having notified the Secretary that the child will leave or is leaving; and

(c) less than 6 weeks have passed since the child left Australia.

(2) The Secretary may vary the determination so that, for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place, the determination:

(a) has the effect that the claimant is not entitled to be paid family tax benefit, if the conditions in paragraphs (1)(b) and (c) are met in relation to:

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(i) each FTB child of the claimant; and
(ii) each regular care child who is also a rent assistance child of the claimant; or

(b) has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the FTB child or regular care child, if the conditions in paragraphs (1)(b) and (c) are not met in relation to:
(i) each FTB child of the claimant; and
(ii) each regular care child who is also a rent assistance child of the claimant.

(3) If the Secretary:
(a) varies the determination under subsection (2); and
(b) later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for the FTB child or regular care child for a day described in that subsection or the question what is the claimant's daily rate of family tax benefit for the day;

the Secretary must vary the determination to undo the effect mentioned in that subsection relating to the day.

31 Variation of instalment entitlement determination to reflect changes in eligibility

(1) If:
(a) a determination is made under section 16 that a claimant is entitled to be paid family tax benefit by instalment; and
(b) after the determination is made an event occurs; and
(c) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination immediately after the occurrence, he or she would conclude:
(i) that the claimant was no longer eligible for family tax benefit; or

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(ii) that the claimant was still so eligible but that the rate of family tax benefit should be a different rate to the rate previously determined;

the Secretary must, subject to subsection (2):

(d) if subparagraph (c)(i) applies—vary the determination so that the claimant is not entitled to be paid family tax benefit with effect from the date of occurrence; and

(e) if subparagraph (c)(ii) applies—vary the determination so as to establish the different rate with effect from the date of occurrence.

(1A) For the purpose of subsection (1), the occurrence of an event includes the expiration of a period of time if the expiration of that period is relevant to the operation of this Act.

(1B) The reference in subsection (1) to the occurrence does not include the occurrence of any event:

(a) that causes the claimant to provide a revised estimate of the claimant's adjusted taxable income to the Secretary; or

(b) that causes the Secretary to revise an estimate of the claimant's maintenance income;

unless:

(c) the event also affects the claimant's eligibility for family tax benefit, or the rate of family tax benefit payable to the claimant, for a reason other than the amount of the claimant's adjusted taxable income or maintenance income; or

(d) the event is the claimant's becoming, or ceasing to be, a member of a couple.

(1C) If:

(a) the Secretary under paragraph (1)(d) varies a determination in relation to an individual because of subsection 24(1) of the Family Assistance Act; and

(b) the child concerned comes to Australia within the period of 13 weeks beginning on the day after the end of:

(i) the 6-week period referred to in subsection 24(1) of the Family Assistance Act; or

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(ii) if that 6-week period has been extended under subsection 24(7) or (9) of the Family Assistance Act—that period as so extended; and

(c) the Secretary is satisfied that the individual is eligible for family tax benefit on the day the child comes to Australia;

then the Secretary must vary the determination so that the individual is entitled to be paid family tax benefit with effect from the date of the child coming to Australia.

Note: The individual does not have to make another claim for family tax benefit.

(1D) If:

(a) the Secretary under paragraph (1)(d) varies a determination in relation to an individual because of subsection 24(4) of the Family Assistance Act; and

(b) the individual returns to Australia within the period of 13 weeks beginning on the day after the end of:

(i) the 6-week period referred to in subsection 24(4) of the Family Assistance Act; or

(ii) if that 6-week period has been extended under subsection 24(7), (9) or (10) of the Family Assistance Act—that period as so extended; and

(c) the Secretary is satisfied that the individual is eligible for family tax benefit on the day the individual returns to Australia;

then the Secretary must vary the determination so that the individual is entitled to be paid family tax benefit with effect from the date of the individual's return to Australia.

Note: The individual does not have to make another claim for family tax benefit.

(1E) Subsections (1C) and (1D) do not limit any later application of subsection (1) in relation to the determination.

Example: The Secretary under subsection (1D) varies the determination so that the individual is entitled to be paid family tax benefit.

The individual remains in Australia for 8 weeks, but then leaves Australia again for more than 6 weeks.

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Because of subsection 24(4) of the Family Assistance Act, the Secretary may, under paragraph (1)(d) of this section, vary the determination again so that the individual is not entitled to be paid family tax benefit.

Beneficial variations only to have limited effect

(2) If:

(a) the Secretary does not become aware of the occurrence of the event until after the end of the income year (the ***second income year***) following the one in which the event occurred; and

(b) the claimant did not notify the Secretary of the occurrence of the event before the end of the second income year; and

(c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's entitlement to family tax benefit under the determination;

the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the event.

Sections 27, 27A, 28, 28A, 28B, 30, 30A and 30B and subsection 29(2) variations prevail

(3) If:

(a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and

(b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

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31A Variation of instalment entitlement determination to reflect revised adjusted taxable income estimates

(1) If:

(a) a determination is in force on a particular day under which a claimant is entitled to be paid family tax benefit by instalment; and

(b) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant; and

(c) the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the current income year or the next income year that is not attributable to an event mentioned in paragraph 31(1B)(c) or (d); and

(d) the Secretary considers the revised estimate to be reasonable; and

(e) if the claimant's rate of family tax benefit were calculated using the revised estimate—a new rate of family tax benefit would be required;

the Secretary must vary the determination so that the claimant's rate of family tax benefit is determined on the basis of that revised estimate.

Note: Section 20C affects the meaning of paragraph (1)(b) for couples.

(2) A variation of a determination under subsection (1) has effect:

(a) if it results in an increase in the claimant's rate of family tax benefit:

(i) unless subparagraph (ii) applies—from the day on which the revised estimate was provided to the Secretary; or

(ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i)—from that first day; and

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(b) if it results in a decrease (including a decrease to nil) in the claimant's rate of family tax benefit:

(i) unless subparagraph (ii) or (iii) applies—from the day on which the revised estimate was provided to the Secretary; or

(ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i) and subparagraph (iii) does not apply—from that first day; or

(iii) if the day after the end of the last instalment period before the variation takes place occurs after the days identified in subparagraphs (i) and (ii)—from the day first-mentioned in this subparagraph.

(3) If:

(a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and

(b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

31B Variation of instalment entitlement determination to reflect revised maintenance income estimates

(1) If:

(a) a determination is in force on a particular day under which a claimant is entitled to be paid family tax benefit by instalment; and

(b) that determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of an estimate of the claimant's maintenance income in a particular income year; and

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(c) the Secretary, at any time before or during that income year, makes a revised estimate of that amount that is attributable to the occurrence of an event other than an event to which paragraph 31(1B)(c) or (d) applies; and

(d) if the claimant's rate of family tax benefit were calculated using the revised estimate—a new rate of family tax benefit would be required;

the Secretary must vary the determination so that the claimant's rate of family tax benefit is determined on the basis of that revised estimate.

(2) A variation of a determination under subsection (1) has effect from a day determined by the Secretary, which must not be earlier than either of the following:

(a) the day after the end of the last instalment period before the variation takes place;

(b) the first day of the income year to which the revised estimate relates.

(3) If:

(a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and

(b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

31C Variation of instalment entitlement determination to reflect indexation of estimate of adjusted taxable income

(1) If:

(a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and

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(b) the Secretary gives the claimant a notice under subsection 20A(2); and

(c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and

(d) if the claimant's rate of family tax benefit were calculated using the indexed estimate stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed estimate stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

(a) from the start day specified in the notice for the indexed estimate; or

(b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

31D Variation of instalment entitlement determination to reflect indexation of adjusted taxable income

(1) If:

(a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and

(b) the Secretary gives the claimant a notice under subsection 20B(2); and

(c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and

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(d) if the claimant's rate of family tax benefit were calculated using the indexed actual income stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed actual income stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

(a) from the start day specified in the notice for the indexed actual income; or

(b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

31E Continuous adjustment of daily rate of family tax benefit

(1) This section applies if:

(a) a determination is in force in an income year under which a claimant is entitled to be paid family tax benefit by instalment; and

(b) one of the following applies:

(i) a variation of the determination under subsection 31A(1) has effect on a day in the income year that is after 1 July;

(ii) a variation of the determination under subsection 31B(1) has effect on a day in the income year that is after 1 July;

(iii) a variation of the determination under subsection 31C(1) has effect on a day in the income year that is after 1 July;

(iv) a variation of the determination under subsection 31D(1) has effect on a day in the income year that is after 1 July;

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(v) on a day in the income year, the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the income year that does not result in a variation of the determination under subsection 31A(1);

(vi) on a day in the income year that is after 1 July, the Secretary makes a revised estimate of the claimant's maintenance income that does not result in a variation of the determination under subsection 31B(1);

(vii) the determination ceases to be in force in the income year and another determination comes into force in that income year under which the claimant is entitled to be paid family tax benefit by instalment or family tax benefit for a past period that falls wholly within that income year.

(2) The Secretary must apply the following method statement to work out if there is a daily overpayment rate:

Method statement

Step 1. Work out the total amount of family tax benefit the claimant is or was entitled to be paid during the period beginning at the start of the income year and ending at the end of the day before the applicable day.

Step 2. Work out the total amount of family tax benefit the claimant would have been entitled to be paid during that period if the claimant's rate of family tax benefit were calculated using:

(a) if subparagraph (1)(b)(i) applies—the revised estimate concerned; or

(b) if subparagraph (1)(b)(ii) applies—the revised estimate concerned; or

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(c) if subparagraph (1)(b)(iii) applies—the indexed estimate concerned; or

(d) if subparagraph (1)(b)(iv) applies—the indexed actual income concerned; or

(e) if subparagraph (1)(b)(v) applies—the revised estimate concerned; or

(f) if subparagraph (1)(b)(vi) applies—the revised estimate concerned; or

(g) if subparagraph (1)(b)(vii) applies—the estimate of the claimant's adjusted taxable income for the income year, and the estimate of the claimant's maintenance income in that income year, that were used in determining the claimant's rate of family tax benefit under the other determination referred to in that subparagraph.

Step 3. Take the amount worked out at step 2 away from the amount worked out at step 1.

Step 4. If the amount worked out at step 3 is greater than zero, work out the number of days during the period beginning on the applicable day and ending at the end of the last day in the income year.

Step 5. Work out the ***daily overpayment rate*** by dividing the amount worked out at step 3 by the number of days worked out at step 4, and rounding the result of the division to the nearest cent (rounding 0.5 cents upwards).

(3) If there is a daily overpayment rate, the Secretary must vary the applicable determination so that the claimant's daily rate of family tax benefit for the period beginning on the applicable day and ending at the end of the last day in the income year is reduced (but not below nil) by that daily overpayment rate.

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(3A) For the purposes of subsection (3), the ***applicable determination*** is:

(a) if subparagraph (1)(b)(i), (ii), (iii), (iv), (v) or (vi) applies—the determination referred to in paragraph (1)(a); or

(b) if subparagraph (1)(b)(vii) applies—the other determination referred to in that subparagraph.

(4) This section may have more than one application in relation to the claimant during the income year.

(5) In this section:

applicable day means:

(a) if subparagraph (1)(b)(i), (ii), (iii) or (iv) applies—the day on which the variation concerned has effect; and

(b) if subparagraph (1)(b)(v) or (vi) applies—the first day of the instalment period in which the Secretary applies the method statement because of that subparagraph applying; and

(c) if subparagraph (1)(b)(vii) applies—the first day in the income year for which the claimant's entitlement to be paid family tax benefit arose under the other determination referred to in that subparagraph.

32 Notice of variation of determination

(1) The Secretary must give notice of any variation of a determination under this Subdivision to the claimant, stating the effect of the variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.

(2) The variation is not ineffective by reason only that the requirements of subsection (1) are not complied with.

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Subdivision CA—Non-payment of family tax benefit for non-lodgment of tax returns

32AA Non-payment of family tax benefit for non-lodgment of tax returns

(1) If the Secretary varies a determination under subsection 28(2) in relation to a claimant, the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to:

(a) the claimant during a prohibited period for the claimant (see section 32AB); and

(b) the claimant's partner (if any) (the ***relevant partner***) mentioned in subparagraph 28(1)(b)(iii) during a prohibited period for that partner (see section 32AC).

(2) This section is subject to section 32AE.

32AB Prohibited periods for claimant

First kind of prohibited period

(1) There is a prohibited period for the claimant if:

(a) the claimant was required to lodge an income tax return for the cancellation income year concerned but the claimant has not done so by the end of the grace period; or

(b) the claimant and the relevant partner are members of the same couple at the end of the grace period, and that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For ***relevant partner*** see section 32AA. For ***grace period*** see subsection (8).

(1A) However, there is not a prohibited period for the claimant under subsection (1) because of a variation mentioned in section 32AA if:

(a) no debt arose under section 71 as a result of that variation; or

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(b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.

(2) The prohibited period referred to in subsection (1):
(a) begins on the day after the end of the grace period; and
(b) ends when subsection (3), (4), (4A) or (7) applies (whichever occurs first).

(3) This subsection applies if:
(a) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return; and
(b) if the relevant partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return.

(4) This subsection applies if:
(a) the claimant and the relevant partner cease to be members of the same couple at any time after the end of the grace period; and
(b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.

(4A) This subsection applies if:
(a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
(b) an amount of that debt was outstanding at the end of the grace period; and
(c) at a time after the end of the grace period, no amount of that debt is outstanding.

Second kind of prohibited period

(5) There is a prohibited period for the claimant if:

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(a) the claimant and the relevant partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and

(b) the claimant and that partner become members of the same couple again on a day (the ***applicable day***) that is after the end of the period applicable under paragraph (a) of the definition of ***grace period*** in subsection (8); and

(c) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.

(5A) However, there is not a prohibited period for the claimant under subsection (5) because of a variation mentioned in section 32AA if:

(a) no debt arose under section 71 as a result of that variation; or

(b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the day that would, apart from this subsection, be determined under paragraph (6)(a).

(6) The prohibited period referred to in subsection (5):

(a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and

(b) ends when:

(i) the relevant partner lodges an income tax return for the cancellation income year concerned; or

(ii) the claimant and the relevant partner cease to be members of the same couple again; or

(iii) subsection (6A) or (7) applies;

whichever occurs first.

(6A) This subsection applies if:

(a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and

(b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and

(c) at a time on or after that day, no amount of that debt is outstanding.

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Prohibited period may end in special circumstances

(7) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Grace period

(8) In this section:

grace period means:

(a) the period of 75 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the variation mentioned in section 32AA is made; or

(b) if subsection (7) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the determination mentioned in subsection (7) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the claimant under subsection (1).

(9) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of ***grace period*** in subsection (8) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Determinations are not legislative instruments

(10) A determination made under paragraph (6)(a) or subsection (7) or (9) is not a legislative instrument.

32AC Prohibited periods for relevant partner

First kind of prohibited period

(1) There is a prohibited period for the relevant partner if:

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(a) the claimant and that partner are members of the same couple at the end of the grace period; and

(b) either or both of the following apply:

(i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period;

(ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For ***relevant partner*** see section 32AA. For ***grace period*** see subsection (10).

(1A) However, there is not a prohibited period for the relevant partner under subsection (1) because of a variation mentioned in section 32AA if:

(a) no debt arose under section 71 as a result of that variation; or

(b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.

(2) The prohibited period referred to in subsection (1):

(a) begins on the day after the end of the grace period; and

(b) ends when subsection (3), (4), (4A) or (9) applies (whichever occurs first).

(3) This subsection applies if:

(a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and

(b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.

(4) This subsection applies if the claimant and that partner cease to be members of the same couple at any time after the end of the grace period.

(4A) This subsection applies if:

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(a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
(b) an amount of that debt was outstanding at the end of the grace period; and
(c) at a time after the end of the grace period, no amount of that debt is outstanding.

Second kind of prohibited period

(5) There is a prohibited period for the relevant partner if:
(a) the claimant and that partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and
(b) the claimant and that partner become members of the same couple again on a day (the ***applicable day***) that is after the end of the period applicable under paragraph (a) of the definition of ***grace period*** in subsection (10); and
(c) either or both of the following apply:
(i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day;
(ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.

(5A) However, there is not a prohibited period for the relevant partner under subsection (5) because of a variation mentioned in section 32AA if:
(a) no debt arose under section 71 as a result of that variation; or
(b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the day that would, apart from this subsection, be determined under paragraph (6)(a).

(6) The prohibited period referred to in subsection (5):
(a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and

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(b) ends when subsection (7), (8), (8A) or (9) applies (whichever occurs first).

(7) This subsection applies if:
(a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and
(b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.

(8) This subsection applies if the claimant and that partner cease to be members of the same couple again.

(8A) This subsection applies if:
(a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
(b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and
(c) at a time on or after that day, no amount of that debt is outstanding.

Prohibited period may end in special circumstances

(9) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Grace period

(10) In this section:

grace period means:
(a) the period of 75 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the variation mentioned in section 32AA is made; or

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(b) if subsection (9) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the determination mentioned in subsection (9) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the relevant partner under subsection (1).

(11) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of ***grace period*** in subsection (10) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Determinations are not legislative instruments

(12) A determination made under paragraph (6)(a) or subsection (9) or (11) is not a legislative instrument.

32AD Prohibited periods for new partner

If:

(a) on or after the day the variation mentioned in section 32AA is made, the claimant becomes a member of a couple and the claimant's partner (the ***new partner***) is not the relevant partner; and

(b) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so when the claimant becomes a member of that couple;

then, during a prohibited period for the claimant and while the claimant and the new partner are members of the same couple, the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to the new partner.

Note: For ***relevant partner*** see section 32AA.

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32AE Non-entitlement to payment of family tax benefit after 3 or more variations under subsection 28(2)

(1) This section applies if 3 or more variations under subsection 28(2) have been made in relation to a claimant.

Claimant

(2) The claimant is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period if, throughout that period, both subsections (3) and (4) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For ***cancellation income year*** see subsection 28(1).

Note 2: Subsection (8) creates an exception to subsection (2).

(3) This subsection applies in relation to a cancellation income year if either or both of the following apply:

(a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;

(b) if the claimant is a member of a couple and the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For ***relevant partner*** see section 32AA.

(4) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

Partner

(5) If the claimant is a member of a couple, the claimant's partner is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period if, throughout that period, both subsections (6) and (7) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For ***cancellation income year*** see subsection 28(1).

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Note 2: Subsection (9) creates an exception to subsection (5).

(6) This subsection applies in relation to a cancellation income year if either or both of the following apply:

(a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;

(b) if the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For ***relevant partner*** see section 32AA.

(7) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

Exceptions

(8) The Secretary may, by writing, determine that subsection (2) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

(9) The Secretary may, by writing, determine that subsection (5) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

(10) A period specified in a determination under subsection (8) or (9) may be a period beginning before, on or after the day the determination is made.

(11) A determination made under subsection (8) or (9) is not a legislative instrument.

32AEA Effect of this Subdivision on newborn upfront payment of family tax benefit

If this Subdivision has the effect that:

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(a) the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to an individual during a period; or

(b) an individual is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period;

then the individual is not entitled to be paid an amount of family tax benefit under section 58AA of the Family Assistance Act during that period.

Subdivision CB—Non-entitlement to FTB on estimated income basis

32AF Non-entitlement to FTB on estimated income basis—review of income during 2 consecutive income years

Scope of Subdivision

(1) This Subdivision applies in relation to an individual if:

(a) there are 2 consecutive income years (each of which is a ***consecutive year***) in which there are one or more days for which the individual was entitled to be paid family tax benefit worked out on an estimated income basis; and

(b) in respect of each consecutive year, the Secretary, under section 105, reviews the rate of family benefit the individual was entitled to be paid for those days on the basis of the individual's adjusted taxable income as finally determined in respect of the consecutive year by the Secretary; and

(c) as a result of the review and in respect of each consecutive year, the Secretary determines either or both of the following:

(i) the individual's Part A rate of family tax benefit is nil for those days because of the individual's adjusted taxable income, and there are no other days in either consecutive year for which the individual was entitled to be paid the Part A rate;

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(ii) the individual's Part B rate of family tax benefit is nil for those days because of subclause 28B(1) of Schedule 1 to the Family Assistance Act.

Note: Family tax benefit may be worked out on an estimated income basis under subsection 20(1), (2A) or (3) (see definition of ***estimated income basis*** in subsection 3(1)).

Basic non-entitlement rule

(2) Subject to this Subdivision:

(a) if subparagraph (1)(c)(i) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part A rate of family tax benefit worked out on an estimated income basis; and

(b) if subparagraph (1)(c)(ii) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part B rate of family tax benefit worked out on an estimated income basis.

(3) For the purposes of this Subdivision, the ***exclusion day***, in relation to an individual, is:

(a) either:

(i) if the later of the consecutive years is 2010-11—1 July 2012; or

(ii) in any other case—1 July of the first income year after the later of the consecutive years; or

(b) if the Secretary determines a later day in relation to the individual—the later day.

(4) A determination under paragraph (3)(b) is not a legislative instrument.

Position of individual's partner

(5) While paragraph (2)(a) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part A rate of family tax benefit worked out on an estimated income basis.

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(6) While paragraph (2)(b) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part B rate of family tax benefit worked out on an estimated income basis.

Multiple applications of section

(7) Sections 32AG to 32AM do not prevent this section applying again in relation to the individual in respect of 2 consecutive income years, either or both of which are different from the 2 consecutive income years the subject of the previous application of this section.

32AG Exception—greater than nil rate of FTB for later income year

Scope

(1) This section applies if, in respect of an income year (the ***payment year***) after the later of the consecutive years, the Secretary, taking into account the individual's adjusted taxable income as finally determined in respect of the payment year by the Secretary, determines either or both of the following on a day (the ***payment day***):

(a) the individual's Part A rate of family tax benefit is greater than nil on one or more days in the payment year;

(b) the individual's Part B rate of family tax benefit is greater than nil on one or more days in the payment year.

Payment day is in same income year as exclusion day

(2) If the payment day is in the income year in which the exclusion day occurs, then:

(a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and

(b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

Example: Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after

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1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2012 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2012.

Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

Payment day is in income year later than that of exclusion day

(3) If the payment day is in an income year that is later than the income year in which the exclusion day occurs, then:

(a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the later income year; and

(b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the later income year.

Example: Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2013 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2013.

Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

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32AH Exception—resumption of eligibility for FTB

Scope

(1) This section applies if:

(a) the individual is not eligible for family tax benefit for the whole of an income year (the ***applicable year***) that is after the later of the consecutive years (other than because of the individual's income or the individual's partner's income); and

(b) after the applicable year, the individual makes a claim for family tax benefit in relation to the income year (the ***current year***) in which the claim is made; and

(c) the Secretary has finally determined the individual's adjusted taxable income in respect of the applicable year; and

(d) the Secretary is satisfied that, if the Secretary were to take into account that adjusted taxable income, either or both of the following would apply in respect of one or more days in the current year:

(i) the individual's Part A rate of family tax benefit would be greater than nil;

(ii) the individual's Part B rate of family tax benefit would be greater than nil, or would be nil (other than because of subclause 28B(1) of Schedule 1 to the Family Assistance Act).

Exclusion day is in current year

(2) If the exclusion day is in the current year, then:

(a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and

(b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

Example: Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after

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1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2011-12 (the applicable year). Assume that in 2012-13 (the current year) the individual makes a claim for family tax benefit for 2012-13.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2011-12, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2012-13.

Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

Current year is later than that of exclusion day

(3) If the current year is later than the income year in which the exclusion day occurs, then:

(a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the current year; and

(b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the current year.

Example: Assume that under section 32AF the consecutive years are 2010-11 and 2011-12. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2012-13 (the applicable year). Assume that in 2013-14 (the current year) the individual makes a claim for family tax benefit for 2013-14.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2012-13, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2013-14.

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Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

32AI Exception—income support payments

Scope

(1) This section applies if, on a day (the ***income support day***) after the later of the consecutive years, the individual, or the individual's partner (if any), is receiving support (***income support***), in the form of a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment.

Trigger day is on or before exclusion day

(2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

Trigger day is after exclusion day

(3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

Trigger day for income support payments

(4) In this section:

trigger day means the later of:

(a) the earliest income support day; and

(b) 1 July of the income year the Secretary becomes aware that the individual, or the individual's partner, is receiving the income support.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

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32AJ Exception—new FTB child

Scope

(1) This section applies if, on a day (the ***FTB child day***) after the later of the consecutive years:
  (a) the individual has an FTB child; and
  (b) the child was not an FTB child of the individual at any time during the consecutive years.

Trigger day is on or before exclusion day

(2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

Trigger day is after exclusion day

(3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

Trigger day for new FTB child

(4) In this section:

trigger day means the later of:
  (a) the earliest FTB child day; and
  (b) 1 July of the income year the Secretary becomes aware of the existence of the FTB child.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

32AK Exception—couple separates

Scope

(1) This section applies if:
  (a) at the end of the later of the consecutive years, the individual is a member of a couple; and

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(b) on any later day (a ***separation day***) the individual ceases to be a member of that couple.

Note: Paragraph (b) may apply more than once, for example if the couple separates, then reconciles, then again separates.

Trigger day is on or before exclusion day

(2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

Trigger day is after exclusion day

(3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

Reconciliation of separated couple

(4) However, if on any day (the ***reconciliation day***) after a separation day, the individual again becomes a member of that couple, then subsection 32AF(2) applies in relation to the individual as if the reconciliation day were the exclusion day.

Note: This subsection may apply more than once, for example if the couple separates, then reconciles, then again separates and reconciles.

Trigger day for separation

(5) In this section:

trigger day, in relation to a particular separation day, means the later of:

(a) the separation day; and

(b) 1 July of the income year the Secretary becomes aware that the individual has (on that separation day) ceased to be a member of that couple.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

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Section 32AL

32AL Exception—special circumstances

Scope

(1) This section applies if the Secretary is satisfied that:
  (a) on a day (the ***special circumstances day***) after the later of the consecutive years, special circumstances exist in relation to the individual, the individual's partner (if any) or both; and
  (b) those circumstances did not exist at the end of the later of the consecutive years; and
  (c) those circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.

Trigger day is on or before exclusion day

(2) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

Trigger day is after exclusion day

(3) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

Secretary's determinations—general

(4) A determination under subsection (2) or (3):
  (a) has effect in accordance with its terms; and
  (b) is not a legislative instrument.

Trigger day for special circumstances

(5) In this section:

trigger day means the later of:
  (a) the special circumstances day; and

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(b) 1 July of the income year the Secretary becomes aware of the existence of the special circumstances.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

32AM Exception—determined circumstances

Scope

(1) This section applies if the Secretary is satisfied that:

(a) on a day (the ***determined circumstances day***) after the later of the consecutive years, circumstances determined in an instrument under subsection (2) exist in relation to the individual, the individual's partner (if any) or both; and

(b) the determined circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.

(2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(a).

Trigger day is on or before exclusion day

(3) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

Trigger day is after exclusion day

(4) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

Secretary's determinations—general

(5) A determination under subsection (3) or (4):

(a) has effect in accordance with its terms; and

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(b) is not a legislative instrument.

Trigger day for determined circumstances

(6) In this section:

trigger day means the later of:

(a) the determined circumstances day; and

(b) 1 July of the income year the Secretary becomes aware of the existence of the determined circumstances.

Note: For the meaning of ***consecutive year***, see subsection 32AF(1). For the meaning of ***exclusion day***, see subsection 32AF(3).

Subdivision D—FTB reconciliation conditions

32A FTB Part A supplement and FTB Part B supplement to be disregarded unless and until individual has satisfied the FTB reconciliation conditions

(1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the ***first individual***) is entitled to be paid family tax benefit at a particular rate in respect of a period (the ***same-rate benefit period***) that consists of, or is included in, a particular income year (the ***relevant income year***).

(2) In making or varying the determination, the Secretary must disregard the following provisions:

(a) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;

(b) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;

(ba) paragraph 29(1)(b) of Schedule 1 to the Family Assistance Act;

(bb) paragraph (b) of step 1 of the method statement in subclause 29(2) of Schedule 1 to the Family Assistance Act;

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(bba) paragraph 29A(2)(b) of Schedule 1 to the Family Assistance Act;

(bc) subclause 31A(1) of Schedule 1 to the Family Assistance Act;

(c) subclause 38A(1) of Schedule 1 to the Family Assistance Act;

unless and until:

(d) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for the same-rate benefit period; or

(e) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for each of those same-rate benefit periods.

Note 1: If those provisions are disregarded, they will be taken into account when the determination or variation is reviewed under section 105—see section 105A.

Note 2: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

(3) Subsection (2) does not apply for the purposes of working out the amount of a clean energy advance.

32B When FTB reconciliation conditions are satisfied

For the purposes of this Act, the first individual satisfies the FTB reconciliation conditions for a same-rate benefit period:

(a) if only one of sections 32C to 32Q applies to the first individual for the same-rate benefit period—at the relevant reconciliation time; or

(b) if 2 or more of sections 32C to 32Q apply to the first individual for the same-rate benefit period—at whichever of the relevant reconciliation times is the latest.

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32C Relevant reconciliation time—first individual must lodge tax return

(1) This section applies to the first individual for a same-rate benefit period if:
  (a) the first individual is or was required to lodge an income tax return for the relevant income year; and
  (b) clause 38L of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.

(2) Disregard paragraph (1)(b) if the first individual was a member of a couple at any time during the same-rate benefit period.

(3) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income year was lodged before the end of:
  (a) the first income year after the relevant income year; or
  (b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the first individual from lodging the return before the end of that first income year.

(4) The further period under paragraph (3)(b) must end no later than the end of the second income year after the relevant income year.

32D Relevant reconciliation time—no separation of couple and partner must lodge tax return

(1) This section applies to the first individual for a same-rate benefit period if:
  (a) the first individual was a member of a couple throughout that period; and
  (b) the other member of the couple (the ***partner***) is or was required to lodge an income tax return for the relevant income year; and

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(c) the first individual continues to be a member of the couple until the end of:
(i) the first income year after the relevant income year; or
(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the partner from lodging the return before the end of that first income year.

(2) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year, so long as the partner's income tax return for the relevant income year was lodged before the end of:
(a) the first income year after the relevant income year; or
(b) such further period (if any) as the Secretary allows under subparagraph (1)(c)(ii).

(3) The further period under subparagraph (1)(c)(ii) must end no later than the end of the second income year after the relevant income year.

32E Relevant reconciliation time—couple separates during next income year and partner must lodge tax return

(1) This section applies to the first individual for a same-rate benefit period if:
(a) the first individual was a member of a couple throughout that period; and
(b) the other member of the couple (the ***partner***) is or was required to lodge an income tax return for the relevant income year; and
(c) the first individual ceased to be a member of the couple during the first income year after the relevant income year.

(2) The relevant reconciliation time is:
(a) if the partner lodged the return before the end of the first income year after the relevant income year—when an

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assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year; or

(b) otherwise—the end of the first income year after the relevant income year.

32F Relevant reconciliation time—couple separates after end of next income year and partner must lodge tax return

(1) This section applies to the first individual for a same-rate benefit period if:

(a) the first individual was a member of a couple throughout that period; and

(b) the other member of the couple (the ***partner***) is or was required to lodge an income tax return for the relevant income year; and

(c) the partner did not lodge the return before the end of the first income year after the relevant income year; and

(d) the Secretary allowed a further period for the partner to lodge the return because the Secretary was satisfied that there were special circumstances that prevented the partner from lodging the return before the end of that first income year; and

(e) the first individual ceased to be a member of the couple during the period beginning at the start of the second income year after the relevant income year and ending at the end of that further period allowed by the Secretary.

(2) The relevant reconciliation time is:

(a) if the partner lodged the return while the first individual and the partner were members of the same couple—when an assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year; or

(b) otherwise—when the first individual ceased to be a member of the couple.

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(3) The further period under paragraph (1)(d) must end no later than the end of the second income year after the relevant income year.

32J Relevant reconciliation time—individual not required to lodge an income tax return

(1) This section applies to the first individual for a same-rate benefit period if:

(a) the first individual; or

(b) any other individual whose adjusted taxable income is relevant in working out the first individual's entitlement to, or rate of, family tax benefit for the same-rate benefit period;

is not required to lodge an income tax return for the relevant income year.

(2) The relevant reconciliation time is whichever is the earlier of the following times:

(a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the first individual's adjusted taxable income for the relevant income year, so long as that notification occurs before the end of:

(i) the first income year after the relevant income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the first individual from making that notification before the end of that first income year;

(b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual, so long as the Secretary becomes so satisfied before the end of the first income year after the relevant income year.

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(3) The further period under subparagraph (2)(a)(ii) must end no later than the end of the second income year after the relevant income year.

32M Relevant reconciliation time—target foreign income, tax free pension/benefit or child maintenance expenditure

(1) This section applies to the first individual for a same-rate benefit period if any of the following were taken into account in working out the first individual's adjusted taxable income for the relevant income year:

(a) the first individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);

(b) the first individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);

(c) the first individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act);

(d) another individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);

(e) another individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);

(f) another individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act).

(2) The relevant reconciliation time is whichever is the earlier of the following times:

(a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the first individual's adjusted taxable income for the relevant income year, so long as that notification occurs before the end of:

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(i) the first income year after the relevant income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the first individual from making that notification before the end of that first income year;

(b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual, so long as the Secretary becomes so satisfied before the end of the first income year after the relevant income year.

(3) The further period under subparagraph (2)(a)(ii) must end no later than the end of the second income year after the relevant income year.

32N Relevant reconciliation time—individual has maintenance income

(1) This section applies to the first individual for a same-rate benefit period if:

(a) the first individual has an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; and

(b) clause 19B of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.

(2) The relevant reconciliation time is whichever is the earlier of the following times:

(a) the time after the end of the relevant income year when the first individual notifies the Secretary of information that is sufficient to work out the first individual's annualised amount of maintenance income for the relevant income year, so long as that notification occurs before the end of:

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(i) the first income year after the relevant income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the first individual from making that notification before the end of that first income year;

(b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's annualised amount of maintenance income for the relevant income year can be worked out without receiving a notification from the first individual, so long as the Secretary becomes so satisfied before the end of the first income year after the relevant income year.

(3) The further period under subparagraph (2)(a)(ii) must end no later than the end of the second income year after the relevant income year.

32P Relevant reconciliation time—individual not member of a couple, no maintenance income etc.

(1) This section applies to the first individual for a same-rate benefit period if:

(a) the first individual was not a member of a couple at any time during the same-rate benefit period; and

(b) clause 38L of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period; and

(c) either:

(i) the first individual did not have an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; or

(ii) clause 19B of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period.

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(2) The relevant reconciliation time is the end of the relevant income year.

32Q Relevant reconciliation time—individual covered by determination made by the Secretary

The Secretary may, by legislative instrument, determine that:

(a) this section applies to a specified class of individuals for a same-rate benefit period in specified circumstances; and

(b) the relevant reconciliation time applicable to that class for the same-rate benefit period is the time ascertained in accordance with the determination.

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Division 2—Payment of family tax benefit advances

Subdivision A—Request for family tax benefit advance

33 Request

(1) An individual may request a family tax benefit advance.

(2) If an individual makes a request for a family tax benefit advance (the ***first advance***) accompanied by a request under section 35B (regular family tax benefit advances), the individual may also request that entitlement to the first advance be determined on a specified future day.

34 Form of request

(1) To be effective a request:
  (a) must be made in a form and manner, contain any information, and be accompanied by any documents required by the Secretary; and
  (b) must specify the amount of family tax benefit advance sought; and
  (c) the amount of family tax benefit advance sought must be at least the minimum amount.

(2) If an effective request is made, the Secretary must determine the request in accordance with this Division. If a request is not effective, it is taken never to have been made.

35 Request may be withdrawn or varied

(1) An individual may withdraw or vary a request before the request is determined.

(2) The individual may only do so in a manner determined by the Secretary.

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(3) If a request is withdrawn, it is taken never to have been made.

Subdivision B—Entitlement to family tax benefit advance

35A Entitlement to family tax benefit advance

(1) The Secretary must determine that an individual is entitled to be paid a family tax benefit advance if:

(a) on the advance assessment day, the individual is entitled to be paid family tax benefit by instalment; and

(b) the individual has made an effective request under section 34 for a family tax benefit advance; and

(c) on the advance assessment day, the individual's Part A rate (disregarding clauses 5 and 25A of Schedule 1 to the Family Assistance Act) is equal to or exceeds the amount that would, under clause 26 of that Schedule, be the FTB child rate if:

(i) the individual's Part A rate were required to be worked out using Part 3 of that Schedule; and

(ii) clause 27 of that Schedule did not apply; and

(d) on the advance assessment day, the individual has at least one FTB child; and

(e) on the advance assessment day, the amount of advance that the individual would be entitled to is at least the minimum amount; and

(f) the Secretary considers, on the basis of information available to the Secretary on the advance assessment day, that the individual will not suffer financial hardship from the individual's Part A rate being reduced as a result of being paid the advance; and

(g) on the advance assessment day, the individual is not excluded from being paid a family tax benefit advance under subsection (2).

(2) An individual is excluded from being paid a family tax benefit advance if:

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(a) an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day has not been fully repaid; or

(b) an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day is being repaid as a new advance due to a determination under clause 51 of Schedule 1 to the Family Assistance Act; or

(c) the individual owes a debt to the Commonwealth (whether arising under this Act or not) that is:

(i) recoverable under Part 4 by means of deductions from the individual's instalments of family tax benefit under section 84 (unless that debt has been written off because of subsection 95(4A) or (4B)); or

(ii) being recovered by deductions from the individual's instalments of family tax benefit under section 227; or

(d) on the advance assessment day, the Secretary is prohibited from making a payment of family tax benefit to the individual under section 32AA or 32AD (non-payment for non-lodgment of tax returns).

(3) An individual's ***advance assessment day*** is the day the Secretary determines the individual's entitlement to be paid a family tax benefit advance.

(4) If the individual is not entitled to be paid a family tax benefit advance under subsection (1), the Secretary must determine that the individual is not entitled to the family tax benefit advance.

Subdivision C—Regular family tax benefit advances

35B Regular family tax benefit advances

(1) An individual who makes a request in accordance with section 34 for a family tax benefit advance of the minimum amount (the ***first advance***) may, when making the request, also request that a family tax benefit advance of the minimum amount be paid to the individual at regular intervals of 182 days.

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(2) For the request for payment of a family tax benefit advance at regular intervals to be effective, the request must be made in a form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

(3) If an individual makes an effective request under this section:

(a) the Secretary must make a determination under section 35A, in relation to the individual's eligibility for a family tax benefit advance of the minimum amount, at intervals that would best facilitate payment in accordance with the request; and

(b) the ***advance assessment day*** for a determination referred to in paragraph (a) is:

(i) if the individual has not previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of an interval of 182 days that began on the day the first advance was paid; or

(ii) if the individual has previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of the last of the intervals of 182 days, the first of which began on the day the first advance was paid.

(4) The Secretary must, in making a determination referred to in subsection (3), treat paragraph 35A(1)(b) (requirement to make an effective request) as having been satisfied if:

(a) the individual has made an effective request under this section; and

(b) the request has not been withdrawn under subsection (6) before the determination is made; and

(c) the individual has not failed to repay the last family tax benefit advance paid in response to the request under section 34 mentioned in subsection (1), or the request under this section, within 182 days.

(5) A request under subsection (1) ceases to be effective if:

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(a) the Secretary, in making a determination referred to in subsection (3), determines that the individual is not entitled to a family tax benefit advance; or
(b) the individual withdraws the request under subsection (6).

(6) An individual may, in a manner determined by the Secretary, withdraw the request at any time.

Subdivision D—Amount of family tax benefit advance

35C Amount of family tax benefit advance

(1) The amount of the family tax benefit advance is the smaller of the following amounts:
(a) the amount of advance sought;
(b) the maximum amount of advance payable to the individual on the advance assessment day worked out under section 35D less the original amount of each family tax benefit advance paid to the individual that is unrepaid on that day.

(2) When working out the original amount of each family tax benefit advance paid to the individual that is unrepaid for the purposes of paragraph (1)(b), disregard clause 51 of Schedule 1 to the Family Assistance Act.

(3) The Secretary may determine that the amount of the family tax benefit advance is a lower amount than the amount that applies under subsection (1) if the Secretary is satisfied that the individual would suffer financial hardship if the individual's Part A rate were reduced as a result of being paid that amount.

35D Maximum amount of family tax benefit advance payable

(1) Subject to subsection (2), the ***maximum amount*** of family tax benefit advance payable to the individual is set out in the following table:

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Maximum amount of family tax benefit advance		
Item	**If 7.5% of the individual's adjusted Part A rate is:**	**The individual's maximum amount of family tax benefit advance is:**
1	greater than or equal to 23.3% of the standard rate for a child under 13	23.3% of the standard rate for a child under 13
2	less than 23.3% and greater than 7.5% of the standard rate for a child under 13	7.5% of the individual's adjusted Part A rate
3	less than or equal to 7.5% of the standard rate for a child under 13	7.5% of the standard rate for a child under 13

Member of a couple in a blended family

(2) If a determination under section 28 of the Family Assistance Act that the individual is eligible for a percentage (the ***section 28 percentage***) of the family tax benefit for FTB children of the individual is in force, the ***maximum amount*** of family tax benefit advance payable to the individual is the section 28 percentage of the amount worked out for the individual under subsection (1).

Rounding

(3) Amounts worked out under this section must be rounded to the nearest cent (rounding 0.5 cents upwards).

Definitions

(4) In this section:

adjusted Part A rate, in relation to an individual, means the individual's Part A rate disregarding:

(a) clause 38A of Schedule 1 to the Family Assistance Act; and

(b) any reduction under clause 5 or 25A of that Schedule.

standard rate for a child under 13 means the FTB child rate for one FTB child who is under 13 years of age worked out under clause 7 of Schedule 1 to the Family Assistance Act (disregarding clauses 8 to 11 of that Schedule).

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Subdivision E—Payment of family tax benefit advance

35E Payment of advance

(1) If an individual is entitled to be paid a family tax benefit advance, the Secretary must, at such time and in such manner as the Secretary considers appropriate, pay the individual the advance.

(2) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

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Division 3—Stillborn baby payment

36 Need for a claim

The only way that a person can become entitled to be paid a stillborn baby payment is to make a claim in accordance with this Division.

37 Who can claim

The only persons who can make a claim in accordance with this Division are individuals.

38 How to claim

(1) An individual (the ***claimant***) may make a claim for payment of:
  (a) a stillborn baby payment in normal circumstances; or
  (b) a stillborn baby payment because of the death of another individual.

(2) A claim is not effective unless:
  (a) the claim:
    (i) is made in a form and manner; and
    (ii) contains any information; and
    (iii) is accompanied by any documents;
  required by the Secretary; and
  (b) in the case of a claim for a stillborn baby payment in normal circumstances—the claim contains an estimate of the sum of:
    (i) the individual's adjusted taxable income; and
    (ii) if the individual is a member of a couple on the day the claim is made—the adjusted taxable income of the individual's partner;
  for the 6-month period mentioned in paragraph 36(1)(d) of the Family Assistance Act; and

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(c) in the case of a claim for a stillborn baby payment in normal circumstances—the tax file number requirement in section 38A has been satisfied in relation to the claim; and

(d) in the case of a claim for a stillborn baby payment because of the death of another individual—the tax file number requirement in section 38B has been satisfied in relation to the claim.

Estimate of adjusted taxable income

(3) For the purposes of paragraph (2)(b):

(a) a reference in Schedule 3 to the Family Assistance Act to an income year is taken to be a reference to the 6-month period referred to in that paragraph; and

(b) disregard subclause 2(2) and clauses 3 and 3A of that Schedule.

38A Tax file number requirement to be satisfied for claims for stillborn baby payment in normal circumstances to be effective

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 38(2)(b) (which states what is required for certain claims to be effective).

(2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

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Statement that TFN claim person does not know what his or her tax file number is etc.

(4) The second kind of statement that can be made is a statement by the TFN claim person that the person:
  (a) has a tax file number but does not know what it is; and
  (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  (c) authorises the Commissioner of Taxation to tell the Secretary:
    (i) whether the person has a tax file number; and
    (ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
  (a) has an application for a tax file number pending; and
  (b) authorises the Commissioner of Taxation to tell the Secretary:
    (i) if a tax file number is issued to the person—that number; or
    (ii) if the application is refused—that the application has been refused; or
    (iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

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Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
  (a) the person is, or was, the claimant's partner; and
  (b) the claimant cannot obtain from the person:
    (i) the person's tax file number; or
    (ii) a statement by the person under subsection (4) or (5).

38B Tax file number requirement to be satisfied for claims for stillborn baby payment because of the death of another individual to be effective

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 38(2)(c) (which states what is required for claims in substitution because of the death of another individual to be effective).

(2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN substitution person. However, the requirement does not apply in relation to a TFN substitution person if a determination is in force under subsection (7) or (8) in relation to the person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of who the TFN substitution person is, this kind of statement can be made by the claimant only.

Statement that TFN substitution person does not know what his or her tax file number is

(4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner

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during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

(a) has a tax file number but does not know what it is; and

(b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

(c) authorises the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by the TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

(a) has an application for a tax file number pending; and

(b) authorises the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—that number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

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Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's tax file number.

(8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement by the person under subsection (4) or (5).

39 Restrictions on claiming

"Normal circumstances" entitlement must not already have been determined, or be awaiting determination, on a previous claim

(1) A claim for payment of a stillborn baby payment in normal circumstances is not effective if the claimant has previously made such a claim based on the same circumstances (whether or not the claim has yet been determined).

Timing of "normal circumstances" stillborn baby payment claim

(2) Subject to subsections (3), (3A) and (4), a claim for payment of a stillborn baby payment in normal circumstances is not effective unless it is made before the end of the period of 52 weeks beginning on the day of the birth of the stillborn child.

(3) If the Secretary is satisfied that the claimant was unable to make a claim for payment of a stillborn baby payment in normal circumstances because of severe illness associated with the birth of the stillborn child, the Secretary may extend the period of 52 weeks mentioned in subsection (2) to such longer period as the Secretary considers appropriate.

(3A) If:

(a) in relation to any day during the period of 52 weeks mentioned in subsection (2), paragraphs 36(2)(a) and (b) of

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the Family Assistance Act apply in relation to the claimant or the claimant's partner; and

(b) after the end of, or during the last 13 weeks of, that 52-week period, the Secretary gives the claimant, or the claimant's partner, a notice specifying that the claimant's or the claimant's partner's rate of family tax benefit consists of or includes a Part A rate greater than nil;

subsection (2) of this section does not apply if the claim for payment of a stillborn baby payment is made within the period of 13 weeks after the day on which the notice is given.

(4) If:

(a) the claimant, or the claimant's partner, made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for payment of a stillborn baby payment relates; and

(b) the claimant, or the claimant's partner, is given a notice under section 24 of that Act in relation to the claim for parental leave pay that states that parental leave pay is not payable and no determination of the kind mentioned in paragraph 13(6)(b) or 14(4)(b) of that Act has been made; and

(c) the notice is given:

(i) after the end of the period of 52 weeks mentioned in subsection (2) of this section; or

(ii) during the last 13 weeks of that period of 52 weeks;

subsection (2) of this section does not apply if the claim for payment of a stillborn baby payment is made within the period of 13 weeks after the day on which the notice is given.

"Bereavement" entitlement must not already have been determined, or be awaiting determination, on a previous claim

(5) A claim for payment of a stillborn baby payment because of the death of another individual is not effective if the claimant has previously made such a claim because of the death of that individual (whether or not the claim has yet been determined).

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40 Claim may be withdrawn

(1) A claimant may withdraw or vary a claim before the claim is determined.

(2) The claimant may only do so in a manner determined by the Secretary.

(3) If a claim is withdrawn, it is taken never to have been made.

41 Secretary must determine claim

(1) If a claim is effective, the Secretary must determine the claim in accordance with this section and sections 42 to 44. If the claim is not effective, it is taken not to have been made.

Information to be taken into account

(2) The Secretary is to make the determination:
  (a) having regard only to the information in the claim (and any accompanying documents or information required by the Secretary); or
  (b) having regard to the things in paragraph (a) and also to any other information or documents (whether or not provided by the claimant).

Deferral of "normal circumstances" stillborn baby payment determination pending resolution of parental leave pay

(3) If:
  (a) the claim is one for payment of a stillborn baby payment in normal circumstances; and
  (b) the claimant, or the claimant's partner, has made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for a stillborn baby payment relates;

the Secretary must not determine the claim for a stillborn baby payment until one of the following occurs:

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(c) if the Secretary determines under that Act that parental leave pay for the child is payable to the person who made the claim for parental leave pay:

(ii) the instalment period (within the meaning of that Act) for the instalment of parental leave pay that relates to the first of those days has ended; or

(iii) the Secretary revokes the determination under section 25 of that Act;

(d) the claimant, or the claimant's partner, is given a notice under section 24 of that Act in relation to the claim for parental leave pay that states that parental leave pay is not payable and no determination of the kind mentioned in paragraph 13(6)(b) or 14(4)(b) of that Act has been made;

(e) the claim for parental leave pay is withdrawn under section 61 of that Act.

41A Restriction on determining claim where tax file number not provided etc.

Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.

(1) If:

(a) a TFN claim person makes a statement of the kind set out in subsection 38A(4); or

(b) a TFN substitution person makes a statement of the kind set out in subsection 38B(4);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

Statement that an application for a tax file number is pending

(2) If:

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(a) a TFN claim person makes a statement of the kind set out in subsection 38A(5); or

(b) a TFN substitution person makes a statement of the kind set out in subsection 38B(5);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:

(i) the person has not applied for a tax file number; or

(ii) an application by the person for a tax file number has been refused; or

(iii) the person has withdrawn an application for a tax file number.

(3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

42 Determination of "normal circumstances" entitlement claim

If:

(a) the claim is one for payment of a stillborn baby payment in normal circumstances; and

(b) the Secretary is satisfied that the claimant is eligible for a stillborn baby payment in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act in respect of the child to whom the claim relates;

the Secretary must determine that the claimant is entitled to be paid the stillborn baby payment and must determine the amount of the payment that the claimant is entitled to be paid.

43 Determination of "bereavement" entitlement claim

If:

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(a) the claim is one for payment of a stillborn baby payment because of the death of another individual; and

(b) the Secretary is satisfied that the claimant is, in the circumstances covered by the claim, eligible for a stillborn baby payment in accordance with Subdivision B of Division 2 of Part 3 of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the stillborn baby payment and must determine the amount of the payment that the claimant is entitled to be paid.

44 Determination that no entitlement

If the Secretary is not satisfied as mentioned in section 42 or 43, the Secretary must determine that the claimant is not entitled to be paid a stillborn baby payment in respect of the child to whom the claim relates, or in the circumstances covered by the claim, as the case requires.

45 When determination is in force

A determination comes into force when it is made and remains in force at all times afterwards.

46 Notice of determination

(1) The Secretary must give notice of the determination to the claimant, stating:

(a) whether the claimant is entitled to be paid a stillborn baby payment under the determination; and

(b) if the claimant is entitled—the amount of the stillborn baby payment and how it is to be paid; and

(c) that the claimant may apply for review of the determination in the manner set out in Part 5.

(2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

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47 Payment of stillborn baby payment

(1) If the claimant is entitled to be paid a stillborn baby payment, the Secretary must pay the amount of the payment to the claimant in a single lump sum:

(a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the amount to be paid; and

(b) to the credit of a bank account nominated and maintained by the claimant.

Payment not to bank account

(2) However, the Secretary may direct that an amount that is to be paid under subsection (1) is to be paid in a way other than by payment to the credit of a bank account nominated and maintained by the claimant. A direction has effect accordingly.

Interaction with other provisions

(3) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

47A Variation of determination where certain statements under section 38A made

(1) If:

(a) a TFN claim person has made a statement of the kind set out in subsection 38A(4); and

(b) a determination is in force under which the claimant is entitled to be paid a stillborn baby payment in normal circumstances; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number;

the consequence in subsection (3) applies.

(2) If:

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(a) a TFN claim person has made a statement of the kind set out in subsection 38A(5); and

(b) a determination is in force under which the claimant is entitled to be paid a stillborn baby payment in normal circumstances; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;

the consequence in subsection (3) applies.

(3) For the purposes of subsection (1) or (2), the consequence is that the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid a stillborn baby payment.

(4) If:

(a) under subsection (3), the Secretary varies the determination; and

(b) the Secretary finds out the tax file number of the TFN claim person at any time after the variation took place;

the Secretary must vary the determination to undo the effect mentioned in subsection (3).

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Division 4A—One-off payment to families

65F Payment of one-off payment to families

If an individual is entitled to a one-off payment to families, the Secretary must pay the payment to the individual in a single lump sum:

(a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

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Division 4B—Economic security strategy payment to families

65G Payment of economic security strategy payment to families

If an individual is entitled to an economic security strategy payment to families, the Secretary must pay the payment to the individual in a single lump sum:

(a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

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Division 4C—Back to school bonus and single income family bonus

65H Payment of back to school bonus and single income family bonus

If an individual is entitled to a back to school bonus or a single income family bonus, the Secretary must pay the bonus to the individual in a single lump sum:

(a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the bonus to be made; and

(b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the bonus.

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Division 4CA—ETR payment

65HA Payment of ETR payment

(1) If an individual is entitled to an ETR payment, the Secretary must pay the payment to the individual in a single lump sum:

(a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

(2) If, on 8 May 2012, section 32AA or 32AD prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis, the Secretary must not pay the ETR payment to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to that day.

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Division 4D—Clean energy advance

65J Payment of clean energy advance

(1) Subject to this section, if an individual is entitled to a clean energy advance, the Secretary must pay the advance to the individual in a single lump sum:

(a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the advance to be paid; and

(b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the advance.

(2) If:

(a) the decision day (see subsection 105(1) of the Family Assistance Act) or the trigger day (see subsection 108(1), (1A) or (2) of that Act), as the case may be, is on or after 1 July 2012 and before 1 July 2013; and

(b) on that day, section 32AA or 32AD of this Act prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis;

then the Secretary must not pay the clean energy advance to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to that day.

(3) If:

(a) the decision day (see subsection 105(1) of the Family Assistance Act) is on or after 1 July 2013; and

(b) in relation to one or more days in the 2012-13 income year, section 32AA or 32AD of this Act prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis;

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then the Secretary must not pay the clean energy advance to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to those days.

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Division 4DA—2020 economic support payment

65JA Payment of first 2020 economic support payment

(1) If an individual is entitled to a first 2020 economic support payment, the Secretary must, subject to subsection (2), pay the payment to the individual in a single lump sum:
  (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

(2) The Secretary must not pay the payment on or after 1 July 2022 if the individual is entitled to the payment because subsection 116(2) or (4) of the Family Assistance Act applies to the individual on a day.

65JB Payment of second 2020 economic support payment

(1) If an individual is entitled to a second 2020 economic support payment, the Secretary must, subject to subsection (2), pay the payment to the individual in a single lump sum:
  (a) on the date, occurring on or after 10 July 2020, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

(2) The Secretary must not pay the payment on or after 1 July 2023 if the individual is entitled to the payment because subsection 116(2) or (4) of the Family Assistance Act applies to the individual on 10 July 2020.

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Division 4DB—Additional economic support payments

65JC Payment of additional economic support payment 2020

(1) If an individual is entitled to an additional economic support payment 2020, the Secretary must, subject to subsection (2), pay the payment to the individual in a single lump sum:
  (a) on the date, occurring on or after 27 November 2020, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

(2) The Secretary must not pay the payment on or after 1 July 2023 if the individual is entitled to the payment because subsection 123(2) or (4) of the Family Assistance Act applies to the individual on 27 November 2020.

65JD Payment of additional economic support payment 2021

(1) If an individual is entitled to an additional economic support payment 2021, the Secretary must, subject to subsection (2), pay the payment to the individual in a single lump sum:
  (a) on the date, occurring on or after 26 February 2021, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
  (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

(2) The Secretary must not pay the payment on or after 1 July 2023 if the individual is entitled to the payment because subsection 123(2) or (4) of the Family Assistance Act applies to the individual on 26 February 2021.

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Division 4E—Single income family supplement

Subdivision A—Making claims

65K Need for a claim

(1) Subject to subsection (2), the only way that an individual can become entitled to be paid single income family supplement is to make a claim in accordance with this Division.

(2) If:

(a) in relation to a period in an income year:

(i) a determination under section 16 or 17 is in force in respect of an individual as a claimant; or

(ii) a determination under section 18 is in force in respect of an individual because the Secretary is satisfied that the individual is eligible for family tax benefit under section 32 of the Family Assistance Act; and

(b) the individual's rate of family tax benefit payable under the determination in relation to that period takes into account one or more FTB children of the individual;

the individual is not required to make a claim for single income family supplement in relation to that period.

65KA How to claim

(1) An individual (a ***claimant***) may make a claim:

(a) for payment of single income family supplement for a past period; or

(b) for payment of single income family supplement by single payment/in substitution because of the death of another individual.

Form etc. of claim

(2) To be effective:

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(a) a claim must:
(i) be made in a form and manner; and
(ii) contain any information; and
(iii) be accompanied by any documents;
required by the Secretary; and

(b) in the case of a claim for payment of single income family supplement for a past period—the tax file number requirement in section 65KB must be satisfied in relation to the claim; and

(c) in the case of a claim for payment of single income family supplement in substitution because of the death of another individual—the tax file number requirement in section 65KC must be satisfied in relation to the claim.

65KB Tax file number requirement to be satisfied for claims for a past period

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 65KA(2)(b) (which states what is required for certain claims to be effective).

(2) Subject to subsection (7), the requirement is that a statement of one of the kinds set out in subsections (3), (4) and (5) must be made in relation to each TFN claim person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

Statement that TFN claim person does not know what his or her tax file number is etc.

(4) The second kind of statement that can be made is a statement by the TFN claim person that the person:

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(a) has a tax file number but does not know what it is; and
(b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
(c) authorises the Commissioner of Taxation to tell the Secretary:
(i) whether the person has a tax file number; and
(ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
(a) has an application for a tax file number pending; and
(b) authorises the Commissioner of Taxation to tell the Secretary:
(i) if a tax file number is issued to the person—that number; or
(ii) if the application is refused—that the application has been refused; or
(iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
(a) the person is, or was, the claimant's partner; and
(b) the claimant cannot obtain from the person:
(i) the person's tax file number; or
(ii) a statement by the person under subsection (4) or (5).

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65KC Tax file number requirement to be satisfied for claim in substitution because of the death of another individual

(1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 65KA(2)(c) (which states what is required for claims in substitution because of the death of another individual to be effective).

(2) Subject to subsections (7) and (8), the requirement is that a statement of one of the kinds set out in subsections (3), (4) and (5) must be made in relation to each TFN substitution person.

Statement of tax file number

(3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of who the TFN substitution person is, this kind of statement can be made by the claimant only.

Statement that TFN substitution person does not know what his or her tax file number is etc.

(4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

(a) has a tax file number but does not know what it is; and

(b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

(c) authorises the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—that number.

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Statement that an application for a tax file number is pending

(5) The third kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

(a) has an application for a tax file number pending; and

(b) authorises the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—that number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn.

How statement to be given

(6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

Exemption from tax file number requirement

(7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's tax file number.

(8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement referred to in subsection (4) or (5) in respect of the person.

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65KD Restrictions on claims for payment for a past period

Restriction where previous claim

(1) A claim for payment of single income family supplement for a past period is not effective if the claimant has previously made a claim for payment of single income family supplement for any of the past period (whether or not the claim has yet been determined).

Other restrictions

(2) A claim for payment of single income family supplement for a past period is not effective if:

(a) the period does not fall wholly within one income year; or

(b) the period does fall wholly within one income year (the ***relevant income year***) but the claim is made after the end of:

(i) the first income year after the relevant income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the claim before the end of that first income year.

(2A) The further period referred to in subparagraph (2)(b)(ii) must end no later than the end of the second income year after the relevant income year.

(3) A claim for payment of single income family supplement for a past period is not effective if the period occurs in the income year in which the claim is made.

65KE Restrictions on bereavement claims

Restriction where previous claim

(1) A claim for payment of single income family supplement by single payment/in substitution because of the death of another individual is not effective if the claimant has previously made a claim for payment of single income family supplement because of the death

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of that individual (whether or not the claim has yet been determined).

Other restrictions

(2) If a claim for payment of single income family supplement by single payment/in substitution because of the death of another individual is based on eligibility for an amount of single income family supplement under section 57GF or 57GG of the Family Assistance Act, the claim is not effective if it is made after the end of the income year following the one in which the death occurred.

65KF Claim may be withdrawn or varied

(1) A claimant may withdraw or vary a claim before the claim is determined.

(2) The claimant may only do so in a manner determined by the Secretary.

(3) If a claim is withdrawn, it is taken never to have been made.

Subdivision B—Determination of claims and payment of single income family supplement

65KG Secretary must determine claim

If an effective claim is made, the Secretary must determine the claim in accordance with this Subdivision. If a claim is not effective, it is taken not to have been made.

65KH Restriction on determining claim where income tax assessment not made

(1) If, in relation to a claim for payment of single income family supplement made by an individual:

(a) the claim is for payment of that supplement for a past period; and

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(b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and

(c) either or both of subsections (2) and (3) apply;

the Secretary can only determine the claim if each assessment concerned has been made.

(2) This subsection applies if:

(a) the claimant is required to lodge an income tax return for the past period income year; and

(b) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the claimant's taxable income for the past period income year.

(3) This subsection applies if:

(a) a person is the claimant's partner at any time during the past period; and

(b) that person is required to lodge an income tax return for the past period income year; and

(c) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on that person's taxable income for the past period income year.

65KI Restriction on determining claim where income tax return not lodged

(1) If, in relation to a claim for payment of single income family supplement made by an individual:

(a) the claim is for payment of that supplement for a past period; and

(b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and

(c) either or both of subsections (2) and (3) apply;

then the claim is taken never to have been made.

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(2) This subsection applies if:
(a) the claimant is required to lodge an income tax return for the past period income year; and
(b) the claimant has not lodged the return before the end of:
(i) the first income year after the past period income year; or
(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the return before the end of that first income year.

(3) This subsection applies if:
(a) a person is the claimant's partner at any time during the past period; and
(b) that person is required to lodge an income tax return for the past period income year; and
(c) that person has not lodged the return before the end of:
(i) the first income year after the past period income year; or
(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.

(4) The further period referred to in subparagraph (2)(b)(ii) or (3)(c)(ii) must end no later than the end of the second income year after the past period income year.

65KJ Restriction on determining claim where tax file number not provided etc.

Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.

(1) If:
(a) a TFN claim person makes a statement of the kind set out in subsection 65KB(4); or

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(b) a TFN substitution person makes a statement of the kind set out in subsection 65KC(4);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

Statement that an application for a tax file number is pending

(2) If:

(a) a TFN claim person makes a statement of the kind set out in subsection 65KB(5); or

(b) a TFN substitution person makes a statement of the kind set out in subsection 65KC(5);

the Secretary can only determine the claim concerned if:

(c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

(d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:

(i) the person has not applied for a tax file number; or

(ii) an application by the person for a tax file number has been refused; or

(iii) the person has withdrawn an application for a tax file number.

(3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

65KK Determination of past period entitlement claim

If:

(a) the claim is one for payment of single income family supplement for a past period; and

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(b) the Secretary is satisfied that the claimant was eligible for single income family supplement:
(i) for the whole of the period in accordance with Subdivision A of Division 6 of Part 3 of the Family Assistance Act; or
(ii) for part of the period in accordance with that Subdivision and for the remainder of the period in accordance with section 57GE of that Act;

the Secretary must determine that the claimant is entitled to be paid single income family supplement for the past period.

65KL Determination of bereavement entitlement claim

If:

(a) the claim is one for payment of single income family supplement by single payment/in substitution because of the death of another individual; and
(b) the Secretary is satisfied that the claimant is eligible for single income family supplement under section 57GF or 57GG of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the single income family supplement.

65KM Determination that no entitlement

If the Secretary is not satisfied as mentioned in section 65KK or 65KL, the Secretary must determine that the claimant is not entitled to be paid single income family supplement for the past period or because of the death of the other individual, as the case requires.

65KN When determination is in force

A determination under this Division comes into force when it is made and remains in force at all times afterwards.

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65KO Notice of determination

(1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:

(a) whether the claimant is entitled to be paid single income family supplement under the determination; and

(b) if the claimant is so entitled—the amount of the supplement and how it is to be paid; and

(c) that the claimant may apply for review of the determination in the manner set out in Part 5.

(2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

65KP Payment of single income family supplement—no claim required

(1) Subject to this section, if an individual is not required to make a claim for single income family supplement in relation to a period (the ***past period***) in an income year (the ***past period income year***), the Secretary must pay any amount of single income family supplement the individual is eligible for in relation to that past period:

(a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the amount to be paid; and

(b) in such manner as the Secretary considers appropriate.

Note: Subsection 65K(2) sets out when a claim for single income family supplement is not required.

(2) If either or both of the following apply:

(a) the individual is required to lodge an income tax return for the past period income year;

(b) the following apply:

(i) a person is the individual's partner at any time during the past period;

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(ii) that person is required to lodge an income tax return for the past period income year;

then the amount of single income family supplement cannot be paid to the individual unless, in relation to each person who is required to lodge an income tax return for that income year, an assessment has been made under the *Income Tax Assessment Act 1936* of the tax payable on that person's taxable income for that income year.

(3) If either or both of the following apply:

(a) the individual is required to lodge an income tax return for the past period income year, but the individual has not lodged the return before the end of:

(i) the first income year after the past period income year; or

(ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the individual from lodging the return before the end of that first income year;

(b) the following apply:

(i) a person is the individual's partner at any time during the past period;

(ii) that person is required to lodge an income tax return for the past period income year;

(iii) that person has not lodged the return before the end of the first income year after the past period income year, or of such further period (if any) as the Secretary allows if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the income tax return before the end of that first income year;

then the amount of single income family supplement is not to be paid to the individual.

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(3A) The further period referred to in subparagraph (3)(a)(ii) or (3)(b)(iii) must end no later than the end of the second income year after the past period income year.

(4) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

65KQ Payment of single income family supplement—claim required

(1) If an individual is entitled to be paid an amount of single income family supplement under a determination on a claim for payment of single income family supplement:

(a) for a past period; or

(b) by single payment/in substitution because of the death of another individual;

the Secretary must pay the amount to the individual at such time and in such manner as the Secretary considers appropriate.

(2) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

65KR Secretary's power to request tax file numbers

(1) If a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period, the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a written statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsections (2), (3) and (4) the claimant chooses.

Statement of tax file number

(2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

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Statement that TFN person does not know what his or her tax file number is etc.

(3) The second kind of statement that can be made is a statement by the TFN determination person that the person:
  (a) has a tax file number but does not know what it is; and
  (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  (c) authorises the Commissioner of Taxation to tell the Secretary:
    (i) whether the person has a tax file number; and
    (ii) if the person has a tax file number—that number.

Statement that an application for a tax file number is pending

(4) The third kind of statement that can be made is a statement by the TFN determination person that the person:
  (a) has an application for a tax file number pending; and
  (b) authorises the Commissioner of Taxation to tell the Secretary:
    (i) if a tax file number is issued to the person—that number; or
    (ii) if the application is refused—that the application has been refused; or
    (iii) if the application is withdrawn—that the application has been withdrawn.

65KS Variation of past period determinations where failure to provide tax file number

Non-compliance with request

(1) If:
  (a) the Secretary makes a request under subsection 65KR(1); and
  (b) the claimant does not comply with the request within 28 days of the request being made;

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then, subject to subsection (2), the consequence in subsection (7) applies.

Exemption from request under subsection 65KR(1)

(2) The Secretary may determine that the consequence in subsection (7) does not apply if:

(a) the TFN determination person concerned is or was the claimant's partner; and

(b) the claimant cannot obtain from the person:

(i) the person's tax file number; or

(ii) a statement by the person under subsection 65KR(3) or (4).

Statement made by TFN determination person under subsection 65KR(3)

(3) If:

(a) the Secretary makes a request under subsection 65KR(1); and

(b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 65KR(3); and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has no tax file number;

the consequence in subsection (7) applies.

Statement made by TFN determination person under subsection 65KR(4)

(4) If:

(a) the Secretary makes a request under subsection 65KR(1); and

(b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 65KR(4); and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has not applied

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for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;

the consequence in subsection (7) applies.

Statement made by TFN claim person under subsection 65KB(4)

(5) If:

(a) a TFN claim person has made a statement of the kind set out in subsection 65KB(4); and

(b) a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number;

the consequence in subsection (7) applies.

Statement made by TFN claim person under subsection 65KB(5)

(6) If:

(a) a TFN claim person has made a statement of the kind set out in subsection 65KB(5); and

(b) a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period; and

(c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;

the consequence in subsection (7) applies.

Consequence—variation of determination

(7) For the purposes of subsection (1), (3), (4), (5) or (6), the consequence is that the Secretary may, if the determination is one under which the claimant is entitled to be paid single income

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family supplement for a past period, vary the determination so that it has the effect that the claimant is not entitled to be paid single income family supplement for any day in the past period.

Consequence of Secretary later becoming aware of tax file number

(8) If:

(a) under subsection (7), the Secretary varies the determination; and

(b) the Secretary finds out the tax file number of the TFN determination person or TFN claim person, as the case requires, at any time after the variation takes place;

the Secretary must vary the determination to undo the effect mentioned in subsection (7).

65KT Notice of variation of determination

(1) The Secretary must give notice of any variation of a determination under this Subdivision to the claimant, stating the effect of the variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.

(2) The variation is not ineffective by reason only that the requirements of subsection (1) are not complied with.

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Division 5—Payment protection and garnishee orders

66 Protection of payments under this Part

(1) Payments of the following are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:

(a) family tax benefit;
(b) family tax benefit advances;
(c) stillborn baby payments;
(eb) single income family supplement;
(g) one-off payment to families;
(h) economic security strategy payment to families;
(i) back to school bonus or single income family bonus;
(j) clean energy advance;
(k) ETR payment;
(l) 2020 economic support payment;
(m) additional economic support payment 2020;
(n) additional economic support payment 2021.

(2) Subsection (1) has effect subject to:

(b) section 84 (about deductions from a person's family tax benefit to repay a debt of the person); and
(ba) section 84A (about setting off a person's entitlement to family assistance against a debt of the person); and
(bb) section 87A (setting off debts against various payments);
(c) section 92 (about a person consenting to deductions from the person's family tax benefit to repay the debt of someone else); and
(ca) section 92A (about setting off family assistance of a person to repay the debt of another person); and
(cd) Division 3 of Part 8B (about payments to payment nominee); and

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(d) section 225 (about making of deductions from family assistance for payment to the Commissioner of Taxation); and

(e) section 226 (about setting off a family assistance entitlement against a tax liability); and

(f) section 227 (about deductions from family tax benefit to repay certain child support debts); and

(fa) Part 3AA of the *Social Security (Administration) Act 1999*; and

(g) Part 3B of the *Social Security (Administration) Act 1999*.

67 Effect of garnishee etc. order

(1) If:

(a) a person has an account with a financial institution; and

(b) payments of any of the kinds mentioned in subsection 66(1) are being paid, or have been paid, to the credit of the account; and

(c) a court order in the nature of a garnishee order comes into force in respect of the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The saved amount is worked out as follows:

Method statement

Step 1. Work out the total amount of the payments mentioned in subsection (1) that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

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Part 3A—Payment of child care subsidy and additional child care subsidy

Division 1—Introduction

67AA Simplified outline of this Part

Individuals must make a claim for CCS in order to become entitled to be paid CCS or ACCS in relation to child care provided to a child.

In order to become entitled to be paid ACCS (grandparent) or ACCS (transition to work), an application is needed as well as the claim for CCS.

The Secretary will determine whether an individual is eligible for CCS for a child. If the individual is eligible, weekly determinations are then made about how much (if any) CCS or ACCS is to be paid each week.

Weekly payments are mostly made via the child care service provider, who will pass them on to the individual (usually as a fee reduction).

Broadly, recipients of CCS and ACCS have responsibilities to keep the Secretary informed about changes in their circumstances that might affect their eligibility for or entitlement to CCS or ACCS, and to respond to requests for information.

An approved provider who is eligible for ACCS (child wellbeing) for a child does not need to make a claim, but does need to make a declaration in order to become entitled to be paid the ACCS. Providers also have responsibilities to keep the Secretary informed and respond to requests for information.

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It is also possible for individuals to claim CCS or ACCS in substitution for an individual who has died. If an individual is entitled to be paid such an amount, it is paid directly to the individual.

Note: For the constitutional basis of the provisions of this Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers), see section 85AB of the Family Assistance Act.

67AB Forms of CCS and ACCS

(1) An individual may, in accordance with this Part, become entitled to be paid:
  (a) CCS by fee reduction;
  (b) ACCS by fee reduction;
  (c) CCS or ACCS in substitution for an individual who has died.

(2) An approved provider may, in accordance with this Part, become entitled to be paid ACCS (child wellbeing).

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Division 2—Making claims

67BA Simplified outline of this Division

Claims for CCS must include particular information and be made in a particular way. Among other things, information is needed about bank account details and tax file numbers.

A claim that does not meet the requirements is taken not to have been made.

67BB Need for a claim

The only way that an individual (other than an approved provider) can become entitled to be paid CCS or ACCS is to make a claim in respect of a child for CCS in accordance with this Division.

Note 1: As well as making a claim for CCS, an individual who wants to be paid ACCS (grandparent) or ACCS (transition to work) must apply for that kind of ACCS. See paragraphs 67CD(4)(a) and (6)(a).

Note 2: An approved provider does not have to make a claim to be entitled to be paid ACCS (child wellbeing), but does need to make a declaration. See paragraph 67CH(1)(c).

67BC Who can claim

The only persons who can make a claim for CCS in accordance with this Division are individuals.

67BD Kinds of claims

An individual may make a claim in respect of a child for CCS:

(a) by fee reduction; or

(b) in substitution for an individual who has died.

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67BE When a claim is effective

(1) A claim made by an individual in respect of a child for CCS is effective if:

(a) the claim is made in a form and manner approved by the Secretary; and

(b) the claim contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the claim contains details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid; and

(d) unless paragraph (e) applies—the claim contains the tax file number of each TFN claim person; and

(e) if the claim is for CCS in substitution for an individual who has died—the claim contains the tax file number of each TFN substitution person; and

(f) if the claim is for CCS in substitution for an individual who has died—the claim is made before the end of the income year after the income year in which the individual died; and

(g) any other requirements in the Secretary's rules are met; and

(h) no other provision in this Division prevents the claim being effective.

(2) The Secretary may make a written determination that paragraph (1)(d) does not apply in relation to a claim for 28 days after the day the determination is made, if the Secretary is satisfied that it is appropriate in the circumstances to do so.

(3) If:

(a) a determination under subsection (2) is made in relation to a claim; and

(b) the Secretary is satisfied that it is appropriate in the circumstances that paragraph (1)(d) not apply in relation to the claim indefinitely;

the Secretary may, before the end of the 28 days after the day the determination is made, make a further written determination accordingly.

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67BF Claims that are taken not to have been made

(1) A claim that is not effective is taken not to have been made.

(2) A claim is taken not to have been made by an individual if:

(a) the Secretary has made a determination under subsection 67BE(2) in relation to the claim; and

(b) at the end of the 28 days after the day the determination was made:

(i) if the Secretary has made a further determination under subsection 67BE(3) in relation to the claim—the individual has not provided the individual's tax file number; or

(ii) if the Secretary has not made a further determination under subsection 67BE(3) in relation to the claim—the individual has not provided the tax file number of each TFN claim person.

(3) The Secretary's rules may prescribe other circumstances in which a claim is taken not to have been made.

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Division 3—Determinations

Subdivision A—Entitlement to be paid CCS or ACCS

67CA Simplified outline of this Division

An individual or an approved provider who is eligible for CCS or ACCS is only entitled to be paid CCS or ACCS if the Secretary has made a determination to that effect.

For individuals who claim in respect of a child for CCS by fee reduction, the Secretary will make an initial determination of the individual's eligibility for CCS for the child. Once this is in effect, determinations are made, for each week, about the individual's entitlement to CCS or ACCS that week.

To be entitled to be paid for a week, the individual must:

(a) be eligible for CCS or ACCS (generally); and

(b) meet some additional entitlement conditions.

The additional entitlement conditions mean that not everyone who is eligible for CCS or ACCS will be entitled to be paid for every week. In particular, individuals need to have met the CCS reconciliation conditions for previous income years for which they were entitled to CCS (usually these conditions are met by obtaining a timely tax assessment) and to have kept the Secretary up to date about changes affecting eligibility or entitlement.

Even if the Secretary determines that an individual is entitled to be paid CCS for a week, the individual might later have to repay the CCS if the individual does not meet the CCS reconciliation conditions. (This does not apply to ACCS.)

Determinations are also made each week in relation to an approved provider's entitlement to be paid ACCS (child wellbeing) for a child.

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One-off determinations are made in relation to an individual's entitlement to be paid CCS or ACCS in substitution for an individual who has died.

67CB Entitlement to be paid CCS or ACCS

(1) An individual or an approved provider is only entitled to be paid CCS or ACCS if the Secretary has made a determination to that effect under this Division.

(2) The Secretary is to make determinations under this Division on the basis of the information available to the Secretary at the time of making the determination.

Note: Part 5 provides for review of determinations, including in relation to the use of information in circumstances where information becomes available after a determination is made.

(3) At any time, an individual or an approved provider is entitled to be paid, in accordance with this Part, the amount of CCS or ACCS (if any) for a week specified in whichever child care decision is in effect at the time for the week.

(4) However, an individual who is entitled to be paid CCS for sessions of care provided to a child in a week:

(a) ceases to be entitled to be paid that CCS, and is taken never to have been entitled to be paid that CCS, if the individual has not met the CCS reconciliation conditions, for the income year in which the CCS fortnight that includes the week starts, by the first deadline for the income year; and

(b) cannot again become entitled to be paid that CCS before the individual meets the CCS reconciliation conditions for the income year.

Note 1: See section 105E for the determinations the Secretary is required to make in these circumstances.

Note 2: CCS payments for an income year are capped if the CCS reconciliation conditions for the income year are met after the second deadline for the income year (see subsection 105D(2A)).

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(5) Subsection (4) applies despite any other provision of this Act or the Family Assistance Act or any determination in effect to the contrary.

Subdivision B—Determinations for individuals claiming CCS by fee reduction

67CC Determination of individual's eligibility for CCS by fee reduction

Determination on effective claim

(1) If an individual makes an effective claim in respect of a child for CCS by fee reduction, the Secretary must determine:

(a) if, when making the determination, the Secretary is satisfied that the requirements in subparagraphs 85BA(1)(a)(i) to (iv) of the Family Assistance Act are met in relation to the claim—that the individual is eligible for CCS by fee reduction for the child; and

(b) if not so satisfied—that the individual is not eligible for CCS by fee reduction for the child.

Cessation of eligibility

(2) The Secretary may determine that an individual for whom a determination under paragraph (1)(a) is in effect in relation to a child is not eligible for CCS by fee reduction for the child, if any of the following apply:

(a) the Secretary is satisfied that the individual has ceased to be eligible, and is not reasonably likely to become eligible again, for CCS by fee reduction for sessions of care provided to the child;

(b) the Secretary has made determinations under subsection 67CD(8) in relation to the individual (otherwise than because of subsection 105E(2)) for:

(i) unless subparagraph (ii) applies—at least 52 consecutive weeks; or

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(ii) if the Minister's rules prescribe a different number of consecutive weeks for the purposes of this subparagraph—at least that number of consecutive weeks;

(c) the child ceased to meet the immunisation requirements in section 6 of the Family Assistance Act more than 63 days ago;

(d) a report under section 204B for a week, indicating that a session of care in relation to which the individual is the claimant has been provided to the child in the week, has not been given to the Secretary in relation to:

(i) unless subparagraph (ii) applies—at least 26 consecutive weeks; or

(ii) if the Minister's rules prescribe a different number of consecutive weeks for the purposes of this subparagraph—at least that number of consecutive weeks;

(e) the Secretary is satisfied that the individual:

(i) does not intend that the child be enrolled for care by a child care service; or

(ii) does not intend that the child attend any sessions of care provided by a child care service.

Cessation of eligibility on request

(3) The Secretary may determine that an individual for whom a determination under paragraph (1)(a) is in effect in relation to a child is not eligible for CCS by fee reduction for the child, if the individual requests the Secretary, in a form and manner approved by the Secretary, to do so. The Secretary may make the determination despite the individual being eligible.

Date of effect

(4) A determination made under paragraph (1)(a):

(a) takes effect on the day specified in the determination, which must be the first day for which the Secretary is satisfied that

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the requirements in subparagraphs 85BA(1)(a)(i) to (iv) of the Family Assistance Act are met that is also:

(i) the first Monday of a CCS fortnight; and

(ii) not more than 28 days before the day the claim was made; and

(b) continues in effect until any of the following happens:

(i) it is superseded by a determination made under subsection (2) or (3);

(ii) it is set aside on review;

(iii) a day or event (if any) specified in the determination as the day or event on which the determination ceases to have effect;

(iv) the individual dies.

(5) A determination made under paragraph (1)(b) has effect from the day the determination is made.

(6) A determination made under subsection (2) or (3) has effect from the day specified in the determination (which may be earlier than the day the determination is made).

67CD Determination of individual's entitlement to be paid CCS or ACCS

Preconditions for making determinations

(1) The Secretary may make a determination under this section for an individual for a week, in relation to sessions of care provided to a child by an approved child care service, only if:

(a) a determination that the individual is eligible for CCS by fee reduction for the child is in effect under paragraph 67CC(1)(a) in relation to any day in the week; and

(b) the provider of the service has given the Secretary a report under section 204B (requirement to report about children for whom care is provided) in relation to the child for the week, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and

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(e) if the Secretary gives the individual a notice under subsection (11) in relation to the child's enrolment for those sessions—the individual has complied with the notice.

(1A) For the purposes of paragraph (1)(b), the provider of the service is taken to have given the Secretary a report under section 204B in relation to the child for the week even if the report is not given by the day required under paragraph 204B(2)(d).

Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

Entitlement to be paid CCS

(2) If the Secretary is satisfied that:

(a) the individual is eligible for CCS under section 85BA of the Family Assistance Act for one or more of the sessions of care provided by the service to the child in the week, or would be eligible except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

(b) the individual meets the information requirements in subsection (10) for the week; and

(c) none of subsections (3), (4) and (6) apply in relation to the sessions of care; and

(d) the amount of CCS to which the individual will become entitled for the sessions of care is more than nil;

the Secretary must determine:

(e) that the individual is entitled to be paid CCS for the sessions of care referred to in paragraph (a); and

(f) the amount of CCS the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

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Entitlement to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship)

(3) If the Secretary is satisfied that:

(a) the individual is eligible for ACCS under section 85CA or 85CG of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

(b) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(c) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(d) that the individual is entitled to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship) (as applicable) for the sessions of care referred to in paragraph (a); and

(e) the amount of ACCS the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

Entitlement to be paid ACCS (grandparent)

(4) If the Secretary is satisfied that:

(a) the individual has applied to the Secretary, in a form and manner approved by the Secretary, and within any time period approved by the Secretary, for ACCS (grandparent) in relation to the week; and

(b) the application contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the individual is eligible for ACCS under section 85CJ of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an

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immunisation grace period for the child (see subsection (9)); and

(d) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(e) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(f) that the individual is entitled to be paid ACCS (grandparent) for the sessions of care referred to in paragraph (c); and

(g) the amount of ACCS (grandparent) the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

(5) A determination cannot be made under subsection (4) for an individual for a week if the CCS fortnight that includes the week starts more than 28 days before the individual made the application referred to in paragraph (4)(a).

Entitlement to be paid ACCS (transition to work)

(6) If the Secretary is satisfied that:

(a) the individual has applied to the Secretary, in a form and manner approved by the Secretary, and within any time period approved by the Secretary, for ACCS (transition to work) in relation to the week; and

(b) the application contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the individual is eligible for ACCS under section 85CK of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

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(d) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(e) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(f) that the individual is entitled to be paid ACCS (transition to work) for the sessions of care referred to in paragraph (b); and

(g) the amount of ACCS (transition to work) the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

(7) A determination cannot be made under subsection (6) for an individual for a week if the CCS fortnight that includes the week starts before the individual made the application referred to in paragraph (6)(a).

No entitlement to be paid CCS or ACCS

(8) If the Secretary is not satisfied as referred to in subsection (2), (3), (4) or (6), the Secretary must determine that the individual is not entitled to be paid CCS or ACCS for the sessions of care provided to the child by the service in the week.

Immunisation grace period

(9) A session of care is provided on a day in an ***immunisation grace period*** for a child if:

(a) on the day, the child does not meet the immunisation requirements in section 6 of the Family Assistance Act; and

(b) the day is no more than 63 days after the day the child ceased to meet the immunisation requirements.

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Meeting the information requirements

(10) An individual ***meets the information requirements*** for a week if, on a day in the week:

(a) either of the following applies:

(i) the Secretary has the details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid;

(ii) the Secretary made a request of the individual under section 67FE no more than 28 days ago; and

(b) any of the following applies:

(i) the Secretary has the tax file number of each TFN determination person;

(ii) the Secretary made a determination under subsection 67BE(2) or (3) in relation to the individual's claim no more than 28 days ago;

(iii) the Secretary made a request of the individual under section 67FG no more than 28 days ago;

(iv) the Secretary has the tax file number of the individual and is satisfied that it is unreasonable in the circumstances for the individual to provide the tax file number of each TFN determination person other than the individual;

(c) if, before the week, a period for giving information or producing a document required under Division 1 of Part 6 had ended without the individual giving the information or producing the document—the individual has given the information or produced the document; and

(d) if a determination was made for the individual under section 67CD for a week in a previous income year and the first deadline for the previous income year has passed—the individual has met the CCS reconciliation conditions for that previous income year.

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Notice requiring information about enrolments

(11) For paragraph (1)(e), the Secretary may, by written notice, require an individual to give to the Secretary, in a form and manner approved by the Secretary, information stated in the notice in relation to the child's enrolment for sessions of care provided, or to be provided, by an approved child care service.

67CE Notice of determinations under this Subdivision

Notice to individual

(1) The Secretary must give written notice to an individual for whom any of the following determinations are made, no later than 7 days after making the determination:
  (a) a determination under section 67CC about the individual's eligibility for CCS for a child;
  (b) a determination under section 67CD about the individual's entitlement to be paid CCS or ACCS for a week, if the determination is different from a determination made under that section for the individual for the previous week for any of the following reasons:
    (i) a change in the individual's applicable percentage;
    (ii) a change in the individual's activity test result.

(2) At least once every CCS quarter, the Secretary must give written notice to an individual for whom determinations are made under section 67CD for weeks starting in the CCS quarter.

(3) A ***CCS quarter*** is the period of 3 months starting on the first Monday of the first CCS fortnight each January, April, July and October.

Notice to providers

(4) The Secretary must give written notice of a determination made under section 67CD to the provider of the child care service that provided the sessions of care to which the determination relates, as soon as practicable after making the determination.

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(5) A notice under subsection (4) may be given to a provider by making the notice available to the provider using an electronic interface.

(6) If the Secretary has decided to pay the fee reduction amount in relation to a determination under section 67CD directly to the individual under subsection 67EC(2), the notice under subsection (4) of this section must include a statement to that effect.

Subdivision C—Determinations for individuals claiming CCS or ACCS in substitution for individual who has died

67CF Determination of individual's entitlement to be paid CCS or ACCS in substitution for individual who has died

Preconditions for making determinations

(1) The Secretary may make a determination under this section for an individual (the ***substitute***) only if:

(a) the substitute has made an effective claim in respect of a child for CCS in substitution for an individual who has died; and

(b) the provider of a child care service that provided sessions of care to the child in a week to which the claim relates has given the Secretary a report under section 204B (requirement to report about children for whom care is provided) in relation to the child for each week in which such sessions of care were provided, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and

(c) either of the following applies:

(i) the Secretary has the details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid;

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(ii) the Secretary made a request of the individual under section 67FE no more than 28 days ago.

(1A) For the purposes of paragraph (1)(b), the provider of the child care service is taken to have given the Secretary a report under section 204B in relation to the child for a week even if the report is not given by the day required under paragraph 204B(2)(d).

Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

Individual entitled to be paid CCS or ACCS in substitution

(2) If the Secretary is satisfied that the substitute is eligible for an amount of CCS or ACCS under section 85DA of the Family Assistance Act, the Secretary must determine in writing:

(a) that the substitute is entitled to be paid CCS or ACCS in substitution for the individual who has died; and

(b) the amount of CCS or ACCS that the substitute is entitled to be paid.

Individual not entitled to be paid CCS or ACCS in substitution

(3) If the Secretary is not satisfied as referred to in subsection (2), the Secretary must determine that the substitute is not entitled to be paid CCS or ACCS in substitution for the individual who has died.

67CG Notice of determinations under this Subdivision

The Secretary must give written notice to an individual for whom a determination is made under section 67CF about the individual's entitlement to be paid CCS or ACCS in substitution for an individual who has died, no later than 7 days after making the determination.

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Subdivision D—Determinations for approved providers

67CH Determination of provider's entitlement to be paid ACCS (child wellbeing)

Preconditions for making determinations

(1) The Secretary must make a determination under this section for an approved provider for a week, in relation to sessions of care provided by an approved child care service of the provider to a child, if:

(a) either of the following is in effect in relation to the child for the week:

(i) a certificate given by the provider under section 85CB of the Family Assistance Act;

(ii) a determination made by the Secretary under section 85CE of the Family Assistance Act; and

(b) the provider has given the Secretary a report for the week under section 204B (requirement to report about children for whom care is provided) in relation to the child, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and

(c) the provider has given the Secretary a declaration, in a form approved by the Secretary:

(i) for a certificate or determination in effect because of subparagraph 85CA(2)(b)(i) of the Family Assistance Act—that the provider has made reasonable endeavours to identify an individual who is eligible for CCS (child wellbeing) for the sessions of care and has not been able to identify anyone; or

(ii) for a certificate or determination in effect because of subparagraph 85CA(2)(b)(ii) of the Family Assistance Act—that the child is in a class prescribed for the purposes of that subparagraph.

(1A) For the purposes of paragraph (1)(b), the provider is taken to have given the Secretary a report for the week under section 204B in

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relation to the child even if the report is not given by the day required under paragraph 204B(2)(d).

Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

Provider entitled to be paid ACCS (child wellbeing)

(2) If the Secretary is satisfied that the provider is eligible for ACCS under subsection 85CA(2) of the Family Assistance Act for sessions of care provided to the child in the week, the Secretary must determine in writing:

(a) that the provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(b) the amount of ACCS (child wellbeing) that the provider is entitled to be paid.

Provider not entitled to be paid ACCS (child wellbeing)

(3) If the Secretary is not satisfied as referred to in subsection (2), the Secretary must determine in writing that the provider is not entitled to be paid ACCS (child wellbeing) for those sessions of care.

67CI Notice of determinations under this Subdivision

(1) The Secretary must give written notice of a determination made under this Subdivision to the approved provider for whom the determination was made as soon as practicable.

(2) A notice under subsection (1) may be given to an approved provider by making the notice available to the provider using an electronic interface.

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Division 4—Estimates etc. of adjusted taxable income

67DA Simplified outline of this Division

To work out the amount of CCS an individual is entitled to be paid for a week, it is necessary to know the individual's adjusted taxable income for the income year the week relates to.

The final amount of the individual's income for the income year usually cannot be known until after the income year has ended.

In the meantime, the Secretary is able to rely on an estimate provided by the individual, or on an indexed estimate or the indexed actual income of an earlier income year.

After the individual meets the CCS reconciliation conditions, any underpayment to the individual will generally be topped up and any overpayments become debts due to the Commonwealth.

67DB Determinations when adjusted taxable income is not known

Determinations under section 67CD

(1) This section applies if, at the time of making a determination under section 67CD for a week in a CCS fortnight, for an individual who is not eligible for any kind of ACCS, the individual has not met the CCS reconciliation conditions.

Estimate

(2) The Secretary may make the determination under section 67CD on the basis of the most recent of whichever of the following estimates (if any) exists on the first Monday of the CCS fortnight:
   (a) a reasonable estimate given to the Secretary by the individual;

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(b) the indexed estimate stated in a notice given to the individual under section 67DC and with a start day that has arrived or passed;

(c) the indexed actual income stated in a notice given to the individual under section 67DD and with a start day that has arrived or passed.

No estimate

(3) If none of the estimates referred to in subsection (2) exists on the first Monday of the CCS fortnight, the Secretary must determine under subsection 67CD(8) that the individual is not entitled to be paid CCS or ACCS.

67DC Indexed estimates

(1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:

(a) the individual, or the individual's partner, is a claimant for CCS by fee reduction; and

(b) a determination is in effect under paragraph 67CC(1)(a) that the claimant is eligible for CCS for a child; and

(c) information about the adjusted taxable income of the individual needed to make a determination under Division 3 for the claimant is not known; and

(d) the claimant has given the Secretary an estimate of the amount needed that the Secretary considers to be reasonable.

(2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:

(a) stating the indexed estimate for the individual; and

(b) specifying the start day used in the Secretary's calculation (which must be the first day of a CCS fortnight at least 14 days after the day the notice is given).

(3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under

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subsection (2) stating an indexed estimate for that individual with a start day in the same income year.

(4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 67DD(2) stating an indexed actual income for the same individual. Any such notice under subsection 67DD(2) must specify a start day that is no earlier than the start day specified in the superseded notice.

(5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period

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ending on or before a specified day that is the third Friday of that November.

(6) For the purposes of subsection (5), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 67DD(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 67DB (disregarding the effect for couples of section 67DE of this Act and clause 3AA of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 67DB if the individual were the claimant (disregarding the effect for couples of section 67DE of this Act and clause 3AA of Schedule 3 to the Family Assistance Act).

(7) A notice under subsection (2) is not a legislative instrument.

67DD Indexed actual incomes

(1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:

(a) the individual, or the individual's partner, is a claimant for CCS by fee reduction; and

(b) a determination is in effect under paragraph 67CC(1)(a) that the claimant is eligible for CCS; and

(c) information about the adjusted taxable income of the individual needed to make a determination under Division 3 for the claimant is not known; and

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(d) the most recent such determination made for the claimant was made on the basis of an indexed estimate or an indexed actual income; and

(e) since the claimant was last given a notice under subsection 67DC(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and

(f) the adjusted taxable income for an income year (***actual income***) of the individual (disregarding the effect for couples of clause 3AA of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

(2) If:

(a) the Secretary calculates an indexed actual income for the individual; and

(b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));

the Secretary may give the claimant a notice:

(c) stating the indexed actual income for the individual; and

(d) specifying the start day used in the Secretary's calculation (which must be the start of a CCS fortnight at least 14 days after the day the notice is given).

(3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 55AA(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.

(4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual

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which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

(5) For the purposes of paragraph (2)(b), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 67DC(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for

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the individual under section 67DB (disregarding the effect for couples of section 67DE of this Act and clause 3AA of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 67DB if the individual were the claimant (disregarding the effect for couples of section 67DE of this Act and clause 3AA of Schedule 3 to the Family Assistance Act).

(6) A notice under subsection (2) is not a legislative instrument.

67DE Indexed estimates and indexed actual incomes for members of couples

(1) This section applies in relation to any individual who is a member of a couple.

(2) For the purposes of this Act or the Family Assistance Act, any reference to a determination under section 67CD being made on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).

(3) The reference is taken to be a reference to the determination being made on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:

(a) the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:

(i) if the individual is the claimant for CCS or ACCS (grandparent)—the individual; or

(ii) if the individual is the partner of the claimant—the individual's partner;

under subsection 67DC(2) or 67DD(2) with the most recent start day that has arrived or passed; or

(b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of

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clause 3AA of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

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Division 5—Payments

67EA Simplified outline of this Division

If an individual is entitled to be paid CCS or ACCS by fee reduction for sessions of care provided to a child in a week:

(a) the Secretary pays the amount to the provider of the child care service (less a withholding amount in the case of CCS); and

(b) the provider must pass on the amount to the individual within 14 days or a longer period directed by the Secretary (whether as a fee reduction or in any other way). The provider's obligation to pass on the amount is dealt with in section 201A.

If the individual does not receive their full entitlement in this way, the entitlement is paid directly to them, though usually not until after the CCS reconciliation conditions are met.

Approved providers who are entitled to be paid ACCS (child wellbeing), and individuals who are entitled to be paid CCS or ACCS in substitution for an individual who has died, are paid their entitlements directly.

67EB Payments to providers of individuals' entitlements to CCS or ACCS by fee reduction

(1) If a fee reduction decision is made for an individual in relation to sessions of care provided by a child care service to a child, the Secretary must pay the fee reduction amount for the decision to the credit of a bank account nominated and maintained by the provider of the service.

Note: However, the Secretary may instead pay the fee reduction amount directly to the individual (see subsection 67EC(2)).

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(2) The following table sets out the decisions that are ***fee reduction decisions*** and the amount that is the ***fee reduction amount*** for each such decision. A reference to a provider being given notice of a fee reduction decision is a reference to the provider being given notice of the decision under the provision specified for the decision in the table.

Fee reduction decisions and fee reduction amounts

Item	Fee reduction decision	Fee reduction amount	Notice of the decision
1	a determination made under subsection 67CD(2) of an amount of CCS the individual is entitled to be paid for sessions of care provided by a service to a child in a week, if made while the child is still enrolled for care by the service	the amount of CCS the individual is entitled to be paid less the withholding amount for the payment	subsection 67CE(4)
2	a determination made under subsection 67CD(3), (4) or (6) of an amount of ACCS the individual is entitled to be paid for sessions of care provided by a service to a child in a week, if made while the child is still enrolled for care by the service	the amount of ACCS the individual is entitled to be paid	subsection 67CE(4)

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Fee reduction decisions and fee reduction amounts			
Item	**Fee reduction decision**	**Fee reduction amount**	**Notice of the decision**
3	a decision on review under Part 5 of this Act or under the ART Act that has the effect that the amount of CCS an individual is entitled to be paid for sessions of care provided by a service to a child in a week in a CCS fortnight is increased (including from nil), if the decision is made: (a) before the individual meets the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and (b) while the child is still enrolled for care by the service	the amount by which the entitlement is increased, less the withholding amount for the payment	subsection 106A(2) or 109B(2A) or section 136
4	a decision on review under Part 5 of this Act or under the ART Act that has the effect that the amount of ACCS an individual is entitled to be paid for sessions of care provided by a service to a child in a week in a CCS fortnight is increased (including from nil), if the decision is made: (a) before the individual meets the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and (b) while the child is still enrolled for care by the service	the amount by which the entitlement is increased	subsection 106A(2) or 109B(2A) or section 136

(3) The ***withholding amount***, for a payment, is the following percentage of the payment:

(a) 10%;

(b) if the Minister's rules prescribe a different percentage and paragraph (c) does not apply—the prescribed percentage;

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(c) if a determination made under subsection (4) applies to the individual—the percentage specified in the determination.

(4) The Secretary may make a determination specifying a percentage for an individual for the purposes of paragraph (3)(c), if the Secretary is satisfied that the percentage is appropriate to manage a debt that has been or might be incurred by the individual under Part 4.

(5) A determination made under subsection (4) is not a legislative instrument.

(6) This section is subject to:
(a) subsection 67EC(2) (direct payment to individuals); and
(b) Part 4 (overpayments and debt recovery); and
(c) paragraph 195H(1)(f) (suspension of payments); and
(d) section 205B (setting off business continuity payments).

67EC Payment directly to individuals of entitlements to CCS or ACCS

Before CCS reconciliation conditions met

(1) If:
(a) a decision is made for an individual in relation to sessions of care provided by an approved child care service to a child; and
(b) the decision would be a fee reduction decision except that the child is not enrolled for care by the service when the decision is made;

the Secretary must pay the amount that would have been the fee reduction amount for the decision, in accordance with subsection (5):
(c) directly to the individual; or
(d) if the Secretary considers it appropriate—to another person:
(i) on the individual's behalf; or

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(ii) to discharge or set off an obligation of the individual to the other person.

(2) If:

(a) a fee reduction decision is made for an individual in relation to sessions of care provided by an approved child care service to a child; and

(b) the Secretary considers that it is appropriate in the circumstances;

the Secretary may pay the fee reduction amount directly to the individual in accordance with subsection (5) instead of under subsection 67EB(1) (payment to credit of approved provider's bank account).

Fee reduction amounts not passed on

(3) If a provider:

(a) remits a fee reduction amount to the Secretary in accordance with paragraph 201A(1)(b); or

(b) incurs a debt to the Commonwealth under section 71D in relation to a fee reduction amount;

the Secretary may pay the fee reduction amount directly to the individual in accordance with subsection (5).

After CCS reconciliation conditions met

(4) If:

(a) an individual is entitled to be paid CCS or ACCS by fee reduction for sessions of care provided by an approved child care service in CCS fortnights starting in an income year (the ***relevant income year***); and

(b) the individual meets the CCS reconciliation conditions for the relevant income year; and

(c) the total of the fee reduction amounts passed on by the provider of the service to the individual under section 201A, for fee reduction decisions for weeks in CCS fortnights starting in the relevant income year, is less than the total

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amount of CCS or ACCS the individual is entitled to be paid for those weeks;

the Secretary must pay so much of the difference as has not already been paid under subsection (1), (2) or (3) to the individual under subsection (5).

Note: CCS payments for an income year are capped if the CCS reconciliation conditions for the income year are met after the second deadline for the income year (see subsection 105D(2A)).

How amounts are to be paid under this section

(5) The whole or any part of an amount mentioned in subsection (1), (2), (3) or (4) must be paid at such time as the Secretary considers appropriate:

(a) to the credit of a bank account nominated and maintained by:

(i) the individual; or

(ii) if the amount is to be paid to another person under paragraph (1)(b)—the other person; or

(b) if the Secretary so directs—in a different way.

(6) Without limitation, the Secretary may consider that it is not appropriate to make a payment under subsection (1), (2) or (3) until after the individual meets the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week to which the payment relates starts.

Provisions this section is subject to

(7) This section is subject to:

(a) Part 4 (overpayments and debt recovery); and

(b) Division 3 of Part 8B (payments to payment nominees).

67ED Payment of CCS or ACCS in substitution for an individual who has died

(1) If an individual is entitled to be paid CCS or ACCS in substitution for an individual who has died, the Secretary must pay the amount of the entitlement, at such time as the Secretary considers

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appropriate and to the credit of a bank account nominated and maintained by the individual.

(2) The Secretary may direct that the whole or part of the amount is to be paid in a different way. If the Secretary does so, the amount must be paid in accordance with the direction.

(3) This section is subject to:
  (a) Part 4 (overpayments and debt recovery); and
  (b) Division 3 of Part 8B (payments to payment nominees).

67EE Payments to provider in respect of provider's own entitlement to be paid ACCS (child wellbeing)

(1) If a provider is entitled to be paid an amount of ACCS (child wellbeing) for sessions of care provided to a child in a week, the Secretary must pay the amount, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the provider.

(2) This section is subject to:
  (a) Part 4 (overpayments and debt recovery); and
  (b) paragraph 195H(1)(f) (suspension of payments); and
  (c) section 205B (setting off business continuity payments).

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Division 6—Giving information

67FA Simplified outline of this Division

Individuals who are eligible for CCS or ACCS have a duty to keep the Secretary informed about changes of circumstances that might affect their eligibility or entitlement.

The Secretary may also request individuals from time to time to give information relevant to their eligibility or entitlement.

Providers have a duty to notify the Secretary if they consider that a child who has been considered to be at risk of serious abuse or neglect is not at risk. The Secretary may also request them to give information about various matters.

67FB Notice of change of circumstances: individuals

(1) An individual must notify the Secretary as soon as practicable, in a manner set out in a notice given to the individual under section 67FD, if:

(a) a determination is in effect under paragraph 67CC(1)(a) that the individual is eligible for CCS for a child; and

(b) any of the following happens:

(i) an event that causes the individual to cease to be eligible for CCS for sessions of care provided by an approved child care service to the child;

(ii) if the individual was eligible for a kind of ACCS—an event that causes the individual to cease to be eligible for that kind of ACCS for sessions of care provided by an approved child care service to the child;

(iii) an event that affects whether the individual is entitled to be paid CCS or a kind of ACCS, or the amount of CCS or ACCS the individual is entitled to be paid, for the child;

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(iv) the individual becomes aware that an event referred to in subparagraph (i), (ii) or (iii) is likely to happen.

(2) An individual commits an offence if the individual contravenes subsection (1).

Penalty: Imprisonment for 6 months.

(3) Subsection (1) does not require an individual who has been eligible for ACCS (transition to work) to notify the Secretary of the end of the 24 week period referred to in paragraph 85CK(2)(b) of the Family Assistance Act.

(4) To avoid doubt, subsection (1) does not require an individual who is eligible for CCS or ACCS for an Aboriginal or Torres Strait Islander child to notify the Secretary that the child is an Aboriginal or Torres Strait Islander child.

67FC Notice if child not at risk of serious abuse or neglect: providers

(1) An approved provider must notify the Secretary as soon as practicable, in a manner set out in a notice given to the provider under section 67FD, if:

(a) a certificate given by the provider under section 85CB (certification for ACCS (child wellbeing)) of the Family Assistance Act is in effect in relation to a child for a week; and

(b) the provider considers that the child is not at any risk of serious abuse or neglect during the week; and

(c) the time for cancelling the certificate under section 85CC of the Family Assistance Act has passed.

(2) An approved provider must notify the Secretary as soon as possible, in a manner set out in a notice given to the provider under section 67FD, if:

(a) the provider knows that a determination made by the Secretary under section 85CE (determination for ACCS

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(child wellbeing)) of the Family Assistance Act is in effect in relation to a child for a week; and

(b) the provider considers that the child is not at any risk of serious abuse or neglect during the week.

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

(4) Subsection (1) and (2) apply even if the certificate or determination has ceased to have effect.

67FD Manner of notifying change of circumstances

(1) The Secretary must approve a manner of notification to be used to notify the Secretary of matters required to be notified under sections 67FB and 67FC.

(2) The Secretary must give individuals to whom section 67FB applies and approved providers to whom section 67FC applies written notice of the approved manner.

67FE Request for bank account details

If:

(a) a determination is in effect under paragraph 67CC(1)(a) that an individual is eligible for CCS for a child; and

(b) the Secretary is satisfied that the Secretary does not have the details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid;

the Secretary may, by written notice given to the individual, request the individual to give the Secretary the details of such a bank account within 28 days of the request.

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67FG Request for tax file number etc. of TFN determination persons

If:

(a) a determination is in effect under paragraph 67CC(1)(a) that an individual is eligible for CCS for a child; and

(b) the Secretary does not know the tax file number of one or more of the TFN determination persons;

the Secretary may, by written notice given to the individual, request that the individual provide the tax file number of a specified TFN determination person within 28 days of the request.

67FH Request for information about care provided

(1) The Secretary may, by written notice given to the approved provider of a child care service, require the provider to give the Secretary information in relation to any aspect of care provided or expected to be provided by the service.

(2) The notice must:

(a) specify the period in relation to which, or the intervals at which, the information is to be provided; and

(b) be given in a form and manner approved by the Secretary.

(3) Information given in response to the notice must be given in a form and manner approved by the Secretary.

67FI Request for information in relation to eligibility or entitlement for CCS or ACCS

The Secretary may, by written notice given to an individual for whom a determination is in effect under paragraph 67CC(1)(a) that the individual is eligible for CCS for a child, request the individual to give the Secretary, before the end of the period specified in the notice, the information specified in the notice in relation to the individual's present or future eligibility or entitlement for CCS or ACCS.

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Division 7—Payment protection and garnishee orders

67GA Simplified outline of this Division

Generally, a payment of CCS or ACCS is protected, subject to some exceptions related to debt management and payment to nominees.

67GB Protection of payments in relation to CCS and ACCS

(1) Payments of the following amounts are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:
  (a) child care subsidy;
  (b) additional child care subsidy;
  (c) payments under section 67EB (fee reduction amounts);
  (d) payments under section 205A or 205C (business continuity payments).

(2) Subsection (1) has effect subject to the following provisions:
  (a) paragraph 67EC(5)(b) and subsection 67ED(2) (about payment of CCS or ACCS in a different way);
  (b) section 84A (about setting off a person's entitlement to family assistance against a debt of the person);
  (c) section 87A (setting off debts against various payments);
  (d) Division 3 of Part 8B (about payments to payment nominee).

67GC Effect of garnishee etc. order

(1) If:
  (a) a person has an account with a financial institution; and
  (b) payments of any of the kinds mentioned in subsection 67GB(1) are being paid, or have been paid, to the credit of the account; and

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(c) a court order in the nature of a garnishee order comes into force in respect of the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The saved amount is worked out as follows:

Method statement

Step 1. Work out the total amount of the payments mentioned in subsection (1) that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount.

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Part 4—Overpayments and debt recovery

Division 1—Preliminary

68 References to amount paid to person

For the purposes of this Part, an amount of family assistance is taken to be paid to a person if:

(a) the amount is applied against a liability of that person or another person for:

(i) a primary tax; or

(ii) a debt under this Act or the *Social Security Act 1991*; or

(b) the amount is set off under this Part against another amount.

Note: CCS or ACCS is also taken to have been paid to a person if a fee reduction amount is passed on to an individual (see section 201A).

69 Special provisions relating to approved providers

For the purposes of this Part, a reference to an amount being paid to a person when the person is an approved provider includes a reference to an amount that, at the time when it was paid, was paid to an approved provider even if:

(a) the provider is no longer approved; or

(b) the provider is no longer approved in respect of the service concerned.

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Division 2—Amounts recoverable under this Act

70 Debts due to the Commonwealth

If an amount has been paid by way of family assistance, one-off payment to families, a payment under section 67EB, a payment under section 205A or 205C, economic security strategy payment to families, back to school bonus, single income family bonus, a clean energy advance, ETR payment, 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021, the amount is a debt due to the Commonwealth only to the extent to which a provision of:

(a) this Act; or

(b) the *Data-matching Program (Assistance and Tax) Act 1990*;

expressly provides that it is.

71 Debts in respect of family assistance other than CCS, ACCS and family tax benefit advance

No entitlement to amount

(1) If:

(a) an amount has been paid to a person by way of family tax benefit, stillborn baby payment or single income family supplement (the ***assistance***) in respect of a period or event; and

(b) the person was not entitled to the assistance in respect of that period or event;

the amount so paid is a debt due to the Commonwealth by the person.

Overpayment

(2) If:

(a) an amount (the ***received amount***) has been paid to a person by way of assistance; and

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(b) the received amount is greater than the amount (the ***correct amount***) of assistance that should have been paid to the person under the family assistance law;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

71A Debts arising in respect of family tax benefit advances

No entitlement to advance

(1) If:

(a) a family tax benefit advance has been paid to an individual; and

(b) the individual was not entitled to the advance;

the amount so paid is a debt due to the Commonwealth by the individual.

Overpayment

(2) If:

(a) an amount (the ***received amount***) of family tax benefit advance has been paid to an individual; and

(b) the received amount is greater than the amount (the ***correct amount***) of family tax benefit advance that should have been paid to the individual under the family assistance law;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the individual.

Debt arising during the repayment period for a family tax benefit advance

(3) If:

(a) an individual is paid a family tax benefit advance; and

(b) the repayment period for the advance has not expired; and

(c) one of the following occurs:

(i) the individual ceases to be entitled to be paid family tax benefit by instalment;

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(ii) the individual's Part A rate becomes nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

the amount of unrepaid family tax benefit advance becomes a debt due to the Commonwealth by the individual.

Debt arising due to variation or review after the repayment period for a family tax benefit advance has expired

(4) If:

(a) an individual is paid a family tax benefit advance; and

(b) the individual's Part A rate has been reduced under clause 5 or 25A of Schedule 1 to the Family Assistance Act to repay the advance; and

(c) the repayment period for the advance has expired; and

(d) due to a variation in a determination, or a variation or substitution of a decision on review (other than a variation under subsection 28(2) or (6)), the reduction in the individual's Part A rate under clause 5 or 25A of Schedule 1 to the Family Assistance Act has not been sufficient to repay the advance; and

(e) at the time of the variation of the determination, or the variation or substitution of the decision on review:

(i) the individual is not entitled to be paid family tax benefit by instalment; or

(ii) the individual's Part A rate is nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

the amount of the family tax benefit advance left unrepaid as a result of the variation of the determination, or the variation or substitution of the decision on review, becomes a debt due to the Commonwealth by the individual.

Note: If the individual is entitled to be paid family tax benefit by instalment and has a Part A rate greater than nil, the unrepaid amount of the advance is to be repaid by reductions in the individual's Part A rate (see clause 51 of Schedule 1 to the Family Assistance Act).

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Debt arising due to variation under subsection 28(2) or (6)

(5) If:

(a) an individual is paid a family tax benefit advance; and

(b) the individual's Part A rate has been reduced under clause 5 or 25A of Schedule 1 to the Family Assistance Act to repay the advance; and

(c) due to a variation in a determination of the individual's entitlement to family tax benefit made under subsection 28(2) or (6), the reduction in the individual's Part A rate under clause 5 or 25A of Schedule 1 to the Family Assistance Act has not been sufficient to repay the advance;

the amount of the family tax benefit advance left unrepaid as a result of the variation of the determination becomes a debt due to the Commonwealth by the individual.

(6) If a debt is created under subsection (5) and the Secretary varies the determination of the individual's entitlement to family tax benefit under subsection 28(3) or (4), the debt is taken never to have been created.

Note: If, after the variation, the individual's Part A rate was not sufficient to repay the advance, the unrepaid amount of the advance is to be repaid either by reductions in the individual's Part A rate (see clauses 48 and 51 of Schedule 1 to the Family Assistance Act) or as a debt under subsection (3) or (4).

Debt arising due to determination under clause 45 of Schedule 1 to the Family Assistance Act

(7) If:

(a) an individual is paid a family tax benefit advance; and

(b) the Secretary determines under clause 45 of Schedule 1 to the Family Assistance Act that the amount of the advance that is unrepaid is to be a debt;

the amount of the family tax benefit advance becomes a debt due to the Commonwealth by the individual.

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*Meaning of **FTB advance debt***

(8) The debt due to the Commonwealth under subsection (1), (2), (3), (4), (5) or (7) is an ***FTB advance debt***.

71B Debts in respect of CCS or ACCS—no entitlement

(1) If:

(a) an amount is paid to an individual (the ***recipient***) by way of CCS for one or more sessions of care, but the recipient is not entitled to be paid CCS for the sessions of care; or

(b) an amount is paid to an individual (the ***recipient***) by way of a kind of ACCS for one or more sessions of care, but the recipient is not entitled to be paid that kind of ACCS for the sessions of care; or

(c) an amount is paid to a provider (the ***recipient***) by way of ACCS (child wellbeing) for a session of care provided to a child, but the recipient is not entitled to be paid ACCS (child wellbeing) for the session of care;

the amount is a debt due to the Commonwealth by the recipient.

(2) If:

(a) a payment is made under Division 5 of Part 3A to a financial institution for the credit of an account kept with the institution (an ***incorrect account***); and

(b) the Secretary is satisfied that the amount was intended to be paid for the credit of an account kept in the name of a person who is not the person, or one of the persons, in whose name the incorrect account is kept;

an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name the incorrect account is kept.

71C Debts in respect of CCS or ACCS—overpayment

(1) If:

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(a) an amount (the ***received amount***) is paid to an individual by way of CCS or ACCS for one or more sessions of care; and

(b) the received amount is greater than the amount (the ***correct amount***) of CCS or ACCS the individual was entitled to be paid for the sessions of care;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the individual.

(2) If:

(a) an amount (the ***received amount***) is paid to a provider under section 67EE by way of ACCS (child wellbeing) for one or more sessions of care; and

(b) the received amount is greater than the amount (the ***correct amount***) of ACCS (child wellbeing) the provider was entitled to be paid for the sessions of care;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the provider.

71D Debts in respect of fee reduction amounts provider fails to pass on or remit

If a provider to whom notice of a fee reduction decision is given does not do one of the following within 14 days after the notice is given (or, if that period has been extended under subsection 201A(2A), within the extended period):

(a) pass on the fee reduction amount for the decision to the individual to whom the decision relates;

(b) remit the fee reduction amount to the Secretary in a manner approved by the Secretary;

an amount equal to the fee reduction amount is a debt due to the Commonwealth by the provider.

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71DA Debts in respect of CCS or ACCS—absences before first attendance or after last attendance

When this section applies

(1) This section applies if:

(a) an amount (the ***CCS/ACCS amount***) is paid to an individual by way of CCS or ACCS for a session of care provided by a child care service of a provider to a child on a day; and

(b) the child did not attend any part of the session of care on the day; and

(c) the day was:

(i) before the day the child first attended a session of care provided by the service; or

(ii) after the last day the child attended a session of care provided by the service before the child ceased to be enrolled for care by the service; and

(d) the service is not taken to have provided the session of care to the child on the day under subsection 10(2), (3) or (5) of the Family Assistance Act; and

(e) the individual incurs a debt under subsection 71B(1) for the CCS/ACCS amount.

If debt is incurred before reconciliation

(2) If the individual incurs the debt before the individual meets the CCS reconciliation conditions for the income year in which the session of care occurs, then:

(a) the individual is not taken to have incurred the debt; and

(b) the CCS/ACCS amount is instead a debt due to the Commonwealth by the provider.

If debt is incurred after reconciliation

(3) If the individual incurs the debt after the individual meets the CCS reconciliation conditions for the income year in which the session of care occurs, then:

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(a) the amount of the debt is taken to be the amount of the withholding component of the CCS/ACCS amount (see subsection (4)); and

(b) the amount of the fee reduction component of the CCS/ACCS amount is a debt due to the Commonwealth by the provider (see subsection (5)).

(4) The ***withholding component*** of the CCS/ACCS amount is the amount that would be the withholding amount under subsection 67EB(3), if it were assumed that:

(a) subsections 67EB(3) and (4) applied for the purposes of this section; and

(b) references to a payment in subsection 67EB(3) were instead references to the CCS/ACCS amount.

(5) The ***fee reduction component*** of the CCS/ACCS amount is the CCS/ACCS amount less the withholding component of the CCS/ACCS amount.

Interaction with section 71F

(6) If:

(a) under paragraph (2)(b), the provider incurs a debt for the CCS/ACCS amount; and

(b) under paragraph 71F(2)(b), the provider incurs a debt that consists wholly or partly of an amount (the ***corresponding 71F(2)(b) amount***) that relates to the same session of care as the CCS/ACCS amount;

then:

(c) if the CCS/ACCS amount is equal to, or more than, the corresponding 71F(2)(b) amount—the provider is taken not to have incurred so much of the debt under paragraph 71F(2)(b) that is equal to the corresponding 71F(2)(b) amount; and

(d) if the corresponding 71F(2)(b) amount is more than the CCS/ACCS amount—the provider is taken not to have incurred a debt for the CCS/ACCS amount under paragraph (2)(b) of this section.

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(7) If:

(a) under paragraph (3)(b), the provider incurs a debt for the amount of the fee reduction component of the CCS/ACCS amount; and

(b) under paragraph 71F(3)(b), the provider incurs a debt that consists wholly or partly of an amount (the ***corresponding 71F(3)(b) amount***) that relates to the same session of care as the CCS/ACCS amount;

then:

(c) if the amount of the fee reduction component is equal to, or more than, the corresponding 71F(3)(b) amount—the provider is taken not to have incurred so much of the debt under paragraph 71F(3)(b) that is equal to the corresponding 71F(3)(b) amount; and

(d) if the corresponding 71F(3)(b) amount is more than the amount of the fee reduction component—the provider is taken not to have incurred a debt for the amount of the fee reduction component under paragraph (3)(b) of this section.

71E Debts in respect of ACCS (child wellbeing) for provider—individual at fault

(1) The Secretary may make a determination for an individual and a provider in the circumstances referred to in subsection (2). If the Secretary does so:

(a) the provider is taken not to have incurred a debt that, apart from the determination, was incurred by the provider under subsection 71B(1) or 71C(2); and

(b) the amount of the debt is instead a debt due to the Commonwealth by the individual.

(2) The circumstances are that:

(a) the individual makes a false or misleading statement; and

(b) because of the statement, the provider is paid an amount by way of ACCS (child wellbeing) for one or more sessions of care provided by a service to a child who was in the care of

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the individual immediately before the sessions of care were provided; and

(c) the provider incurs a debt under subsection 71B(1) or 71C(2) in relation to the payment.

71F Debts in respect of CCS or ACCS for individual—provider at fault

When this section applies

(1) This section applies if:

(a) an amount (the ***CCS/ACCS amount***) is paid to an individual by way of CCS or ACCS for a session of care provided by a child care service of a provider; and

(b) all or part of the CCS/ACCS amount (the ***attributable component***) is paid to the individual because the provider has:

(i) made a false or misleading statement; or

(ii) failed to comply with the family assistance law; and

(c) the individual incurs a debt under subsection 71B(1) or 71C(1) for the CCS/ACCS amount.

If debt is incurred before reconciliation

(2) If the individual incurs the debt before the individual meets the CCS reconciliation conditions for the income year in which the session of care occurs, then:

(a) the amount of the debt is taken to be reduced by the amount of the attributable component; and

(b) the amount of the attributable component is instead a debt due to the Commonwealth by the provider.

If debt is incurred after reconciliation

(3) If the individual incurs the debt after the individual meets the CCS reconciliation conditions for the income year in which the session of care occurs, then:

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(a) the amount of the debt is taken to be the amount of the withholding component of the CCS/ACCS amount (see subsection (4)); and

(b) the amount of the fee reduction component of the CCS/ACCS amount (see subsection (5)) is a debt due to the Commonwealth by the provider.

(4) The ***withholding component*** of the CCS/ACCS amount is the amount that would be the withholding amount under subsection 67EB(3), if it were assumed that:

(a) subsections 67EB(3) and (4) applied for the purposes of this section; and

(b) references to a payment in subsection 67EB(3) were instead references to the CCS/ACCS amount.

(5) The ***fee reduction component*** of the CCS/ACCS amount is the CCS/ACCS amount less the withholding component of the CCS/ACCS amount.

71G Debts where provider approval is suspended cancelled or varied

(1) If:

(a) an amount is paid to a provider under the family assistance law; and

(b) before the payment is made:

(i) the provider's approval, or the provider's approval in respect of a service, is suspended by operation of section 197AB; or

(ii) the provider's approval is cancelled by operation of subsection 197L(1); or

(iii) the provider's approval is varied to remove a service from the approval by operation of subsection 197L(3); and

(c) because of that suspension, cancellation or variation, the recipient should not have been paid the amount;

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the amount paid is a debt due to the Commonwealth by the provider.

(2) If:

(a) a fee reduction amount is paid to a provider under section 67EB in relation to a session of care provided by a child care service of the provider on a day; and

(b) after the payment is made, one of the following events occurs and takes effect on or before the day:

(i) the provider's approval is cancelled or suspended (other than by operation of section 197AB or subsection 197L(1));

(ii) the provider's approval is varied to remove the service from the approval (other than by operation of subsection 197L(3));

(iii) the provider's approval in respect of the service is suspended (other than by operation of section 197AB);

so much of the fee reduction amount as relates to the session of care is a debt due to the Commonwealth by the provider.

71H Debts in respect of business continuity payments paid to provider

(1) If:

(a) an amount is paid under section 205A or 205C (business continuity payments) in respect of a child care service; and

(b) any of the following occurs:

(i) the approval of the provider of the service is suspended or cancelled;

(ii) the approval of the provider of the service is varied to remove the service from the approval;

(iii) the approval of the provider in respect of the service is suspended; and

(c) the whole or a part of the amount has not already been set off against another amount under section 205B by the day the suspension, cancellation or variation takes effect;

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then that whole or part is a debt due to the Commonwealth by the provider immediately before the provider's approval was suspended, cancelled or varied.

(1A) If:

(a) an amount is paid under section 205C (business continuity payments—emergency or disaster) in respect of a child care service; and

(b) the provider of the service is not eligible for the whole or a part of the payment;

then that whole or part is a debt due to the Commonwealth by the provider.

(2) If:

(a) a payment under section 205A or 205C is made to a financial institution for the credit of an account kept with the institution (an ***incorrect account***); and

(b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of a person who was not the person, or one of the persons, in whose name the incorrect account was kept;

an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name the incorrect account was kept.

71I Debts arising in respect of one-off payment to families

(1) This section applies in relation to an individual (the ***recipient***) who has been paid a one-off payment to families (the ***relevant payment***).

What determinations are relevant?

(2) Each of the following is a ***relevant determination*** in relation to the recipient:

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(a) if the relevant payment was made because, at that time, subsection 86(2) of the Family Assistance Act applied to the recipient (whether or not it was also made because subsection 86(3) of that Act also applied)—the determination referred to in paragraph 86(2)(a) of the Family Assistance Act;

(b) if the relevant payment was made because, at that time, subsection 86(3) of the Family Assistance Act applied to the recipient (whether or not it was also made because subsection 86(2) also applied)—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 86(3)(a), (b) and (c) of the Family Assistance Act was paid;

(c) if the relevant payment was made because, at that time, subsection 86(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 86(4)(b) of the Family Assistance Act.

Situation in which whole amount is a debt

(3) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to:

(i) 11 May 2004 (if the relevant determination is covered by paragraph (2)(a) or (b)); or

(ii) all or part of the 2002-03 income year (if the relevant determination is covered by paragraph (2)(c));

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:

(i) unless subparagraph (ii) applies—the recipient; or

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(ii) if the relevant determination is covered by paragraph (2)(b)—the other individual, or one of the other individuals, referred to in paragraph 86(3)(b) of the Family Assistance Act; and

(c) had the change, revocation, setting aside or superseding occurred on or before 11 May 2004, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

Situation in which part of amount is a debt

(4) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to:

(i) 11 May 2004 (if the relevant determination is covered by paragraph (2)(a) or (b)); or

(ii) all or part of the 2002-03 income year (if the relevant determination was covered by paragraph (2)(c));

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:

(i) unless subparagraph (ii) applies—the recipient; or

(ii) if the relevant determination is covered by paragraph (2)(b)—the other individual, or one of the other individuals, referred to in paragraph 86(3)(b) of the Family Assistance Act; and

(c) had the change, revocation, setting aside or superseding occurred on or before 11 May 2004, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

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71J Debts arising in respect of economic security strategy payment to families

(1) This section applies in relation to an individual (the ***recipient***) who has been paid an economic security strategy payment to families (the ***relevant payment***).

What determinations are relevant?

(2) Each of the following is a ***relevant determination*** in relation to the recipient:

(a) if the relevant payment was made because, at that time, subsection 89(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(2)(a) of that Act;

(b) if the relevant payment was made because, at that time, subsection 89(3) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(3)(a) of that Act;

(c) if the relevant payment was made because, at that time, subsection 89(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(4)(a) of that Act;

(d) if the relevant payment was made because, at that time, subsection 89(5) of the Family Assistance Act applied to the recipient—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 89(5)(a), (b) and (c) of the Family Assistance Act was paid;

(e) if the relevant payment was made because, at that time, subsection 89(6) of the Family Assistance Act applied to the recipient—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;

(f) if the relevant payment was made because, at that time, subsection 89(7) of the Family Assistance Act applied to the recipient—a determination under the Veterans' Children Education Scheme because of which the whole or part of the

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allowance was paid in the circumstances described in that subsection;

(g) if the relevant payment was made because, at that time, subsection 89(8) of the Family Assistance Act applied to the recipient—a determination under the Military Rehabilitation and Compensation Act Education and Training Scheme because of which the whole or part of the allowance was paid in the circumstances described in that subsection;

(h) if the relevant payment was made because, at that time, subsection 93(2) of the Family Assistance Act applied to the recipient—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 93(2)(a) and (b) of the Family Assistance Act was paid;

(i) if the relevant payment was made because, at that time, subsection 93(3) of the Family Assistance Act applied to the recipient—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;

(j) if the relevant payment was made because, at that time, subsection 93(4) of the Family Assistance Act applied to the recipient—a determination under the Veterans' Children Education Scheme because of which the allowance was paid in the circumstances described in that subsection;

(k) if the relevant payment was made because, at that time, subsection 93(5) of the Family Assistance Act applied to the recipient—a determination under the Military Rehabilitation and Compensation Act Education and Training Scheme because of which the allowance was paid in the circumstances described in that subsection.

Situation in which whole amount is a debt

(3) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 14 October 2008, is or was (however

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described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:

(i) unless subparagraph (ii) or (iii) applies—the recipient;

(ii) if the relevant determination is covered by paragraph (2)(d)—the recipient or the other individual, or one of the other individuals, covered by paragraph 89(5)(b) of the Family Assistance Act;

(iii) if the relevant determination is covered by paragraph (2)(e), (f) or (g)—the recipient or the student, or one of the students, covered by paragraph 89(6)(a), (7)(a) or (8)(a) of the Family Assistance Act; and

(c) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

Situation in which part of amount is a debt

(4) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 14 October 2008, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:

(i) unless subparagraph (ii) or (iii) applies—the recipient;

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(ii) if the relevant determination is covered by paragraph (2)(d)—the recipient or the other individual, or one of the other individuals, covered by paragraph 89(5)(b) of the Family Assistance Act;

(iii) if the relevant determination is covered by paragraph (2)(e), (f) or (g)—the recipient or the student, or one of the students, covered by paragraph 89(6)(a), (7)(a) or (8)(a) of the Family Assistance Act; and

(c) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

71K Debts arising in respect of back to school bonus or single income family bonus

(1) This section applies in relation to an individual (the ***recipient***) who has been paid a back to school bonus or a single income family bonus (the ***relevant payment***).

What determinations are relevant?

(2) Each of the following is a ***relevant determination*** in relation to the recipient:

(a) if the relevant payment was made because, at that time, subsection 95(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 95(2)(a) of that Act;

(b) if the relevant payment was made because, at that time, subsection 95(3) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 95(3)(a) of that Act;

(c) if the relevant payment was made because, at that time, subsection 95(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 95(4)(a) of that Act;

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(d) if the relevant payment was made because, at that time, section 98 of the Family Assistance Act applied to the recipient—the determination made under Part 3 of the *Social Security (Administration) Act 1999* that resulted in the recipient receiving the carer payment or disability support pension;

(e) if the relevant payment was made because, at that time, subsection 101(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(2)(a) of that Act;

(f) if the relevant payment was made because, at that time, subsection 101(3) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(3)(a) of that Act;

(g) if the relevant payment was made because, at that time, subsection 101(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(4)(a) of that Act.

Situation in which whole amount is a debt

(3) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 3 February 2009, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

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Situation in which part of amount is a debt

(4) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 3 February 2009, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

71L Debts arising in respect of clean energy advance

(1) This section applies in relation to an individual who has been paid a clean energy advance.

(2) For the purposes of this section, the ***relevant determination*** in relation to the individual is the determination referred to in paragraph 103(1)(a) or (2)(a) or 104(1)(a) of the Family Assistance Act.

Situation in which whole amount is a debt

(3) If:

(a) after the advance was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to a day in the period starting on 1 July 2012 and ending on 30 June 2013, is or was (however described) changed, revoked, set aside or superseded by another determination; and

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(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the day the advance was paid, the advance would not have been paid;

the amount of the advance is a debt due to the Commonwealth by the individual.

Situation in which part of amount is a debt

(4) If:

(a) after the advance was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to a day in the period starting on 1 July 2012 and ending on 30 June 2013, is or was (however described) changed, revoked, set aside or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the day the advance was paid, the amount of the advance would have been reduced;

the amount by which the advance would have been reduced is a debt due to the Commonwealth by the individual.

71M Debts arising in respect of ETR payment

(1) This section applies in relation to an individual who has been paid an ETR payment.

(2) For the purposes of this section, each of the following is a ***relevant determination*** in relation to the individual:

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(a) if the ETR payment was made because, at that time, subsection 102A(1) of the Family Assistance Act applied to the individual—the determination referred to in paragraph 102A(1)(a) of that Act;

(b) if the ETR payment was made because, at that time, subsection 102A(2) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 102A(2)(a), (b), (c) and (e) of the Family Assistance Act was paid;

(c) if the ETR payment was made because, at that time, subsection 102A(3) of the Family Assistance Act applied to the individual—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;

(d) if the ETR payment was made because, at that time, subsection 102A(4) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied:

(i) paragraphs 102A(4)(a), (c), (d) and (f) of the Family Assistance Act was paid; or

(ii) paragraphs 102A(4)(b), (c), (d) and (f) of the Family Assistance Act was paid, if that instalment was paid to the individual;

(e) if the ETR payment was made because, at that time, subsection 102D(1) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 102D(1)(a), (b) and (c) of the Family Assistance Act was paid;

(f) if the ETR payment was made because, at that time, subsection 102D(2) of the Family Assistance Act applied to the individual—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;

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(g) if the ETR payment was made because, at that time, subsection 102D(3) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied:

(i) paragraphs 102D(3)(a), (c) and (d) of the Family Assistance Act was paid; or

(ii) paragraphs 102D(3)(b), (c) and (d) of the Family Assistance Act was paid, if that instalment was paid to the individual;

(h) if the ETR payment was made because, at that time, subsection 102F(1) of the Family Assistance Act applied to the individual—the determination referred to in paragraph 102F(1)(a) of that Act.

Situation in which whole amount is a debt

(3) If:

(a) after the ETR payment was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the day the ETR payment was paid, the ETR payment would not have been paid;

the amount of the ETR payment is a debt due to the Commonwealth by the individual.

Situation in which part of amount is a debt

(4) If:

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(a) after the ETR payment was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the day the ETR payment was paid, the amount of the ETR payment would have been reduced;

the amount by which the ETR payment would have been reduced is a debt due to the Commonwealth by the individual.

72 Debts arising in respect of 2020 economic support payment

(1) This section applies in relation to an individual who has been paid a 2020 economic support payment because subsection 116(2), (3) or (4) of the Family Assistance Act applied to the individual on a day.

(2) If:

(a) after the payment was paid to the individual, the determination mentioned in that subsection of the Family Assistance Act, at least so far as the determination relates to that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before that day, the payment would not have been paid;

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the amount of the payment is a debt due to the Commonwealth by the individual.

72A Debts arising in respect of additional economic support payment

(1) This section applies in relation to an individual who has been paid an additional economic support payment 2020 or additional economic support payment 2021 because subsection 123(2), (3) or (4) of the Family Assistance Act applied to the individual on a day.

(2) If:

(a) after the payment was paid to the individual, the determination mentioned in that subsection of the Family Assistance Act, at least so far as the determination relates to that day, is or was (however described) changed, revoked, set aside or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before that day, the payment would not have been paid;

the amount of the payment is a debt due to the Commonwealth by the individual.

73 Debts arising from ART stay orders

If:

(a) a person applies to the ART for ART review or ART child care provider review of a decision; and

(b) the ART makes an order under subsection 32(2) (ART may stay operation or implementation) of the ART Act; and

(c) as a result of the order or the operation of subsection 107(3) (when ART's decision on review comes into operation) of

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the ART Act, the amount that has in fact been paid to the person under the family assistance law is greater than the amount that should have been paid to the person under the family assistance law;

the difference between the amount that was in fact paid to the person and the amount that should have been paid is a debt due to the Commonwealth.

74 Person other than payee obtaining payment of a cheque

If:

(a) an amount of family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021 is paid by cheque; and

(b) a person other than the payee obtains possession of the cheque from the payee; and

(c) the cheque is not endorsed by the payee to the person; and

(d) the person obtains value for the cheque;

the amount of the cheque is a debt due by the person to the Commonwealth.

75 Debts arising from conviction of person for involvement in contravention of family assistance law by debtor

If:

(a) a person (the ***recipient***) is liable to repay an amount paid to the recipient under the family assistance law; and

(b) the amount was paid to the recipient because the recipient contravened a provision of the family assistance law; and

(c) another person is convicted of an offence:

(i) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(ii) against section 11.4 or 11.5 of the *Criminal Code*;

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in relation to that contravention;

the recipient and the other person are jointly and severally liable to pay the debt.

76 Data-matching Program (Assistance and Tax) Act debts

If:

(a) an amount has been paid to a person by way of family assistance; and

(b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

the amount so paid is recoverable by the Commonwealth.

77 Notices in respect of debt

(1) If a debt by a person to the Commonwealth under a provision of this Part has not been wholly paid, the Secretary must give the person a notice specifying:

(a) the date on which it was issued (the ***date of the notice***); and

(b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and

(c) the period to which the debt relates; and

(d) the outstanding amount of the debt at the date of the notice; and

(e) the day on which the outstanding amount is due and payable; and

(ea) the effect of sections 78 and 78A; and

(f) that a range of options is available for repayment of the debt; and

(g) the contact details for inquiries concerning the debt.

(2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.

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(3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

78 Interest charge—no repayment arrangement in effect

(1) If:

(a) a notice is given to a person under subsection 77(1) in relation to a debt; and

(b) an amount (the ***unpaid amount***) of the debt remains unpaid at the end of the day (the ***due day***) on which the debt is due to be paid; and

(c) at the end of the due day, there is no arrangement in effect under section 91 in relation to the debt;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 78D and 78E.

(2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the unpaid amount;

(ii) interest charge on any of the unpaid amount;

(b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 91 in relation to the debt.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the unpaid amount;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 78C.

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Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

78A Interest charge—failure to comply with or termination of repayment arrangement

(1) If:

(a) an arrangement is in effect under section 91 in relation to a person and a debt; and

(b) the person fails to make a payment under the arrangement;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 78D and 78E.

(2) The period starts at the beginning of the day after the day (the ***due day***) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;

(c) the day before the day the arrangement is terminated under section 91.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

(b) the interest charge from previous days.

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Note 1: For ***interest charge rate*** see section 78C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

Repayment arrangement is terminated

(4) If:

(a) an arrangement is in effect under section 91 in relation to a person and a debt; and

(b) the arrangement is then terminated under section 91 on a day (the ***termination day***);

then:

(c) the following amounts (if any) are due and payable on the 14th day after the termination day:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt; and

(d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 78D and 78E.

(5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 91 in relation to the debt.

(6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate

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for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 78C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

78B Other rules for interest charge

When interest charge is due and payable

(1) The interest charge under section 78 or 78A for a day is due and payable to the Commonwealth at the end of that day.

Interest charge is a debt

(2) The interest charge under section 78 or 78A for a day is a debt due to the Commonwealth by the person.

Provisions that do not apply to interest charge debt

(3) Subsection 77(1) does not apply in relation to the debt referred to in subsection (2) of this section.

78C What is the *interest charge rate*?

(1) For the purposes of sections 78 and 78A, the ***interest charge rate*** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.

(2) The ***base interest rate*** for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

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Base interest rate		
Item	**Column 1** **For days in this quarter:**	**Column 2** **the monthly average yield of 90-day Bank Accepted Bills for this month applies:**
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

(3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

(4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

78D Exemption from interest charge—general

(1) A person is not liable to pay interest charge under section 78 or 78A if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:

(a) the person is receiving instalments of family tax benefit; or

(b) the person is receiving a social security payment; or

(c) the person is receiving a payment of pension, veteran payment or allowance under the *Veterans' Entitlements Act 1986*; or

(d) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or

(e) the person is receiving instalments under the Assistance for Isolated Children Scheme; or

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(f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.

(2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

78E Exemption from interest charge—Secretary's determination

(1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.

(2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
(a) failing to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or
(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.

(4) The determination may be expressed to be subject to the person complying with one or more specified conditions.

(5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.

(6) If:
(a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
(b) the person contravenes a condition or conditions without reasonable excuse;

the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.

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(7) The Secretary may cancel or vary the determination by written notice given to the person.

78F Guidelines on interest charge provisions

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Division dealing with interest charge.

80 Debt from failure to comply with garnishee notice

(1) If:

(a) a person (the ***garnishee debtor***) is given a notice under section 89 in respect of a debt due by another person (the ***original debtor***) under this Act; and

(b) the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;

then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:

(c) legal proceedings; or

(d) garnishee notice.

(2) The amount of the debt outstanding is the amount equal to:

(a) as much of the amount required by the notice under section 89 to be paid by the garnishee debtor as the garnishee debtor was able to pay; or

(b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;

whichever is the lesser.

(3) If the Commonwealth recovers:

(a) the whole or part of the debt due by the garnishee debtor under subsection (1); or

(b) the whole or part of the debt due by the original debtor;

then:

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(c) both debts are reduced by the amount that the Commonwealth has so recovered; and

(d) the amount specified in the notice under section 89 is to be taken to be reduced by the amount so recovered.

(4) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(5) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

81 Overseas application of provisions

Sections 71 to 75 extend to:

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

(b) all persons (irrespective of nationality or citizenship).

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Division 3—Methods of recovery

82 Methods of recovery

(1) A debt owed by a person is recoverable by the Commonwealth by one or more of the following means:

(a) deductions from instalments of family tax benefit to which the person is entitled;

(b) setting off family assistance to which the person is entitled against the debt;

(c) setting off against one or more child care service payments that are to be made to the person;

(d) repayment by instalments under an arrangement entered into under section 91;

(e) if section 92 applies to another person who is entitled to be paid family tax benefit by instalment—deductions from that other person's instalments of family tax benefit;

(f) if section 92A applies to another person who is entitled to family assistance—setting off (otherwise than as mentioned in paragraph (b)) the family assistance against the debt;

(g) the application of an income tax refund owed to the person;

(h) if section 93 applies to another person to whom an income tax refund is owed—the application of that refund;

(i) legal proceedings;

(j) garnishee notice.

Note: For ***child care service payment*** see subsection 3(1).

(3) In this section:

debt means:

(a) a debt due to the Commonwealth under section 71, 71A, 71B, 71C, 71D, 71E, 71F, 71G, 71H, 71I, 71J, 71K, 71L, 71M, 73, 74, 76, 77, 78B or 80; or

(b) a debt due to the Commonwealth for which a person is liable because of section 75.

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84 Deductions from debtor's family tax benefit

(1) This section applies to a debt if:

(a) under section 82, the debt is recoverable by the Commonwealth by means of deductions from instalments of family tax benefit to which the person is entitled; or

(b) the debt is a debt due by the person to the Commonwealth under the *Social Security Act 1991*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

(c) the debt was incurred under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998.

(2) The debt is to be deducted from instalments of family tax benefit to which the person is entitled in the following way:

(a) the Secretary is to determine the amount by which each instalment of family tax benefit is to be reduced; and

(aa) a determination under paragraph (a) may be an amount that would reduce the payment to nil if the person has consented to the amount of the deduction being an amount that would reduce the payment to nil; and

(b) each instalment of family tax benefit is to be reduced by the amount determined by the Secretary until the sum of those amounts, and any amounts recovered under an Act referred to in paragraph (1)(b), is equal to the debt.

The Secretary may from time to time vary the amount by which instalments of family tax benefit are to be reduced.

84A Setting off family assistance against debt owed

(1) This section applies:

(a) to a person if the person is entitled to an amount of family assistance; and

(b) to a debt owed by the person if:

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(i) under section 82, the debt is recoverable by the Commonwealth by means of setting off family assistance to which the person is entitled against the debt; or

(ii) the debt is a debt due by the person to the Commonwealth under the *Social Security Act 1991*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

(iii) the debt was incurred under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998.

(2) The Secretary may determine that the whole or a part of the entitlement is to be set off against the debt.

(3) Under subsection (2), the Secretary may set off a person's CCS or ACCS only against a debt the person incurs in relation to CCS or ACCS.

(4) If the Secretary makes a determination under subsection (2), the amount of the entitlement and the amount of the debt are reduced accordingly.

87 Application of income tax refund owed to person

(1) If, under section 82, a debt owed by a person is recoverable by the Commonwealth by means of application of an income tax refund payable to the person, the Commissioner of Taxation may apply the whole or a part of the refund to the debt.

(2) The amount of the refund and the amount of the debt are reduced accordingly.

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87A Setting off debts of an approved provider against child care service payments

(1) This section applies if a debt owed by an approved provider is to be recovered by the Commonwealth by means of setting off the debt against a payment referred to in paragraph 82(1)(c) (child care service payments).

(2) The Secretary must determine the amount by which the payment is to be reduced. The determination has effect accordingly.

(3) A determination under subsection (2) may cover one or more payments and may make different provision for different payments.

(4) The Secretary may vary a determination under subsection (2).

(5) If a payment is reduced by an amount in accordance with this section, the debt is reduced by that amount.

(6) A determination under subsection (2) is not a legislative instrument.

88 Legal proceedings

If, under section 82, a debt is recoverable by the Commonwealth by means of legal proceedings, the debt is recoverable by the Commonwealth in a court of competent jurisdiction.

89 Garnishee notice

(1) If, under section 82, a debt is recoverable from a person (the ***debtor***) by the Commonwealth by means of a garnishee notice, the Secretary may by written notice given to another person:

(a) by whom any money is due or accruing, or may become due, to the debtor; or

(b) who holds or may subsequently hold money for or on account of the debtor; or

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(c) who holds or may subsequently hold money on account of some other person for payment to the debtor; or

(d) who has authority from some other person to pay money to the debtor;

require the person to whom the notice is given to pay the Commonwealth:

(e) an amount specified in the notice, not exceeding the amount of the debt or the amount of the money referred to in paragraph (a), (b), (c) or (d); or

(f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied; or

(g) such percentage as is specified in the notice of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied.

(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.

(3) A person must not refuse or fail to comply with a notice under subsection (1) to the extent to which the person is capable of complying with the notice.

Penalty: Imprisonment for 12 months.

(4) If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.

(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to have made the payment under the authority of the debtor and of any other person concerned.

(6) If:

(a) a notice is given to a person under subsection (1) in respect of a debt; and

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(b) an amount is paid by another person in reduction or in satisfaction of the debt;

the Secretary must notify the first-mentioned person accordingly, and the amount specified in the notice is to be taken to be reduced by the amount so paid.

(7) If, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money is to be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, even though the condition has not been fulfilled.

(8) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(9) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

91 Arrangement for payment of debt by instalments

(1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person, other than an approved provider, who owes a debt under which the person is to pay the debt, or the outstanding amount of the debt, by instalments in accordance with the terms of the arrangement.

(1A) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with an approved provider that owes a debt under which the provider is to pay the debt, or the outstanding amount of the debt, by instalments in accordance with the terms of the arrangement.

(1B) If a payment is required to be made under an arrangement entered into under subsection (1) or (1A) before the end of a particular day, the payment must be made before the end of that day.

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(2) An arrangement entered into under subsection (1) or (1A) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day on which the arrangement commences (whether that day is the day on which the arrangement is entered into or an earlier or later day).

(3) If an arrangement entered into under subsection (1) or (1A) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The Secretary may terminate or alter an arrangement entered into under subsection (1) or (1A):
  (a) at the debtor's request; or
  (b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or
  (c) without notice, if the Secretary is satisfied that the debtor has failed to disclose material information about the debtor's true capacity to repay the debt.

(5) In this section:

debt means a debt recoverable by the Commonwealth under Division 2.

92 Deduction by consent from a person's family tax benefit to meet another person's debt

(1) If:
  (a) a person (the ***debtor***):
    (i) has a debt under this Act or under the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

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(ii) had incurred a debt under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998; and

(b) another person (the ***consenting person***) is entitled to be paid family tax benefit by instalment; and

(c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's instalments;

the Secretary may deduct the amount from the consenting person's instalments of family tax benefit.

(2) The debtor's debt is reduced by an amount equal to the amount deducted from the consenting person's family tax benefit.

(3) The consenting person may revoke the consent at any time.

92A Setting off family assistance of person against another person's debt

(1) If:

(a) a person (the ***debtor***):

(i) has a debt under this Act or under the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

(ii) had incurred a debt under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998; and

(b) another person (the ***consenting person***) is entitled to an amount of family assistance (except family tax benefit to which section 92 applies); and

(c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's entitlement;

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the Secretary may determine that the whole or a part of the entitlement is to be set off against the debt.

(2) Subsection (1) does not apply to an entitlement to be paid CCS or ACCS.

(3) If the Secretary makes a determination under subsection (1), the amount of the entitlement and the amount of the debt are reduced accordingly.

(4) The consenting person may revoke the consent at any time.

93 Application of income tax refund owed to another person

(1) If:

(a) a person (the ***debtor***) has a debt under this Act; and

(b) another person (the ***consenting person***) is entitled to an income tax refund; and

(c) for the purpose of the recovery of the debt, the consenting person consents to the application of an amount from the consenting person's refund to the debt;

the Commissioner of Taxation may apply the whole or a part of the refund to the debt.

(2) The amount of the refund and the amount of the debt are reduced accordingly.

(3) The consenting person may revoke the consent at any time.

93A Recovery of amounts from financial institutions

(1) If:

(a) a family assistance payment or family assistance payments are made to a financial institution for the credit of an account kept with the institution; and

(b) the Secretary is satisfied that the payment or payments were intended to be paid to someone who was not the person or one of the persons in whose name or names the account was kept;

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the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the family assistance payment or family assistance payments;

(d) the amount standing to the credit of the account when the notice is given to the institution.

(2) If:

(a) a family assistance payment or family assistance payments that are intended to be paid to a person are made to a financial institution for the credit of an account that was kept with the institution by the person or by the person and one or more other persons; and

(b) the person died before the payment or payments were made;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the family assistance payment or family assistance payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person's account; and

(b) the reasons for the recovery action.

(3) A financial institution must comply with a notice given to it under subsection (1) or (2).

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Penalty: 300 penalty units.

(4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

(5) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of a family assistance payment or family assistance payments, any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the family assistance payment or family assistance payments.

(6) In this section:

family assistance payment means:

(a) a payment of family tax benefit, stillborn baby payment, family tax benefit advance, CCS or ACCS; or

(aa) a payment of single income family supplement; or

(b) a payment under section 67EB (fee reduction amount); or

(bc) a payment under section 205A or 205C (business continuity payments); or

(c) a payment of one-off payment to families; or

(d) a payment of economic security strategy payment to families; or

(e) a payment of back to school bonus or single income family bonus; or

(f) a payment of clean energy advance; or

(g) a payment of ETR payment; or

(h) a payment of 2020 economic support payment; or

(i) a payment of additional economic support payment 2020; or

(j) a payment of additional economic support payment 2021.

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93B No time limit on debt recovery action

For the purposes of this Part, legal proceedings, or any action under a provision of this Part, for the recovery of a debt may be commenced or taken at any time.

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Division 4—Non-recovery of debts

94 Meaning of *debt*

In this Division:

debt means a debt recoverable by the Commonwealth under Division 2.

94A Time for recovering certain CCS debts

(1) This section applies if:

(a) an individual incurs a debt under subsection 71B(1) or 71C(1) in relation to an amount of CCS; and

(b) the debt is incurred because the individual does not meet the CCS reconciliation conditions for an income year by the first deadline for the income year.

(2) The Secretary need not pursue recovery of the debt before the second deadline for the income year.

Note: It is possible for the individual to become entitled again to the amount of the CCS by meeting the CCS reconciliation conditions for the income year.

95 Secretary may write off debt

(1) The Secretary may, on behalf of the Commonwealth, decide to write off a debt for a stated period or otherwise, but only if subsection (2), (4A) or (4B) applies.

Secretary may write off debt if debt irrecoverable or debt will not be repaid etc.

(2) The Secretary may decide to write off a debt under subsection (1) if:

(a) the debt is irrecoverable at law; or

(b) the debtor has no capacity to repay the debt; or

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(c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or

(d) it is not cost effective for the Commonwealth to take action to recover the debt.

(3) For the purposes of paragraph (2)(a), a debt is taken to be irrecoverable at law if, and only if:

(b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

(c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or

(d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.

(4) For the purposes of paragraph (2)(b), if a debt is recoverable by means of:

(a) deductions under section 84; or

(aa) deductions under section 1231 of the *Social Security Act 1991*; or

(b) setting off under section 84A family assistance; or

(c) application of an income tax refund under section 87; or

(d) setting off under section 87A against a payment referred to in paragraph 82(1)(c) (child care service payments);

the person is taken to have a capacity to repay the debt unless recovery by those means would cause the person severe financial hardship.

Secretary may write off subsection 28(2) or (6) debt if claimant and partner separate

(4A) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 28(2) or (6) (which deal with when income tax returns have not been lodged) if the following conditions are met:

(a) the claimant and the partner mentioned in subparagraph 28(1)(b)(iii) (the ***ex-partner***) ceased to be

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members of the same couple after the end of the income year after the cancellation income year mentioned in subsection 28(1);

(b) if the claimant was required to lodge an income tax return for the cancellation income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;

(c) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by the time when the claimant and the ex-partner ceased to be members of the same couple.

Debt arising because of CCS reconciliation conditions not being met if claimant and partner separate

(4B) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 105E(2) (review if CCS reconciliation conditions not met) in relation to an income year (the ***relevant income year***) if:

(a) the debtor, and an individual who was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care provided in CCS fortnights starting in the relevant income year, ceased to be members of the same couple after the end of the income year after the relevant income year; and

(b) if the debtor was required to lodge an income tax return for the relevant income year—the Commissioner of Taxation has made an assessment of the taxable income for the relevant income year of the debtor; and

(c) the other individual was required to lodge an income tax return for the relevant income year but had not done so at the time the debtor and the other individual ceased to be members of the same couple.

When decision under subsection (1) takes effect

(5) A decision made under subsection (1) takes effect:

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(a) if no day is specified in the decision—on the day on which the decision is made; or

(b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

Debt that has been written off may be recovered

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

96 Power to waive Commonwealth's right to recover debt

(1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 97, 98, 99, 100, 101 or 102.

(2) A waiver takes effect:

(a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or

(b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

97 Waiver of debt arising from error

(1) The Secretary must waive the right to recover the proportion (the ***administrative error proportion***) of a debt that is attributable solely to an administrative error made by the Commonwealth if subsection (2) or (3) applies to that proportion of the debt.

(2) The Secretary must waive the administrative error proportion of a debt if:

(a) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt; and

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(b) the person would suffer severe financial hardship if it were not waived.

(3) The Secretary must waive the administrative error proportion of a debt if:

(a) the payment or payments were made in respect of the debtor's eligibility for family assistance for a period or event (the ***eligibility period or event***) that occurs in an income year; and

(b) the debt is raised after the end of:

(i) the debtor's next income year after the one in which the eligibility period or event occurs; or

(ii) the period of 13 weeks starting on the day on which the payment that gave rise to the debt was made;

whichever ends last; and

(c) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt.

(4) For the purposes of this section, the administrative error proportion of the debt may be 100% of the debt.

98 Waiver of debt relating to an offence

(1) If:

(a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and

(b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;

the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.

(2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

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99 Waiver of small debt

(1) The Secretary must waive the right to recover a debt if:
  (a) the debt is, or is likely to be, less than $200; and
  (b) it is not cost effective for the Commonwealth to take action to recover the debt.

(2) Subsection (1) does not apply if the debt is at least $50 and could be recovered:
  (a) by deductions under:
    (i) section 84 of this Act; or
    (ii) section 1231 of the *Social Security Act 1991*; or
  (b) by setting off under section 84A family assistance; or
  (c) by setting off under section 87A against a payment referred to in paragraph 82(1)(c) (child care service payments).

100 Waiver in relation to settlements

Settlement of civil action

(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the ART

(2) If the Secretary has agreed to settle proceedings before the ART relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Waiver where at least 80% of debt recovered and debtor cannot pay more

(3) If:

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(a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and

(b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

(4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the ***unpaid amount***), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

Formula for working out present value of unpaid amount

(6) For the purposes of subsection (5), the ***present value of the unpaid amount*** is the amount worked out in accordance with the following formula:

$$\frac{\text{Annual repayment}}{\text{Interest}} \times \left[1 - \frac{1}{\left(1 + \text{Interest}\right)^{rp}}\right]$$

where:

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annual repayment is the amount of the debt that the Secretary believes would be recovered under Division 2 in a year if subsection (4) did not apply in relation to the debt.

interest is the annual rate of interest specified by the Minister by legislative instrument.

rp (repayment period) is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

101 Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

(a) the debt did not result wholly or partly from the debtor or another person knowingly:
  (i) making a false statement or a false representation; or
  (ii) failing or omitting to comply with a provision of the family assistance law; and

(b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and

(c) it is more appropriate to waive than to write off the debt or part of the debt.

102 Secretary may waive debts of a particular class

(1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts, or parts of debts, arising under or as a result of this Act that are included in a class of debts specified by the Minister by legislative instrument.

(1A) An instrument made by the Minister under subsection (1):

(a) may specify conditions to be met before the Secretary exercises the power to waive debts, or parts of debts, in the specified class; and

(b) may specify limits on the amounts to be waived in relation to debts in the specified class.

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The Secretary must exercise the power to waive in accordance with any conditions or limits specified in the instrument.

(2) A decision under subsection (1) takes effect:

(a) if no day is specified in the decision—on the day on which the decision is made; or

(b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

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Division 5—Departure prohibition orders

Subdivision A—Secretary may make departure prohibition orders

102A Secretary may make departure prohibition orders

(1) The Secretary may make an order (a ***departure prohibition order***) prohibiting a person from departing from Australia for a foreign country if:

(a) the person has one or more debts to the Commonwealth under this Part; and

(b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and

(c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:

(i) having wholly paid the one or more debts; or

(ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

Matters to be taken into account in making order

(2) Before making an order under this section, the Secretary must have regard to the following matters:

(a) the capacity of the person to pay the one or more debts;

(b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;

(c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;

(d) such other matters as the Secretary considers appropriate.

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Form of order

(3) A departure prohibition order must be in a form approved by the Secretary.

Subdivision B—Departure from Australia of debtors prohibited

102B Departure from Australia of debtors prohibited

A person must not depart from Australia for a foreign country if:

(a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and

(b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

Subdivision C—Other rules for departure prohibition orders

102C Notification requirements for departure prohibition orders

(1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

Notifying person of order

(2) The Secretary must notify the person that the order has been made.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

Notifying other persons of order

(4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department

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administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering that Act.

(5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Division, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).

(6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).

(7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

102D Operation of departure prohibition order

(1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Subdivision E deals with appeals to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) against the making of departure prohibition orders.

(2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

102E Revocation and variation of departure prohibition orders

(1) The Secretary must revoke a departure prohibition order in respect of a person if:

(a) the person no longer has any debts to the Commonwealth under this Part; or

(b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under this Part to be wholly paid; or

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(c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under this Part are completely irrecoverable.

(2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.

(3) A revocation or variation, under this section, of a departure prohibition order may be:

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

102F Notification requirements for revocations and variations

(1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order was given under subsection 102C(4) or (5).

(2) If:

(a) a person makes an application under paragraph 102E(3)(a) for the revocation or variation of a departure prohibition order; and

(b) the Secretary refuses to revoke or vary the order;

the Secretary must give notice of the refusal to the person.

(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

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Subdivision D—Departure authorisation certificates

102G Application for departure authorisation certificate

(1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a ***departure authorisation certificate***) authorising the person to depart from Australia for a foreign country.

(2) The application must be in a form approved by the Secretary.

102H When Secretary must issue departure authorisation certificate

(1) This section applies if a person makes an application under section 102G for a departure authorisation certificate.

(2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:

(a) that, if the certificate is issued:

(i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and

(ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 102E(1) to revoke the departure prohibition order in respect of the person; and

(b) that it is not necessary for the person to give security under section 102J for the person's return to Australia.

(3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:

(a) the person has given security under section 102J for the person's return to Australia; or

(b) if the person is unable to give such security, the Secretary is satisfied:

(i) that the certificate should be issued on humanitarian grounds; or

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(ii) that refusing to issue the certificate will be detrimental to Australia's interests.

102J Security for person's return to Australia

(1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.

(2) The Secretary may substitute a later day for the day mentioned in subsection (1):

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

(3) The Secretary may refuse an application by a person to substitute a later day if:

(a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or

(b) the person refuses to give such further security as the Secretary considers appropriate; or

(c) the Secretary considers that it would not be appropriate to substitute the later day.

102K What departure authorisation certificate must authorise

(1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.

(2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

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102L Notification requirements for departure authorisation certificates

(1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 102C(4) or (5).

(2) If:

(a) a person makes an application under section 102G for a departure authorisation certificate; and

(b) the Secretary refuses to issue the certificate;

the Secretary must give notice of the refusal to the person.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

102M Notification requirements for substituted days

(1) If, under section 102J, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 102C(4) or (5).

(2) If:

(a) a person makes an application under paragraph 102J(2)(a) to substitute a later day for the person's return to Australia; and

(b) the Secretary refuses the application;

the Secretary must give notice of the refusal to the person.

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(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

Subdivision E—Appeals and review in relation to departure prohibition orders and departure authorisation certificates

102N Appeals to courts against making of departure prohibition orders

(1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) against the making of the order.

(2) This section has effect subject to Chapter III of the Constitution.

102P Jurisdiction of courts

The jurisdiction of a court under section 102N must be exercised by a single Judge.

102Q Orders of court on appeal

A court hearing an appeal under section 102N against the making of a departure prohibition order may, in its discretion:

(a) make an order setting aside the order; or

(b) dismiss the appeal.

102R Review of decisions

(1) Applications may be made to the ART for review of a decision of the Secretary under section 102E, 102H or 102J.

(2) Despite any provision of Part 5, that Part does not apply in relation to any decision of the Secretary under this Division.

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Subdivision F—Enforcement

102S Powers of officers of Customs and members of the Australian Federal Police

(1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:

(a) a person is about to depart from Australia for a foreign country; and

(b) a departure prohibition order in respect of the person is in force; and

(c) the person's departure is not authorised by a departure authorisation certificate.

(2) The officer or member may:

(a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and

(b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:

(i) a departure prohibition order in respect of the person is in force; and

(ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.

(3) A person commits an offence if:

(a) the person is subject to a requirement under paragraph (2)(b); and

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

Penalty: 30 penalty units.

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(4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

102T Privilege against self-incrimination

(1) An individual is not excused from answering a question, or producing a document, under paragraph 102S(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) the answer given or document produced; and

(b) answering the question or producing the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;

are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

102U Production of authority to depart

(1) If:

(a) a departure prohibition order in respect of a person is in force; and

(b) the person is about to depart from Australia for a foreign country; and

(c) the person's departure is authorised by a departure authorisation certificate;

an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to

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give a copy of the certificate to the officer or member for inspection.

(2) A person commits an offence of strict liability if:

(a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

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

Penalty for contravention of this subsection: 5 penalty units.

Subdivision G—Interpretation

102V Interpretation—departure from Australia for foreign country

A reference in this Division to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

102W Meaning of *Australia*

For the purposes of this Division, ***Australia***, when used in a geographical sense, includes the external Territories.

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Part 5—Review of decisions

Note: This Part does not apply in relation to any decision of the Secretary under Division 5 of Part 4 (about departure prohibition orders).

Division 1A—Preliminary matters in relation to child care decisions

103 Child care decision

A ***child care decision*** is:

(a) a determination made by the Secretary under Division 3 of Part 3A; or

(b) a decision made on review under Part 5 or the ART Act of:

(i) a determination mentioned in paragraph (a); or

(ii) a decision that is a child care decision under a previous application of this paragraph.

103A CCS reconciliation conditions

(1) An individual (the ***claimant***) meets the ***CCS reconciliation conditions*** for an income year (the ***relevant income year***) if subsection (2), (3) or (4) applies in relation to each of the following persons:

(a) the claimant;

(b) each person who was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care provided in CCS fortnights starting in the relevant income year.

Income tax assessment made

(2) This subsection applies to a person if the Commissioner of Taxation has made an assessment of the taxable income of the person for the relevant income year.

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No requirement to lodge income tax return

(3) This subsection applies to a person if:
  (a) the relevant income year has ended; and
  (b) the person is not required to lodge an income tax return in respect of the income year; and
  (c) either:
    (i) the claimant has notified the Secretary of the amount of the claimant's adjusted taxable income for the relevant income year; or
    (ii) the Secretary is satisfied that the claimant's adjusted taxable income for the relevant income year can be worked out without such notification.

Former partner has not lodged income tax return

(4) This subsection applies to a person who was, but is no longer, a partner of the claimant if:
  (a) the person was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care (the ***relevant sessions of care***) provided in CCS fortnights starting in the relevant income year; and
  (b) the relevant income year has ended; and
  (c) the person is required to lodge an income tax return in respect of the relevant income year, but has not done so by the first deadline for the relevant income year; and
  (d) the Secretary is satisfied that it is reasonable in all the circumstances to estimate the claimant's adjusted taxable income for the relevant income year; and
  (e) the Secretary is otherwise satisfied that it is appropriate for this subsection to apply in all the circumstances.

Note: For subparagraph (3)(c)(ii) and paragraph (4)(d), the claimant's adjusted taxable income for the relevant year is worked out taking into account the adjusted taxable income of any TFN determination person who has been the claimant's partner during the relevant income year (see clauses 3AA and 3A of Schedule 3 to the Family Assistance Act).

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103B First deadline

(1) The ***first deadline*** for an income year (the ***relevant income year***) is:

(a) the end of the first income year after the relevant income year; or

(b) if the Secretary allows the individual a longer period under subsection (2)—the end of the longer period.

(2) The Secretary may allow an individual a longer period if the Secretary is satisfied that special circumstances prevented the individual meeting the CCS reconciliation conditions for the relevant income year before the end of the first income year after the relevant income year.

(3) The end of the longer period must not be later than the end of the second income year after the relevant income year.

First deadline *for 2018-19 income year*

(4) Despite paragraph (1)(a), the ***first deadline*** for the 2018-19 income year is 31 March 2021.

(5) Subsection (4) does not prevent the Secretary from allowing an individual a longer period in accordance with this section.

103C Second deadline

(1) The ***second deadline*** for an income year (the ***relevant income year***) is:

(a) the end of the second income year after the relevant income year; or

(b) if the Secretary allows the individual a longer period under subsection (2)—the end of the longer period.

(2) The Secretary may allow an individual a longer period if the Secretary is satisfied that special circumstances prevented the individual meeting the CCS reconciliation conditions for the

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relevant income year before the end of the second income year after the relevant income year.

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Division 1—Internal review

Subdivision A—Review initiated by the Secretary

104 Decisions that may be reviewed by Secretary on own initiative

Under section 105, the Secretary may review any decision of an officer under the family assistance law except:

(a) a decision under section 67EB to pay an amount; or

(b) a decision to give a person a notice under section 199E (notice about effect of non-compliance by provider on eligibility for CCS or ACCS); or

(c) a decision under section 205A (business continuity payments—reports not given); or

(d) a decision under section 85GA of the Family Assistance Act (funding agreements) in relation to an agreement.

105 Secretary may review certain decisions on own initiative

(1) If:

(a) a decision (the ***original decision***) is a decision that, under section 104, the Secretary may review under this section; and

(b) the Secretary is satisfied that there is sufficient reason to review the decision;

the Secretary may review the decision.

Secretary may review decision even if application has been made to the ART

(2) The Secretary may review the original decision even if an application has been made to the ART for review in relation to the decision.

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Secretary must not review decision if review under section 109A occurring

(3) The Secretary must not review the original decision under this section while any review of the decision is taking place under section 109A.

Secretary may make decisions in respect of an original decision

(4) The Secretary may decide (the ***review decision***) to:
  (a) affirm the original decision; or
  (b) vary the original decision; or
  (c) set the original decision aside and substitute a new decision.

(4A) If:
  (a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
  (b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;

the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

Secretary may deem certain events to have occurred

(5) If:
  (a) the Secretary makes a review decision to set the original decision aside under subsection (4); and
  (b) the Secretary is satisfied that an event that did not occur would have occurred if the original decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

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105A Review of determination or variation—taking account of FTB Part A supplement or FTB Part B supplement

(1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the ***first individual***) is entitled to be paid family tax benefit at a particular rate in respect of a period (the ***same-rate benefit period***) that consists of, or is included in, a particular income year (the ***relevant income year***).

(2) If:

(a) in making or varying the determination, the Secretary disregarded one or more of the following provisions:

(i) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;

(ii) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;

(iia) paragraph 29(1)(b) of Schedule 1 to the Family Assistance Act;

(iib) paragraph (b) of step 1 of the method statement in subclause 29(2) of Schedule 1 to the Family Assistance Act;

(iiba) paragraph 29A(2)(b) of Schedule 1 to the Family Assistance Act;

(iic) subclause 31A(1) of Schedule 1 to the Family Assistance Act;

(iii) subclause 38A(1) of Schedule 1 to the Family Assistance Act; and

(b) if section 32A had not been enacted, the Secretary would have been required to take account of one or more of the provisions mentioned in paragraph (a); and

(c) either:

(i) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for the same-rate benefit period; or

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(ii) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for each of those same-rate benefit periods;

then:

(d) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the determination or variation; and

(e) the Secretary must exercise the power conferred by subsection 105(1) to review the determination or variation; and

(f) the review must take account of whichever of the provisions mentioned in paragraph (a) are relevant.

Note: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

(3) Paragraph (2)(f) does not limit the scope of the review.

105B Review of instalment determination—taking account of energy supplements

(1) This section applies if:

(a) a determination under section 16 is in force in a quarter under which an individual is entitled to be paid family tax benefit by instalment; and

(b) disregarding subsections (2) and (2A) of this section, an election made by the individual under subsection 58A(1) of the Family Assistance Act is in force on one or more days in that quarter.

(2) The consequences in subsection (2A) apply:

(a) once one of the following applies in that quarter:

(i) the individual ceases to be entitled to be paid family tax benefit under the determination;

(ii) a revocation of the election takes effect;

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(iii) the election ceases to be in force under subsection 58A(3A) of the Family Assistance Act; or

(b) otherwise—after the end of that quarter.

(2A) The consequences are:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the determination; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review the determination; and

(c) the review must be done by assuming that:

(i) Division 2B of Part 4 of Schedule 1 to the Family Assistance Act and Division 2AA of Part 5 of that Schedule applied in relation to those days; and

(ii) the election was not in force on those days.

Note: Those Divisions deal with energy supplement (Part A) and energy supplement (Part B).

Definition

(3) In this section:

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

105C Review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Favourable changes affecting individuals

(1) A decision on review under section 105 of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of CCS or ACCS the individual is entitled to be paid for the week is increased (including from nil); and

(b) one of the following applies:

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(i) the individual was required to notify the Secretary of the information by subsection 67FB(1);

(ia) the information is that a child for whom the individual is eligible for CCS or ACCS is an Aboriginal or Torres Strait Islander child, and the information was notified to the Secretary in a manner approved by the Secretary;

(ii) the Secretary required the individual to give the information or produce a document containing the information under Part 6 and the individual did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earlier of the following events:

(i) the individual notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information.

(2) Despite subsection (1), the Secretary may take the information into account if the Secretary is satisfied that the individual notified or gave the information, or produced the document, as soon as practicable.

(3) Subsection (1) does not apply if the information is the adjusted taxable income of the individual.

Favourable changes affecting providers

(4) A decision on review under section 105 of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for the week is increased (including from nil); and

(b) either:

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(i) the provider was required to notify the Secretary of the information by section 204F; or

(ii) the Secretary required the provider to give the information or produce a document containing the information under Part 6 and the provider did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earlier of the following events:

(i) the provider notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information.

(5) Despite subsection (4), the Secretary may take the information into account if the Secretary is satisfied that the provider notified or gave the information, or produced the document, as soon as practicable.

105D Review of entitlement to be paid CCS or ACCS—time limit on increase

(1) A decision on review under section 105 of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS must not have the effect that the amount of CCS or ACCS the individual is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the decision on review is made.

(2) Subsection (1) does not apply if:

(a) the decision on review is a child care decision made because of or in relation to section 105E, to the extent that the review relates to:

(i) the individual's adjusted taxable income for the income year in which the CCS fortnight starts; or

(ii) the individual's activity test result for the CCS fortnight; or

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(b) the review is conducted:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and

(ii) within 90 days after the individual or other person was notified by the Commissioner of the outcome of the review.

(2A) However, if:

(a) the decision on review is a child care decision made under subsection 105E(3); and

(b) the individual did not meet the CCS reconciliation conditions for the income year by the second deadline for the income year;

the decision must not have the effect that the amount of CCS the individual is entitled to be paid for the income year is more than the amount (less any withholding amounts) the individual was entitled to be paid for the income year before the child care decisions for the individual for the income year were set aside under paragraph 105E(2)(c).

(3) A decision on review under section 105 of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) must not have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the decision on review is made.

105E Review of individual's entitlement to be paid CCS by fee reduction—meeting CCS reconciliation conditions

(1) If an individual meets the CCS reconciliation conditions for an income year (the ***relevant income year***) by the first deadline for the relevant income year:

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(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the child care decisions (if any) in relation to subsection 67CD(2) or (8) for the individual in relation to sessions of care provided in each week in CCS fortnights starting in the relevant income year; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) the review must take into account:

(i) information obtained about the adjusted taxable income of the individual by the meeting of the CCS reconciliation conditions; and

(ii) subject to section 105C, any other information available about the individual's activity test result or any other matter relevant to the individual's entitlement.

(2) If an individual does not meet the CCS reconciliation conditions for an income year (the ***relevant income year***) by the first deadline for the relevant income year:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the child care decisions (if any) in relation to subsection 67CD(2) or (8) for the individual in relation to sessions of care provided in each week in CCS fortnights starting in the relevant income year; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) despite subsection 105(4), the Secretary must set the child care decisions aside and substitute them with determinations under subsection 67CD(8) that the individual is not entitled to be paid CCS or ACCS for the sessions of care.

(3) If an individual meets the CCS reconciliation conditions for an income year (the ***relevant income year***) after the first deadline for the relevant income year:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the

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child care decisions in relation to subsection 67CD(8) made for the individual in accordance with paragraph (2)(c) of this section; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) the review must take into account:

(i) information obtained about the adjusted taxable income of the individual by the meeting of the CCS reconciliation conditions; and

(ii) subject to sections 105C and 105D, any other information available about the individual's activity test result or any other matter relevant to the individual's entitlement.

Member of a couple for part of a year

(4) Subsections (5) and (6) apply to the review, under this section, by the Secretary of a child care decision that relates to an individual who is a member of a couple on one or more, but not all, of the first Mondays in CCS fortnights that start in an income year.

(5) The Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act in relation to each CCS fortnight that starts in the income year as if paragraph 3AA(2)(b) of Schedule 3 to the Family Assistance Act had not been enacted.

(6) If the individual is a member of a couple on the first Monday in a CCS fortnight that starts in the income year, the Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act in relation to the fortnight as if the individual's adjusted taxable income for the year included the adjusted taxable income for the year for the other member of the couple.

(7) To avoid doubt, subsections (5) and (6) have effect despite Part 1 of Schedule 2 to the Family Assistance Act.

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106 Notice of review decision not relating to CCS or ACCS

(3) If:

(a) the Secretary makes a review decision under section 105 to:

(i) vary an original decision; or

(ii) set aside an original decision and substitute a new decision; and

(b) the review decision is not a decision to which section 106A applies (certain review decisions relating to CCS or ACCS);

the Secretary must give notice of the review decision to the person whose entitlement, or possible entitlement, to family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021 is affected by the decision.

(4) A notice must state the effect of the review decision and that the applicant, or person whose entitlement or possible entitlement is affected by the decision, may apply for review of the review decision involved in the manner set out in this Part.

(5) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

106A Notice of certain review decisions relating to CCS or ACCS

(1) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CC that an individual is or is not eligible for CCS for a child by fee reduction, the Secretary:

(a) must give written notice of the review decision to the individual (the ***affected person***); and

(b) may give written notice of the review decision to the provider of any approved child care service at which the child has been enrolled since the determination under section 67CC first took effect.

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(2) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care, or to affirm a child care decision in relation to section 67CD for an individual in relation to sessions of care when reviewing the child care decision because of section 105E, the Secretary:

(a) must give written notice of the review decision to the individual (the ***affected person***); and

(b) if the review decision is a fee reduction decision—must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care; and

(c) if the review decision is not a fee reduction decision—may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

(3) If the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), a notice under subsection (2) of this section must include a statement to that effect.

(4) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CF (entitlement to be paid CCS or ACCS in substitution for a person who has died), the Secretary must give written notice of the review decision to the individual for whom the determination under section 67CF was made (the ***affected person***).

(5) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CH (entitlement of provider to be paid ACCS (child wellbeing)), the Secretary must give written notice of the review decision to the provider for whom the determination under section 67CH was made (the ***affected person***).

(6) If the Secretary makes a review decision under section 105 to vary or substitute a decision made under Part 8 or 8A in relation to a

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provider (or a decision made on review of such a decision), the Secretary must give written notice of the review decision to the provider (the ***affected person***).

(7) A notice under this section to an affected person must state the effect of the review decision and inform the affected person that the affected person may apply for review of the review decision in the manner set out in this Part.

(8) A notice under this section may be given to a provider by making the notice available to the provider using an electronic interface.

(9) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

106B Notice to ART

(1) If the Secretary makes a review decision under section 105 to vary or substitute a decision after a person has applied to the ART for a review in relation to the decision, the Secretary must give written notice of the review decision to the ART Principal Registrar.

(2) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

107 Date of effect of certain decisions made under section 105 in relation to family tax benefit by instalment

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

(a) the Secretary reviews, under section 105 (including because of the operation of section 105A), a decision (the ***original decision***) relating to the payment to a person of family tax benefit by instalment; and

(b) the Secretary decides (the ***review decision***) to vary the original decision or set aside the original decision and substitute a new decision; and

(c) the review decision will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment; and

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(d) the review decision is made more than 52 weeks after the person concerned was given notice of the original decision;

the date of effect of the review decision is the first day of the period to which the original decision relates.

(1AA) If:

(a) paragraphs (1)(a), (b), (c) and (d) apply; and

(b) the first day of the period to which the original decision relates is earlier than the first day (the ***cut-off day***) of the income year before the income year in which the review decision was made;

then, despite subsection (1), the person cannot be paid any entitlement created or increased as mentioned in paragraph (1)(c) (including as a result of taking into account the FTB Part A supplement or the FTB Part B supplement) in relation to any day earlier than the cut-off day.

(1A) Subsection (1AA) does not apply if the review was undertaken under section 105 because of the operation of section 105A.

107A Date of effect of certain decisions made under section 105 in relation to eligibility for CCS

If:

(a) the Secretary makes a review decision under section 105 to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC (eligibility for CCS) for an individual; and

(b) the review decision has the effect that the individual becomes eligible for CCS for a child, or eligible for additional days;

the date of effect of the review decision cannot be earlier than the first day of the income year before the income year in which the review decision was made.

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Subdivision B—Review initiated by the applicant

108 Decisions that may be reviewed under section 109A

Decisions that may and may not be reviewed under section 109A

(1) A decision of any officer under the family assistance law must be reviewed on application under section 109A unless an exception set out in subsection (2), (5) or (6) applies to the decision.

(2) The exceptions to the rule in subsection (1) are:

(a) a decision made by:

(i) the Secretary personally; or

(ii) another agency head himself or herself in the exercise of a delegated power; or

(iii) the Chief Executive Centrelink in the exercise of a delegated power; or

(iv) the Chief Executive Medicare in the exercise of a delegated power; or

(b) a decision under section 67EB to pay an amount; or

(c) a decision to give a person a notice under section 199E (notice about effect of non-compliance by provider on eligibility for CCS or ACCS); or

(d) a decision under section 205A (business continuity payments—reports not given); or

(e) except as mentioned in subsection (3) or (4), a determination about a person's eligibility for, or entitlement to, family assistance other than CCS or ACCS if that determination:

(i) is neither a determination made under section 19 because the Secretary is not satisfied that an estimate of adjusted taxable income is reasonable nor a determination varied under section 28A; and

(ii) is wholly or partly based on an estimate of the amount of adjusted taxable income, or maintenance income, in a particular income year, to the extent that the determination is so based; or

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(f) a decision under section 199B to publicise information; or

(g) a decision under section 85GA of the Family Assistance Act (funding agreements) in relation to an agreement.

(h) a decision under an instrument (including regulations) made under this Act or the Family Assistance Act.

(2A) Paragraph (2)(h) does not apply in relation to a decision under an instrument if the instrument provides that the decision is reviewable for the purposes of this section.

(3) A determination about a person's (the ***applicant's***) eligibility for, or entitlement to, family assistance other than CCS, to the extent the determination is based on an estimate of adjusted taxable income for an income year (the ***relevant income year***), is not to be reviewed under section 109A unless the applicant applies for the review after the end of the relevant income year and one of the following paragraphs applies:

(a) the Commissioner of Taxation has, on the basis of income tax returns lodged before the end of the income year immediately after the relevant income year, made an assessment of the taxable income for the relevant income year of all persons whose taxable income was relevant in making the determination;

(b) there is no person whose taxable income was relevant in making the determination who was required to lodge an income tax return for the relevant income year.

(4) A determination about a person's (the ***applicant's***) eligibility for, or entitlement to, family tax benefit to the extent that the determination was based on an estimate of the amount of maintenance income in a particular income year, may be reviewed under section 109A only if the applicant seeks that review after the end of that year.

(5) A child care decision about an individual's entitlement to be paid CCS for a week, to the extent the child care decision is based on:

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(a) the individual's adjusted taxable income for the income year (the ***relevant income year***) in which the CCS fortnight that includes the week starts; or

(b) the individual's activity test result for the CCS fortnight that includes the week;

is not to be reviewed under section 109A unless the individual has met the CCS reconciliation conditions for the relevant income year.

(6) A child care decision made because of subsection 105E(2) is not to be reviewed under section 109A unless the individual has met the CCS reconciliation conditions for the relevant income year.

109A Review of certain decisions may be initiated by applicant

(1) A person affected by a decision (the ***original decision***):

(a) that is not a care percentage decision; and

(b) that is not a decision under Part 8 (approval of providers of child care services); and

(c) that, under section 108, must be reviewed under this section;

may apply to the Secretary for review of the original decision.

(1A) A person affected by a decision (the ***original decision***):

(a) that is a care percentage decision; and

(b) that, under section 108, must be reviewed under this section;

may apply to the Secretary, or the Child Support Registrar, for review of the original decision.

(1B) If a decision (the ***original decision***):

(a) is made under Part 8 (approval of providers of child care services) in relation to a provider; and

(b) under section 108, must be reviewed under this section;

the provider may apply to the Secretary for review of the original decision.

(2) If the person makes an application under subsection (1), (1A) or (1B), the Secretary must either:

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(a) review the original decision and decide (the ***review decision***) to:
  (i) affirm it; or
  (ii) vary it; or
  (iii) set it aside and substitute a new decision; or
(b) arrange for an authorised review officer (see section 109C) to do so.

(2A) If:
(a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
(b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;

the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

(3) If:
(a) the person who reviews the decision (the ***decision reviewer***) makes a review decision to set aside an original decision; and
(b) the decision reviewer is satisfied that an event that did not occur would have occurred if the original decision had not been made;

the decision reviewer may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

(4) If:
(a) a person who may apply to the Secretary or Child Support Registrar for review of a decision under subsection (1), (1A) or (1B) has not done so; and
(b) the person applies to the ART for review of the decision (despite not being entitled to do so);

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the person is taken to have applied to the Secretary or Child Support Registrar for review of the decision under that subsection on the day on which the person applied to the ART.

109B Notice to be given of decisions under section 109A

Decision reviewer to give notice of section 109A decision

(1) The decision reviewer of a decision reviewed under section 109A must give notice of the review decision as set out in this section.

Notice of decisions relating to CCS or ACCS

(2) If a review decision is a decision to affirm, vary or substitute a child care decision in relation to section 67CC that an individual is or is not eligible for CCS for a child by fee reduction, the decision reviewer:

(a) must give written notice of the review decision to the individual; and

(b) may give written notice of the review decision to the provider of any approved child care service at which the child has been enrolled since the determination under section 67CC first took effect.

(2A) If a review decision is a decision to affirm, vary or substitute a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care, the decision reviewer:

(a) must give written notice of the review decision to the individual; and

(b) if the review decision is a fee reduction decision—must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care; and

(c) if the review decision is not a fee reduction decision—may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

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(2B) If the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), a notice under subsection (2A) of this section must include a statement to that effect.

(2C) A notice under subsection (2) or (2A) may be given to a provider by making the notice available to the provider using an electronic interface.

Notice to be given of other review decisions

(3) If a review decision is in respect of any other original decision that may be reviewed under section 109A, other than an original decision referred to in subsection (2) or (2A), the decision reviewer must give the applicant written notice of his or her decision:

(a) to affirm or vary the decision reviewed; or

(b) to set it aside and substitute a new decision.

109C Authorised review officers

The Secretary must authorise officers to be authorised review officers for the purposes of this Division.

109D Review applications—time limits applicable to review of certain decisions

Time for making applications for review

(1) Subject to this section, an application for review under section 109A of any decision (other than an excepted decision) must be made no later than:

(a) for a decision in relation to CCS or ACCS (including a decision in relation to Part 8A)—90 days after the applicant is notified of the decision; and

(b) otherwise—52 weeks after the applicant is notified of the decision.

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Exception—Secretary may extend time limits in special circumstances

(2) The Secretary may, if he or she is satisfied that there are special circumstances that prevented the applicant from making an application under section 109A for review of a decision (other than an excepted decision) within the period specified for the decision in subsection (1), permit a person to make the application after the end of that period and within such further period as the Secretary determines to be appropriate.

Further exceptions

(3) An application under section 109A for review of a decision (other than an excepted decision) to which paragraph (1)(b) applies may also be made after the 52 weeks mentioned in that paragraph if the application is for review of one or other of the following decisions:

(a) a determination decision that a person is or is not entitled to be paid family tax benefit for a past period if the period occurs in the income year in which the application was made or in the previous income year (a determination of entitlement is made under section 17 or 19);

(b) a determination decision that a person is or is not entitled to be paid family tax benefit by single payment/in substitution because of the death of another individual if the death occurred in the income year in which the application was made or in the previous income year (a determination of entitlement is made under section 18 or 19).

(4) An application under section 109A for review of a decision (other than an excepted decision or a decision to which subsection (5A) relates) relating to the payment to a person of family assistance, or of one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021, may also be made after the period specified for the decision in subsection (1), if:

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(a) the application for review is made because of an assessment, by the Commissioner of Taxation, of taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (4A); or

(b) the application for review is made:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (4A); and

(ii) within 90 days after the relevant person was notified by the Commissioner of the outcome of the review; or

(c) the family assistance is family tax benefit and the application for review is made:

(i) because of a review, by the Child Support Registrar, of a previous decision by the Registrar about the child support entitlement of any relevant person; and

(ii) within 90 days after the relevant person was notified by the Registrar of the outcome of the review.

(4A) For the purposes of paragraph (4)(a) or subparagraph (4)(b)(i), the income tax return of a person in respect of a particular income year (the ***base year***) must be lodged before the end of:

(a) the first income year after the base year; or

(b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.

(4B) The further period under paragraph (4A)(b) must end no later than the end of the second income year after the base year.

(5) In subsection (4), a reference to a relevant person, in relation to the person first-mentioned in that subsection, is a reference:

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(a) so far as paragraph (4)(a) or (b) is concerned—to any person (including the first-mentioned person) whose taxable income is relevant in determining the first-mentioned person's eligibility for, or rate of, family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021; and

(b) so far as paragraph (4)(c) is concerned—to any person (including the first-mentioned person) whose entitlement to child support is relevant in determining the first-mentioned person's rate of family tax benefit.

(5A) An application under section 109A for review of a decision (other than an excepted decision) relating to the payment to an individual of CCS for a week may also be made after the 90 days mentioned in paragraph (1)(a) if the application for review is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week starts; and

(b) within 90 days after the individual or other person was notified by the Commissioner of the outcome of the review.

(6) In this section:

excepted decision means a decision:

(a) relating to the payment to a person of family tax benefit by instalment; or

(b) relating to the raising of a debt under Division 2 of Part 4; or

(c) made under Part 8 (approval of providers of child care services).

Note: Applications by providers for review of decisions made under Division 2 of Part 4 relating to CCS or ACCS or decisions made under Part 8 are subject to the time limits set out in section 109DA.

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109DA Review applications—time limits on certain applications by providers

(1) An application by a provider for review under subsection 109A(1) of a decision made under Division 2 of Part 4 relating to CCS or ACCS must be made no later than:

(a) 52 weeks after the provider is notified of the decision; or

(b) if the provider was not notified of the decision—52 weeks after the provider becomes aware of the decision.

(2) An application by a provider for review under subsection 109A(1B) of a decision made under Part 8 (approval of providers of child care services) must be made no later than:

(a) 14 days after the provider is notified of the decision; or

(b) if the provider was not notified of the decision—14 days after the provider becomes aware of the decision.

109DB Review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Section 105C applies to a decision on review under section 109A of a child care decision in relation to section 67CD or 67CH as if the references to section 105 were references to section 109A.

Note: Section 105C limits the information that can be taken into account in the decision on review.

109DC Review of entitlement to be paid CCS or ACCS—time limit on increase

Section 105D applies to a decision on review under section 109A of a child care decision in relation to section 67CD or 67CH as if:

(a) the references to section 105 were references to section 109A; and

(b) the references to the income year in which the decision on review is made were references to the income year in which the application for review is made; and

(c) subparagraph (2)(a)(ii) were omitted; and

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(d) paragraph (2)(c) referred to the application being made instead of the review being conducted.

Note: Section 105D limits when a decision on review can increase the amount of CCS or ACCS an individual or provider is entitled to be paid.

109E Date of effect of certain decisions relating to payment of family tax benefit by instalment

(1) If:

(a) a person applies under section 109A for review of a decision (the ***original decision***) relating to the payment to the person of family tax benefit by instalment; and

(b) the application is made more than 52 weeks after the person was given notice of the original decision; and

(c) the Secretary or an authorised review officer decides, under subsection 109A(2), to vary the original decision or to set aside the original decision and substitute a new decision; and

(d) the decision of the Secretary or authorised review officer (the ***review decision***) will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment;

the date of effect of the review decision is the first day of the period to which the original decision relates.

(2) The Secretary may, if he or she is satisfied that there are special circumstances that prevented the applicant from making an application under section 109A for review of the original decision within 52 weeks, determine that subsection (1) applies as if the reference to 52 weeks were a reference to such longer period as the Secretary determines to be appropriate.

(2AA) If:

(a) paragraphs (1)(a), (b), (c) and (d) apply; and

(b) the first day of the period to which the original decision relates is earlier than the first day (the ***cut-off day***) of the income year before the income year in which the application referred to in paragraph (1)(b) was made;

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then, despite subsection (1), the person cannot be paid any entitlement created or increased as mentioned in paragraph (1)(d) (including as a result of taking into account the FTB Part A supplement or the FTB Part B supplement) in relation to any day earlier than the cut-off day.

(2A) Subsection (2AA) does not apply in relation to a decision by the Secretary or by an authorised review officer on an application by a person under section 109A for review of the original decision if:

(a) as a result of the original decision, the person was entitled to be paid family tax benefit by instalment at a particular rate in respect of a period (the ***same-rate benefit period***) that consists of, or is included in, a particular income year (the ***relevant income year***); and

(aa) the original decision is not a decision made under subsection 105(4) (including because of the operation of section 105A) or 109A(2); and

(b) either:

(i) if the same-rate benefit period to which the original decision relates is the only same-rate benefit period for the person for the relevant income year—the person satisfies the FTB reconciliation conditions for the same-rate benefit period; or

(ii) if the same-rate benefit period to which the original decision relates is one of 2 or more same-rate benefit periods for the person for the relevant income year—the person satisfies the FTB reconciliation conditions for each of those same-rate benefit periods.

Note: To work out when the person satisfied the FTB reconciliation conditions, see section 32B.

(3) Subsection (2AA) does not apply in relation to a decision by the Secretary or by an authorised review officer on an application under section 109A for review of the original decision if:

(b) the application for review is made:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the

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taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (3A); and

(ii) within 90 days after the relevant person was notified by the Commissioner of the outcome of the review; or

(c) the application for review is made:

(i) because of a review, by the Child Support Registrar, of a previous decision by the Registrar about the child support entitlement of any relevant person; and

(ii) within 90 days after the relevant person was notified by the Registrar of the outcome of the review.

(3A) For the purposes of subparagraph (3)(b)(i), the income tax return of a person in respect of a particular income year (the ***base year***) must be lodged before the end of:

(a) the first income year after the base year; or

(b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.

(3B) The further period under paragraph (3A)(b) must end no later than the end of the second income year after the base year.

(4) In subsection (3), a reference to a relevant person, in relation to the person first-mentioned in that subsection, is a reference:

(a) so far as paragraph (3)(b) is concerned—to any person (including the first-mentioned person) whose taxable income is relevant in determining the first-mentioned person's eligibility for, or rate of, family tax benefit; and

(b) so far as paragraph (3)(c) is concerned—to any person (including the first-mentioned person) whose entitlement to child support is relevant in determining the first-mentioned person's rate of family tax benefit.

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109EA Date of effect of certain decisions made under section 109A in relation to eligibility for CCS

Section 107A applies to a review under section 109A of a child care decision in relation to section 67CC as if:

(a) the reference to section 105 were a reference to section 109A; and

(b) the reference to the income year in which the review decision was made were a reference to the income year in which the application for review was made.

Note: Section 107A provides for the date of effect of a decision to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC.

109F Withdrawal of review applications

(1) An applicant for review under section 109A may, in writing or in any other manner approved by the Secretary, withdraw the application at any time before the decision reviewer does any of the things in subsection 109A(2).

(2) If an application is so withdrawn, it is taken never to have been made.

109G Secretary may continue payment etc. pending outcome of application for review

(1) If:

(a) an adverse family assistance decision is made; and

(b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and

(c) a person applies under section 109A for review of the adverse decision;

the Secretary may declare that entitlement to the family assistance to which the adverse family assistance decision relates is to continue, pending the determination of the review, as if the adverse decision had not been made.

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(3) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.

(4) The declaration:

(a) starts to have effect on the day on which it is made or on the earlier day (if any) specified in the declaration; and

(b) stops having effect if:

(i) the application for review of the adverse decision is withdrawn; or

(ii) the review of the adverse decision is determined by the Secretary or an authorised review officer; or

(iii) the declaration is revoked by the Secretary.

(5) In this section:

adverse family assistance decision, in relation to a person, means any decision having the effect that:

(a) the person ceases to be entitled to family assistance; or

(b) the person's entitlement to family assistance is reduced.

109H Notification of further rights of review

(1) If the decision reviewer gives an applicant a notice under section 109B, the notice must include:

(a) a statement to the effect that the applicant may, subject to this Part and the ART Act, apply to the ART for review of the review decision mentioned in the notice; and

(b) a statement about the review decision that:

(i) sets out the reasons for the decision; and

(ii) sets out the findings by the decision reviewer on material questions of fact; and

(iii) refers to the evidence or other material on which those findings were based.

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

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Division 2—Review by ART

Subdivision A—Simplified outline of this Division

110 Simplified outline of this Division

If a person is dissatisfied with a decision of a decision reviewer under Subdivision B of Division 1, the person may apply to the ART for review of the decision (an "ART review") (certain decisions are excepted).

If a decision has been reviewed by the ART, in some circumstances the ART Act allows a person to apply to refer the matter to the ART as constituted by the guidance and appeals panel for further review.

In other circumstances, application may be made for review (a "second review") of the decision by the ART on ART review. Applications for second review are made under the ART Act.

The rules relating to reviews by the ART are mainly in the ART Act, but the operation of that Act is modified in some ways by this Division.

The ART Act allows a person to appeal to the Federal Court on a question of law from a decision of the ART.

Subdivision B—Application for ART review

111 Application for ART review

(1) If the decision reviewer has affirmed, varied or set aside a decision under Subdivision B of Division 1, application may be made to the ART for review (***ART review***) of the decision as affirmed or varied or, if it has been set aside and another decision substituted, the decision so substituted.

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(1A) If a decision has been made by:

(a) the Secretary personally; or

(b) another agency head himself or herself in the exercise of a delegated power; or

(c) the Chief Executive Centrelink in the exercise of a delegated power; or

(d) the Chief Executive Medicare in the exercise of a delegated power;

application may be made to the ART for review (also ***ART review***) of the decision.

(2) However, a person cannot apply for review under subsection (1) or (1A) in respect of any of the following decisions:

(a) a decision about the form or manner in which an application or claim is to be made or a notice given;

(b) a decision about the kind of information or documents required to be given in or to accompany an application, claim or notice;

(c) a decision under section 109G or 113 (continuation of payment etc. pending review of adverse decision);

(d) a decision under Division 1 of Part 6 or section 203A (Secretary requiring or requesting information from person);

(da) a decision under section 67FE, 67FG, 67FH or 67FI (Secretary requesting information in relation to CCS or ACCS) or subsection 204A(6) (Secretary requesting further information about a child care service stopping operations);

(e) a decision relating to the Secretary's power under section 137 or 141 to settle proceedings before the ART;

(f) a child care provider decision;

(g) a decision under section 203C (engaging expert for independent audit);

(h) a decision under section 204D (information about number of child care places).

(2A) A child care decision about an individual's entitlement to be paid CCS for a week, to the extent the child care decision is based on:

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(a) the individual's adjusted taxable income for the income year (the ***relevant income year***) in which the CCS fortnight that includes the week starts; or

(b) the individual's activity test result for the CCS fortnight that includes the week;

is not to be reviewed on ART review unless the individual has met the CCS reconciliation conditions for the relevant income year.

(3) In this section:

decision reviewer means a person who, in accordance with subsection 109A(2), reviewed a decision that was the subject of an application under section 109A.

111A Time limit for application for ART review

90 day time limit for most kinds of decision

(1) Subject to subsections (2) and (2A), an application for ART review of a decision, other than a decision covered by subsection (3A) or excepted under subsection (5), must be made no later than 90 days after the person is notified of the decision.

(2) The ART may, if it determines that there are special circumstances that prevented the person from making an application for ART review of a decision of the kind referred to in subsection (1) within the 90 days mentioned in subsection (1), permit a person to make the application after the end of that period and within such further period as the ART determines to be appropriate.

(2A) An application for ART review of a child care decision about an individual's entitlement to be paid CCS for a week, other than a decision excepted under subsection (5), may also be made after the 90 days mentioned in subsection (1) if the application for review is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation

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conditions for the income year in which the CCS fortnight that includes the week starts; and

(b) within 90 days after the individual or other person was notified by the Commissioner of the outcome of the review.

(3) Subsections (1), (2) and (2A) apply despite sections 18 and 19 of the ART Act (which deal with when applications for review may be made).

52 week time limit for certain provider debt decisions

(3A) An application by a provider for ART review in respect of a decision under Division 2 of Part 4 relating to CCS or ACCS must be made no later than:

(a) 52 weeks after the provider is notified of the decision; or

(b) if the provider was not notified of the decision—52 weeks after the provider becomes aware of the decision.

(3B) Subsection (3A) applies despite sections 18 and 19 of the ART Act (which deal with when applications for review may be made).

No time limit for excepted decisions

(4) Section 18 (when to apply for review) of the ART Act does not apply in relation to an application for ART review of a decision that is excepted under subsection (5).

Excepted decisions

(5) A decision is excepted under this subsection if the decision:

(a) relates to the payment to a person of family tax benefit by instalment; or

(b) relates to the raising of a debt under Division 2 of Part 4 (other than a decision referred to in subsection (3A)).

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Subdivision C—Other matters relating to ART review

111B Person who made the decision

For the purposes of ART review of a decision, a reference in the ART Act to the decision-maker for the decision is taken to be a reference to the Secretary.

111C Decision-maker taken to have elected not to participate in ART review proceeding

For the purposes of ART review of a decision, the decision-maker for the decision is taken to have given the ART an election notice (within the meaning of the ART Act) in relation to a kind of proceeding that is a proceeding for ART review of the decision.

112 Operation and implementation of decision under ART review

Subsection 32(2) (ART may stay operation or implementation) of the ART Act does not apply in relation to a proceeding for ART review.

112A Remitting decisions for reconsideration

Section 85 (ART may remit decision to decision-maker for reconsideration) of the ART Act does not apply in relation to a proceeding for ART review.

112B Requesting reasons for decision

Section 268 (requesting reasons for reviewable decision from decision-maker) of the ART Act does not apply in relation to a decision for which an application for ART review may be made.

112C Legal or financial assistance

(1) Subsection 294(1) (legal or financial assistance for applicants) of the ART Act does not apply in relation to:

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(a) a person who proposes to apply to the ART for ART review; or

(b) a person who applies to the ART for ART review, unless the proceeding in relation to the application is a guidance and appeals panel proceeding.

(2) Subsection 294(3) (legal or financial assistance for other parties) of the ART Act does not apply in relation to a proceeding for ART review unless the proceeding is a guidance and appeals panel proceeding.

(3) Subsection 294(4) (legal or financial assistance for court proceedings) of the ART Act does not apply in relation to a matter that relates to a proceeding for ART review unless the proceeding is a guidance and appeals panel proceeding.

113 Secretary may continue certain matters pending outcome of application for ART review

(1) If:

(a) an adverse family assistance decision is made; and

(b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and

(c) a person makes an application for ART review of the adverse decision;

the Secretary may declare that entitlement to the family assistance is to continue, pending the determination of the review, as if the adverse decision had not been made.

(3) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.

(4) The declaration:

(a) starts to have effect on the day it is made or on the earlier day (if any) specified in the declaration; and

(b) stops having effect if:

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(i) the ART dismisses the application for ART review of the adverse decision; or

(ii) the ART determines the ART review of the adverse decision; or

(iii) the Secretary revokes the declaration.

(5) In this section:

adverse family assistance decision, in relation to a person, means any decision having the effect that:

(a) the person ceases to be entitled to family assistance; or

(b) the person's entitlement to family assistance is reduced.

114 Arrangements for ART review if section 113 declaration in force

If a declaration under section 113 is in force in relation to a decision for which an application for ART review has been made, the President of the ART must take reasonable steps to ensure that the decision is reviewed as quickly as possible.

115 Variation of original decision after application is made for ART review

(1) If an officer varies or substitutes a decision after an application has been made for ART review of the decision, the application is taken to be an application for ART review of the decision as varied or substituted.

(2) However, if the President of the ART refers the application to the guidance and appeals panel under section 122 of the ART Act, section 31 (decision cannot be altered outside Tribunal process) of that Act applies to the decision after the referral is made.

116 Procedure on receipt of application for certain ART reviews

(1) The ART may, in relation to an application for ART review, request the Secretary to lodge with the ART the statement and other documents referred to in section 23 (decision-maker must

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give ART reasons and documents—general rule) of the ART Act before the end of the period that otherwise applies.

(2) If the ART does so, the Secretary must take reasonable steps to comply with the request.

(3) Nothing in this section prevents the operation of subsection 28(4) of the ART Act (which allows the ART to shorten the period for giving documents).

116A Parties to ART review

The parties to an ART review of a care percentage decision include, in addition to the parties referred to in subsection 22(1) of the ART Act, each person who is a responsible person (within the meaning of the *Child Support (Assessment) Act 1989*) for the child to whom the decision relates.

119 Power to obtain information for ART reviews

(1) If the ART reasonably believes that a person has information that is relevant to an ART review and the person is not a party to the review, the ART may, by written notice given to the person, require the person to give to the ART, within the period and in the manner specified in the notice, any such information.

Note: Section 74 of the ART Act deals with the ART's power to summon a person to give evidence or produce documents.

(2) A person commits an offence if:

(a) the ART gives the person a notice under subsection (1); and

(b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(3) Subsection (2) does not apply if complying with the notice might tend to incriminate the person.

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

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120 ART may require Secretary to obtain information for ART review

(1) If the ART reasonably believes that a person will be able to give information, or produce a document or records, relevant to an ART review, the ART may, for the purposes of the review, request the Secretary to exercise the Secretary's powers under section 154 or 157A.

(2) The Secretary must comply with the request as soon as practicable and no later than 7 days after the request is made.

(3) Section 153A does not apply to the Secretary when complying with a request under subsection (1).

121 Hearing of certain ART reviews in private

(1) This section applies in relation to a proceeding for ART review if the ART is constituted for the purposes of the proceeding otherwise than by the guidance and appeals panel.

(2) The hearing of the proceeding must be in private.

(3) The ART may give directions, in writing or otherwise, as to the persons who may be present at the hearing of the proceeding.

(4) In giving directions, the ART must have regard to the wishes of the parties and the need to protect their privacy.

(5) Section 69 (hearings to be in public unless practice directions or ART order requires otherwise) of the ART Act does not apply in relation to the hearing of the proceeding.

122 Costs of ART review

(1) Subject to subsection (4) and the outcome of any application under section 294 of the ART Act, a party to an ART review must bear any expenses incurred by the party in connection with the review.

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(2) The ART may determine that the Commonwealth is to pay the reasonable costs that are:
  (a) incurred by a party for travel and accommodation in connection with an ART review; and
  (b) specified in the determination.

(3) If the ART arranges for the provision of a medical service in relation to a party to an ART review, the ART may determine that the Commonwealth is to pay the costs of the provision of the service.

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

123 Decision on ART review of care percentage decision

If:
  (a) the ART has reviewed:
    (i) a decision (a ***child support decision***) on application referred to in section 89 of the *Child Support (Registration and Collection) Act 1988*; or
    (ii) a decision on application referred to in section 131D of the ART Act in relation to a child support decision; and
  (b) that review involved (wholly or partly) a review of a determination to which a care percentage decision relates;

then, despite section 54 of the ART Act, the ART must not, on ART review of the care percentage decision, vary or substitute the decision in a way that would have the effect of varying or substituting the determination referred to in paragraph (b).

124 Certain other decisions on ART review

(1) If, on ART review of a decision, the ART sets the decision aside under section 105 of the ART Act and substitutes for it a decision that a person is entitled to have a payment made under this Act, the ART must:
  (a) assess the amount of the payment; or

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(b) ask the Secretary to assess the amount of the payment.

(2) Despite subsection (1), the ART must ask the Secretary to assess, in accordance with any directions or recommendations of the ART, the amount of CCS or ACCS an individual or provider is entitled to be paid, if:

(a) on ART review, the ART:

(i) reviews a child care decision in relation to section 67CD, 67CF or 67CH as to an amount of CCS or ACCS that the individual or provider is entitled to be paid; and

(ii) considers that the individual or provider is entitled to be paid a different amount of CCS or ACCS; or

(b) on ART review, the ART:

(i) reviews a child care decision in relation to subsection 67CD(6), 67CF(3) or 67CH(3) that the individual or provider is not entitled to be paid CCS or ACCS; and

(ii) considers that the individual or provider is entitled to be paid an amount of CCS or ACCS.

(3) For the purposes of this Part and the definition of ***child care decision*** in subsection 3(1), the Secretary's assessment under subsection (2) forms part of the ART's decision on the review.

125 Date of effect of certain ART review decisions relating to payment of family tax benefit

(1) If:

(a) a person makes an application for ART review of a decision (the ***original decision***) relating to the payment to a person of family tax benefit by instalment; and

(b) the application is made more than 90 days after the person was given notice of the original decision; and

(c) the ART makes a decision under section 105 of the ART Act to vary or substitute the original decision; and

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(d) the decision of the ART will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment;

then, despite subsections 108(4) and (5) of the ART Act, the date of effect of the decision of the ART is the first day of the period to which the original decision relates.

(2) The ART may, if satisfied that there are special circumstances that prevented the applicant from making an application within 90 days, determine that subsection (1) applies as if the reference to 90 days were a reference to such longer period as the ART determines to be appropriate.

(3) If:

(a) paragraphs (1)(a), (b), (c) and (d) apply; and

(b) the first day of the period to which the original decision relates is earlier than the first day (the ***cut-off day***) of the income year before the income year in which the application referred to in paragraph (1)(b) was made;

then, despite subsection (1), the person cannot be paid any entitlement created or increased as mentioned in paragraph (1)(d) (including as a result of taking into account the FTB Part A supplement or the FTB Part B supplement) in relation to any day earlier than the cut-off day.

125A Date of effect of certain ART review decisions relating to eligibility for CCS

If:

(a) the ART makes a decision on ART review to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC (eligibility for CCS) for an individual; and

(b) the ART's decision has the effect that the individual becomes eligible for CCS for a child, or eligible for additional days;

the date of effect of the ART's decision cannot be earlier than the first day of the income year before the income year in which the application for review was made.

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127 Secretary or ART may treat event as having occurred if decision set aside on ART review

If:

(a) on ART review of a decision, the ART sets the decision aside under section 105 of the ART Act; and

(b) the Secretary or the ART, as the case may be, is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary or the ART may, if satisfied that it is reasonable to do so, treat the event as having occurred for the purposes of the family assistance law.

136 Notice by Secretary of certain ART decisions in relation to CCS or ACCS by fee reduction

(1) This section applies to a decision on ART review of a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care.

(2) If the decision is a fee reduction decision, the Secretary must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care.

(3) If the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), the notice under subsection (2) of this section must include a statement to that effect.

(4) If the decision is not a fee reduction decision, the Secretary may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

(5) A notice under this section may be given to a provider by making the notice available using an electronic interface.

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137 Settlement of proceedings before the ART

(1) The Secretary may agree, in writing, with other parties to settle proceedings before the ART if the proceedings are an ART review and they relate to the recovery of a debt.

(2) If proceedings are settled and the Secretary gives the ART a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

137A ART review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Favourable changes affecting individuals

(1) A decision on ART review of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of CCS or ACCS the individual is entitled to be paid for the week is increased (including from nil); and

(b) either:

(i) the individual was required to notify the Secretary of the information by subsection 67FB(1); or

(ii) the Secretary required the individual to give the information or produce a document containing the information under Part 6 and the individual did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earliest of the following events:

(i) the individual notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information;

(iii) the ART otherwise became aware of the information.

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(2) Despite subsection (1), the decision on review may take the information into account if the Secretary is satisfied that the individual notified or gave the information, or produced the document, as soon as practicable.

(3) Subsection (1) does not apply if the information is the adjusted taxable income of the individual.

Favourable changes affecting providers

(4) A decision on ART review of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for the week is increased (including from nil); and

(b) either:

(i) the provider was required to notify the Secretary of the information by section 204F; or

(ii) the Secretary required the provider to give the information or produce a document containing the information under Part 6 and the provider did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earliest of the following events:

(i) the provider notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information;

(iii) the ART otherwise became aware of the information.

(5) Despite subsection (4), the decision on review may take the information into account if the Secretary is satisfied that the provider notified or gave the information, or produced the document, as soon as practicable.

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137B ART review of entitlement to be paid CCS or ACCS—time limit on increase

(1) A decision on ART review of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS must not have the effect that the amount of CCS or ACCS the individual is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the application for the review is made.

(2) Subsection (1) does not apply if:

(a) the decision on review is a child care decision made because of or in relation to section 105E, to the extent that the review relates to the individual's adjusted taxable income for the income year in which the CCS fortnight starts; or

(b) the application for review is made:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and

(ii) within 90 days after the individual or other person was notified by the Commissioner of the outcome of the review.

(3) A decision on ART review of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) must not have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the application for the review is made.

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Subdivision G—ART child care provider review

138 Applications for ART child care provider review

Decision of Secretary or authorised review officer

(1) If:

(a) a child care provider decision (other than a decision made under section 197H or 197J) has been reviewed under section 109A; and

(b) the decision has been affirmed, varied or set aside and substituted by the Secretary or authorised review officer under subsection 109A(2);

the provider may apply to the ART for review (***ART child care provider review***) of the decision of the Secretary or authorised review officer.

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

(a) if the Secretary or authorised review officer affirmed a decision—that decision as affirmed; or

(b) if the Secretary or authorised review officer varied a decision—that decision as varied; or

(c) if the Secretary or authorised review officer set aside a decision and substituted a new decision—the new decision.

Decision made personally by agency head

(3) If a child care provider decision (other than a decision under section 197H or 197J) is made by:

(a) the Secretary personally; or

(b) another agency head personally in the exercise of a delegated power; or

(c) the Chief Executive Centrelink in the exercise of a delegated power; or

(d) the Chief Executive Medicare in the exercise of a delegated power;

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the provider may apply to the ART for review (also an ***ART child care provider review***) of the decision.

Referral to guidance and appeals panel

(3A) If a guidance and appeals panel application is taken to have been made because the ART's decision on ART child care provider review is referred to the guidance and appeals panel, review of the decision to which that application relates is also an ***ART child care provider review***.

Meaning of ***child care provider decision***

(4) Each of the following is a ***child care provider decision***:
  (a) a decision under Part 4 (overpayments and debt recovery) in relation to a debt of an approved provider;
  (b) a decision under Part 8 (approval of provider of child care services) in relation to a provider;
  (c) a decision under section 205C (business continuity payments—emergency or disaster).

138B Legal or financial assistance

(1) Subsection 294(1) (legal or financial assistance for applicants) of the ART Act does not apply in relation to:
  (a) a person who proposes to apply to the ART for ART child care provider review; or
  (b) a person who applies to the ART for ART child care provider review, unless the proceeding in relation to the application is a guidance and appeals panel proceeding.

(2) Subsection 294(3) (legal or financial assistance for other parties) of the ART Act does not apply in relation to a proceeding for ART child care provider review unless the proceeding is a guidance and appeals panel proceeding.

(3) Subsection 294(4) (legal or financial assistance for court proceedings) of the ART Act does not apply in relation to a matter

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that relates to a proceeding for ART child care provider review unless the proceeding is a guidance and appeals panel proceeding.

139 Variation of decision after application is made for ART child care provider review

(1) If an officer varies or substitutes a decision after an application has been made to the ART for ART child care provider review of the decision, the application is taken to be an application for ART child care provider review of the decision as varied or substituted.

(2) Subsection (1) does not apply if the application is a guidance and appeals panel application.

(3) If:

(a) a person makes an application (the ***referral application***) under section 123 of the ART Act to refer the ART's decision on ART child care provider review to the guidance and appeals panel; and

(b) the person is taken to have made a guidance and appeals panel application because the ART's decision is referred to the guidance and appeals panel; and

(c) an officer varies or substitutes the decision (the ***reviewable decision***) to which the guidance and appeals panel application relates:

(i) after the referral application is made; and

(ii) before the ART is constituted for the purposes of the proceeding in relation to the guidance and appeals panel application;

the guidance and appeals panel application is taken to be a guidance and appeals panel application in relation to the reviewable decision as varied or substituted by the officer.

140 Secretary may treat event as having occurred if decision to set aside on ART child care provider review

If:

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(a) on ART child care provider review of a decision, the ART sets the decision aside under section 105 of the ART Act; and

(b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, treat the event as having occurred for the purposes of the family assistance law.

141 Settlement of proceedings before the ART

(1) The Secretary may agree, in writing, with other parties to settle proceedings before the ART if the proceedings are an ART child care provider review and they relate to the recovery of a debt.

(2) If proceedings are settled and the Secretary gives the ART a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

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Division 6—Date of effect of reviews under the child support law

152C Date of effect of decisions on objections under the child support law that apply for family assistance purposes

(1) This section applies if:

(a) a person lodges, under section 80A of the *Child Support (Registration and Collection) Act 1988*, an objection to a care percentage decision (within the meaning of that Act); and

(b) the consideration of the objection under that Act involves (wholly or partly) a consideration of a determination that:

(i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or

(ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and

(c) the objection was lodged more than 52 weeks after notice of the care percentage decision referred to in paragraph (a) of this subsection was given; and

(d) the decision (the ***review decision***) on the objection has the effect of varying the determination or substituting a new determination; and

(e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it were a determination made under Subdivision D of Division 1 of Part 3 of that Act.

(2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:

(a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or

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(b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the objection was lodged—that first day.

(3) If the Secretary is satisfied that there are special circumstances that prevented the objection from being lodged within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 52 weeks in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

152D Date of effect of certain ART reviews under the child support law that apply for family assistance purposes

(1) This section applies if:

(a) a person applies to the ART, under section 89 of the *Child Support (Registration and Collection) Act 1988*, for review of a decision (the ***original decision***); and

(aa) the application for review of the original decision is not a guidance and appeals panel application; and

(b) the review of the original decision involves (wholly or partly) a review of a determination that:

(i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or

(ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and

(c) the application for review of the original decision was made more than 90 days after notice of the original decision was given; and

(d) the decision (the ***review decision***) on the review has the effect of varying the determination or substituting a new determination; and

(e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it

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were a determination made under Subdivision D of Division 1 of Part 3 of that Act.

(2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:

(a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or

(b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the application for review was made—that first day.

(3) If the Secretary is satisfied that there are special circumstances that prevented the application for review from being made within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 90 days in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

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