

Social Security Act 1991

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Chapter 2—Pensions, benefits and allowances

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Part 2.11A—Austudy payment

Division 1—Qualification for austudy payment

Subdivision A—Basic qualifications

568 Qualification for austudy payment—general rule

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

- (a) the person satisfies the activity test (see Subdivision B); and
- (b) the person is of austudy age (see Subdivision C); and
- (c) the person is an Australian resident.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

568A Qualification for austudy payment—transferee from social security pension

If:

- (a) a person was receiving a social security pension; and
- (b) the person claims an austudy payment within 14 days after the day on which the last instalment of the person's pension was paid; and
- (c) the person becomes qualified for an austudy payment at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for an austudy payment for the whole of the 14 day period.

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Subdivision B—Activity test

569 Activity test

General

569(1) Subject to subsection (2), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is undertaking qualifying study (see section 569A).

Persons who do not satisfy the activity test

569(2) A person cannot be taken to satisfy the activity test if the person:

- (a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or
- (b) has completed a course for:
 - (i) a degree of Master or Doctor at an educational institution; or
 - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For *educational institution* see subsection 23(1).

Industrial instrument

569(3) In paragraph (2)(a):

industrial instrument means an award or agreement (however described) that:

- (a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:
 - (i) regulates the relationships between employers and employees; or
 - (ii) provides for the prevention or settlement of disputes between employers and employees; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or

settlement of a dispute between an employer and the employer's employees.

569A Undertaking qualifying study

For the purposes of this Part, a person is *undertaking qualifying study* if:

- (a) the person:
 - (i) is enrolled in a course of education at an educational institution; or
 - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
 - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
- (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 569B); and
- (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 569C and 569D); and
- (d) the person satisfies the progress rules (see sections 569G and 569H).

569B Approved course of education or study

For the purposes of paragraph 569A(b), a course is an approved course of education or study if it is a course that the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

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569C Full-time students

For the purposes of this Subdivision, a person is a **full-time student** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 569E.

569D Concessional study-load students

569D(1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:

- (a) 25% concessional study-load students; and
- (b) 66% concessional study-load students.

569D(2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

569D(3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:

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- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

Note: For *normal amount of full-time study* see section 569E.

569D(4) Subsection (2) applies to a person if:

- (a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed knowledge of the person's physical condition has stated in writing that:
 - (i) the person has a substantial physical disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (b) a medical practitioner specialising in psychiatry has stated in writing that:
 - (i) the person has a substantial psychiatric disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (c) a psychologist who is registered with the Board established under the law of a State or Territory that registers psychologists has stated in writing that the person:
 - (i) is intellectually disabled; and
 - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability.

569D(5) Subsection (3) applies to a person if:

- (a) the person cannot undertake the course as a full-time student because of:

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- (i) the relevant educational institution's usual requirements for the course; or
- (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
- (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

569E Normal amount of full-time study

569E(1) For the purposes of this Subdivision, the *normal amount of full-time study* in respect of a course is:

- (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*—the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
- (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
- (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

569E(2) Without limiting subsection (1), the *normal amount of full-time study* in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

569F First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the *relevant period*):

- (a) starting on the first day of classes in a study period; and
- (b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

569G Progress rules—secondary students

General rule

- 569G(1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 569A(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

- 569G(2) A person does not satisfy the progress rules if:
- (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
 - (b) the person has been a full-time student in respect of a course at that level (a *previous course*) in each of 2 previous years; and
 - (c) none of the following circumstances apply:
 - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
 - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
 - (iii) the person failed a previous course because English is not the person's native language;
 - (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
 - (v) each of the previous courses was undertaken more than 10 years before the present study.

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Course at year 12 level

- 569G(3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

- 569G(4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

Meaning of secondary course

- 569G(5) For the purposes of this section, a course is a secondary course if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a secondary course for the purposes of that Act.

569H Progress rules—tertiary students

Full-time students

- 569H(1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
 - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

- 569H(2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

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- (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

- 569H(3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:
- (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
 - (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
 - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
 - (ii) the student's further progress in the course depends on passing a whole year's work in the course; the minimum amount of time plus 1 year; or
 - (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

- 569H(4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student but the Secretary may approve, in particular cases, an allowable study time of up to four times the minimum period in which it is possible to complete the course as a full-time student.

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Time spent by person studying part-time

569H(5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full - time study}}$$

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

569H(6) If:

- (a) a person is undertaking a course as a full-time student; and
- (b) the person has previously undertaken:
 - (i) part of the course; or
 - (ii) one or more than one other course at the same level as that course;as a concessional study-load student; and

- (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the **previous study**) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Current 25% concessional study-load students who have previously undertaken courses on a different basis

569H(6A) If:

- (a) a person is undertaking a course as a 25% concessional study-load student; and
- (b) the person has previously undertaken:

- (i) part of that course; or
- (ii) one or more than one other course at the same level as that course;

in any of the following ways:

- (iii) as a full-time student;
- (iv) as a 66% concessional study-load student;
- (v) on a part-time basis; and

- (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the *previous study*) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be:

- (d) twice the time that the person took to complete the previous study; or
- (e) if the Secretary has approved, under subsection (4), a longer allowable study time in relation to the person for the course—the time taken by the person to complete the previous study multiplied by the factor used by the Secretary for the purposes of the approval under that subsection.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

569H(7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:

- (a) if the person has completed a course (a pre-requisite course) the completion of which is the normal requirement for admission to the course in which the person is enrolled or intends to enrol—time spent undertaking the pre-requisite course;
- (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
- (c) time spent undertaking a course that has been permanently discontinued because of:
 - (i) the person's illness; or

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- (ii) other circumstances beyond the person's control;
- (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
- (e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;
- (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
- (g) time spent undertaking a course after 1973 if the course was not:
 - (i) approved for the Tertiary Education Assistance Scheme; or
 - (ii) approved for the AUSTUDY scheme; or
 - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
- (h) time spent undertaking a course at a foreign institution;
- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
 - (i) AUSTUDY; or
 - (ii) a benefit under the Tertiary Education Assistance Scheme; or
 - (iii) youth allowance; or
 - (iv) austudy payment;because of the application of rules in respect of academic progress.

Levels of tertiary courses

569H(8) There are 4 levels of tertiary courses, levels A, B, C and D.

Level A courses

569H(9) The following are Level A courses:

- (a) a postgraduate bachelor degree course, with or without honours;
- (b) a graduate or postgraduate diploma course;
- (c) a course of practical legal training at a higher education institution;
- (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
- (e) a graduate certificate course.

Level B courses

569H(10) The following are Level B courses:

- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
- (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;
- (c) a diploma course other than:
 - (i) a graduate or postgraduate diploma course; or
 - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
 - (iii) a TAFE course;
- (d) a Master's qualifying course;
- (e) the Barristers or Solicitors Admission Board's course;
- (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

569H(11) The following are Level C courses:

- (a) an associate degree course;
- (b) an associate diploma course;
- (c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
- (d) a 2-year undergraduate diploma course.

Level D courses

569H(12) The following are Level D courses:

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- (a) a TAFE course at a higher education institution;
- (b) a TAFE course, unless the course is in Level A, B or C.

Meaning of tertiary course

569H(13) For the purposes of this section, a course is a tertiary course if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a tertiary course for the purposes of that Act.

Subdivision C—Austudy age

570 Austudy age

General

570(1) Subject to subsection (2), a person is of austudy age for the purposes of this Part if the person is at least 25 years old.

Study begun before turning 25

570(2) Even if the person is at least 25 years old, the person is taken not to be of austudy age if the person:

- (a) was receiving youth allowance immediately before turning 25; and
- (b) has not yet attained the maximum age for youth allowance (see subsection 543B(2)).

Division 2—Situations in which austudy payment is not payable

Subdivision A—Situation in which austudy payment not payable (general)

572 Austudy payment not payable if payment rate nil

572(1) Subject to subsection (2), an austudy payment is not payable to a person if the person's austudy payment rate would be nil.

572(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

Subdivision B—Assets test

573 Austudy payment not payable if assets value limit exceeded

An austudy payment is not payable to a person if:

- (a) the person is not excluded from the application of the austudy payment assets test; and
- (b) the value of the person's assets is more than the person's assets value limit.

Note 1: For persons excluded from application of test see section 573A.

Note 2: For *assets value limit* see section 573B.

573A Who is excluded from application of assets test

A person is excluded from the application of the austudy payment assets test if the person's partner is receiving:

- (a) a payment of pension, benefit or allowance referred to in the table at the end of this section; or
- (b) a payment under Part 5 or 6 of the *Farm Household Support Act 1992*.

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Division 2 Situations in which austudy payment is not payable

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| Table of pensions, benefits and allowances | | |
|---|--|---|
| Item | Type of pension, benefit and allowance | |
| 1 | Age pension | (Part 2.2) |
| 2 | Service pension (age) | (Section 36 of the Veterans' Entitlements Act) |
| 2A | Income support supplement | (Section 45A of the Veterans' Entitlements Act) |
| 3 | Defence widow's pension—if the widow has no dependent children | (Section 70 of the Veterans' Entitlements Act) |
| 4 | War widow's pension—if the widow has no dependent children | (Section 13 of the Veterans' Entitlements Act) |
| 5 | Mature age allowance | (Part 2.12A or 2.12B) |
| 6 | Rehabilitation allowance | (Clause 35 of Schedule 1A) |
| 7 | Commonwealth allowance | (New Enterprise Incentive Scheme (NEIS)) |
| 8 | Carer payment | (Part 2.5) |
| 9 | Service pension (carer) | (Section 39 of the Veterans' Entitlements Act) |
| 10 | Defence widow's pension—if the widow has a dependent child | (Section 70 of the Veterans' Entitlements Act) |
| 11 | Disability support pension | (Part 2.3) |
| 12 | Service pension (invalidity) | (Section 37 of the Veterans' Entitlements Act) |
| 13 | War widow's pension—if the widow has a dependent child | (Section 13 of the Veterans' Entitlements Act) |
| 14 | Newstart allowance | (Part 2.12) |
| 15 | Sickness allowance | (Part 2.14) |
| 16 | Special benefit | (Part 2.15) |
| 17 | Benefit PP (partnered) | (Part 2.10) |

573B Assets value limit [see Appendix for CPI adjusted figures]

573B(1) A person's *assets value limit* is:

- (a) \$125,750 if the person:
 - (i) is not a member of a couple (see section 4); and
 - (ii) is a homeowner; or
- (b) \$215,750 if the person:

- (i) is not a member of a couple; and
- (ii) is not a homeowner; or
- (c) \$178,500 if the person:
 - (i) is a member of a couple; and
 - (ii) is a homeowner; or
- (d) \$268,500 if the person:
 - (i) is a member of a couple; and
 - (ii) is not a homeowner.

Note 1: For *homeowner* see subsection 11(4).

Note 2: The amounts in this section are indexed annually on 1 July (see sections 1191 to 1194).

573B(2) If the Secretary determines in writing a higher amount in substitution for an amount specified in subsection (1) (the *existing amount*), the higher amount is taken, from the commencement of this section, to have been substituted for the existing amount. A determination under this subsection is a disallowable instrument.

573B(3) Subsection (2) and this subsection are repealed at the end of 31 December 1998.

573C Value of person's assets to include value of assets of partner

The value of a person's assets is the sum of the following values:

- (a) the value of the person's assets (disregarding paragraph (b));
- (b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

Sections 573D and 573E apply for the purpose of working out the value of the person's assets and of his or her partner (if any).

573D Assets of trust in which person benefits

A person's assets include:

- (a) any benefit to which the person is entitled directly or indirectly out of the assets of a trust; and
- (b) any asset of a trust that the person can deal with directly or indirectly to his or her advantage; and

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- (c) any interest in the assets of a trust which has been assigned to someone else but which the person can directly or indirectly control.

573E Exclusion of certain farm assets

If:

- (a) an exceptional circumstances certificate referred to in section 8A of the *Farm Household Support Act 1992* was issued in respect of a person; and
- (b) the certificate has effect;

the person's assets do not include any asset that is an exempt asset in respect of the person within the meaning of that Act.

Subdivision D—Waiting periods

575 Waiting periods

575(1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a waiting period.

575(2) For the purposes of this Part, a person may be subject to the following waiting periods:

- (a) a liquid assets test waiting period (see sections 575A, 575B and 575C);
- (b) a newly arrived resident's waiting period (see sections 575D and 575E).

575A Liquid assets test waiting period

When person subject to liquid assets test waiting period—general

575A(1) Subject to this section, if:

- (a) the value of a person's liquid assets is more than the person's maximum reserve on:
 - (i) the day on which the person becomes qualified for austudy payment; or
 - (ii) the day on which the person claims austudy payment;
- and

(b) the person is not a transferee to austudy payment;
the person is subject to a liquid assets test waiting period.

Note 1: For *liquid assets* and *maximum reserve* see section 14A.

Note 2: For *transferee to austudy payment* see subsections 23(6) and (7).

Exception—person already subject to liquid assets test waiting period in previous 12 months

575A(2) Subsection (1) does not apply to a person if, at any time during the 12 months before:

(a) the day on which the person becomes qualified for austudy payment; or

(b) the day on which the person claims austudy payment;

the person:

(c) was subject to a liquid assets test waiting period under this Part and that period has ended; or

(d) has served a liquid assets test waiting period under another Part of this Act; or

(e) has served a liquid assets test waiting period under the *Student Assistance Act 1973* as previously in force.

Exception—waiver for hardship

575A(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For *in severe financial hardship* see subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Exception—certain transferees to austudy payment

575A(4) Subsection (1) does not apply to a person if:

(a) the person is a transferee to austudy payment; and

(b) the person claims austudy payment within 14 days of the transfer day.

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575B Start of liquid assets test waiting period

The liquid assets test waiting period of a person starts on the day on which the person became qualified for austudy payment.

575C Length of liquid assets test waiting period

Number of weeks

575C(1) A person's liquid assets test waiting period is:

- (a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or
- (b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

Working out number of weeks

575C(2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

divisor, in relation to the person, means:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
- (b) otherwise—\$1,000.

liquid assets means the person's liquid assets on the day referred to in subparagraph 575A(1)(a)(i) or (ii) (as the case requires).

maximum reserve amount means the maximum reserve in relation to the person under subsection 14A(1).

Weeks etc. to be disregarded

575C(3) For the purposes of subsection (2), disregard:

- (a) any weeks after the person claimed austudy payment during which the person was not qualified for austudy payment; and
- (b) any fractions of a week.

575D Newly arrived resident's waiting period

Basic rule

- 575D(1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
- (a) has entered Australia on or after 4 March 1997; and
 - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 104 weeks.

Note: For *Australian resident* see subsection 7(2).

Exception—qualifying residence exemption

- 575D(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For *qualifying residence exemption* see subsection 7(6).

Exception—person already subject to waiting period etc.

- 575D(3) Subsection (1) does not apply to a person if:
- (a) the person has been subject to:
 - (i) a newly arrived resident's waiting period under this Act; or
 - (ii) a waiting period under Part 2 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; or
 - (iii) a newly arrived resident's waiting period under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; and
 - (b) that period has ended.

- 575D(4) Subsection (1) does not apply to a person if:
- (a) the person would:
 - (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident's waiting period under this Act; or
 - (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a

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- newly arrived resident's waiting period under Part 8 of that Act;
- and that period would have ended; or
- (b) the person has had:
- (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
 - (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or
- (c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

575E Length of newly arrived resident's waiting period

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first entered Australia; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 104 weeks after that day.

Note: For *Australian resident* see subsection 7(2).

575F Effect of being subject to 2 waiting periods

For the avoidance of doubt, if a person is subject to 2 waiting periods under this Subdivision, an austudy payment is not payable to the person until both of those waiting periods have ended.

Subdivision E—Activity test non-payment periods

576 Third and subsequent activity test breaches: consequences

- 576(1) An austudy payment is not payable to a person who is qualified for an austudy payment while an activity test non-payment period applies to the person.
- 576(2) An activity test non-payment period applies to a person if:
- (a) the person commits an activity test breach (the *latest breach*); and

- (b) the latest breach is the third or subsequent activity test breach within a period of 2 years.

Note: If a breach is the first or second activity test breach within a period of 2 years, an activity test breach rate reduction period applies to the person (see Subdivision B of Division 5).

576A Activity test breaches

A person has committed an activity test breach if:

- (a) the person fails, without reasonable excuse, to satisfy the activity test (see Subdivision B of Division 1); or
- (b) the person refuses or fails, without reasonable excuse, to provide information in relation to the person's income from remunerative work when required to do so under this Act; or
- (c) the person knowingly or recklessly provides false or misleading information in relation to the person's income from remunerative work when required to do so under this Act.

Note: An activity test breach may also arise under other sections of this Act and the *Student Assistance Act 1973* as in force immediately before the commencement of section 576A of this Act (see subsection 23(1)).

576B Length of activity test non-payment period

Basic rule

- 576B(1) Subject to subsection (2), the length of an activity test non-payment period is 8 weeks.

Pre-existing non-payment period

- 576B(2) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test non-payment period (***pre-existing non-payment period***), the pre-existing non-payment period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

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576C Start of activity test non-payment period

Notice of start of period

576C(1) If an activity test non-payment period applies to a person under this Part, the Secretary must give the person a written notice telling the person of the start of the period.

576C(1A) A notice under subsection (1) must contain reasons why the activity test non-payment period applies to the person.

General rule

576C(2) Subject to subsection (3) of this section and section 576E, the activity test non-payment period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

576C(3) Subject to section 576E, if:

- (a) on or before the day on which a person's activity test non-payment period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person; and
- (b) it has not ceased to be payable because of the application of an activity test non-payment period;

the activity test non-payment period starts on the day on which the austudy payment ceases to be payable to the person.

576D Interaction with activity test breach rate reduction periods

Application of section

576D(1) This section applies if, under this Part:

- (a) an activity test non-payment period applies to a person; and
- (b) during the whole or a part of that period, the whole or a part of an activity test breach rate reduction period (***overlap period***) applies to the person.

Note: An administrative breach rate reduction period may also apply to the person (see section 583C).

Overlap period

576D(2) Subject to subsection (4), the activity test non-payment period and the activity test breach rate reduction period are to run concurrently during the overlap period.

Which restriction is to apply

576D(3) Subject to section 576E, only the non-payment restriction relating to the activity test non-payment period is to apply to the person during the overlap period.

Pre-existing activity test breach rate reduction period

576D(4) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test breach rate reduction period (***pre-existing reduction period***), the pre-existing reduction period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

576E Interaction with waiting periods

Application of section

576E(1) This section applies if, under this Part:

- (a) an activity test non-payment period applies to a person; and
- (b) during the whole or a part of that period, the whole or a part of a waiting period (***overlap period***) applies to the person.

Note: An administrative breach rate reduction period may also apply to the person (see section 583C).

Overlap period

576E(2) The non-payment period and the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

576E(3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

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576F Effect of sections 576C, 576D and 576E

For the avoidance of doubt, sections 576C, 576D and 576E do not prevent an austudy payment ceasing to be payable in circumstances that do not involve the application of an activity test non-payment period under this Part.

576G Where one event may give rise to both an activity test penalty and an administrative breach rate reduction period

If, but for this section, an event would result in both an activity test penalty period and an administrative breach rate reduction period applying to a person under the provisions of this Act, only the provision imposing the activity test penalty period is to apply to the person.

Subdivision F—Administrative exclusions

577 Administrative exclusions

For the purposes of this Division, a person is subject to an administrative exclusion while one or more of sections 577A to 577D apply to the person.

Note: These sections apply because the person fails to do certain things. It is open to the person to end the administrative exclusion by doing those things.

577A Failure to comply with request to provide person's tax file number

Person must provide tax file number or employment declaration

577A(1) A person is subject to an administrative exclusion if:

- (a) the Secretary has requested the person under section 579F or 586:
 - (i) to give the Secretary a written statement of the person's tax file number; or
 - (ii) to apply for a tax file number and give the Secretary a written statement of the person's tax file number once it has been issued; and

- (b) at the end of 28 days after the request is made, the person has neither:
 - (i) given the Secretary a written statement of the person's tax file number; nor
 - (ii) given the Secretary an employment declaration and satisfied either subsection (2) or (3).

Person does not know tax file number

577A(2) A person satisfies this subsection if:

- (a) the employment declaration states that the person:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform him or her of the number; and
- (b) the person has given the Secretary a document authorising 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—the tax file number; and
- (c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.

Application for tax file number pending

577A(3) A person satisfies this subsection if:

- (a) the person's declaration states that the person has applied for a tax file number; and
- (b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the person—the tax file 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; and
- (c) the Commissioner of Taxation has not told the Secretary that the person has not applied for a tax file number; and

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- (d) the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and
- (e) the application for a tax file number has not been withdrawn.

577B Failure to comply with request to provide partner's tax file number

Person must provide partner's tax file number

- 577B(1) Subject to subsection (4), a person is subject to an administrative exclusion if:
- (a) the person is a member of a couple; and
 - (b) the person is requested under section 579G or 586A to give the Secretary a written statement of the tax file number of the person's partner; and
 - (c) at the end of 28 days after the request is made the person has neither:
 - (i) given the Secretary a written statement of the partner's tax file number; nor
 - (ii) given the Secretary a declaration by the partner in a form approved by the Secretary and satisfied either subsection (2) or (3).

Partner does not know tax file number

- 577B(2) The person satisfies this subsection if:
- (a) the partner's declaration states that the partner:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform the partner of the partner's tax file number; and
 - (b) the person has given the Secretary a document signed by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the partner has a tax file number; and
 - (ii) if the partner has a tax file number—the tax file number; and
 - (c) the Commissioner of Taxation has not told the Secretary that the partner has no tax file number.

Application for partner's tax file number pending

577B(3) The person satisfies this subsection if:

- (a) the partner's declaration states that the partner has applied for a tax file number; and
- (b) the person has given the Secretary a document signed by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the partner—the tax file 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; and
- (c) the Commissioner of Taxation has not told the Secretary that an application by the partner for a tax file number has been refused; and
- (d) the application for a tax file number has not been withdrawn.

Secretary may waive requirement

577B(4) The Secretary may waive the request for a statement of the partner's tax file number if the Secretary is satisfied that:

- (a) the person does not know the partner's tax file number; and
- (b) the person can obtain none of the following from the partner:
 - (i) the partner's tax file number;
 - (ii) a statement of the partner's tax file number;
 - (iii) a declaration by the partner under subparagraph (1)(c)(ii).

577C Failure to attend the Department etc.—person required to satisfy activity test etc.

Requirement to attend the Department etc.

577C(1) Subject to subsection (2), a person is subject to an administrative exclusion if:

- (a) a person is receiving, or has lodged a claim for, an austudy payment; and

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- (b) the Secretary is of the opinion that the person should:
 - (i) attend an office of the Department; or
 - (ii) contact the Department; or
 - (iii) give information to the Secretary; and
- (c) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, being a period of not less than 14 days, to:
 - (i) attend that office; or
 - (ii) contact that Department; or
 - (iii) give that information; and
- (d) the requirement is reasonable; and
- (e) the person does not comply with the requirement.

Content of notice

577C(1A) A notice under paragraph (1)(c) must inform the person to whom it is given of the effect of failure by the person to comply with the requirement set out in the notice without reasonable excuse.

Reasonable excuse for non-compliance

577C(2) The Secretary may determine that a person is not subject to an administrative exclusion under this section if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement.

577D Failure to nominate account etc.

Period within which account is to be nominated

577D(1) A person is subject to an administrative exclusion if, at the end of the period (*preliminary period*) of 28 days starting on the day on which an austudy payment became payable to the person:

- (a) no account has been nominated for the purposes of subsection 584E(2); and
- (b) the Secretary has not given a direction under subsection 584E(4) in relation to the payment of instalments of the austudy payment to the person.

Cessation of administrative exclusion

- 577D(2) If an account is nominated for the purposes of subsection 584E(2) after the end of the preliminary period, then, subject to this Part, the person ceases to be subject to the administrative exclusion and the allowance is payable to the person:
- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
 - (b) otherwise—on and from the day on which the nomination was made.

Subdivision G—Multiple entitlement exclusions

578 Multiple entitlement exclusions

- 578(1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a multiple entitlement exclusion.
- 578(2) For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:
- (a) the person is receiving an austudy payment and another social security benefit, a social security pension, a service pension or income support supplement becomes payable to the person; or
 - (b) a payment under a scheme referred to in section 578A has been, or may be, made to the person; or
 - (c) an assurance of support applies to the person (see section 578B); or
 - (d) the person has received, or may receive, income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

578A Person receiving payment under certain schemes

General

- 578A(1) Subject to subsection (2), the schemes for the purposes of paragraph 578(b) are:

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- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; and
- (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
- (c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and
- (d) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.
- (da) the scheme known as the Ready Reserve Education Assistance Scheme; and

Note 1: For *prescribed educational scheme* see section 5.

Application made under ABSTUDY Scheme

578A(2) If:

- (a) a person is undertaking qualifying study in respect of a course of education that is to last for 6 months or more; and
- (b) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and
- (c) the person was receiving an austudy payment immediately before the start of the course;

the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:

- (d) the application is determined; or
- (e) the end of the period of 3 weeks beginning on the day on which the course starts;

whichever happens first.

578B Assurance of support

An assurance of support applies to a person if:

- (a) an assurance of support is in force in respect of the person (*assuree*); and
- (b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

Division 5—Rate of austudy payment

Subdivision A—Rate of austudy payment

581 How to work out a person's austudy payment rate

Austudy Payment Rate Calculator in section 1067L

- 581(1) Subject to this section, the rate of a person's austudy payment is to be worked out in accordance with the Austudy Payment Rate Calculator in section 1067L.

Activity test breach rate reduction period only

- 581(2) Subject to subsection (4), if an activity test breach rate reduction period applies to the person, the person's rate of austudy payment for that period is to be worked out in accordance with Subdivision B.

Administrative breach rate reduction period only

- 581(3) Subject to subsection (4), if an administrative breach rate reduction period applies to the person, the person's rate of austudy payment for that period is to be worked out in accordance with Subdivision C.

Activity test breach rate reduction period and administrative breach rate reduction period

- 581(4) If both an activity test breach rate reduction period and an administrative breach rate reduction period apply to the person, the person's rate of austudy payment is to be worked out in accordance with Subdivisions B and C.

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**Subdivision B—Activity test breach reductions in the rate of
austudy payment**

582 Activity test breach rate reduction period

An activity test breach rate reduction period applies to a person if:

- (a) a person commits an activity test breach referred to in section 576A (*latest breach*); and
- (b) the latest breach is the first or second activity test breach in the 2 years immediately before the day after the latest breach.

Note: If the latest breach is the third or subsequent activity test breach in the 2 years before the latest breach, an activity test non-payment period applies to the person (see Subdivision E of Division 2).

582A Length of activity test breach rate reduction period

Basic rule

582A(1) Subject to subsection (2), the length of an activity test breach rate reduction period is 26 weeks.

Pre-existing rate reduction period

582A(2) If, at the time of the commencement of an activity test breach rate reduction period under this Part, the person is already subject to an activity test breach rate reduction period (*pre-existing rate reduction period*), the pre-existing rate reduction period is taken to end immediately before the commencement of the activity test breach rate reduction period under this Part.

582B Start of activity test breach rate reduction period

Notice of start of period

582B(1) If an activity test breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice telling the person of the start of the period.

582B(1A) A notice under subsection (1) must contain reasons why the activity test breach rate reduction period applies to the person.

General rule

582B(2) Subject to subsection (3), the activity test breach rate reduction period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

582B(3) If, on or before the day on which the person's activity test breach rate reduction period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person, the period starts on the day on which the austudy payment ceases to be payable to the person.

582C Interaction with waiting periods

Application of section

582C(1) This section applies if, under this Part:

- (a) an activity test breach rate reduction period applies to a person; and
- (b) during the whole or a part of that period the whole or a part of a waiting period also applies to the person (***overlap period***).

Note: Other periods such as an administrative breach rate reduction period may also apply (see section 583D).

Overlap period

582C(2) The activity test breach rate reduction period and the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

582C(3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

Section 582D

582D Rate of austudy payment where activity test breach rate reduction period applies

Activity test breach reduced rate

582D(1) If an activity test breach rate reduction period applies to a person under this Part, the person's rate of austudy payment for the activity test breach rate reduction period is worked out as follows:

Method statement

Step 1. Work out the person's maximum basic rate of austudy payment using Module B of the Austudy Payment Rate Calculator in section 1067L: the result is the **maximum payment rate**.

Step 2. Work out the rate reduction amount as follows:

- (a) if the activity test breach is the person's first breach in the 2 year period:

$$\text{Maximum payment rate} \times 0.18$$

- (b) if the activity test breach is the person's second breach in the 2 year period:

$$\text{Maximum payment rate} \times 0.24$$

Step 3. Take the rate reduction amount away from the rate of austudy payment worked out in accordance with the Austudy Payment Rate Calculator in section 1067L: the result is the **activity test breach reduced rate**.

Note: An activity test breach reduced rate may be a nil rate.

Meaning of 2 year period

582D(2) In this section:

2 year period means the 2 years immediately before the day after the activity test breach.

Subdivision C—Administrative breach reductions in the rate of austudy payment

583 Administrative breach rate reduction period

General rule

- 583(1) Subject to subsection (2), an administrative breach rate reduction period applies to a person if:
- (a) the person is subject to an administrative exclusion because of the application of section 577C and an austudy payment later becomes payable to the person; or
 - (b) the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 586A, 586B, 586C or 1304.

Exception

- 583(2) An administrative breach rate reduction period does not apply to a person if:
- (a) the person receives an austudy payment; and
 - (b) an administrative breach rate reduction period would, apart from this subsection, apply to the person; and
 - (c) the person's administrative breach reduced rate would be a nil rate; and
 - (d) payment of the austudy payment is cancelled or automatically terminated; and
 - (e) the person lodges a claim for an austudy payment more than 14 days after the date of effect of the cancellation or automatic termination referred to in paragraph (d).

583A Length of administrative breach rate reduction period

Basic rule

- 583A(1) Subject to subsection (2), the length of an administrative breach rate reduction period is 13 weeks.

Section 583B

Pre-existing administrative breach rate reduction period

- 583A(2) If, at the time of the commencement of an administrative breach rate reduction period under this Part, the person is already subject to an administrative breach rate reduction period (***pre-existing reduction period***), the pre-existing reduction period is taken to end immediately before the commencement of the administrative breach rate reduction period under this Part.

583B Start of administrative breach rate reduction period

Notice of start of period

- 583B(1) If an administrative breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice telling the person of the start of the period.
- 583B(1A) A notice under subsection (1) must contain reasons why the administrative breach rate reduction period applies to the person.

General rule

- 583B(2) Subject to subsection (3), the administrative breach rate reduction period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

- 583B(3) If:
- (a) on or before the day on which a person's administrative breach rate reduction period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person; and
 - (b) it has not ceased to be payable because of the application of an administrative breach rate reduction period;
- the administrative breach rate reduction period starts on the day on which the austudy payment ceases to be payable to the person.

583C Interaction with activity test non-payment periods

Application of section

- 583C(1) This section applies if, under this Part:

Section 583D

- (a) an administrative breach rate reduction period applies to a person; and
- (b) during the whole or a part of that period, the whole or a part of an activity test non-payment period also applies to the person (*overlap period*).

Note: Other periods such as a waiting period may also apply (see section 583E).

Overlap period

- 583C(2) The activity test non-payment period and the administrative breach rate reduction period are to run concurrently during the overlap period.

Which restriction is to apply

- 583C(3) Subject to section 576E, the non-payment penalty relating to the activity test non-payment period is to apply to the person during the overlap period.

583D Interaction with activity test breach rate reduction periods

Application of section

- 583D(1) This section applies if, under this Part:
- (a) an administrative breach rate reduction period applies to a person; and
 - (b) during the whole or a part of that period, the whole or a part of an activity test breach rate reduction period also applies to the person (*overlap period*).

Note: Other periods such as a waiting period may also apply (see section 583E).

Overlap period

- 583D(2) Subject to subsection (3), the administrative breach rate reduction period and the whole or a part of the activity test breach rate reduction period are to run concurrently during the overlap period.

Section 583E

Which restriction is to apply

- 583D(3) Subject to sections 576D, 582C and 582D, the only rate reduction amount that is to apply to the person during the overlap period is the higher of the following:
- (a) the rate reduction amount that relates to the activity test breach rate reduction period (see subsection 582D(1));
 - (b) the rate reduction amount that relates to the administrative breach rate reduction period (see section 583G).

583E Interaction with waiting periods

Application of section

- 583E(1) This section applies if, under this Part:
- (a) an administrative breach rate reduction period applies to a person; and
 - (b) during the whole or a part of that period the whole or a part of a waiting period also applies to the person (***overlap period***).

Note: Other periods such as an activity test breach rate reduction period may also apply (see section 583D).

Overlap period

- 583E(2) The administrative breach rate reduction period and the whole or a part of the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

- 583E(3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

583F Effect of sections 583C, 583D and 583E

For the avoidance of doubt, sections 583C, 583D and 583E do not prevent an austudy payment ceasing to be payable in circumstances that do not involve the application of an administrative breach rate reduction period.

583G Rate of austudy payment where administrative breach rate reduction applies

If an administrative breach rate reduction period applies to a person under this Part, the person's rate of austudy payment for the administrative breach rate reduction period is worked out as follows:

Method statement

- Step 1.* Work out the person's maximum basic rate of austudy payment using Module B of the Austudy Payment Rate Calculator in section 1067L: the result is the **maximum payment rate**.
- Step 2.* Multiply the person's maximum payment rate by 0.16: the result is the **rate reduction amount**.
- Step 3.* Take the rate reduction amount away from the rate of austudy payment worked out in accordance with the Austudy Payment Rate Calculator in section 1067L: the result is the **administrative breach reduced rate**.

Note: An administrative breach reduced rate may be a nil rate.

Division 10—Bereavement payments on death of partner

592 Qualification for payments under this Division

Qualification for payment

592(1) If:

- (a) a person is receiving an austudy payment; and
- (b) the person is a long-term social security recipient; and
- (c) the person is a member of a couple; and
- (d) the person's partner dies; and
- (e) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a service pension or income support supplement; or
 - (iii) was a long-term social security recipient; and
- (f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Division is less than the sum of:
 - (i) the amount that would otherwise be payable to the person under section 592C (person's continued rate) on that payday; and
 - (ii) the amount (if any) that would otherwise be payable to the person under section 592A (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Division to cover the bereavement period.

Note 1: Section 592A provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 592B provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For *first available bereavement adjustment payday* and *bereavement period* see section 21.

Choice not to receive payments

592(2) A person who is qualified for payments under this Division may choose not to receive payments under this Division.

Form of choice

592(3) A choice under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the person has been paid an amount or amounts under this Division; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

Rate during bereavement period

592(4) If a person is qualified for payments under this Division in relation to the partner's death, the rate at which austudy payment is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 592C.

592A Continued payment of partner's pension or benefit

If a person is qualified for payments under this Division in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

Note: For *bereavement rate continuation period* see section 21.

592B Lump sum payable in some circumstances

If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and

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(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

Lump sum calculator

Method statement

Step 1. Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is the *combined rate*.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined rate: the result is the *partner's instalment component*.

Step 4. Work out the number of the partner's paydays in the *bereavement lump sum period*.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

592C Adjustment of person's austudy payment rate

If:

- (a) a person is qualified for payments under this Division; and
- (b) the person does not elect under subsection 592(2) not to receive payments under this Division;

the rate of the person's austudy payment during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of austudy payment payable to the person is the rate at which the austudy payment would have been payable to the person if the person's partner had not died;
- (d) during the bereavement lump sum period (if any), the rate at which austudy payment is payable to the person is the rate at which austudy payment would be payable to the person apart from this Division.

592D Effect of death of person entitled to payments under this Division

If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to any person that the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

Lump sum calculator

Method statement

Step 1. Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday

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immediately after the day on which the person dies; and

- (b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is the *combined rate*.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined rate: the result is the *partner's instalment component*.

Step 4. Work out the number of paydays of the partner in the period that begins on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

592E Matters affecting payments under this Division

Recovery/reduction of amount payable

592E(1) If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died

has been paid under this Act or under Part III of the Veterans' Entitlements Act; and

- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount is more than the amount payable to the person under this Division;
- (e) the amount payable to the person under this Division is to be reduced by the amount referred to in paragraph (b).

Bank not liable

592E(2) If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
- (c) the bank pays to the person, out of the account, an amount not more than the total of the amounts paid as mentioned in paragraph (b);

the bank is, despite anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

Part 2.12—Newstart allowance

Division 1—Qualification for and payability of newstart allowance

Subdivision A—Basic qualifications

593 Qualification for newstart allowance

593(1) Subject to sections 596, 596A, 597 and 598, a person is qualified for a newstart allowance in respect of a period if:

- (a) the person satisfies the Secretary that:
 - (i) throughout the period the person is unemployed; or
 - (ii) the person is a CDEP Scheme participant in respect of the period; and

Note: For *CDEP Scheme participant* see section 1188B.

- (b) in the case of a person to whom subparagraph (a)(i) applies—throughout the period, or for each period within the period, the person:
 - (i) satisfies the activity test; or
 - (ii) is not required to satisfy the activity test; and
- (c) if subsection 604(1) applies to the person, at all times (if any) during the period when the person is not a party to a Newstart Activity Agreement, the person is prepared to enter into such an agreement; and
- (d) if subsection 604(1) applies to the person, at all times during the period when the person is a party to a Newstart Activity Agreement, the person is prepared to enter into another such agreement instead of the existing agreement; and
- (e) if the person is required by the Secretary to enter into a Newstart Activity Agreement in relation to the period, the person enters into that agreement; and
- (f) while the agreement is in force, the person satisfies the Secretary that the person is taking reasonable steps to comply with the terms of the agreement; and

Note: See subsection (2A) on taking reasonable steps.

- (g) throughout the period the person:
 - (i) subject to subsection (2B), is at least 21 years of age and has not reached the pension age; and
 - (ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and
- (i) the person was not in receipt of a youth allowance during the period.

Note 1: a person may be treated as unemployed (see section 595).

Note 2: the activity test is set out in section 601.

Note 3: for Newstart Activity Agreement see sections 604 to 607.

Note 5: for *pension age* see section 23.

Note 6: for *Australian resident* see section 7.

Note 8: a person may not be qualified if the person's unemployment is due to industrial action (see section 596).

Note 9: a person may not be qualified if the person has reduced the person's employment prospects by moving to an area of lower employment prospects (see section 597).

Note 12: A person could be in receipt of a youth allowance during a period for which the person would qualify for a newstart allowance, if paragraph (i) was disregarded, because of section 540C (extension of youth allowance to end of payment period).

Note 13: a newstart allowance is not payable in certain situations even if the person is qualified (see Subdivisions C, D, E and F and Part 4.2).

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

593(1B) Subject to sections 596, 596A, 597 and 598, a person is qualified for a newstart allowance in respect of a period if:

- (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
- (b) throughout the period the person:
 - (i) has reached the age of 21 years and has not reached the pension age; and
 - (ii) is an Australian resident; and
- (c) the person was not in receipt of a youth allowance during the period; and

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- (d) the person made a claim for disability support pension at or before the start of the period and the claim was not determined before the end of the period; and
- (e) the Secretary is satisfied that throughout the period the person suffered from a medical condition that had a significant adverse effect on the person's ability to work; and
- (f) the person satisfies any one of the conditions in subsection (1C).

593(1C) The conditions referred to in paragraph (1B)(f) are:

- (a) a condition that the person was an Australian resident when the significant adverse effect of the medical condition on the person's ability to work first occurred; and
- (b) a condition that at the start of the period the person had 10 years qualifying Australian residence or had a qualifying residence exemption for newstart allowance; and
- (c) a condition that:
 - (i) the person was born outside Australia; and
 - (ii) when the significant adverse effect of the medical condition first occurred the person was not an Australian resident but was a dependent child of an Australian resident; and
 - (iii) the person became an Australian resident while a dependent child of an Australian resident.

593(2) Subject to section 596A, a person is qualified for a newstart allowance in respect of a period if:

- (a) the person is a financial hardship farmer throughout the period; and
- (b) the Secretary is satisfied that this subsection should apply to the person; and
- (c) if subsection 604(1) applies to the person, at all times (if any) during the period when the person is not a party to a Newstart Activity Agreement, the person is prepared to enter into such an agreement; and
- (d) if subsection 604(1) applies to the person, at all times during the period when the person is a party to a Newstart Activity

Agreement, the person is prepared to enter into another such agreement instead of the existing agreement; and

- (e) if the person is required by the Secretary to enter into a Newstart Activity Agreement in relation to the period, the person enters into that agreement; and
- (f) while the agreement is in force, the person satisfies the Secretary that the person is taking reasonable steps to comply with the terms of the agreement; and

Note: See subsection (2A) on taking reasonable steps.

- (g) throughout the period, the person:
 - (i) is at least 21 and has not reached the pension age; and
 - (ii) is an Australian resident; and

Note: see subsection (3).

- (i) the person was not in receipt of a youth allowance during the period.

Note 1: for *financial hardship farmer* see subsection 23(1).

Note 2: for Newstart Activity Agreement see sections 604 to 607.

Note 4: for *pension age* see section 23.

Note 5: for *Australian resident* see section 7.

Note 9: A person could be in receipt of a youth allowance during a period for which the person would qualify for a newstart allowance, if paragraph (i) was disregarded, because of section 540C (extension of youth allowance to end of payment period).

Note 10: a newstart allowance is not payable in certain situations even if the person is qualified (see Subdivisions C, D, E and F and Part 4.2).

593(2A) For the purposes of paragraph (1)(f) or (2)(f), a person is taking reasonable steps to comply with the terms of a Newstart Activity Agreement unless the person has failed to comply with the terms of the agreement and:

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

593(4) If:

- (a) a person was receiving a social security pension, a service pension or income support supplement; and

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- (b) the person claims a newstart allowance within 14 days of the day on which the last instalment of the person's pension was paid; and
- (c) the person becomes qualified for a newstart allowance at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for a newstart allowance for the whole of the 14 day period.

Note: subsection (4) operates when a person transfers from a pension to a newstart allowance and the person is not qualified for a newstart allowance immediately after the day on which the person's last instalment of pension is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a newstart allowance for the period beginning on the day after the day on which the person's last instalment of pension was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a pension to a newstart allowance.

595 Persons may be treated as unemployed

595(1) If:

- (a) a person undertakes paid work during a period; and
- (b) the Secretary is of the opinion that, taking into account:
 - (i) the nature of the work; and
 - (ii) the duration of the work; and
 - (iii) any other matters relating to the work that the Secretary considers relevant;

the work should be disregarded;

the Secretary may treat the person as being unemployed throughout the period.

595(2) A person complying with:

- (a) a requirement under subsection 601(2) (activity test); or
- (b) a Newstart Activity Agreement;

may be treated by the Secretary as being unemployed.

595(3) In deciding whether to treat a person as being unemployed, the Secretary is to take into account:

- (a) the nature of the activity undertaken by the person so as to comply with a requirement under subsection 601(2) (activity test) or a Newstart Activity Agreement; and

- (b) the duration of the activity; and
- (c) any other matters relating to the activity that the Secretary considers relevant.

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

596 Unemployment due to industrial action

596(1) A person is not qualified for a newstart allowance in respect of a period unless the person satisfies the Secretary that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

596(2) A person is not qualified for a newstart allowance in respect of a period unless the Secretary is satisfied:

- (a) that the person's unemployment during the period was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
- (b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and
- (c) the person was not a member of the trade union during the period.

596(3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for a newstart allowance in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: for *industrial action*, *trade union* and *unemployment* see section 16.

596(4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission or the Federal Court, a person is not qualified for a newstart allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

Note: For *State industrial authority* see section 4 of the Workplace Relations Act.

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596A Assurance of support

A person is not qualified for newstart allowance in respect of a period if the Secretary is satisfied that throughout the period:

- (a) an assurance of support was in force in respect of the person (in this section called the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: for *assurance of support* see subsection 23(1).

598 Liquid assets test waiting period

598(1) Subject to subsections (4A), (5), (6), (7) and (8), if:

- (a) the value of a person's liquid assets exceeds the person's maximum reserve on:
 - (i) the day on which the person becomes unemployed; or
 - (ii) the day on which the person claims a newstart allowance; and
- (b) the person is not a transferee to a newstart allowance;

Note 1: for *liquid assets* see section 14A.

Note 2: for *maximum reserve* see section 14A.

Note 3: for *transferee to a newstart allowance* see subsections 23(6) and (7).

Note 4: for serving the liquid assets test waiting period see subsection 23(10).

598(2) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (2A), (2B) and (2C).

598(2A) Work out the number of formula weeks (disregarding any fractions of a week) in relation to the claim using the formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

liquid assets means the person's liquid assets.

maximum reserve amount means the maximum reserve in relation to the person under subsection 14(1).

divisor means, in relation to a person:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
- (b) otherwise—\$1,000.

598(2B) If the number of formula weeks is equal to or greater than 13 weeks, the liquid assets test waiting period in relation to the claim is 13 weeks.

598(2C) If subsection (2B) does not apply, the liquid assets test waiting period in relation to the claim is the number of weeks equal to the number of formula weeks.

598(3) Subject to subsections (3AA) and (4), if the person is not a member of a couple, the liquid assets test waiting period in relation to the claim starts on the day on which the person became unemployed.

598(3AA) Subject to subsection (4), if the person:

- (a) is not a member of a couple; and
- (b) is, under Subdivision BA, not required to satisfy the activity test;

the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated.

598(3A) Subject to subsections (3B) and (4), if the person is a member of a couple, the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

- (a) the day on which the person became unemployed;
- (b) if, when the claim is made, the person's partner is unemployed—the day on which the person's partner became unemployed;
- (c) if, when the claim is made, the person's partner is incapacitated for work—the day on which the person's partner became incapacitated for work.

598(3B) Subject to subsection (4), if the person:

- (a) is a member of a couple; and

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(b) is, under Subdivision BA, not required to satisfy the activity test;

the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

- (c) the day on which the person became incapacitated for work;
- (d) if, when the claim is made, the person's partner is unemployed—the day on which the person's partner became unemployed;
- (e) if, when the claim is made, the person's partner is incapacitated for work—the day on which the person's partner became incapacitated for work.

598(4) If:

- (a) a person becomes incapacitated for work; and
- (b) because of section 674 (sickness allowance liquid assets test waiting period), the person is not qualified for sickness allowance during the liquid assets test waiting period that starts on the day on which the person becomes incapacitated for work; and
- (c) within that liquid assets test waiting period:
 - (i) the person ceases to be incapacitated for work; and
 - (ii) the person claims a newstart allowance;

the liquid assets test waiting period starts on the day on which the person becomes incapacitated for work.

598(4A) Subsection (1) does not apply to a person if, at any time during the 12 months preceding:

- (a) the day on which the person becomes unemployed; or
- (b) the day on which the person claims a newstart allowance;

the person or their partner was serving a liquid assets test waiting period that started during that 12 months.

598(5) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

598(6) Subsection (1) does not apply to a person who becomes qualified for newstart allowance at the end of a continuous period in respect of which the person received income support payments (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this subsection).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

598(8) A person is not subject to a liquid assets test waiting period under subsection (1) at any time during which the person:

- (a) is undertaking:
 - (i) formal vocational training in a labour market program approved by the Employment Secretary; or
 - (ia) an activity approved by the Employment Secretary under the CSP; or
 - (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Secretary.

Note 2: for *Employment Secretary* see section 23.

600 Prospective determinations for some allowance recipients

600(1) A person is qualified for newstart allowance for a period if:

- (a) the person is receiving newstart allowance; and
- (b) the Secretary considers at the start of the period that:
 - (i) the person may reasonably be expected to satisfy the qualification requirements for newstart allowance (sections 593 to 599) during the period; and
 - (ii) it is reasonable to expect that newstart allowance will be payable to the person for the period; and
 - (iii) the person will comply with the Act during the period; and
- (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of

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the period to the Commonwealth under or as a result of this Act; and

- (d) one or more of subsections (3), (4), (5), (6) and (7) apply to the person at the start of the period.

600(2) The Minister:

- (a) must determine in writing guidelines for making decisions under paragraph (1)(b); and
- (b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine guidelines that take effect immediately after the revocation. A determination is a disallowable instrument.

600(3) This subsection applies to a person who has a Case Management Activity Agreement with a case manager if the Secretary has decided (either on the recommendation of the case manager or on the Secretary's own initiative) not to give the person recipient statement notices under section 658 at intervals of a fortnight or less. For this purpose, *Case Management Activity Agreement* and *case manager* have the meanings that they have in the *Employment Services Act 1994*.

600(4) This subsection applies to a person who satisfies the activity test:

- (a) under subsection 601(2) (except subparagraph 601(2)(a)(i)); or
- (b) under subsection 601(4) by taking reasonable steps to comply with a Newstart Activity Agreement that requires the person to undertake full-time unpaid voluntary work proposed by the person and approved by the Secretary; or
- (c) under section 603AA (which provides for a person to satisfy the activity test by engaging in full-time unpaid voluntary work).

600(5) This subsection applies to a person if:

- (a) the person is incapacitated for work; and
- (b) under Subdivision BA the person is not required to satisfy the activity test.

600(6) This subsection applies to a person if:

- (a) the person has been receiving a social security pension, social security benefit or job search allowance in respect of a

continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this section); and

- (b) the person is at least 50; and
- (c) the Secretary considers that the person's income from employment is not likely to increase during the period (whether as a result of a person becoming employed or otherwise).

600(7) This subsection applies to a person if the Secretary considers that the person should be qualified for newstart allowance for the period because of one or more of the following:

- (a) the place where the person lives;
- (b) the person's recent employment history;
- (c) the state of the labour market;
- (d) any other reason that the Secretary considers relevant.

Subdivision B—Activity test

601 Activity test

601(1) Subject to subsections (1A) and (3), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is:

- (a) actively seeking; and
- (b) willing to undertake;

paid work in Australia, other than paid work that is unsuitable to be undertaken by the person.

Note 1: For situations in which a person is not required to satisfy the activity test see:

- (a) section 602 (certain persons over 50);
- (b) section 603 (persons attending training camps in remote areas);
- (c) section 603A (special circumstances);
- (d) section 603AA (voluntary work).

Note 2: See subsections (2A) and (2B) on what paid work is unsuitable.

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- 601(1A) The Secretary may notify a person (other than a person who is not required to satisfy the activity test) who is receiving a newstart allowance that the person must take reasonable steps to apply for a particular number of advertised job vacancies in the period specified in the notice.
- 601(1B) If a person refuses or fails to comply with a notice issued under subsection (1A), the person fails to satisfy the activity test in respect of the period specified in the notice.
- 601(1C) The person must give the Secretary a written statement from each employer whose job vacancy the person applied for that confirms that the person applied for that job vacancy.
- 601(1D) The statement from the employer must be in a form approved by the Secretary.
- 601(1E) Subsection (1C) does not apply to a person if the Secretary is satisfied that there are special circumstances in which it is not reasonable to expect the person to give the statement referred to in that subsection.
- 601(1F) If a person contravenes subsection (1C), the person fails to satisfy the activity test.
- 601(2) A person also satisfies the activity test in respect of a period if:
- (a) the Secretary is of the opinion that, throughout the period, the person:
 - (i) should undertake particular paid work, other than paid work that is unsuitable to be done by the person; or
Note: See subsections (2A) and (2B) on what paid work is unsuitable.
 - (ia) should participate in an approved program of work for unemployment payment; or
 - (ii) should:
 - (A) undertake a course of vocational training; or
 - (B) participate in a labour market program; or
 - (BA) participate in a rehabilitation program; or

- (C) participate in another course;
approved by the Employment Secretary which is likely
to:
 - (D) improve the person's prospects of obtaining
suitable paid work; or
 - (E) assist the person in seeking suitable paid work;
or
- (iii) in a case where the person lives in an area where:
 - (A) there is no locally accessible labour market;
and
 - (B) there is no locally accessible vocational
training course or labour market program;
should participate in an activity suggested by the person
and approved by the Employment Secretary; and
- (iv) should undertake an activity approved by the
Employment Secretary under the CSP; and
- (b) the Secretary notifies the person that the person is required
to act in accordance with the opinion; and
- (c) the person takes reasonable steps to comply, throughout the
period, with the Secretary's requirement.

Note 1: for *Employment Secretary* see section 23.

Note 2: See subsection (6) on taking reasonable steps.

- 601(2A) Subject to subsections (2AA) and (2AB), for the purposes of
subsection (1) and subparagraph (2)(a)(i), particular paid work is
unsuitable for a person if and only if, in the Secretary's opinion:
- (a) the person lacks the particular skills, experience or
qualifications that are needed to perform the work and no
training will be provided by the employer; or
 - (b) it has been established that there is medical evidence that the
person has an illness, disability or injury that would be
aggravated by the conditions in which the work would be
performed; or
 - (c) performing the work in the conditions in which the work
would be performed would constitute a risk to health or
safety and would contravene a law of the Commonwealth, a
State or a Territory relating to occupational health and
safety; or

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

601(2AA) If:

- (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person's home is situated; and
- (b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (2A)(g) or (i) unless:

- (c) the person is under the age of 18 or over the age of 50; or
- (d) the person or the person's partner is pregnant; or
- (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
- (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
- (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
- (h) the person or the person's partner has significant caring responsibilities in the old area; or

- (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
 - (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
 - (k) the person would suffer severe financial hardship if the person were to accept the offer.
- 601(2AB) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (2AA) to seek work outside the area at the time when the representation is made.
- 601(2B) Commuting is not unreasonably difficult for the purposes of paragraph (2A)(g) if:
- (a) the sole or principal reason for the difficulty is that the commuting involves a journey, either from the person's home to the place of work or from the place of work to the person's home, that does not normally exceed 90 minutes in duration; or
 - (b) in the Secretary's opinion, a substantial number of people living in the same area as the person regularly commute to their places of work in circumstances similar to those of the person.
- 601(2C) Subsection (2B) does not limit the Secretary's discretion to form the opinion that, for the purposes of paragraph (2A)(g), commuting is not unreasonably difficult.
- 601(2D) A reference in subsection (2A) to remuneration for work is a reference to any income derived from the work that is income from personal exertion.
- Note: For *income from personal exertion* see subsection 8(1).
- 601(2E) For the purposes of paragraph (2)(b), the Secretary must not notify a person that the person is required to participate in an approved program of work for unemployment payment if:

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- (a) because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a newstart allowance at a rate that has been reduced; or
- (b) in the Secretary's opinion:
 - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety.

601(2F) If, after the Secretary has notified the person that the person is required to participate in an approved program of work for unemployment payment, the Secretary:

- (a) is satisfied that the person is a person to whom paragraph (2E)(a) applies; or
- (b) forms the opinion that subparagraph (2E)(b)(i) or (ii) applies in relation to the performance of that work by the person;

the Secretary may, by notice in writing given to the person, inform the person that the requirement to participate in the program is revoked and, upon his or her so doing, the requirement is taken to have been revoked with effect from the day of that notification.

601(3) If a person fails to take reasonable steps to comply, throughout a period, with a requirement of the Secretary under subsection (2), the person cannot be taken to satisfy the activity test in respect of that period in spite of any compliance of the person with subsection (1).

Note: See subsection (6) on taking reasonable steps.

601(4) A person also satisfies the activity test in respect of a period if, throughout the period, the person is taking reasonable steps to comply with the terms of a Newstart Activity Agreement between the Secretary and the person.

Note: See subsection (6) on taking reasonable steps.

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601(5) If a person fails to take reasonable steps to comply, throughout a period, with the terms of a Newstart Activity Agreement between the Secretary and the person, the person cannot be taken to satisfy the activity test in respect of the period in spite of any compliance of the person with subsection (1).

Note 1: for situations where a person is not required to satisfy the activity test see:

- (a) section 602 (certain persons over 50);
- (b) section 603 (persons attending training camps or in remote areas).

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

601(6) For the purposes of this section, a person takes reasonable steps to comply with a notice under subsection (1A), with a requirement of the Secretary under subsection (2), or with the terms of a Newstart Activity Agreement (as the case requires) unless the person has failed so to comply and:

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

601(7) In this section:

Reserves means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

601A Certain actions deemed to be failure to satisfy activity test

601A(1) If a person, who is subject to the activity test in respect of a period, refuses or fails, without reasonable excuse, to attend a job interview, the person is taken to fail the activity test.

Note: For the consequences of failing the activity test see section 624.

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601A(2) If a person, who is subject to the activity test in respect of a period, voluntarily ceases, without reasonable excuse, to take part in, or is dismissed for misconduct from, a labour market program, the person is taken to fail the activity test.

Note: For the consequences of failing the activity test see section 624.

601A(3) If a person who is subject to the activity test in respect of a period fails, without reasonable excuse:

(a) to commence, or to complete, an approved program of work for unemployment payment that the person is required to undertake; or

(b) to comply with the conditions of such a program;

the person is taken to fail to satisfy the activity test.

Note: For the consequences of failing the activity test see section 624.

602 Relief from activity test—certain people over 50 in employment

If a person has received income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this section), the person is taken to satisfy the activity test if:

(a) the person is at least 50 years of age; and

(b) the person is in employment; and

(c) the person earns at least 35% of average male full-time weekly earnings from the employment.

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

Note 3: For *activity test* see section 601.

Note 4: For *average male full-time weekly earnings* see section 15.

602A Relief from activity test—persons to whom subsection 614(6) applies

If:

(a) newstart allowance is payable to a person because of subsection 614(6); and

(b) the person has commenced the full-time course of education referred to in paragraph 614(6)(a);
the person is taken to satisfy the activity test in respect of the period during which the allowance is payable to the person because of that subsection.

603 Relief from activity test—general

603(1) A person is taken to satisfy the activity test in respect of a period when the person is attending a training camp as a member of:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

603(2) Where the Secretary considers that:

- (a) it would be reasonable to assume that:
 - (i) at the end of a period a person is present in an area described in subparagraph 601(2)(a)(iii); and
 - (ii) the person is throughout the period:
 - (A) unemployed; and
 - (B) capable of undertaking paid work that in the Secretary's opinion is suitable to be undertaken by the person; and
 - (C) willing to undertake paid work that in the Secretary's opinion is suitable to be undertaken by the person; and
- (b) having regard to all the relevant factors, including:
 - (i) the location of offices of the Department; and
 - (ii) difficulties with transport and communication; and
 - (iii) the educational and cultural background of the person;
it would be unreasonable to expect the person to comply with the activity test in order to be qualified for newstart allowance for that period;

then, unless the person has been notified of a requirement under subsection 601(2) in relation to the period, the person is taken to satisfy the activity test during that period.

Note 1: for *activity test* see section 601.

Note 2: for *remote area* see section 14.

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603A Relief from activity test—special circumstances

603A(1) Subject to subsections (2) and (3), a person is not required to satisfy the activity test for a period if:

- (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
- (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.

603A(2) The period referred to in subsection (1) is not to exceed 13 weeks.

603A(3) If:

- (a) the Secretary makes a number of determinations under any one or more of the following provisions:
 - (i) subsection 525AA(3) of this Act as previously in force;
 - (ii) subsection 542H(1) of this Act;
 - (iii) subsection (1) of this section; and
- (b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

603AAA Pre-natal and post-natal relief from activity test

603AAA(1) A pregnant woman is not required to satisfy the activity test for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

603AAA(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the activity test for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

603AA Relief from activity test—people engaged in voluntary work

603AA(1) Subject to subsection (3), a person who has reached 50 years is taken to satisfy the activity test in respect of a period (the *relevant period*) if the person:

- (a) is engaged in approved full-time unpaid voluntary work for an approved organisation for at least 32 hours in the period; or
- (b) is engaged, for at least 40 hours in the period in a combination of:
 - (i) approved unpaid voluntary work for an approved organisation; and
 - (ii) suitable paid work for another person.

603AA(2) Subject to subsection (3), a person who:

- (a) is under 50 years; and
- (b) has received income support payments in respect of a continuous period of at least 3 months but less than 12 months immediately before the start of the relevant period (whether or not the kind of payment received has changed over the period and whether any part of it occurred before or after the commencement of this subsection);

is taken to satisfy the activity test in respect of a period (the *relevant period*) if:

- (c) the person is engaged in approved full-time unpaid voluntary work for an approved organisation for at least 32 hours in the period; and
- (d) the period occurs during the 12 months after the person commenced receiving income support payments (whether or not the kind of payment received has changed over the period and whether any part of it occurred before or after the commencement of this subsection); and
- (e) the person has not already undertaken approved full-time unpaid voluntary work with one or more approved organisations in more than 6 periods during the 12 months referred to in paragraph (d).

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603AA(3) Neither subsections (1) nor (2) apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that the subsection is not to apply to the person in respect of that day.

603AA(4) For the purposes of subsections (1) and (2):

- (a) approved voluntary unpaid work, either full-time or otherwise, is work that has been approved by the Secretary for the purposes of this section; and
- (b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

Subdivision BA—Exemption from activity test—people temporarily incapacitated for work

603BA Subdivision not to apply to a person with a pending claim for disability support pension

This Subdivision does not apply to a person who is qualified for newstart allowance under subsection 593(1B).

603B Interpretation

A reference in this Subdivision to a person being exempt from the activity test, or ceasing to be exempt from the activity test, under, or under a provision of, this Subdivision is a reference to a person not being required to satisfy the activity test, or becoming required to satisfy the activity test, as the case may be, because of the operation of, or the operation of that provision of, this Subdivision.

603C Incapacitated person not required to satisfy activity test

- 603C(1) Subject to this Subdivision, a person is not required to satisfy the activity test in respect of a period if:
- (a) throughout the period the person is incapacitated for work because of sickness or an accident; and

- (b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and
- (c) the incapacity is, or is likely to be, of a temporary nature; and
- (d) if this Subdivision had not been enacted and paragraphs 593(1)(b), (c), (d) and (e) were disregarded, the person would qualify for newstart allowance; and
- (e) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
 - (i) the medical practitioner's diagnosis; and
 - (ii) the medical practitioner's prognosis; and
 - (iii) that the person is incapacitated for work; and
 - (iv) the period for which the person is incapacitated for work; and
- (f) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test.

603C(2) In this section:

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

- (a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and
- (b) is for at least 8 hours per week at award wages or above.

603F Time limit for exemption from requirement to satisfy activity test

603F(1) A person ceases to be exempt, under this Subdivision, from the activity test if the person's maximum exemption period ends.

603F(2) Subject to this section, a person's maximum exemption period is:

- (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was required to satisfy the activity test—the lesser of the following periods:

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- (i) the period stated in the certificate as the period for which the person would be incapacitated for work;
 - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
- (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person’s incapacity for work began.

603F(4) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with the form approved under that paragraph; and
- (c) the Secretary is satisfied that the person’s incapacity for work will continue after the end of the person’s maximum exemption period;

the Secretary may extend the person’s maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

603F(4A) If:

- (a) a person was exempt, under this Subdivision, from the activity test; and
- (b) within 14 days after the end of the person’s maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with a form approved under that paragraph; and
- (c) the Secretary is satisfied that the person’s incapacity for work has continued after the end of the person’s maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

603F(5) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and
- (c) the Secretary is satisfied that:
 - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4)(b) before the end of the maximum exemption period; and
 - (ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

603F(5A) If:

- (a) a person was exempt, under this Subdivision, from the activity test; and
- (b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4A)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and
- (c) the Secretary is satisfied that:
 - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4A)(b); and

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- (ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than 4 weeks from the end of the previous maximum exemption period.

603F(6) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (4)(b) before the end of the person's maximum exemption period; and
- (c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and
- (d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

Subdivision C—Newstart Activity Agreements

604 Newstart Activity Agreements

604(1AA) Subsection (1) does not apply to a person who is qualified for a newstart allowance only under subsection 593(1B).

604(1) Subject to subsection (1A), if a person is in receipt of a newstart allowance, the Secretary may require the person to enter into a Newstart Activity Agreement.

604(1A) A person who, under Subdivision BA, is not required to satisfy the activity test is not to be required to enter into a Newstart Activity Agreement.

604(1B) The Secretary is to give a person who is required to enter into a Newstart Activity Agreement notice of:

- (a) the requirement; and
 - (b) the places and times at which the agreement is to be negotiated.
- 604(1C) A Newstart Activity Agreement is a written agreement in a form approved by the Secretary and the Employment Secretary. The agreement is between the person and the Secretary.
- 604(2) For the purposes of this Part, if:
- (a) a person starts to receive newstart allowance on a particular day; and
 - (b) immediately before that day, the person was a party to a Youth Allowance Activity Agreement; and
 - (c) the period covered by the agreement ends after that day;
- the agreement has effect on and after that day as if it were a Newstart Activity Agreement.

605 Newstart Activity Agreements—requirement

- 605(1) Subject to this section, if a person who has made a claim for, or who is in receipt of, a newstart allowance is not a party to a Newstart Activity Agreement, the Secretary may require the person to enter into such an agreement.
- 605(2) Subject to this section, the Secretary may require a person who has entered into a Newstart Activity Agreement to enter into another such agreement instead of the existing one.
- 605(2A) Subsections (1) and (2) do not apply to a person who, under Subdivision BA, is not required to satisfy the activity test.
- 605(2B) Subsections (1) and (2) do not apply to a person who is qualified for a newstart allowance only under subsection 593(1B).
- 605(3) The Secretary is to give a person who is required to enter into a Newstart Activity Agreement notice of:
- (a) the requirement; and
 - (b) the places and times at which the agreement is to be negotiated.

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606 Newstart Activity Agreements—terms

- 606(1) A Newstart Activity Agreement with a person is to require the person to undertake one or more of the following activities approved by the Secretary:
- (a) a job search;
 - (b) a vocational training course;
 - (c) training that would help in searching for work;
 - (d) paid work experience;
 - (e) measures designed to eliminate or reduce any disadvantage the person has in the labour market;
 - (ea) subject to section 607A, development of self-employment;
 - (eb) subject to section 607B, development of and/or participation in group enterprises or co-operative enterprises;
 - (ec) an approved program of work for unemployment payment;
 - (f) participation in a labour market program;
 - (fa) participation in a rehabilitation program;
 - (fb) an activity approved by the Employment Secretary under the CSP;
 - (g) an activity proposed by the person (such as unpaid voluntary work proposed by the person).
- 606(2) The terms of an agreement, which include the specification of the activities that the person is to be required to undertake, are to be approved by the Secretary.
- 606(3) In considering whether to approve the terms of an agreement with a person, the Secretary is to have regard to the person's capacity to comply with the proposed agreement and the person's needs.
- 606(4) In having regard to a person's capacity to comply with an agreement and the person's needs, the Secretary is to take into account:
- (a) the person's education, experience, skills, age and physical condition; and
 - (b) the state of the labour market in the locality where the person resides; and
 - (c) the training opportunities available to the person; and

- (d) any factors that the Secretary considers relevant in the circumstances.

606(5) An agreement with a person:

- (a) may be varied or suspended; and
- (b) if another Newstart Activity Agreement is made with the person, may be cancelled; and
- (c) may be reviewed from time to time at the request of either party to the agreement; and
- (d) may be cancelled by the Secretary after a review under paragraph (c).

606(6) An allowee who is a party to an agreement is to notify the Secretary of any circumstances preventing or affecting the allowee's compliance with the agreement.

607 Newstart Activity Agreements—failure to negotiate

607(1) If:

- (a) a person has been given notice under subsection 605(3) of a requirement to enter into a Newstart Activity Agreement; and
- (b) because the person did not:
 - (i) attend the negotiation of the agreement; or
 - (ii) respond to correspondence about the agreement; or
 - (iii) agree to terms of the agreement proposed by the Secretary;or for any other reason, the Secretary is satisfied that the person is unreasonably delaying entering into the agreement;

then:

- (c) the Secretary may give the person notice that the person is being taken to have failed to enter the agreement; and
- (d) if the notice is given—the person is taken to have so failed.

Note: refusal to enter a Newstart Activity Agreement disqualifies a person for newstart allowance—see paragraph 593(e).

607(2) A notice under paragraph (1)(c) must:

- (a) be in writing; and
- (b) set out the reasons for the decision to give the notice; and

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- (c) include a statement describing the rights of the person to apply for the review of the decision.

607A Newstart Activity Agreements—self-employment

607A(1) A Newstart Activity Agreement must not require a person to undertake as an activity any development of self-employment unless:

- (a) at all times during the 6 months immediately preceding the undertaking of the activity the person has been, or will have been, receiving any of the following:
 - (ii) a newstart allowance;
 - (iii) a youth allowance; and
- (b) the Employment Secretary is satisfied that the activity:
 - (i) will be commercially viable 12 months after the person begins the activity; and
 - (ii) is likely to provide the person with sustainable full-time employment that will provide the person with a level of income at least equivalent to the person's maximum basic rate worked out under Module B of Benefit Rate Calculator B.

607A(3) A Newstart Activity Agreement must not require a person to undertake as an activity any development of self-employment if:

- (a) the person is to undertake the activity for more than 12 months; or
- (b) subject to subsection (4), the person has previously been subject to a requirement under that or any other Newstart Activity Agreement to undertake the same activity or a similar activity; or
- (c) at any time during the 6 months immediately preceding the time at which the activity is to start, the person has been subject to a requirement under that or any other Newstart Activity Agreement to undertake as an activity other development of self-employment.

607A(4) Paragraph (3)(b) does not apply if the Secretary determines in writing that there are special circumstances that justify inclusion of the activity in the Newstart Activity Agreement.

607A(5) This section does not apply to an activity to which a paragraph of subsection 606(1), other than paragraph 606(1)(ea) or (eb), applies.

607B Newstart Activity Agreements—group enterprises and co-operative enterprises

607B(1) A Newstart Activity Agreement must not require a person to undertake as an activity any development of a group enterprise or co-operative enterprise unless:

- (a) at all times during the 6 months immediately preceding the undertaking of the activity the person has been, or will have been, receiving any of the following:
 - (ii) a newstart allowance;
 - (iii) a youth allowance; and
- (b) the Employment Secretary is satisfied that the activity:
 - (i) will be viable 12 months after the person begins the activity; and
 - (ii) is likely to provide the person skills, training or work experience that will help the person to obtain paid employment providing a level of income at least equivalent to the person's maximum basic rate.

607B(2) A Newstart Activity Agreement must not require a person to undertake as an activity any participation in a group enterprise or co-operative enterprise unless:

- (a) at all times during the 6 months immediately preceding the undertaking of the activity the person has been, or will have been, receiving any of the following:
 - (ii) a newstart allowance;
 - (iii) a youth allowance; and
- (b) the Secretary is satisfied that the activity is likely to provide the person with skills, training or work experience that will help the person to obtain paid employment providing a level of income at least equivalent to the person's maximum basic rate worked out under Module B of Benefit Rate Calculator B.

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607B(4) A Newstart Activity Agreement must not require a person to undertake as an activity any development of, or participation in, a group enterprise or co-operative enterprise if:

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

607B(5) This section does not apply to an activity to which a paragraph of subsection 606(1), other than paragraph 606(1)(ea) or (eb), applies.

Subdivision D—Situations where allowance not payable (general)

608 Newstart allowance not payable if allowance rate nil

608(1) Subject to subsection (2), a newstart allowance is not payable to a person if the person's newstart allowance rate would be nil.

608(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

611 Assets test—allowance not payable if assets value limit exceeded

[see Appendix for CPI adjusted figures]

611(1) A newstart allowance is not payable to a person if the value of the person's assets is more than the person's assets value limit.

611(2) A person's assets value limit is worked out using the following table: work out which family situation applies to the person; the

assets value limit is the corresponding amount in the *assets value limit* column.

| Assets value limit table | | | |
|---------------------------------|---|---|---|
| Column 1 | Column 2 | Column 3 | |
| Item | Person's family situation | Assets value limit | |
| | | Column 3A | Column 3B |
| | | Either person or partner homeowner | Neither person nor partner homeowner |
| 1. | Not member of a couple | \$110,750 | \$190,250 |
| 2. | Partnered (partner getting neither pension nor allowance) | \$157,500 | \$237,000 |
| 3. | Partnered (partner getting pension or allowance) | \$78,750 | \$118,500 |

Note 1: for *member of a couple, partnered (partner getting neither pension nor allowance)* and *partnered (partner getting pension or allowance)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person's partner are to be taken as being included in the value of the person's assets (see subsection 612(1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 612(2)).

Note 4: if a newstart allowance is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: the assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).

Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

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612 Value of assets of members of couples

612(1) If:

- (a) a person is a member of a couple; and
- (b) the person's partner:
 - (i) is not in receipt of a social security or service pension or income support supplement; and
 - (ii) is not in receipt of a social security benefit;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

Note: For *social security pension* see subsection 23(1).

612(2) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is in receipt of:
 - (i) a social security or service pension or income support supplement; or
 - (ii) a social security benefit;

the value of:

- (c) the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and
- (d) the person's assets of a particular kind are taken to be 50% of the sum of the value of the assets of that kind of the person and the value of the assets of that kind of the person's partner.

613 Full-time students

613(1) Subject to subsection (2), a newstart allowance is not payable to a person who is enrolled in a full-time course of education or of vocational training for the period that:

- (a) starts when the person starts the course; and
- (b) finishes when the person:
 - (i) completes the course; or
 - (ii) abandons the course; or

- (iii) gives notice to the provider of the course that the person:
 - (A) wishes to withdraw from the course; or
 - (B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and
- (c) includes periods of vacation.

- 613(2) Subsection (1) does not prevent a newstart allowance from being payable for any period during which:
- (a) a person is enrolled in a course that the Secretary has required the person to undertake under subsection 601(2); or
 - (b) the person is engaged in a course undertaken under a Newstart Activity Agreement; or
 - (c) the person has deferred a course of education.

Note 1: for Newstart Activity Agreement see sections 605 to 607.

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

614 Multiple entitlement exclusion

- 614(1) A newstart allowance is not payable to a person if the person is already receiving a service pension or income support supplement.

614(2) If:

- (a) a person is receiving a newstart allowance; and
- (b) a social security pension, another social security benefit, a service pension or income support supplement becomes payable to the person;

a newstart allowance is not payable to the person.

Note 1: another payment type will generally not become payable to the person until the person claims it.

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the newstart allowance ceases to be payable see section 660.

- 614(3) A newstart allowance is not payable to a woman if:
- (a) the woman is an armed services widow; and

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- (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act;

unless:

- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note 1: for *armed services widow* see subsection 4(1).

Note 2: widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (b) may be paid at a lower rate—see subsection 1068(3).

614(3A) A newstart allowance is not payable to a man if:

- (a) the man is an armed services widower; and
- (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widower* see subsection 4(1).

614(4) Subject to subsections (5) and (6), a newstart allowance is not payable to a person for a period if a payment has been or may be made in respect of the person for that period under:

- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
- (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (ba) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (bb) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: for *prescribed educational scheme* see section 5.

614(5) If:

- (a) a person may enrol in a full-time course of education; and

(b) a payment under a scheme referred to in subsection (4) may be made in respect of the person;
the Secretary may decide that, in spite of subsection (4), newstart allowance is payable to the person for a period before the person starts the course.

614(6) If:

- (a) a person enrolls in a full-time course of education; and
- (c) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and
- (d) the person was receiving newstart allowance immediately before the start of the course;

the Secretary may decide that, in spite of subsection (4), newstart allowance is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

614A Maximum basic rate and remote area allowance not payable to CDEP Scheme participant

The maximum basic rate, and the remote area allowance, of newstart allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

614B Provisional commencement day: claimant for disability support pension

614B(1) Subject to subsection (2), the provisional commencement day of a person who is qualified for newstart allowance under subsection 593(1B) is the day on which the person made the claim for disability support pension mentioned in paragraph 593(1B)(d).

614B(2) If the person's claim for disability support pension is rejected, the person's provisional commencement day is to be worked out under section 615.

**Subdivision E—Situations where allowance not payable
(waiting periods)**

620 Ordinary waiting period

620(1) Subject to subsection (2), a person is subject to an ordinary waiting period unless:

- (a) at some time in the 13 weeks immediately before the person's provisional commencement day, the person received an income support payment; or

Note: For *income support payment* see subsection 23(1).

(fa) the following conditions apply:

- (i) the person is a member of a couple;
- (ii) the person's partner dies;
- (iii) immediately before the partner's death, the person was receiving a partner allowance;
- (iv) within the period of 4 weeks that starts on the day after the day on which the partner dies, the person claims a newstart allowance; or
- (g) the Secretary is satisfied that the person is in severe financial hardship.

620(2) A person is not subject to an ordinary waiting period under subsection (1) at any time during which the person:

(a) is undertaking:

- (i) formal vocational training in a labour market program approved by the Employment Secretary; or
- (ia) an activity approved by the Employment Secretary under the CSP; or
- (ii) a rehabilitation program approved by the Employment Secretary; and

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

Note 1: For *provisional commencement day* see section 615.

Note 2: For *social security benefit* see subsection 23(1).

Note 3: For *social security pension* see subsection 23(1).

Note 4: For *service pension* see subsection 23(1).

Note 5: For *Employment Secretary* see subsection 23(1).

Note 9: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

621 Duration of ordinary waiting period

No unused annual leave waiting period

621(1) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is not disqualified for newstart allowance under section 598 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the person's provisional commencement day.

Note 1: for *provisional commencement day* see section 615.

Note 2: If the person is subject to an education leavers waiting period, the education leavers waiting period runs concurrently with the ordinary waiting period.

Note 3: If the person is subject to a newly arrived resident's waiting period, the newly arrived resident's waiting period runs concurrently with the ordinary waiting period.

621(3) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is disqualified for newstart allowance under section 598 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the day after the end of the liquid assets test waiting period referred to in subsection 598(2).

621(7) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work or study and claims sickness allowance; and
- (b) because of sections 693 and 694 (ordinary waiting period), sickness allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i) or (ii), as the case may be:

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- (i) if the person is not disqualified for sickness allowance under section 676 (liquid assets text)—the person's sickness allowance provisional commencement day; or
 - (ii) if the person is disqualified for sickness allowance under section 676 (liquid assets test)—the day after the day on which the person's sickness allowance liquid assets waiting period ends; and
 - (c) during that period the person ceases to be incapacitated for work or study and claims newstart allowance;
- then, despite subsections (1), (2) and (3), the person's ordinary waiting period is a period of 7 days starting on the applicable day.

623A Newly arrived resident's waiting period

623A(1) Subject to this section, a person who:

- (a) has entered Australia on or after 1 January 1993; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

is subject to a newly arrived resident's waiting period.

623A(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a newstart allowance.

Note: For *qualifying residence exemption* see subsection 7(6).

623A(3) Subsection (1) does not apply to a person:

- (a) if, immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period of at least 26 weeks; or
- (b) if:
 - (i) immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period (*permit period*) of less than 26 weeks; and
 - (ii) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and
 - (iii) the period during which that permit continued to be in force as a temporary visa together with the permit period is at least 26 weeks.

Note: For *designated temporary entry permit* see subsection 7(1).

623A(5) Subsection (1) does not apply to a person if:

- (a) the person is already subject to a newly arrived resident's waiting period; or
- (b) the person has already served a newly arrived resident's waiting period; or
- (c) the person:
 - (i) has previously entered Australia before 1 January 1993; and
 - (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

623A(6) Subsection (1) does not apply to a person if:

- (a) the person is a New Zealand citizen; and
- (b) the person was an Australian resident on 1 February 2000; and
- (c) when the person claimed newstart allowance the person had been:
 - (i) an Australian resident for the 12 months immediately preceding the claim; or
 - (ii) continuously present in Australia for the 6 months immediately preceding the claim.

623B Duration of newly arrived resident's waiting period

623B(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

623B(2) If:

- (a) immediately before this section commenced, the person held a valid designated temporary entry permit; and
- (b) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and

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(c) that temporary visa was in force immediately before the person was granted his or her permanent visa;
the newly arrived resident's waiting period ends 26 weeks after the day on which the designated temporary entry permit was granted to the person.

Note: For *designated temporary entry permit* see subsection 7(1).

623B(3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

Subdivision F—Activity test breaches

624 Activity test penalties for failure to satisfy activity test

624(1) Subject to subsection (2), if a person fails to satisfy the activity test (the *failure*), a newstart allowance is not payable to the person.

624(1A) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:

- (a) if the failure is the person's first or second activity test breach in the 2 years immediately before the day after the failure—an activity test breach rate reduction period applies to the person; or
- (b) if the failure is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure—an activity test non-payment period applies to the person.

624(2) A person is not subject to the activity test penalty period under subsection (1) at any time during which the person:

- (a) is undertaking:
 - (i) formal vocational training in a labour market program approved by the Employment Secretary; or

- (ia) an activity approved by the Employment Secretary under the CSP; or
- (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Secretary.

Note: For *Employment Secretary* see section 23.

625 Activity test penalties for failure to enter Newstart Activity Agreement

625(1) Subject to subsection (2), if:

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

a newstart allowance is not payable to the person because of the failure.

625(1A) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:

- (a) if the failure is the person's first or second activity test breach in the 2 years immediately before the day after the failure—an activity test breach rate reduction period applies to the person; or
- (b) if the failure is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure—an activity test non-payment period applies to the person.

625(2) A person is not subject to the activity test penalty period under subsection (1) at any time during which the person:

- (a) is undertaking:
 - (i) formal vocational training in a labour market program approved by the Employment Secretary; or
 - (ia) an activity approved by the Employment Secretary under the CSP; or

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- (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Secretary.

Note 1: For *Employment Secretary* see section 23.

Note 3: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.

626 Activity test penalties for failure to comply with Newstart Activity Agreement

626(1) Subject to subsection (2), if:

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

a newstart allowance is not payable to the person because of the failure.

626(1A) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:

- (a) if the failure is the person's first or second activity test breach in the 2 years immediately before the day after the failure—an activity test breach rate reduction period applies to the person; or
- (b) if the failure is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure—an activity test non-payment period applies to the person.

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

626(2) A person is not subject to the activity test penalty period under subsection (1) at any time during which the person:

- (a) is undertaking:

- (i) formal vocational training in a labour market program approved by the Employment Secretary; or
- (ia) an activity approved by the Employment Secretary under the CSP; or
- (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Secretary.

Note 1: For *Employment Secretary* see section 23.

Note 3: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.

628 Unemployment due to voluntary act

If:

- (a) a person's unemployment is due, either directly or indirectly, to a voluntary act of the person (the *voluntary act*); and
- (b) the Secretary is not satisfied that the person's voluntary act was reasonable;

then:

- (c) if the voluntary act is the person's first or second activity test breach in the 2 years immediately before the day after the voluntary act—an activity test breach rate reduction period applies to the person; or
- (d) if the voluntary act is the person's third or subsequent activity test breach in the 2 years immediately before the day after the voluntary act—an activity test non-payment period applies to the person.

629 Unemployment due to misconduct

If a person's unemployment is due to the person's misconduct as a worker (the *misconduct*), then:

- (a) if the misconduct is the person's first or second activity test breach in the 2 years immediately before the day after the misconduct—an activity test breach rate reduction period applies to the person; or

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- (b) if the misconduct is the person's third or subsequent activity test breach in the 2 years immediately before the day after the misconduct—an activity test non-payment period applies to the person.

630 Refusal of job offer

- 630(1) If a person has refused or failed, without reasonable excuse, to accept a suitable offer of employment (the *failure*), a newstart allowance is not payable to the person.
- 630(2) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:
 - (a) if the failure is the person's first or second activity test breach in the 2 years immediately before the day after the failure—an activity test breach rate reduction period applies to the person; or
 - (b) if the failure is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure—an activity test non-payment period applies to the person.

630AA Failure to provide information etc.

- 630AA(1) If a person:
 - (a) refuses or fails, without reasonable excuse, to provide information in relation to a person's income from remunerative work (the *failure*); or
 - (b) knowingly or recklessly provides false or misleading information in relation to the person's income from remunerative work (the *provision of information*);when required to do so under a provision of this Act, a newstart allowance is not payable to the person.
- 630AA(2) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:
 - (a) if the failure or the provision of information is the person's first or second activity test breach in the 2 years immediately before the day after the failure or the provision of

information—an activity test breach rate reduction period applies to the person; or

- (b) if the failure or the provision of information is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure or the provision of information—an activity test non-payment period applies to the person.

630A Activity test non-payment periods

If an activity test non-payment period applies to a person under this Part, the period applicable to the person is 8 weeks.

630B Commencement of activity test non-payment periods [see Note 6]

630B(1) Subject to subsection 630BA(2), if an activity test non-payment period applies to a person under this Part, the Secretary must give to the person a written notice informing the person of the commencement of the activity test non-payment period applicable to the person.

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

630B(3) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test non-payment period (the *pre-existing non-payment period*), the pre-existing non-payment period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

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

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

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

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

Note: For *activity test deferment period* see subsection 23(1).

630BA Application of activity test non-payment periods before claims for newstart allowance

630BA(1) Subject to section 630BB, if:

(a) at a time when the person was not qualified for a newstart allowance, an event occurred that would have resulted in an activity test non-payment period applying to the person under:

(i) section 624 because the person would have been taken to have failed the activity test under subsection 601A(2); or

(ii) section 628 or 629;

had the person made a claim for a newstart allowance; and

(b) before the end of that period (assuming that the period had commenced on the day on which the event occurred), the person made a claim for a newstart allowance;

the activity test non-payment period is taken to have commenced on the day after the day on which the event occurred.

630BA(3) Subject to section 630BB, if:

(a) at a time when the person was not qualified for a newstart allowance, an event occurred that would have resulted in an activity test non-payment period applying to the person under:

(i) section 624 because the person would have been taken to have failed the activity test under subsection 601A(2); or

(ii) section 628 or 629;

had the person made a claim for a newstart allowance; and

(b) the person made a claim for a newstart allowance after the end of that period (assuming that the period had commenced on the day on which the event occurred);

then:

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

630BBA Activity test non-payment periods—interaction with activity test breach rate reduction periods

630BBA(1) This section applies if, under this Part:

- (a) an activity test non-payment period applies to a person; and
- (b) during the whole or part of that period, the whole or part of an activity test breach rate reduction period also applies to the person (the *overlap period*).

Note: Other periods such as an administrative breach rate reduction period may also apply—see section 644D.

630BBA(2) Subject to subsection (4), if this section applies, the activity test non-payment period and the activity test breach rate reduction period are to run concurrently during the overlap period.

630BBA(3) If this section applies, then, subject to section 630BB, only the non-payment restriction relating to the activity test non-payment period is to apply to the person during the overlap period.

630BBA(4) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test breach rate reduction period (the *pre-existing reduction period*), the pre-existing reduction period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

630BB Activity test non-payment periods—interaction with waiting periods

630BB(1) This section applies if, under this Part:

- (a) an activity test non-payment period applies to a person; and

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- (b) during the whole or part of that period, the whole or part of a waiting period also applies to the person (the *overlap period*).

Note: Other periods such as an administrative breach rate reduction period may also apply—see section 644D.

630BB(2) If this section applies, the activity test non-payment period and the waiting period are to operate concurrently during the overlap period.

630BB(3) If this section applies, then, despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

630BB(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 598.

Note: For *waiting period* see subsection 23(1).

630BC Effect of sections 630B, 630BA, 630BB

For the avoidance of doubt, sections 630B, 630BA and 630BB do not prevent a newstart allowance ceasing to be payable in circumstances that do not involve the application of an activity test non-payment period under this Part.

630BD Where one event may give rise to both an activity test penalty and an administrative breach rate reduction period

If, but for this section, an event would result in an activity test penalty period and an administrative breach rate reduction period both applying to a person under this Act, only the provision imposing the activity test penalty period is to apply to the person.

**Subdivision G—Situations where allowance not payable
(administrative breaches)**

**631 Administrative breach rate reduction period to apply to persons
who fail to comply with notification requirements**

If a person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under 63, 64, 67, 75 or 192 of the Administration Act:

- (a) a newstart allowance is not payable to the person; and
- (b) if, at a later time, a newstart allowance becomes payable to the person—an administrative breach rate reduction period applies to the person.

Note: For *administrative breach rate reduction period* see section 644B.

**Subdivision GA—Participation in an approved program of
work for unemployment payment**

631A Definitions

For the purposes of this Subdivision:

activity test penalty period, in relation to a person, means a period during which a newstart allowance that would otherwise be payable to the person is payable at a reduced rate, or is not payable, because of the operation of section 624, 625, 626, 628, 629, 630 or 630AA in relation to an act or omission of the person.

administrative penalty period, in relation to a person, means a period during which a newstart allowance that would otherwise be payable to the person is payable at a reduced rate because of the operation of section 630C or 631 in relation to an act or omission of the person.

penalty period means:

- (a) activity test penalty period; or
- (b) administrative penalty period.

Section 631B

631B Penalty periods cease to apply on start of participation in approved program of work for unemployment payment

- 631B(1) In spite of any provisions in this Act, if:
- (a) a penalty period or a number of penalty periods apply to, or, but for this section, would apply to, a person; and
 - (b) the person starts to participate in an approved program of work for unemployment payment;
- the penalty period or periods cease to apply to the person on and after that commencement.
- 631B(2) Subsection (1) has effect whether or not the person completes the participation in that program.

631C Participation in an approved program of work for unemployment payment does not give rise to employment under certain industrial relations legislation

A person is not to be taken, by reason only of participation in an approved program of work for unemployment payment in accordance with a requirement of the Secretary under section 601 or with the terms of a Newstart Activity Agreement under section 606, to be:

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

Subdivision H—Other situations where allowance not payable

633 Seasonal workers

- 633(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for newstart allowance, the person, or, if the person is a member of a

couple, the person or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

633(2) Newstart allowance is not payable to the person:

- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or
- (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

633(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
- (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

633(4) Subsection (2) does not apply to a person who:

- (a) has started:
 - (i) formal vocational training in a labour market program approved by the Employment Secretary; or
 - (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Employment Secretary.

Note: For *Employment Secretary* see section 23.

Section 634

634 Move to area of lower employment prospects

634(1) Subject to subsections (1B) and (2), if, in the opinion of the Secretary, a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, a newstart allowance is not payable to the person for 26 weeks.

634(1A) Subsection (1) extends to a person who makes a claim for newstart allowance on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.

634(1B) If a person to whom a newstart allowance is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by subsection (1A)) does either of the following during that period:

- (a) moves back to the place of residence (the *original place of residence*) the movement from which resulted in newstart allowance not being payable to him or her;
- (b) moves to another place of residence a movement to which from the original place of residence would not have resulted in newstart allowance not being payable to him or her;

the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

634(2) Subsection (1) does not apply to a person at any time during which the person:

- (a) is undertaking:
 - (i) formal vocational training in a labour market program approved by the Employment Secretary; or
 - (ia) an activity approved by the Employment Secretary under the CSP; or
 - (ii) a rehabilitation program approved by the Employment Secretary; and
- (b) has been exempted from the application of that subsection by the Secretary.

Note: For *Employment Secretary* see section 23.

634(3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:

- (a) moves to live with a family member who has already established his or her residence in that place of residence; or
- (b) moves to live near a family member who has already established residence in the same area; or
- (c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or
- (d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

Note: For *family member* see subsection 23(1).

- 634(4) The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

Division 4—Rate of newstart allowance

Subdivision A—Rate of newstart allowance

643 How to work out a person's newstart allowance rate

A person's newstart allowance rate is to be worked out using Benefit Rate Calculator B at the end of section 1068.

644AAA Approved program of work supplement

If a person:

- (a) is receiving newstart allowance; and
- (b) is participating in an approved program of work for unemployment payment;

the rate of the person's newstart allowance is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person subsequently ceases to participate in the program in circumstances that constitute:

- (c) a failure of the activity test to which the person is subject; or
- (d) a failure to comply with the terms of a Newstart Activity Agreement to which the person is subject.

Subdivision AA—Activity test breach rate reductions

644AA Activity test breach rate reduction periods

If an activity test breach rate reduction period applies to a person under this Part, the period applicable to the person is 26 weeks.

644AB Commencement of activity test breach rate reduction periods

644AB(1) Subject to section 644AC, if an activity test breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice informing the person of the commencement of the activity test breach rate reduction period applicable to the person.

Section 644AC

- 644AB(2) Subject to section 644AC, the activity test breach rate reduction period commences on the day on which the notice is given to the person.
- 644AB(3) If, at the time of the commencement of an activity test breach rate reduction period under this Part, the person is already subject to an activity test breach rate reduction period (the *pre-existing reduction period*), the pre-existing reduction period is taken to end immediately before the commencement of the activity test breach rate reduction period under this Part.
- 644AB(4) Subject to section 644AC, if, on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, newstart allowance ceases to be payable to the person, the period commences on the day on which newstart allowance ceases to be payable to the person.

Note: For *activity test breach rate reduction period* see subsection 23(1).

644AC Application of activity test breach rate reduction periods before claims for newstart

- 644AC(1) Subject to subsection (2), if:
- (a) at a time when the person was not qualified for a newstart allowance, an event occurred that would have resulted in an activity test breach rate reduction period applying to the person under:
 - (i) section 624 because the person would have been taken to have failed the activity test under subsection 601A(2); or
 - (ii) section 628 or 629;had the person made a claim for a newstart allowance; and
 - (b) before the end of that period (assuming that the period had commenced on the day on which the event occurred), the person made a claim for a newstart allowance;
- the activity test breach rate reduction period is taken to have commenced on the day after the day on which the event occurred.
- 644AC(2) If:
- (a) at a time when the person was not qualified for a newstart allowance, an event occurred that would have resulted in an

Section 644AD

activity test breach rate reduction period applying to the person under:

(i) section 624 because the person would have been taken to have failed the activity test under subsection 601A(2); or

(ii) section 628 or 629;

had the person made a claim for a newstart allowance; and

(b) the person makes a claim for a newstart allowance after the end of that period (assuming that the period had commenced on the day on which the event occurred);

then:

(c) the activity test breach rate reduction period is taken to have commenced and to have ended before the claim was made; and

(d) the Secretary is not obliged to give the person a written notice under subsection 644AB(1).

644AD Activity test breach rate reduction periods—interaction with waiting periods

644AD(1) This section applies if, under this Part:

(a) an activity test breach rate reduction period applies to a person; and

(b) during the whole or part of that period, the whole or part of a waiting period also applies to the person (the *overlap period*).

Note: Other periods such as an administrative breach rate reduction period may also apply—see section 644E.

644AD(2) If this section applies, the activity test breach rate reduction period and the waiting period are to run concurrently during the overlap period.

644AD(3) If this section applies, then despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

Note: For *activity test breach rate reduction period* see subsection 23(1).

644AD(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 598.

Note: For *waiting period* see subsection 23(1).

644AE Rate of newstart allowance where activity test breach rate reduction period applies

644AE(1) If:

- (a) an activity test breach rate reduction period applies to a person under this Part; and
- (b) the person qualifies for a newstart allowance; and
- (c) a newstart allowance is payable to the person;

the person's rate of newstart allowance for the activity test breach rate reduction period is worked out as follows:

Newstart allowance rate calculator for activity test breach rate reduction period

This is how to work out a person's rate of newstart allowance for an activity test breach rate reduction period that applies to the person.

Method statement

Step 1. Work out the person's maximum basic rate of newstart allowance specified in:

- (a) Table B of Module B of Part 3.5 (Benefit Rate Calculator A); or
- (b) Table B of Module B of Part 3.6 (Benefit Rate Calculator B):

the result is called the *maximum payment rate*.

Step 2. Work out the *rate reduction amount* in accordance with subsection (2).

Section 644B

Step 3. Take the rate reduction amount away from the rate of benefit worked out in accordance with Benefit Rate Calculator A in section 1067 or Benefit Rate Calculator B in section 1068, as the case requires:

the result is called the *activity test breach reduced rate*.

Note: An activity test breach reduced rate may be a nil rate.

644AE(2) A person's rate reduction amount is worked out as follows:

(a) if the activity test breach is the person's first breach in the 2 year period:

Maximum payment rate \times 0.18

(b) if the activity test breach is the person's second breach in the 2 year period:

Maximum payment rate \times 0.36

644AE(3) In this section:

2 year period means the 2 years immediately before the day after the activity test breach.

Subdivision B—Administrative breach reductions in the rate of newstart allowance

644B Administrative breach rate reduction periods

If an administrative breach rate reduction period applies to a person under this Part, the period applicable to the person is 13 weeks.

644C Commencement of administrative breach rate reduction periods

644C(1) If an administrative breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice informing the person of the commencement of the administrative breach rate reduction period applicable to the person.

Section 644D

- 644C(2) Subject to subsections (3) and (6), the administrative breach rate reduction period commences on the day on which the notice is given to the person.
- 644C(3) If, at the time of the commencement of an administrative breach rate reduction period under this Part, the person is already subject to an administrative breach rate reduction period (the *pre-existing reduction period*), the pre-existing reduction period is taken to end immediately before the commencement of the administrative breach rate reduction period under this Part.
- 644C(6) If:
- (a) on or before the day on which the period referred to in subsection (1) would (apart from this subsection) have commenced, newstart allowance ceases to be payable to the person; and
 - (b) it has not ceased to be payable because of the application of an administrative breach rate reduction period;
- the administrative breach rate reduction period referred to in subsection (1) commences on the day on which the newstart allowance ceases to be payable to the person.

Note: For *administrative breach rate reduction period* see section 644B.

644D Administrative breach rate reduction periods—interaction with activity test non-payment periods

- 644D(1) This section applies if, under this Part:
- (a) an administrative breach rate reduction period applies to a person; and
 - (b) during the whole or part of that period, the whole or part of an activity test non-payment period also applies to the person (the *overlap period*).

Note: Other periods such as a waiting period may also apply—see section 644EA.

- 644D(2) If this section applies, the activity test non-payment period and the administrative breach rate reduction period are to run concurrently during the overlap period.

Section 644E

- 644D(3) If this section applies, then, subject to section 630BB, the non-payment penalty relating to the activity test non-payment period is to apply to the person during the overlap period.

644E Administrative breach rate reduction periods—interaction with activity test breach rate reduction periods

- 644E(1) This section applies if, under this Part:

- (a) an administrative breach rate reduction period applies to a person; and
- (b) during the whole or part of that period, the whole or part of an activity test breach rate reduction period also applies to the person (the *overlap period*).

Note: Other periods such as a waiting period may also apply—see section 644EA.

- 644E(2) If this section applies, the administrative breach rate reduction period and the activity test breach rate reduction period are to run concurrently during the overlap period.

- 644E(3) If this section applies, then, subject to sections 630BBA, 630BB, 644AD and 644AE, only the higher of the percentage rate reduction amounts that relate to the activity test breach rate reduction period and the administrative breach rate reduction period respectively is the only percentage rate reduction amount that is to apply to the person during the overlap period.

Note 1: For rate reduction amount in relation to an activity test breach rate reduction period see subsection 644AC(1).

Note 2: For rate reduction amount in relation to an administrative breach rate reduction period see subsection 644H(1).

644EA Administrative breach rate reduction periods—interaction with waiting periods

- 644EA(1) This section applies if, under this Part:

- (a) an administrative breach rate reduction period applies to a person; and
- (b) during the whole or part of that period, the whole or part of a waiting period also applies to the person (the *overlap period*).

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Note: Other periods such as activity test breach rate reduction period may also apply—see section 644E.

644EA(2) If this section applies, the administrative breach rate reduction period and the waiting period are to run concurrently during the overlap period.

644EA(3) If this section applies, then, despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

644EA(4) A reference in this section to a waiting period includes a reference to a liquid assets test waiting period under section 598.

Note: For *waiting period* see subsection 23(1).

644F Effect of sections 644D and 644E

For the avoidance of doubt, sections 644D and 644E do not prevent a newstart allowance ceasing to be payable in circumstances that do not involve the application of an administrative breach rate reduction period.

644G Administrative breach rate reduction period not to apply in certain circumstances

Despite any other provision of this Part, an administrative breach rate reduction period does not apply if:

- (a) a person receives a newstart allowance; and
- (b) newstart allowance ceases to be payable to the person because of section 630C or 631; and
- (c) payment of the newstart allowance is cancelled or automatically terminated; and
- (d) the person lodges a claim for a newstart allowance more than 14 days after the date of effect of the cancellation or automatic termination referred to in paragraph (c).

Section 644H

644H Rate of newstart allowance where administrative breach rate reduction applies

644H(1) If:

- (a) an administrative breach rate reduction period applies to a person under this Part; and
- (b) the person qualifies for a newstart allowance; and
- (c) a newstart allowance is payable to the person;

the person's rate of newstart allowance for the administrative breach rate reduction period is worked out as follows:

Newstart allowance rate calculator for administrative breach rate reduction period

This is how to work out a person's rate of newstart allowance for an administrative breach rate reduction period that applies to the person.

Method statement

Step 1. Work out the person's maximum basic rate of newstart allowance specified in Table B of Module B of Part 3.6 (Benefit Rate Calculator B): the result is called the **maximum payment rate**.

Step 2. Work out the **rate reduction amount** in accordance with subsection (2).

Step 3. Take the rate reduction amount away from the rate of benefit worked out in accordance with Benefit Rate Calculator B in section 1068:

the result is called the **administrative breach reduced rate**.

Note: An administrative breach reduced rate may be a nil rate.

644H(2) A person's rate reduction amount is worked out as follows:

Maximum payment rate \times 0.16

653A CDEP Scheme participant may accumulate newstart allowance

- 653A(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any newstart allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- 653A(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
- (a) unless paragraph (b) applies, the last day of the quarter; or
 - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- 653A(3) In this section:

quarter means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

660LG Calculation of bereavement payment in respect of former CDEP Scheme participant

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 614A had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.