



# **Social Security Amendment (2007 Measures No. 2) Act 2007**

**No. 173, 2007**

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

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



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# **Social Security Amendment (2007 Measures No. 2) Act 2007**

**No. 173, 2007**

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

*[Assented to 28 September 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Social Security Amendment (2007 Measures No. 2) Act 2007*.

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## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 September 2007
2. Schedule 1, items 1 to 5	1 January 2008.	1 January 2008
3. Schedule 1, item 6	The day after this Act receives the Royal Assent.  However, if Schedule 4 to the <i>Social Security Amendment (2007 Measures No. 1) Act 2007</i> has not commenced on or before the day after this Act receives the Royal Assent, the provision(s) do not commence at all.	29 September 2007
4. Schedule 1, item 7	The day after this Act receives the Royal Assent.	29 September 2007
5. Schedule 1, items 8 to 34	1 January 2008.	1 January 2008
6. Schedule 1, item 35	20 March 2000.	20 March 2000
7. Schedule 1, items 36 to 48	1 January 2008.	1 January 2008

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

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

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### *Social Security Act 1991*

#### **1 After section 5D**

Insert:

#### **5E Relatives (other than parents)**

A person is a *relative (other than a parent)* of a child if:

- (a) the person is not the child's natural parent, adoptive parent or step-parent; and
- (b) any of the following apply to the person:
  - (i) the person is related to the child by blood, adoption or marriage;
  - (ii) if the child is an Aboriginal or Torres Strait Islander child who has traditional Aboriginal or Torres Strait Islander kinship ties—the person is related to the child under Aboriginal or Torres Strait Islander kinship rules;
  - (iii) if the child is a member of a community that accepts relationships other than those referred to in subparagraphs (i) and (ii) as kinship ties—the person is accepted by the community to be related to the child.

#### **2 Subsection 16B(3)**

Omit “paragraph (1)(b), the Secretary is to have regard to”, substitute “paragraph (1)(b) or subsection (2), the Secretary must comply with”.

#### **3 Subsection 16B(4)**

Omit “Secretary”, substitute “Minister”.

#### **4 Subsection 16B(4)**

After “complied with”, insert “by the Secretary”.

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

Insert:



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***Aboriginal or Torres Strait Islander child*** means a child who is a descendant of:

- (a) an Indigenous inhabitant of Australia; or
- (b) an Indigenous inhabitant of the Torres Strait Islands.

**6 Subsection 23(1) (definition of *family law order*) (the definition inserted by item 1 of Schedule 4 to the *Social Security Amendment (2007 Measures No. 1) Act 2007*)**

Repeal the definition.

**7 Subsection 23(1)**

Insert:

***family law order*** means:

- (a) a parenting order within the meaning of section 64B of the *Family Law Act 1975*; or
- (b) a family violence order within the meaning of section 4 of that Act; or
- (c) a State child order registered under Subdivision B of Division 13 of Part VII of that Act; or
- (d) an overseas child order registered under Subdivision C of Division 13 of Part VII of that Act.

**8 After subsection 94(4)**

Insert:

- (4A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (4B) in deciding the following:
  - (a) whether paragraph (1)(b) applies to a person;
  - (b) whether the Secretary is satisfied as mentioned in subsection (2) or (4).
- (4B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (4A).

**9 Subsection 94(6) (note)**

Repeal the note.

**10 After subsection 94A(4)**

Insert:

(4A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (4B) in deciding the following:

- (a) whether paragraph (1)(d) applies to a person;
- (b) whether the Secretary is satisfied as mentioned in paragraph (1)(g) or subsection (2) or (3).

(4B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (4A).

**11 Subsection 94A(6) (note)**

Repeal the note.

**12 Subsection 95(2) (note)**

Repeal the note.

**13 Subsection 362(3) (note)**

Repeal the note.

**14 Paragraph 502D(3)(c)**

Omit “children.”, substitute “children; or”.

**15 After paragraph 502D(3)(c)**

Insert:

- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

**16 At the end of subsection 502D(3)**

Add:

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

**17 After subsection 502H(1)**

Insert:

(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:

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- (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
- (b) whether, for the purposes of paragraph (a) of the definition of **work** in subsection (2), work is of a kind that a person could be reasonably expected to do.

(1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

## **18 After subsection 542A(1)**

Insert:

- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
- (a) whether subparagraph (1)(a)(ii) or paragraph (1)(b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (b) of the definition of **work** in subsection (3), work is of a kind that a person is reasonably capable of performing.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

## **19 Paragraph 542FA(3)(c)**

Omit “children.”, substitute “children; or”.

## **20 After paragraph 542FA(3)(c)**

Insert:

- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

## **21 At the end of subsection 542FA(3)**

Add:

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

## **22 Paragraph 602C(3)(c)**

Omit “children.”, substitute “children; or”.

**23 After paragraph 602C(3)(c)**

Insert:

- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

**24 At the end of subsection 602C(3)**

Add:

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

**25 After subsection 603C(1)**

Insert:

- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
  - (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (a) of the definition of **work** in subsection (2), work is of a kind that a person could be reasonably expected to do.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

**26 Subsection 660XBA(4) (note 8)**

Repeal the note.

**27 Subsection 660XBI(1)**

Omit “(1)”.

**28 Subsection 660XBI(1) (note 4)**

Repeal the note.

**29 Subparagraph 660YAB(1)(a)(ii)**

Omit “12,”.

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**30 Paragraph 731DB(3)(c)**

Omit “children.”, substitute “children; or”.

**31 After paragraph 731DB(3)(c)**

Insert:

- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

**32 At the end of subsection 731DB(3)**

Add:

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

**33 After subsection 731K(1)**

Insert:

- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
  - (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (a) of the definition of *work* in subsection (2), work is of a kind that a person could be reasonably expected to do.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

**34 Subparagraph 771(1)(a)(ii)**

Omit “12,”.

**35 Subparagraph 1237AAD(a)(ii)**

After “this Act”, insert “, the Administration Act”.

**36 Schedule 1B (cover page)**

Omit “Department of Social Security 1997”.

**37 Schedule 1B (paragraph 1 of the introduction)**

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Omit “a medical assessment”, substitute “an assessment”.

**38 Schedule 1B (paragraph 2 of the introduction)**

Omit “Medical Officer”, substitute “assessor”.

**39 Schedule 1B (paragraph 6 of the introduction)**

Omit “medical officer”, substitute “assessor”.

**40 Schedule 1B (paragraph 8 of the introduction)**

Omit “medical officer”, substitute “assessor”.

**41 Schedule 1B (paragraph 8 of the introduction)**

Omit “Medical officers must use their clinical judgement”, substitute “Assessors must use their judgement”.

**42 Schedule 1B (paragraph 10 of the introduction)**

Omit “medical officer”, substitute “assessor”.

**43 Schedule 1B (table 1)**

Omit “clinical judgement of medical officers”, substitute “judgement of assessors”.

**44 Schedule 1B (table 2)**

Omit “medical officer”, substitute “assessor”.

**45 Schedule 1B (table 2)**

Omit “clinical”, substitute “a medical officer’s”.

**46 Schedule 1B (table 22)**

Omit “Medical Officer”, substitute “assessor”.

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

**47 Section 12**

Repeal the section, substitute:

**12 Deemed claim in certain cases**

- (1) The Secretary may determine that, for the purposes of the social security law, a person is taken to have made a claim for an income support payment (the *new payment*), if:
  - (a) the person became qualified for the new payment while receiving another income support payment; or
  - (b) the person became qualified for the new payment immediately after ceasing to receive another income support payment.
- (2) The person is taken to have made the claim for the new payment on the day specified in the Secretary's determination. That day must not be earlier than:
  - (a) the day that is 13 weeks before the day on which the Secretary's determination is made; or
  - (b) if the person became qualified for the new payment after the day referred to in paragraph (a)—the day on which the person became qualified for the new payment.

**48 Application—amendment of section 12 of the *Social Security (Administration) Act 1999***

- (1) A determination (including a determination on review) made on or after 1 January 2008 under section 12 of the *Social Security (Administration) Act 1999* must be made under section 12 as amended, and cannot be made under section 12 as in force before 1 January 2008 (whether or not the determination would relate to a person who became qualified for a payment before that date).
- (2) Subitem (1) does not apply in relation to a determination on review if a review of the decision (whether or not the review on which the determination was made) was:
  - (a) initiated by the Secretary; or
  - (b) applied for by a person;
 before 1 January 2008.
- (3) In this item:  
*determination on review* means a determination made on review of a decision in accordance with Part 4 of the *Social Security (Administration) Act 1999*.

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*[Minister's second reading speech made in—  
House of Representatives on 16 August 2007  
Senate on 20 September 2007]*

(160/07)

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