Paid Parental Leave Act 2010

No. 104, 2010

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About this compilation

This compilation

This is a compilation of the *Paid Parental Leave Act 2010* that shows the text of the law as amended and in force on 1 December 2014 (the ***compilation date***).

This compilation was prepared on 1 December 2014.

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for a paid parental leave scheme, and for related purposes

Chapter 1—Introduction

Part 1-1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *Paid Parental Leave Act 2010*.

2 Commencement

This Act commences on 1 October 2010.

3 Act binds Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.

(3) To avoid doubt, subsection (2) does not prevent the Crown from being liable to pay a pecuniary penalty under section 147 or 159.

Note: Section 147 deals with civil penalty orders and section 159 deals with infringement notices.

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Division 1A—Objects of this Act

3A Objects of this Act

(1A) This Act establishes a paid parental leave scheme with 2 payments—parental leave pay, and dad and partner pay.

(1B) The objects of the paid parental leave scheme are to:

(a) signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents; and

(b) promote equality between men and women and balance between work and family life.

(1) The object of parental leave pay is to provide financial support to primary carers (mainly birth mothers) of newborn and newly adopted children, in order to:

(a) allow those carers to take time off work to care for the child after the child's birth or adoption; and

(b) enhance the health and development of birth mothers and children; and

(c) encourage women to continue to participate in the workforce.

(2) The object of dad and partner pay is to provide financial support to fathers and partners caring for newborn or newly adopted children, in order to:

(a) increase the time that fathers and partners take off work around the time of birth or adoption; and

(b) create further opportunities for fathers and partners to bond with the child; and

(c) allow fathers and partners to take a greater share of caring responsibilities and to support mothers and partners from the beginning.

(3) The financial support provided by this Act is intended to complement and supplement existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child.

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Division 2—Guide to this Act

4 Guide to this Act

Overview

This Act provides for the payment of parental leave pay and dad and partner pay in the first year after the birth of a child or, for adoption, the placement of a child.

Parental leave pay is paid to a person for a particular period. That period is called the person's PPL period. The maximum period for which any person may be paid parental leave pay is 18 weeks. A person's PPL period may be the full 18 weeks or a lesser period (e.g. where the person is not eligible for parental leave pay for that full period).

Parental leave pay is paid in instalments at the national minimum wage for each week day during the person's PPL period. It is paid by either the person's employer or the Secretary.

Dad and partner pay is a one-off payment that relates to a period of up to 2 weeks. The period is called the person's DAPP period. The person's DAPP period may be the full 2 weeks or a lesser period (if the person is not eligible for dad and partner pay for that full period).

Dad and partner pay is paid at the national minimum wage for each week day during the person's DAPP period. Dad and partner pay is paid by the Secretary.

Chapter 2—When parental leave pay is payable to a person

Chapter 2 sets out when parental leave pay is payable to a person. The key provisions for the Chapter are found in Part 2-1.

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Section 4

A person can only be paid parental leave pay if the Secretary makes a determination that parental leave pay is payable to the person. Part 2-2 has the rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person is not eligible for parental leave pay. Part 2-3 has the rules about eligibility. For the main case, to be eligible a person must (broadly):

(a) satisfy the work test, the income test and the Australian residency test; and

(b) be the child's primary carer; and

(c) not have returned to work.

The Secretary also cannot make that determination if the person has not made a claim for parental leave pay. Part 2-4 has the rules about claims.

There are 3 types of claims: a primary claim, a secondary claim and (in rare cases) a tertiary claim. These claims relate to each other, although the primary claim is the main one—a secondary or tertiary claim cannot be made without it. The primary claim will often be the only claim that is made. If a secondary or tertiary claim is made, that claim will be for the part of the maximum 18 week period (or lesser period) in which parental leave pay was not payable to the primary claimant.

Chapter 3—Payment of parental leave pay

Chapter 3 sets out how parental leave pay is paid to a person.

Part 3-1 is about instalments of parental leave pay. It deals with when instalments must be paid, whether the person's employer or the Secretary must pay them and the amount of the instalments.

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Part 3-2 sets out when a person's employer must pay instalments to the person. The employer is only required to do that if an employer determination has come into force for the employer and the person, and the employer has been paid enough by the Secretary to fund the instalment.

Part 3-3 sets out when the Secretary must pay instalments directly to the person. The Secretary is required to do that if an employer determination is never made for the person (e.g. the person is a contractor and so does not have an employer). There are some other circumstances in which the Secretary is also required to pay instalments directly to the person (such as when an employer determination is being reviewed or has been revoked).

Part 3-4 has general rules about the payment of instalments (such as what happens when an instalment cannot be paid on the day specified in this Act).

Part 3-5 is about employer determinations. If an employer determination is in force for an employer and a person, the employer must pay instalments to the person. The Secretary must be satisfied that certain conditions have been met before the Secretary can make an employer determination.

Chapter 3A—Dad and partner pay

Chapter 3A sets out when dad and partner pay is payable to a person. The key provisions for the Chapter are found in Part 3A-1.

A person can only be paid dad and partner pay if the Secretary makes a determination that dad and partner pay is payable to the person. Part 3A-2 has rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person is not eligible for dad and partner pay. Part 3A-3 has the rules about eligibility. For the main case, to be eligible a person must (broadly):

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(a) satisfy the work test, the income test and the Australian residency test; and

(b) be caring for the child; and

(c) not be working.

The Secretary also cannot make that determination if the person has not made a claim for dad and partner pay. Part 3A-4 has the rules about claims.

Part 3A-5 sets out how dad and partner pay is paid to a person. Generally, dad and partner pay is paid by the Secretary as a single payment.

Chapter 4—Compliance and enforcement

Chapter 4 deals with compliance and enforcement.

Part 4-1 allows the Secretary to gather information for the purposes of checking compliance with this Act. It also deals with the confidentiality of personal and protected information.

Part 4-2 deals with other compliance matters. It allows the Secretary to refer matters to the Fair Work Ombudsman for investigation if the Secretary has reason to believe that an employer has not complied with certain obligations under this Act. It also deals with civil penalty provisions, compliance notices and infringement notices.

Part 4-3 provides for debts in relation to the paid parental leave scheme, and for the recovery of debts owing to the Commonwealth.

Chapter 5—Review of decisions

Chapter 5 is about administrative and judicial review of decisions made under this Act.

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Part 5-1 allows the Secretary, on his or her own initiative, to conduct an internal review of decisions made under this Act. It also allows a person whose interests are affected by certain types of decisions to seek internal review of those decisions, and an employer to seek internal review of certain types of decisions that affect employers.

Part 5-2 allows a person to apply to the Social Security Appeals Tribunal for review of a decision made under this Act.

Part 5-3 is about the procedures to be followed when the Social Security Appeals Tribunal reviews a decision.

Part 5-4 allows the Secretary or a person whose interests are affected by a decision made by the Social Security Appeals Tribunal to apply to the Administrative Appeals Tribunal for review of the decision.

Part 5-5 has miscellaneous provisions relating to reviews of decisions under this Act.

Chapter 6—Miscellaneous

Chapter 6 has miscellaneous provisions.

Part 6-1 has rules that modify this Act so that it applies correctly in 3 limited kinds of cases—adoption, claims made in exceptional circumstances etc. and Commonwealth employment.

Part 6-2 is about payment nominees (who are people who can receive payments of instalments of parental leave pay, or a payment of dad and partner pay, on behalf of other people for the purposes of this Act) and correspondence nominees (who are people who can receive notices on behalf of other people for the purposes of this Act).

Part 6-3 deals with other miscellaneous matters, such as the PPL rules, delegations and regulations.

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Part 1-2—Definitions

Division 1—Guide to this Part

5 Guide to this Part

This Part is about the terms that are defined in this Act.

Division 2 has the Dictionary (see section 6). The Dictionary is a list of every term that is defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

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Division 2—The Dictionary

6 The Dictionary

In this Act:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

ABN (short for Australian Business Number) has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

acceptance notice: see section 103.

ADI (short for authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

adjusted taxable income: see section 38.

Attorney-General's Secretary means the Secretary of the Department administered by the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

Australia, when used in a geographical sense, includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Australian-based employee means an employee:

(a) whose primary place of work is in Australia; or

(b) who is employed by an Australian government employer.

Australian government employer means:

(a) the Commonwealth; or

(b) a State; or

(c) a Territory; or

(d) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or

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(e) a body corporate:
(i) incorporated under a law of the Commonwealth, a State or a Territory; and
(ii) in which the Commonwealth, a State or a Territory, has a controlling interest.

Australian residency test: see sections 45 and 46.

Australian resident has the same meaning as in the Social Security Act.

authorised party, in relation to the adoption of a child, means a person or agency that, under the law of the State, Territory or foreign country whose courts have jurisdiction in relation to the adoption, is authorised to conduct negotiations or arrangements for the adoption of children.

authorised review officer means an officer authorised under section 271 to be an authorised review officer for the purposes of this Act.

bank account includes an account held with an ADI.

bank account information: see subsection 104(2).

birth verification form: see subsection 18(4).

born prematurely: a child is ***born prematurely*** if, at the time of the child's delivery, the child's period of gestation is less than 37 weeks.

business includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

caring: see subsections 115CL(1) and (4).

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

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

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civil penalty order: see subsection 147(2).

civil penalty provision: see section 146.

claim means:

(a) for parental leave pay—a primary claim, a secondary claim or a tertiary claim for parental leave pay for a child; or

(b) for dad and partner pay—a claim for dad and partner pay for a child.

claimant means a person who is a primary claimant, secondary claimant, tertiary claimant or DAPP claimant.

claimant decision: see section 206.

Commonwealth agency means any of the following:

(a) a non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*;

(b) any other unincorporated body established for a public purpose by or under a law of the Commonwealth.

compliance notice: see subsection 157(3).

controls an entity: see subsection 35(4).

correspondence nominee means a person who is appointed as a correspondence nominee under section 281.

dad and partner pay means payments of dad and partner pay under this Act.

daily national minimum wage amount: see subsection 65(2).

DAPP claimant means a person who has made an effective claim for dad and partner pay for a child.

DAPP period: see subsection 115AE(1).

date of the further debt notice: see section 174.

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date of the initial debt notice: see section 173.

debt payment arrangement: see section 190.

decision has the same meaning as in the AAT Act.

defence force member means a member of the Australian Defence Force.

effective claim means:

(a) for parental leave pay—a claim that is made in accordance with Part 2-4; or

(b) for dad and partner pay—a claim that is made in accordance with Part 3A-4.

eligible:

(a) for parental leave pay—see section 31; or

(b) for dad and partner pay—see section 115CB.

employee has its ordinary meaning and:

(a) includes a reference to a person who is usually such an employee; and

(b) does not include a person on a vocational placement.

employer has its ordinary meaning and includes a reference to a person who is usually such an employer.

employer determination: see section 101.

employer determination decision: see section 207.

employer funding amount decision: see section 208.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

entity means any of the following:

(a) a natural person;

(b) a body corporate;

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(c) a body politic;
(d) a partnership;
(e) any other unincorporated association or body of persons;
(f) a trust.

exceptional circumstances: a claim is made in ***exceptional circumstances*** if it is made by a person who satisfies:
(a) paragraph 54(1)(c) (which deals with primary claims); or
(b) paragraph 54(2)(d) (which deals with secondary claims); or
(c) subsection 54(3) (which deals with tertiary claims).

Fair Work Act means the *Fair Work Act 2009*.

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

family assistance law has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

final debt payment day: see section 175.

financial institution means:
(a) an ADI; or
(b) the Reserve Bank of Australia; or
(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

further debt notice: see section 174.

garnishee, in relation to a garnishee notice: see section 184.

garnishee notice: see section 184.

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holder, of a visa, has the same meaning as in the *Migration Act 1958*.

Human Services Department means the Department administered by the Human Services Minister.

Human Services Minister means the Minister administering the *Human Services (Centrelink) Act 1997*.

Human Services Secretary means the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

income test: see sections 37 and 115CG.

Note: Division 4 of Part 3A-3 (which includes section 115CG) is relevant in applying the income test to claimants for dad and partner pay.

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

indexation day: see subsection 42(1).

indexation factor: see subsection 43(1).

indexed amount: see subsection 42(2).

infringement notice: see subsections 159(1) and (2).

initial eligibility determination:

(a) for parental leave pay—see section 26; or

(b) for dad and partner pay—see section 115BL.

insolvent: a person is ***insolvent*** if:

(a) for a natural person:

(i) the person is an insolvent under administration; or

(ii) the person is a debtor in relation to a debt agreement under Part IX of the *Bankruptcy Act 1966* that has not ended or been terminated; and

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(b) for a person that is or was a body corporate:

(i) the person is an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) or an entity with a similar status under a law of a foreign country; or

(ii) a provisional liquidator has been appointed in relation to the person under section 472 of the *Corporations Act 2001*; or

(iii) a person with a similar status to a provisional liquidator has been appointed in relation to the person under a law of a foreign country.

instalment means an instalment of parental leave pay.

instalment period for a person: see section 64.

interest exemption determination: see subsection 178(1).

involved in a contravention of a civil penalty provision: see subsection 145(2).

keeping in touch day: see section 50.

law enforcement officer means:

(a) a member of a police force or police service of the Commonwealth, a State or a Territory; or

(b) a person appointed to a position for the purposes of being trained as a member of a police force or police service of the Commonwealth, a State or a Territory; or

(c) a person who has the powers and duties of a member of a police force or police service of the Commonwealth, a State or a Territory;

and, without limiting paragraphs (a), (b) and (c), includes a police reservist, a police recruit, a police cadet, a junior constable, a police medical officer, a special constable, an ancillary constable or a protective services officer.

maximum DAPP period: see subsection 115AE(3).

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maximum DAPP period end day: see subsection 115AE(5).

maximum DAPP period start day: see subsection 115AE(4).

maximum PPL period: see subsection 11(3).

maximum PPL period end day: see subsection 11(5).

maximum PPL period start day: see subsection 11(4).

minimum amount for a PPL funding amount: see subsection 76(2).

national minimum wage order has the same meaning as in the Fair Work Act.

nominated start date:

(a) for parental leave pay—see subsection 57(1); or
(b) for dad and partner pay—see subsection 115DG(1).

nominee means a correspondence nominee or a payment nominee.

not working: see section 115CM.

officer means a person performing duties, or exercising powers or functions, under or in relation to this Act.

original debt: see section 184.

original debtor: see section 184.

paid enough to fund an instalment: see section 73.

paid work: see section 35.

parent:

(a) when used in relation to a child who has been adopted—means an adoptive parent of the child; and
(b) when used in relation to a child born because of the carrying out of an artificial conception procedure—means a person who is a parent of the child under section 60H of the *Family Law Act 1975*; and

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(c) when used in relation to a child born because of a surrogacy arrangement—includes a person who is a parent of the child under section 60HB of the *Family Law Act 1975*.

parental leave pay means payments of parental leave pay under this Act.

partner has the same meaning as in the Social Security Act.

payability determination means:

(a) for parental leave pay—a determination made under section 13, 14, 15, 16 or 17 that parental leave pay is, or is not, payable to a person for a child; or

(b) for dad and partner pay—a determination made under section 115BB that dad and partner pay is, or is not, payable to a person for a child.

pay cycle information: see subsection 104(3).

payday for an instalment: see section 64.

payment nominee means a person who is appointed as a payment nominee under section 280.

payroll cut-off for an instalment that is payable to a person means the last day on which the person's employer can reasonably make changes to the instalment to be paid to, or in relation to, the person on the person's payday for the instalment.

penalty interest rate: see section 180.

permissible break: see subsection 36(1).

permissible purpose: see section 49.

PPL is short for paid parental leave.

PPL agency means:

(a) the Department; or

(b) the Human Services Department.

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PPL agency representative means:

(a) for the Department—the Secretary; or

(b) for the Human Services Department—the Chief Executive Centrelink or the Chief Executive Medicare.

PPL day: see subsection 63(3).

PPL funding amount: see subsection 75(1).

PPL income limit: see section 41.

PPL period: see subsection 11(1).

PPL requirement: see subsection 287(6).

PPL rules (short for Paid Parental Leave Rules) means the rules made by the Minister under section 298.

primary carer: see section 47.

primary claim: see subsection 53(2).

primary claimant means a person who has made an effective primary claim for parental leave pay for a child.

principal in relation to a nominee, means the person in relation to whom the nominee was appointed.

Principal Member means the Principal Member of the Social Security Appeals Tribunal.

Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the Social Security Appeals Tribunal.

protected information means:

(aa) information about a person that is or was held in the records of the Department or the Human Services Department; or

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

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

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

provisional indexed amount: see section 42.

qualifying period: see section 32.

qualifying work: see section 34.

reference income year:

(a) for a primary claimant or a secondary claimant—see section 39; or

(b) for a DAPP claimant—see section 115CH.

reference period:

(a) for a person claiming parental leave pay—see subsection 47(2); or

(b) for a person claiming dad and partner pay—see subsection 115CL(2).

relevant PPL income limit:

(a) for a primary claimant or a secondary claimant—see section 40; or

(b) for a DAPP claimant—see section 115CJ.

resides in Australia has the same meaning as in the Social Security Act.

returns to work: see section 48.

saved amount:

(a) for parental leave pay—see subsection 97(2); or

(b) for dad and partner pay—see subsection 115EK(2).

secondary claim: see subsection 53(3).

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secondary claimant means a person who has made an effective secondary claim for parental leave pay for a child for which another person has made a primary claim.

Secretary means the Secretary of the Department.

security notice means a notice under section 278C.

Social Security Act means the *Social Security Act 1991*.

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

special category visa has the same meaning as in the *Migration Act 1958*.

SSAT means the Social Security Appeals Tribunal.

Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the SSAT.

SSAT member means a member of the SSAT.

Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the SSAT.

SSAT reviewable claimant decision: see section 215.

SSAT reviewable employer decision: see section 223.

stillborn, in relation to a child, means a child:

(a) who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and
(b) who has not breathed since delivery; and
(c) whose heart has not beaten since delivery.

subject to review: an employer determination is ***subject to review*** until:

(a) any applicable time limits for applying for a review (however described) or lodging an appeal (however described) of or in relation to the determination have expired; and

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(b) if there is such a review or appeal of or in relation to the determination—the review or appeal (and any later reviews or appeals) have been finally disposed of.

tax file number has the same meaning as in section 202A of the *Income Tax Assessment Act 1936*.

tax file number statement: see subsection 59(1).

tertiary claim: see subsection 53(4).

tertiary claimant means a person who has made an effective tertiary claim for parental leave pay for a child for which another person has made a secondary claim.

this Act includes the PPL rules and the regulations.

transfer day: see subsections 84(3), (4) and (5).

verifies a child's birth: see section 18.

vocational placement means a placement that is:

(a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and

(b) undertaken as a requirement of an education or training course; and

(c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

week day means a day that is not a Saturday or a Sunday.

working day means a day that is not a Saturday, a Sunday or a public holiday.

work test: see Division 3 of Part 2-3 and sections 115CE and 115CF.

Note: Sections 115CE and 115CF and other provisions of Division 3 of Part 3A-3 are relevant in applying the work test to claimants for dad and partner pay.

work test period:

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(a) for a primary claimant or a secondary claimant—see section 33; or
(b) for a DAPP claimant—see section 115CD.

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Chapter 2—When parental leave pay is payable to a person

Part 2-1—Key provisions

Division 1—Guide to this Part

7 Guide to this Part

This Part has the key provisions for this Chapter (which deals with when parental leave pay is payable to a person).

A person can only be paid parental leave pay if the Secretary makes a determination that parental leave pay is payable to the person. Part 2-2 has the rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person has not made a claim for parental leave pay. Part 2-4 has the rules about claims. There are 3 types of claims: a primary claim, a secondary claim and (in rare cases) a tertiary claim. These claims relate to each other, although the primary claim is the main one—a secondary or tertiary claim cannot be made without it. The primary claim will often be the only claim that is made.

If the Secretary makes a determination that parental leave pay is payable to a person for a child, the parental leave pay is payable for the particular period that is specified in the determination. This period is the person's PPL period. The maximum period for which any person may be paid parental leave pay is 18 weeks. A person's PPL period may be the full 18 weeks or a lesser period (e.g. where the person is not eligible for parental leave pay for that full period).

If a secondary or tertiary claim is made, that claim will be for the part of the maximum 18 week period (or lesser period) in which

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parental leave pay was not payable to the primary claimant. The person's employer or the Secretary will pay instalments of parental leave pay for that period (see Chapter 3 for the rules about how the person is paid parental leave pay).

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Division 2—When parental leave pay is payable to a person

8 A determination must be made for parental leave pay to be payable to a person

Parental leave pay is payable to a person for a child for a period if a determination of the Secretary that parental leave pay is payable to the person for that period is in force under section 13, 14, 15, 16 or 17.

Note: See Part 2-2 for the rules about when the Secretary can make a determination that parental leave pay is, or is not, payable to a person.

9 For the determination to be made, the person must be eligible

The Secretary cannot make a determination that parental leave pay is payable to a person for a child for a period unless the person was or will be eligible for parental leave pay during the period.

Note: See Part 2-3 for the rules about when a person is eligible for parental leave pay.

10 For the determination to be made, the person must claim

The Secretary cannot make a determination that parental leave pay is payable to a person for a child for a period unless the person has made:

(a) an effective primary claim for the child (in which case the person is the primary claimant); or

(b) an effective secondary claim for the child (in which case the person is the secondary claimant); or

(c) an effective tertiary claim for the child (in which case the person is the tertiary claimant).

Note: See Part 2-4 for the rules about how to make an effective claim.

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11 The determination must specify the person's *PPL period*

(1) If the Secretary makes a determination that parental leave pay is payable to a person for a child, the Secretary must specify, in the determination, the period for which parental leave pay is payable to the person. That period is the person's ***PPL period***.

Note: For a primary claimant's PPL period, see subsections 13(3) and 14(3). For a secondary claimant's PPL period, see subsections 14(6), 15(5) and 16(4). For a tertiary claimant's PPL period, see subsection 17(3).

(2) A person's PPL period must be the same as, or within, the maximum PPL period for the child.

(3) The ***maximum PPL period*** for a child is the period that:
  (a) starts on the child's maximum PPL period start day; and
  (b) ends on the child's maximum PPL period end day.

(4) The ***maximum PPL period start day*** for a child is:
  (a) if, on or before the day (the ***relevant day***) that is 28 days after the day the child was born, the primary claimant both made an effective claim for parental leave pay for the child and verified the child's birth—the later of the following days:
    (i) the day the child was born;
    (ii) the primary claimant's nominated start date; and
  (b) if, on or before the relevant day, the primary claimant made an effective claim for parental leave pay for the child but did not verify the child's birth—the later of the following days:
    (i) the day the primary claimant verifies the child's birth;
    (ii) the primary claimant's nominated start date; and
  (c) if the primary claimant makes an effective claim for parental leave pay for the child after the relevant day—the later of the following days:
    (i) the day the claim is made;
    (ii) the primary claimant's nominated start date.

(5) The ***maximum PPL period end day*** for a child is the earlier of the following days:

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(a) the day that is 125 days after the maximum PPL period start day (which is 18 weeks from (and including) that start day);
(b) the day before the child's first birthday.

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Part 2-2—Determinations about whether parental leave pay is payable to a person

Division 1—Guide to this Part

12 Guide to this Part

This Part is about the Secretary making determinations about whether parental leave pay is payable to a person. These determinations are payability determinations. A person cannot be paid parental leave pay unless there is a payability determination that parental leave pay is payable to the person.

Division 2 has the rules that apply to the Secretary when making a payability determination. Different rules apply depending on the type of claim and, for a primary or secondary claim, whether it was made by itself or at the same time as another claim.

Division 3 has restrictions that apply in particular circumstances to prevent the Secretary from making a payability determination that parental leave pay is payable to a person (for example, where the child's birth has not been verified or the person has already been paid parental leave pay for the child).

Division 4 has general rules that apply to payability determinations (for example, if the Secretary makes a determination, the Secretary must give a notice of it to the claimant).

Division 5 deals with initial eligibility determinations. These determinations can be made by the Secretary before the Secretary makes a payability determination. The Secretary can make an initial eligibility determination if the Secretary is satisfied that the person satisfies, or will satisfy, particular eligibility criteria (the work test, the income test and the Australian residency test). If the

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Secretary makes a determination, the Secretary must give a notice of it to the claimant.

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Division 2—Determinations about whether parental leave pay is payable to a person

13 Determination on a primary claim made alone

When a claim is to be determined under this section

(1) If:

(a) a primary claimant has made an effective primary claim for parental leave pay for a child; and

(b) another person has not made an effective secondary claim for parental leave pay for the child at the same time;

the Secretary must make a determination on the primary claim under this section.

When parental leave pay is payable to primary claimant

(2) The Secretary must determine that parental leave pay is payable to the primary claimant for the primary claimant's PPL period if, when making the determination, the Secretary is satisfied that the primary claimant was or will be eligible for parental leave pay on each day in the period that:

(a) starts on the day the child was born; and

(b) ends on the last day of the primary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

Primary claimant's PPL period

(3) The Secretary must specify in the determination under subsection (2) that the primary claimant's PPL period:

(a) starts on the child's maximum PPL period start day; and

(b) ends on:

(i) if the Secretary is satisfied that the primary claimant was or will be eligible on each day in the child's

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maximum PPL period—the child's maximum PPL period end day; or

(ii) if the Secretary is satisfied that the primary claimant was or will be eligible for a period that is shorter than the child's maximum PPL period—the last day in the child's maximum PPL period that the primary claimant was or will be eligible.

When parental leave pay is not payable to primary claimant

(4) The Secretary must determine that parental leave pay is not payable to the primary claimant if the Secretary is not satisfied of the matters in subsection (2).

14 Determination on primary and secondary claims made jointly—claimants sharing parental leave pay

When a claim is to be determined under this section

(1) If:

(a) a primary claimant has made an effective primary claim for parental leave pay for a child; and

(b) a secondary claimant has made an effective secondary claim for parental leave pay for the child at the same time; and

(c) in the primary claim, the primary claimant requested that parental leave pay that is or may be payable for the child be shared between the primary claimant and the secondary claimant;

the Secretary must make a determination on the primary claim and the secondary claim under this section.

When parental leave pay is payable to primary claimant

(2) The Secretary must determine that parental leave pay is payable to the primary claimant for the primary claimant's PPL period if, when making the determination, the Secretary is satisfied that the primary claimant was or will be eligible for parental leave pay on each day in the period that:

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(a) starts on the day the child was born; and
(b) ends on the last day of the primary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

Primary claimant's PPL period

(3) The Secretary must specify in the determination under subsection (2) that the primary claimant's PPL period:
(a) starts on the child's maximum PPL period start day; and
(b) ends on the last day in the child's maximum PPL period that the Secretary is satisfied that the primary claimant was or will be eligible.

When parental leave pay is not payable to primary claimant

(4) The Secretary must determine that parental leave pay is not payable to the primary claimant if the Secretary is not satisfied of the matters in subsection (2).

When parental leave pay is payable to secondary claimant

(5) The Secretary must determine that parental leave pay is payable to the secondary claimant for the secondary claimant's PPL period if, when making the determination, the Secretary is satisfied that:
(a) a determination has been made under subsection (2) for the primary claimant; and
(b) the secondary claimant was or will be eligible for parental leave pay on each day in the secondary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

Secondary claimant's PPL period

(6) The Secretary must specify in the determination under subsection (5) that the secondary claimant's PPL period:

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(a) starts on the first day after the primary claimant's PPL period ends; and

(b) ends on:

(i) if the Secretary is satisfied that the secondary claimant was or will be eligible on each day that remains in the child's maximum PPL period—the child's maximum PPL period end day; or

(ii) otherwise—the last day in the child's maximum PPL period that the Secretary is satisfied that the secondary claimant was or will be eligible.

When parental leave pay is not payable to secondary claimant

(7) The Secretary must determine that parental leave pay is not payable to the secondary claimant if the Secretary is not satisfied of the matters in subsection (5).

15 Determination on primary and secondary claims made jointly—secondary claimant to get all the parental leave pay

When a claim is to be determined under this section

(1) If:

(a) a primary claimant has made an effective primary claim for parental leave pay for a child; and

(b) a secondary claimant has made an effective secondary claim for parental leave pay for the child at the same time; and

(c) in the primary claim, the primary claimant requested that the secondary claimant be paid the full amount of parental leave pay that is or may be payable for the child;

the Secretary must make a determination on the primary claim and the secondary claim under this section.

When parental leave pay is not payable to primary claimant

(2) The Secretary must determine that parental leave pay is not payable to the primary claimant.

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When parental leave pay is payable to secondary claimant

(3) The Secretary must determine that parental leave pay is payable to the secondary claimant for the secondary claimant's PPL period if, when making the determination, the Secretary is satisfied that:

(a) the primary claimant:

(i) satisfies the work test and income test on that day; and

(ii) satisfied the Australian residency test on the day the child was born; and

(b) the secondary claimant was or will be eligible for parental leave pay on each day in the secondary claimant's PPL period; and

(c) if the secondary claimant's PPL period starts after the day the child was born—subsection (4) applies to the period that:

(i) starts on the day the child was born; and

(ii) ends on the day before the start of the secondary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

(4) This subsection applies to the period referred to in paragraph (3)(c) if:

(a) the primary claimant was or will be eligible for parental leave pay on each day in that period; or

(b) the secondary claimant was or will be eligible for parental leave pay on each day in that period; or

(c) both of the following are satisfied:

(i) the primary claimant was or will be eligible for parental leave pay on each day in the first part of that period;

(ii) the secondary claimant was or will be eligible for parental leave pay on each day in the last part of that period.

Secondary claimant's PPL period

(5) The Secretary must specify in the determination under subsection (3) that the secondary claimant's PPL period:

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(a) starts on the maximum PPL period start day; and

(b) ends on:

(i) if the Secretary is satisfied that the secondary claimant was or will be eligible on each day in the child's maximum PPL period—the child's maximum PPL period end day; or

(ii) if the Secretary is satisfied that the secondary claimant was or will be eligible for a period that is shorter than the child's maximum PPL period—the last day in the child's maximum PPL period that the Secretary is satisfied that the secondary claimant was or will be eligible.

When parental leave pay is not payable to secondary claimant

(6) The Secretary must determine that parental leave pay is not payable to the secondary claimant if the Secretary is not satisfied of the matters in subsection (3).

16 Determination on a secondary claim made after the primary claim

When a claim is to be determined under this section

(1) If:

(a) a primary claimant makes an effective primary claim for parental leave pay for a child; and

(b) a secondary claimant makes an effective secondary claim for parental leave pay for the child at a later time;

the Secretary must make a determination on the secondary claim under this section.

(2) However, the Secretary cannot make a determination on the secondary claim under this section until the Secretary has first made a determination on the primary claim.

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When parental leave pay is payable to secondary claimant

(3) The Secretary must determine that parental leave pay is payable to the secondary claimant for the secondary claimant's PPL period if, when making the determination, the Secretary is satisfied that:

(a) a determination under section 13 or 14 that parental leave pay is payable to the primary claimant was or will be in force on the day before the start of the secondary claimant's PPL period; and

(b) the secondary claimant was or will be eligible for parental leave pay for the child on each day in the secondary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

Secondary claimant's PPL period

(4) The Secretary must specify in the determination under subsection (3) that the secondary claimant's PPL period:

(a) starts on the first day after the primary claimant's PPL period ends; and

(b) ends on:

(i) if the Secretary is satisfied that the secondary claimant was or will be eligible on each day that remains in the child's maximum PPL period—the child's maximum PPL period end day; or

(ii) otherwise—the last day in the child's maximum PPL period that the Secretary is satisfied the secondary claimant was or will be eligible.

When parental leave pay is not payable to secondary claimant

(5) The Secretary must determine that parental leave pay is not payable to the secondary claimant if the Secretary is not satisfied of the matters in subsection (3).

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17 Determination on a tertiary claim

When a tertiary claim is to be determined under this section

(1) If a tertiary claimant makes an effective tertiary claim for parental leave pay for a child, the Secretary must make a determination on the tertiary claim under this section.

When parental leave pay is payable to tertiary claimant

(2) The Secretary must determine that parental leave pay is payable to the tertiary claimant for the tertiary claimant's PPL period if, when making the determination, the Secretary is satisfied that:

(a) a determination under section 14, 15 or 16 that parental leave pay is payable to the secondary claimant was or will be in force on the day before the start of the tertiary claimant's PPL period; and

(b) the tertiary claimant was or will be eligible for parental leave pay on each day in the tertiary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

Tertiary claimant's PPL period

(3) The Secretary must specify in the determination under subsection (2) that the tertiary claimant's PPL period:

(a) starts on the first day after the secondary claimant's PPL period ends; and

(b) ends on:

(i) if the Secretary is satisfied that the tertiary claimant was or will be eligible on each day that remains in the child's maximum PPL period—the child's maximum PPL period end day; or

(ii) otherwise—the last day in the child's maximum PPL period that the Secretary is satisfied the tertiary claimant was or will be eligible.

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When parental leave pay is not payable to tertiary claimant

(4) The Secretary must determine that parental leave pay is not payable to the tertiary claimant if the Secretary is not satisfied of the matters in subsection (2).

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Division 3—When the Secretary cannot make a determination that parental leave pay is payable

18 The child's birth has not been verified

(1) The Secretary must not make a payability determination that parental leave pay is payable to a person for a child unless the primary claimant has verified the child's birth.

Verifying a child's birth

(2) A person ***verifies*** a child's birth if:
  (a) the person gives the Secretary a completed birth verification form for the child; and
  (b) if subsection (3) applies to the person, the person satisfies the requirement of that subsection.

(3) If:
  (a) the person is the parent (other than an adoptive parent) of the child; and
  (b) the child is not stillborn; and
  (c) the person is, under a law of a State or a Territory, responsible (whether alone or jointly) for registering the birth of the child under the law;

then the person must give the Secretary information showing that:
  (d) the child's birth has been registered under the law; or
  (e) the person has applied to have the birth of the child registered under the law.

(4) The Secretary may approve a form (a ***birth verification form***) for the purposes of verifying the birth of a child.

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19 The child was born before 1 January 2011

The Secretary must not make a payability determination that parental leave pay is payable to a person for a child if the child was born before 1 January 2011.

20 Multiple births

The Secretary must not make a payability determination that parental leave pay is payable to a person for a child if:

(a) the child and another child are born during the same multiple birth; and

(b) parental leave pay is or was payable to the person or another person for the other child.

21 Parental leave pay is already payable to the person etc.

(1) The Secretary must not make a payability determination that parental leave pay is payable to a person for a child if:

(a) there is in force another payability determination that parental leave pay is payable to the person for the child, in respect of a different claim made by the person; or

(b) if the person is the primary claimant—there is in force a payability determination that parental leave pay is payable to:

(i) the person's partner for the child; or

(ii) the person's former partner (when he or she was the person's partner) for the child; or

(c) if the person is the secondary claimant—there is in force a payability determination that parental leave pay is payable to:

(i) the person's partner for the child (other than as the primary claimant to which the person's secondary claim relates); or

(ii) the person's former partner (when he or she was the person's partner) for the child (other than as the primary claimant to which the person's secondary claim relates).

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(2) Subsection (1) does not apply to a claim that is made in exceptional circumstances.

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Division 4—General provisions applying to determinations about whether parental leave pay is payable

22 Assumptions when making the determination

In deciding whether to make a payability determination about parental leave pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged.

23 When the determination is in force

A payability determination about parental leave pay comes into force on the day it is made and continues in force unless it is:

(a) revoked under section 25 (which deals with revoking a payability determination on the claimant's request); or

(b) set aside under Chapter 5 (which deals with review of decisions).

24 Notice of the determination

If the Secretary makes a payability determination about parental leave pay, the Secretary must give a notice of the determination to the claimant, stating:

(a) whether parental leave pay is payable; and

(b) if parental leave pay is payable—the claimant's PPL period; and

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

25 Revoking the determination on request

(1) If:

(a) a payability determination is made that parental leave pay is payable to a person; and

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(b) the person requests the Secretary to revoke the determination; and

(c) the request is made:

(i) before the start of the person's PPL period; and

(ii) in a manner approved by the Secretary;

then the Secretary must revoke the determination.

(2) The revocation is taken to have come into force on the day the person requested the Secretary to revoke the determination.

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Division 5—Initial eligibility determinations about parental leave pay

26 Initial eligibility determinations

Primary claimants

(1) If a person makes an effective primary claim, the Secretary may make a determination (the ***initial eligibility determination***) that the person is initially eligible for parental leave pay for the child if, when making the determination, the Secretary is satisfied that the person satisfies:
  (a) the work test; and
  (b) the income test; and
  (c) the Australian residency test.

Secondary claimants

(2) If a person makes an effective secondary claim, the Secretary may make a determination (the ***initial eligibility determination***) that the person is initially eligible for parental leave pay for the child if, when making the determination, the Secretary is satisfied that the person:
  (a) satisfies:
    (i) the work test; and
    (ii) the income test; and
    (iii) the Australian residency test; or
  (b) will satisfy those tests on the day the person becomes the child's primary carer.

27 Assumptions when making the initial eligibility determination

In deciding whether to make an initial eligibility determination about parental leave pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged.

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28 When the initial eligibility determination comes into force

An initial eligibility determination about parental leave pay comes into force on the day it is made.

29 Notice of the initial eligibility determination

If the Secretary makes an initial eligibility determination about parental leave pay, the Secretary must give a notice of the determination to the claimant.

Part 2-3—Eligibility for parental leave pay

Division 1—Guide to this Part

30 Guide to this Part

This Part sets out when a person is eligible for parental leave pay. The Secretary cannot make a payability determination that parental leave pay is payable if the person is not eligible for it.

Division 2 sets out when a person is eligible for parental leave pay. Subsection 31(2) deals with the main case and requires that for a person to be eligible for parental leave pay for a child, the person must (broadly):

(a) satisfy the work test, the income test and the Australian residency test; and

(b) be the child's primary carer; and

(c) not have returned to work.

There are other eligibility criteria that apply for more unusual cases—see subsection 31(3) (which deals with when a child is stillborn or dies) and subsection 31(4) (which allows the PPL rules to prescribe eligibility criteria).

Division 3 has the work test. To satisfy the work test, a person must have performed enough paid work or taken enough paid leave in a particular period before the day the child was born (for a primary claimant) or the day the person became the child's primary carer (for a secondary claimant). A previous PPL period and previous DAPP period of the person may be taken into account in working out whether the person satisfies the work test for a subsequent child. Special rules apply in the case of premature birth or complications or illness related to the pregnancy (see

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section 36A) or if the person is already eligible for dad and partner pay (see section 36B).

Division 4 has the income test. To satisfy the income test, the person's income for a particular income year must not be more than the PPL income limit (which is $150,000 until 30 June 2017 and then indexed. A special rule applies if the person is already eligible for dad and partner pay (see subsection 37(2)).

Division 5 has the Australian residency test. To satisfy this test, the person must be an Australian resident or be in a special class of visa holder.

Division 6 sets out when a person is the primary carer of a child. For the main case, a person will not be eligible for parental leave pay if the person is not the child's primary carer.

Division 7 sets out when a person returns to work after the birth of a child. For the main case, a person will not be eligible for parental leave pay if the person performs more than one hour of work other than for a permissible purpose. There are 2 permissible purposes. One is where the person performs the work for another entity on a keeping in touch day with that entity. The other is where the person performs the work for a business that the person carries on and the work consists of overseeing the business or is an occasional administrative task.

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Division 2—When a person is eligible for parental leave pay

31 When a person is *eligible* for parental leave pay

(1) This section sets out when a person is eligible for parental leave pay for a child on a day.

Eligible

(2) First, a person is ***eligible*** for parental leave pay for a child on a day if, on that day:
  (a) the person satisfies the work test (see Division 3); and
  (b) the person satisfies the income test (see Division 4); and
  (c) the person satisfies the Australian residency test (see Division 5); and
  (d) the person is the primary carer of the child (see Division 6); and
  (e) the person has not returned to work (see Division 7).

(3) Second, a person is ***eligible*** for parental leave pay for a child on a day if:
  (a) the child is stillborn or has died before that day; and
  (b) on that day, the person would be eligible under subsection (2) for parental leave pay for the child, if paragraphs (2)(d) and (e) were disregarded; and
  (c) the person would have been the child's primary carer on that day had the child not been stillborn or died.

(4) Third, a person is ***eligible*** for parental leave pay for a child on a day if, on that day:
  (a) if the person is the primary claimant:
    (i) the person satisfies the work test (see Division 3); and
    (ii) the person satisfies the income test (see Division 4); and
    (iii) the person satisfies the Australian residency test (see Division 5); and

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(iv) the person satisfies the conditions prescribed by the PPL rules; and

(b) if the person is a secondary claimant or tertiary claimant—the person satisfies the conditions prescribed by the PPL rules.

Not eligible—overlap with DAPP period

(4A) If there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period, then, despite subsections (2), (3) and (4), the person is not ***eligible*** for parental leave pay for the child on a day that is in the DAPP period.

Not eligible—excess days

(4B) Despite subsections (2), (3) and (4), if:

(a) there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period; and

(b) combined, the total days in the DAPP period and the reference period for the person's claim for parental leave pay for the child exceed 126;

then:

(c) the Secretary must exclude from the reference period the excess number of days; and

(d) the person is not ***eligible*** for parental leave pay for the child on a day excluded by the Secretary.

Not eligible—claimant deceased

(5) Despite subsections (2), (3) and (4), a person is not ***eligible*** for parental leave pay for a child on a day if, on that day, the person is deceased.

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Division 3—The work test

32 When a person satisfies the *work test*

To work out whether a person satisfies the ***work test*** on a day, use the following method statement:

Method statement

Step 1. Work out the person's work test period.

Note: ***Work test period*** is defined in section 33 for primary claimants and secondary claimants and in section 115CD for DAPP claimants.

Step 2. Work out the days in the work test period on which the person has and has not performed qualifying work.

Note: ***Qualifying work*** is defined in section 34.

Step 3. Work out whether any days on which the person has not performed qualifying work during the work test period fall within a permissible break.

Note: ***Permissible break*** is defined in section 36.

Step 4. Work out whether there is a period (a ***qualifying period***) of 295 consecutive days in the work test period that are days:

(a) on which the person has performed qualifying work; or

(b) that fall within a permissible break.

Step 5. If the person has performed at least 330 hours of qualifying work in a qualifying period, the person satisfies the ***work test***.

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Note 1: A person may also satisfy the work test despite not satisfying the test in step 5, if:

(a) the child was born prematurely; or

(b) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work.

See sections 36A (for claimants for parental leave pay) and 115CE (for DAPP claimants).

Note 2: Section 36B is an alternative way of satisfying the work test for a person claiming parental leave pay who is already eligible for dad and partner pay. An equivalent provision is in section 115CF for a DAPP claimant who is already eligible for parental leave pay.

Note 3: If the person performs qualifying work on a day because of paragraph (c) or (d) of the definition of ***qualifying work*** in subsection 34(1), see section 35A to work out the hours of qualifying work the person is taken to have performed on the day.

33 The *work test period*

Primary claimant's work test period

(1) The ***work test period*** for a primary claimant is the 392 days immediately before:

(a) if the child is born on or before the expected date of birth of the child—the day the child is born; or

(b) if the child is born after the expected date of birth of the child—either:

(i) the day the child is born; or

(ii) if the person does not satisfy the work test in the work test period that applies under subparagraph (i), the expected date of birth of the child.

(2) However, for the purposes of making an initial eligibility determination on a primary claim that is made before the child is born, the ***work test period*** for the primary claimant is the 392 days immediately before the expected date of birth of the child.

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Secondary claimant's work test period

(3) The ***work test period*** for a secondary claimant is the 392 days immediately before the day the person becomes the child's primary carer.

Note: For the ***work test period*** for a DAPP claimant, see section 115CD.

34 When a person performs *qualifying work*

(1) A person performs ***qualifying work*** on a day if at least one of the following applies on the day:
  (a) the person performs at least one hour of paid work;
  (b) the person takes a period of paid leave of at least one hour;
  (c) the day is in the person's PPL period for a previous child;
  (d) the day is in the person's DAPP period for a previous child.

(2) For the purposes of paragraph (1)(b), the PPL rules may prescribe what is, or is not, taken to be paid leave.

35 When a person performs *paid work*

People other than self-employed

(1) A person performs ***paid work*** on a day if, on that day, the person performs work (whether as an employee, a contractor or otherwise and whether or not in Australia) for another entity for remuneration or other financial benefit.

(2) However, a person is taken not to perform ***paid work*** for the purposes of subsection (1) if the other entity is controlled by the person (whether alone or with others).

Self-employed

(3) A person performs ***paid work*** on a day if, on that day, the person performs work for the purposes of a business that is carried on for profit (whether in or outside of Australia) by:
  (a) the person (whether alone or with others); or

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(b) an entity that is controlled by the person (whether alone or with others).

*When a person **controls** an entity*

(4) A person ***controls*** an entity if the person has the capacity to determine the outcome of decisions about the entity's financial and operating policies.

PPL rules about what paid work is

(5) The PPL rules may prescribe what is, or is not, taken to be paid work.

35A Hours of qualifying work on a day in a PPL or DAPP period

If person does not perform paid work or take paid leave in previous PPL or DAPP period

(1) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day only because the day is in the person's PPL period or DAPP period for a previous child, the person is taken to have performed on that day:
(a) 7.6 hours of work, if the day is a week day; and
(b) no hours of work, if the day is a Saturday or Sunday.

If person performs paid work in previous PPL or DAPP period

(2) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day because both:
(a) the person performs at least one hour of paid work on the day; and
(b) the day is in the person's PPL period or DAPP period for a previous child;
the person is taken to have performed on that day the greater of:
(c) the hours of work the person would be taken to have performed if subsection (1) applied; and

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(d) the number of hours of paid work performed by the person on that day.

Note: Paid work for a permissible purpose could be performed during a person's PPL period or DAPP period for a previous child (see Division 7 of this Part and Division 7 of Part 3A-3).

If person takes paid leave in previous PPL or DAPP period

(3) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day because both:

(a) the person takes a period of paid leave of at least one hour on the day; and

(b) the day is in the person's PPL period or DAPP period for a previous child;

the person is taken to have performed on that day the greater of:

(c) the hours of work the person would be taken to have performed if subsection (1) applied; and

(d) the number of hours of paid leave taken by the person on that day.

36 When there is a *permissible break*

(1) A ***permissible break*** is any of the periods in subsections (2) and (3).

Permissible break between 2 qualifying work days

(2) If, between a day on which the person performed qualifying work (a ***qualifying work day***) in the work test period and the next qualifying work day, there was at least 1 day but not more than 56 consecutive days on which the person did not perform qualifying work—the day or period of consecutive days between those 2 qualifying work days is a ***permissible break***.

Permissible break at the start of the work test period

(3) If:

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(a) a person performed qualifying work on a day (the ***earlier qualifying work day***) before the first day in the work test period; and

(b) the person next performed qualifying work on a day (the ***later qualifying work day***) after the first day in the work test period; and

(c) the later qualifying work day was no more than 56 consecutive days after the earlier qualifying work day;

then the day or period of consecutive days on which the person did not perform qualifying work between the first day in the work test period and the later qualifying work day (including the first day of the work test period) is a ***permissible break***.

36A Premature birth or pregnancy-related complications or illness

A person also satisfies the ***work test*** on a day if:

(a) the person is the birth mother of the child; and

(b) the Secretary is satisfied that either or both of the following circumstances existed:

(i) the child was born prematurely;

(ii) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work; and

(c) the Secretary is satisfied that the person would have satisfied the work test on the day in accordance with section 32 if that circumstance, or those circumstances, had not existed.

36B Claimant for parental leave pay who is already eligible for dad and partner pay

A claimant for parental leave pay also satisfies the ***work test*** on a day if the Secretary is satisfied that the claimant is eligible for dad and partner pay for the child.

Note: See section 115CF for an equivalent provision for a DAPP claimant.

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Division 4—The income test

Subdivision A—The income test

37 When a person satisfies the *income test*

(1) A person satisfies the ***income test*** on a day if the person's adjusted taxable income for the reference income year is not more than the relevant PPL income limit.

(2) A claimant for parental leave pay also satisfies the ***income test*** on a day if the Secretary is satisfied that the claimant is eligible for dad and partner pay for the child.

Note: See subsection 115CG(2) for an equivalent provision for a DAPP claimant.

38 A person's *adjusted taxable income*

A person's ***adjusted taxable income*** for an income year is worked out in accordance with Schedule 3 to the Family Assistance Act (disregarding subclause 2(2) and clauses 3 and 3A of that Schedule).

Note: Schedule 3 to the Family Assistance Act sets out how to work out a person's adjusted taxable income for the purposes of that Act.

39 The *reference income year*

The ***reference income year*** for a person is:

(a) if the person is a primary claimant—the income year that ended before the earlier of:
  (i) the day the person made the claim; and
  (ii) the day the child was born; and

(b) if the person is a secondary claimant—the income year that ended before the earlier of:
  (i) the day the person made the claim; and
  (ii) the day the person became the child's primary carer.

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Note: For the ***reference income year*** for a DAPP claimant, see section 115CH.

40 The *relevant PPL income limit*

The ***relevant PPL income limit*** for a person is:

(a) if the person is a primary claimant—the PPL income limit that applies on the earlier of the following days:
  (i) the day the person made the claim;
  (ii) the day the child was born; or

(b) if the person is a secondary claimant—the PPL income limit that applies on the earlier of the following days:
  (i) the day the person made the claim;
  (ii) the day the person became the child's primary carer.

Note: For the ***relevant PPL income limit*** for a DAPP claimant, see section 115CJ.

41 The *PPL income limit*

The ***PPL income limit*** that applies on a day is:

(a) if the day is on or after 1 October 2010 but before 1 July 2017—$150,000; and

(b) if the day is on or after an indexation day (the ***relevant indexation day***) but before the next indexation day—the indexed amount on the relevant indexation day worked out under Subdivision B.

Subdivision B—Indexation of the PPL income limit

42 Indexation of the PPL income limit

(1) The amount of the PPL income limit in section 41 is to be indexed under this Subdivision on 1 July each year (the ***indexation day***) starting on 1 July 2017.

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Working out the indexed amount for the PPL income limit

(2) This is how to work out the ***indexed amount*** for the PPL income limit on the indexation day:

Method statement	
Step 1.	Work out the amount (the ***previous amount***) for the PPL income limit that applied on the day immediately before the indexation day.
Step 2.	Use section 43 to work out the indexation factor on the indexation day.
Step 3.	Multiply the previous amount by the indexation factor: the result is the ***provisional indexed amount***.
Step 4.	Use section 44 to round off the provisional indexed amount: the result is the ***indexed amount***.

43 The *indexation factor*

(1) The ***indexation factor*** is worked out using the following formula and applying subsections (2) and (3):

$$\frac{\text{Index number for the reference December quarter}}{\text{Index number for the base December quarter}}$$

where:

base December quarter means the December quarter that has the highest index number of the December quarters before the reference December quarter (but not earlier than the December quarter 2007).

index number, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital

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cities and is published by the Australian Statistician in relation to that quarter.

reference December quarter means the last December quarter before the indexation day.

(2) The indexation factor is to be worked out to 3 decimal places, but increased by 0.001 if the fourth decimal place is more than 4.

(3) If an indexation factor worked out under subsections (1) and (2) would be less than 1, that indexation factor is to be increased to 1.

Changes to CPI reference base and publication of substituted index numbers

(4) Amounts are to be worked out under this section:
   (a) using only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
   (b) disregarding index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).

44 Rounding off indexed amounts

(1) If a provisional indexed amount is a multiple of $1.00, the provisional indexed amount becomes the indexed amount.

(2) If a provisional indexed amount is not a multiple of $1.00, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of $1.00.

(3) If a provisional indexed amount is not a multiple of $1.00 but is a multiple of $0.50, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of $1.00.

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Division 5—The Australian residency test

45 When a person satisfies the *Australian residency test*

(1) A person satisfies the ***Australian residency test*** on a day if, on that day, the person:

(a) is an Australian resident; or

(b) is a special category visa holder residing in Australia; or

(c) satisfies subsection (2).

When a person satisfies this subsection

(2) A person satisfies this subsection if:

(a) the person is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act; and

(b) either:

(i) the person is in Australia; or

(ii) the person is temporarily absent from Australia for not more than 6 weeks and the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

46 Effect of absence from Australia on Australian residency test

(1) Despite section 45, a person does not satisfy the ***Australian residency test*** on a day (the ***relevant day***) if:

(a) before the relevant day, the person left Australia; and

(b) on the relevant day, the person has been absent from Australia for more than 56 weeks since the day the person left Australia.

Effect of a person's return to Australia within 56 weeks

(2) If:

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(a) a person who has been absent from Australia for more than 6 weeks, but not more than 56 weeks, returns to Australia; and

(b) the person leaves Australia again less than 6 weeks later;

then the person is taken not to have returned to Australia for the purposes of subsection (1).

Effect of a person's return to Australia after 56 weeks

(3) If:

(a) a person satisfies the Australian residency test while the person is absent from Australia; and

(b) the person then ceases to satisfy the Australian residency test because of the application of subsection (1) or a previous application of this subsection; and

(c) the person returns to Australia; and

(d) the person leaves Australia again less than 6 weeks later;

then, despite section 45, the person does not satisfy the ***Australian residency test*** at any time during:

(e) the person's return to Australia referred to in paragraph (c); or

(f) the person's absence from Australia referred to in paragraph (d).

Extension of 56 week period for Australian Defence Force and Australian Federal Police deployments

(4) The Secretary may extend the 56 week period referred to in subsection (1) or (2), to a period of no more than 3 years, if the Secretary is satisfied that the person is unable to return to Australia within the 56 week period because the person is:

(a) deployed outside Australia as a defence force member, under conditions specified in a determination made under the *Defence Act 1903* that relates to such deployment; or

(b) deployed outside Australia, for the purpose of capacity-building or peacekeeping functions, as:

(i) a member or a special member of the Australian Federal Police; or

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(ii) a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

Extension of 56 week period for events or circumstances prescribed in the PPL rules

(5) The Secretary may extend the 56 week period referred to in subsection (1) or (2), to a period of no more than 3 years, if the Secretary is satisfied that:

(a) the person is unable to return to Australia within the 56 week period because of an event prescribed by the PPL rules; or

(b) a circumstance prescribed by the PPL rules applies.

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Division 6—Primary carer

47 When a person is the *primary carer* of a child

(1) A person is the ***primary carer*** of a child on a day in the person's reference period if:

(a) the child is in the person's care in that period; and

(b) the person meets the child's physical needs more than anyone else in that period.

(2) A person's ***reference period*** is the period that is determined by the Secretary for the purposes of making a payability determination on the person's claim.

(3) Only one person can be a child's primary carer on a particular day.

(4) Despite subsection (1), a person is not the ***primary carer*** of a child on a day if, before that day, the child has died.

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Division 7—Return to work

48 When a person *returns to work*

A person ***returns to work*** on a day that is on or after the birth of a child if, on that day, the person performs one hour or more of paid work other than for a permissible purpose.

49 When paid work is for a *permissible purpose*

Permissible purpose *for people other than self-employed*

(1) If a person performs paid work on a day for another entity (see subsection 35(1)), the person does so for a ***permissible purpose*** if:
   (a) the person performs the work for the entity as an employee, defence force member or law enforcement officer; and
   (b) the day is a keeping in touch day with the entity and would otherwise be a day of leave in a period of leave granted by that entity; and
   (c) the person has not already performed paid work on 10 keeping in touch days (whether with the entity or another entity).

Permissible purpose *for self-employed*

(2) If a person performs paid work on a day for a business in the situation referred to in subsection 35(3), the person does so for a ***permissible purpose*** if the work performed by the person consists of overseeing the business or is an occasional administrative task for the purposes of the business.

50 Performing paid work on a *keeping in touch day*

A day on which a person performs paid work for an entity on a day that would otherwise be a day of leave in a period of leave granted by that entity is a ***keeping in touch day*** if:

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(a) the purpose of performing the work is to enable the person to keep in touch with his or her employment or engagement in order to facilitate a return to that employment or engagement after the end of the period of leave; and

(b) both the person and the entity consent to the person performing work for the entity on that day; and

(c) the day is not within:

(i) if the person suggested or requested that he or she perform work for the entity on that day—14 days after the day the child was born; or

(ii) otherwise—42 days after the day the child was born.

Note 1: Performance of work on keeping in touch days is also dealt with, for the purposes of unpaid parental leave, in section 79A of the *Fair Work Act 2009*.

Note 2: The employer will be obliged, under the relevant contract of employment or industrial instrument, to pay the employee for performing work on a keeping in touch day.

Note 3: Section 344 of the *Fair Work Act 2009* prohibits the exertion of undue influence or undue pressure on the person in relation to a decision by the person whether to consent to performing work on keeping in touch days: see subsection 79A(3) of that Act.

Note 4: That section, and section 343 of that Act, contain other prohibitions on coercion and undue influence or pressure.

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Part 2-4—Claims for parental leave pay

Division 1—Guide to this Part

51 Guide to this Part

This Part is about claims for parental leave pay. A person cannot be paid parental leave pay unless the person has first made a claim for it.

Division 2 sets out the rules about claims. There are 3 types of claims: a primary claim, a secondary claim and (in rare cases) a tertiary claim. These claims relate to each other, although the primary claim is the main one—a secondary or tertiary claim cannot be made without it. However, it will often be the only claim that is made. Section 54 sets out who can make a primary claim, a secondary claim or a tertiary claim.

The Secretary cannot make a payability determination on a claim unless it is an effective claim. To be effective, the claim must be made by the right person and satisfy the requirements in the provisions listed in section 55. One of those requirements is that the claim must be in the form, and contain the information, required by the Secretary (see section 56). Another requirement is that the claim must be made in the period set out in section 60.

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Division 2—Claims for parental leave pay

52 Who can claim

Only a natural person can make a claim for parental leave pay.

53 Types of claims

(1) There are 3 types of claims for parental leave pay:
  (a) a primary claim; and
  (b) a secondary claim; and
  (c) a tertiary claim.

(2) A ***primary claim*** is a claim in the form approved by the Secretary for primary claims.

(3) A ***secondary claim*** is a claim in the form approved by the Secretary for secondary claims.

(4) A ***tertiary claim*** is a claim in the form approved by the Secretary for tertiary claims.

(5) For the purposes of subsections (2), (3) and (4), the Secretary may approve:
  (a) different forms for different types of claims; and
  (b) different forms for the same type of claim.

54 Who can make a primary claim, secondary claim or tertiary claim

Primary claim

(1) Only the following people can make a primary claim for a child:
  (a) the child's birth mother;
  (b) an adoptive parent of the child;

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(c) a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a primary claim can be made.

Secondary claim

(2) Only the following people can make a secondary claim for a child:
(a) the partner of a primary claimant;
(b) a person who:
(i) is a parent of the child; and
(ii) is not the primary claimant;
(c) a partner of a person covered by paragraph (b);
(d) a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a secondary claim can be made.

Tertiary claim

(3) Only a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a tertiary claim can be made can make a tertiary claim for a child.

55 When a claim is effective

(1) A claim for parental leave pay is not effective unless the requirements of the following provisions that apply to the claim are satisfied:
(a) section 56 (which deals with the form etc. of the claim);
(b) section 57 (which deals with the nominated start date);
(c) section 58 (which deals with expected date of birth etc.);
(d) section 59 (which deals with tax file number statements);
(e) section 60 (which deals with when to make the claim).

(2) A claim for parental leave pay is also not effective if it is made by a person who cannot make that type of claim under section 54.

(3) A claim for parental leave pay that is not effective is taken not to have been made.

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56 Requirements of the claim

(1) The claim for parental leave pay must:

(a) be made in the form approved, and the manner required, by the Secretary for that type of claim; and

(b) contain any information (including information about the claimant's employer or the claimant's employment with that employer) required by the Secretary; and

(c) be accompanied by any documents required by the Secretary.

(2) For the purposes of paragraphs (1)(b) and (c), the Secretary may require that different information be contained in, and different documents accompany:

(a) different types of claims; or

(b) different claims of the same type of claim.

57 Nominated start date

(1) If the claim is a primary claim, the claim must state a specific date (the ***nominated start date***) on which the primary claimant wants parental leave pay to start being paid.

Note 1: For the purposes of subsection (1), "6 months after the birth of the child" would not be a specific date. However, the "date of birth of the child" would be.

Note 2: Even though a primary claimant nominates a specific date, parental leave pay may not be payable from that date because, for example, the primary claimant has not verified the child's birth before that date: see subsection 11(4).

(2) Before a payability determination is made on the primary claim, the primary claimant may change his or her nominated start date by notifying the Secretary of the new nominated start date.

(3) If a payability determination is made that parental leave pay is payable to the primary claimant, the primary claimant may only change his or her nominated start date (the ***old date***) by:

(a) notifying the Secretary, before the old date, of the new nominated start date; and

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(b) nominating a new nominated start date that is on or after the day the person notifies the Secretary of the change.

58 Expected date of birth and expected day of primary care

Primary claim

(1) If the claim is a primary claim and it is made before the child's birth, the claim must specify the child's expected date of birth.

Secondary claim

(2) If the claim is a secondary claim and it is made before the day the secondary claimant expects to become the child's primary carer, the claim must specify the day the claimant expects to become the child's primary carer.

59 Tax file number statement

(1) The claim for parental leave pay must contain the person's ***tax file number statement***, which is a statement of the kind set out in subsection (2), (3) or (4).

Statement of tax file number

(2) The first kind is a statement of the person's tax file number.

Statement that person does not know his or her tax file number

(3) The second kind is a statement that the person:
  (a) has a tax file number but does not know what it is; and
  (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  (c) authorises the Commissioner of Taxation to tell the Secretary:
    (i) whether the person has a tax file number; and
    (ii) if the person has a tax file number—that number.

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Statement that an application for a tax file number is pending

(4) The third kind is a statement that the person:
  (a) has an application for a tax file number pending; and
  (b) authorises the Commissioner of Taxation to tell the Secretary:
    (i) if a tax file number is issued to the person—that number; or
    (ii) if the application is refused—that the application has been refused; or
    (iii) if the application is withdrawn—that the application has been withdrawn.

60 When to claim

A claim for parental leave pay must be made in the period that:
  (a) starts on the day that is 97 days before the expected date of birth of the child; and
  (b) ends on the day before the child's first birthday.

61 Claim may be withdrawn or varied

(1) After making an effective claim for parental leave pay, the person may withdraw or vary the claim before a payability determination is made on it.

(2) The person may only do so in a manner approved by the Secretary.

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

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Chapter 3—Payment of parental leave pay

Part 3-1—Instalments of parental leave pay

Division 1—Guide to this Part

62 Guide to this Part

This Part is about instalments of parental leave pay.

Parental leave pay is payable in instalments for regular periods called instalment periods. Instalments are payable to a person if those instalment periods overlap with the person's PPL period.

Instalments are payable by either a person's employer (see Part 3-2) or the Secretary (see Part 3-3).

This Part also contains rules for working out the amount of an instalment and deals with the deductions that may be made from an instalment.

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Division 2—Instalments of parental leave pay

63 Instalments of parental leave pay

(1) Parental leave pay must be paid to a person in instalments.

Who pays an instalment

(2) An instalment is payable to a person, in accordance with sections 72, 84, 85, 86 and 87, by either:
  (a) the person's employer; or
  (b) the Secretary.

When an instalment is payable

(3) An instalment is payable to a person if one or more days (the ***PPL days***) of an instalment period for the person fall within the person's PPL period.

(4) An instalment becomes payable on the payday for the instalment.

(5) More than one instalment may be paid to a person on a particular day.

64 A person's *instalment period* and the *payday* for an instalment

(1) A person's ***instalment period***, and the ***payday*** for an instalment that relates to an instalment period, are worked out according to the following rules.

Note: Sections 93 and 94 affect when an instalment period for a person starts and ends in certain circumstances.

Instalment to be paid by employer—regular pay period

(2) If the instalment is to be paid by the person's employer and there is a regular period for which the person would usually be paid in relation to the person's performance of work:

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(a) the person's ***instalment period*** is each such regular period; and

(b) the ***payday*** for the instalment is the day on which the person would usually be paid in relation to the person's performance of work for the instalment period to which the instalment relates.

Instalment to be paid by employer—no regular pay period

(3) If the instalment is to be paid by the person's employer and there is not a regular period for which the person would usually be paid in relation to the person's performance of work:

(a) the person's ***instalment period*** is each calendar month; and

(b) the ***payday*** for the instalment is the first day after the end of the instalment period to which the instalment relates.

Instalment to be paid by Secretary

(4) If the instalment is to be paid by the Secretary:

(a) the person's ***instalment period*** is the period of 14 days starting on a day the Secretary considers appropriate for the person (or a class of person in which the person is included) and each successive 14 day period; and

(b) the ***payday*** for the instalment is a day that the Secretary considers appropriate that occurs after the instalment period to which the instalment relates.

65 The amount of an instalment

(1) The amount of an instalment is the total of the daily national minimum wage amounts for each week day, during the instalment period to which the instalment relates, that is also a PPL day.

(2) The ***daily national minimum wage amount*** for a day is 7.6 times the amount of the national minimum wage (when expressed as a monetary amount per hour) set by a national minimum wage order that is in operation on that day (whether or not the order has also taken effect on that day).

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Note: For when a national minimum wage order comes into operation, see section 287 of the Fair Work Act.

(3) For the purposes of subsection (2):

(a) the national minimum wage is taken to be the wage set by the national minimum wage order for employees in relation to whom no exceptional circumstances exist (see subsection 287(2) of the Fair Work Act); and

(b) if:

(i) the Fair Work Commission makes a determination under section 296 of the Fair Work Act varying a national minimum wage order; and

(ii) the day the determination comes into operation under section 297 of that Act is earlier than the day the determination is made;

the determination is taken to come into operation on the day the determination is made.

66 Protection of instalment

(1) An instalment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: Section 97 (which deals with the effect of a garnishee etc. order) also provides a protection for an account into which an instalment has been paid.

(2) Subsection (1) has effect subject to sections 67, 68 and 69 (which deal with deductions).

67 Deductions authorised by person

(1) An employer or the Secretary may deduct an amount from an instalment that is payable to a person if the deduction is:

(a) authorised by the person; and

(b) principally for the person's benefit.

Note: A deduction by an employer in accordance with a salary sacrifice or other arrangement, under which a person chooses to:

(a) forgo an amount payable to the person in relation to an instalment; but
(b) receive some other form of benefit or remuneration;

will be permitted if it is made in accordance with this section.

(2) The Secretary may deduct an amount from an instalment that is payable to a secondary claimant for a child if:
(a) a primary claimant owes a debt to the Commonwealth in relation to amounts paid to, or in relation to, the primary claimant by way of instalments for the same child; and
(b) the deduction is authorised by the secondary claimant for the purposes of the recovery of the debt.

(3) An authorisation for the purposes of paragraph (1)(a) or (2)(b):
(a) must be in writing; and
(b) must specify the amount of the deduction; and
(c) may be withdrawn in writing by the person at any time.

(4) Any variation in the amount of the authorised deduction must also be authorised in writing by the person.

68 Deductions for PAYG withholding

An employer or the Secretary (the ***payer***) may deduct an amount from an instalment that is payable to a person if the payer is required to withhold the amount under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*.

69 Deductions relating to child support

(1) An employer may deduct an amount from an instalment that is payable to a person if the employer is required to deduct the amount under section 46 or 72A of the *Child Support (Registration and Collection) Act 1988*.

(2) The Secretary, in accordance with a notice given to the Secretary under section 72AD of the *Child Support (Registration and Collection) Act 1988* in relation to a person to whom an instalment is payable, must:

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(a) make deductions from an instalment that is payable to the person (subject to subsections (3) and (4) of that section); and
(b) pay the amounts deducted to the Child Support Registrar.

70 No other deductions

(1) An amount must not be deducted from an instalment except in accordance with section 67, 68 or 69. This subsection applies despite any other law of the Commonwealth, a State or a Territory.

(2) An employer must comply with subsection (1).

Note: This subsection is a civil penalty provision (see section 146).

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Part 3-2—Payment of instalments by employer

Division 1—Guide to this Part

71 Guide to this Part

This Part is about the payment of instalments to a person by the person's employer.

Under Division 2, an employer is only required to pay an instalment to a person if an employer determination has come into force for the employer and the person (see Part 3-5) and the employer has been paid enough by the Secretary to fund the instalment.

Division 3 is about the payment by the Secretary of amounts (called PPL funding amounts) to an employer to ensure the employer has been paid enough to fund an instalment.

Division 4 sets out certain obligations of employers relating to paying instalments (such as giving and keeping records and notifying the Secretary if certain events happen).

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Division 2—Payment of instalments by employer

72 When an employer pays instalments

Employer determination in force on day during instalment period

(1) An employer must pay an instalment to a person on the payday for the instalment if:

(a) the instalment is payable to the person; and

(b) an employer determination is in force for the employer and the person on a day during the instalment period to which the instalment relates; and

(c) as at the payroll cut-off for the instalment, the employer has been paid enough to fund the instalment.

Note 1: This subsection is a civil penalty provision (see section 146).

Note 2: See section 96 for when the employer is taken to have complied with this requirement.

Employer determination comes into force after instalment period

(2) If:

(a) a person's employer becomes required under subsection (1) to pay an instalment after the start of the person's PPL period; and

(b) an earlier instalment is taken to have become payable to the person under section 91 (which deals with the effect of the Secretary or an employer becoming required to pay instalments after the start of a person's PPL period); and

(c) as at the payroll cut-off for the instalment referred to in subsection (1), the employer has been paid enough to fund the earlier instalment;

the employer must pay the earlier instalment on the payday for the instalment referred to in subsection (1).

Note 1: This subsection is a civil penalty provision (see section 146).

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Note 2: See section 96 for when the employer is taken to have complied with this requirement.

Employer determination in force and employer paid enough at later time

(3) If:

(a) an employer is not required under subsection (1) or (2) to pay an instalment only because paragraph (1)(c) or (2)(c) (as the case may be) was not satisfied; and

(b) that paragraph is satisfied as at the payroll cut-off for an instalment for a later instalment period;

the employer must pay the instalment to the person on the payday for the instalment for that later instalment period.

Note 1: This subsection is a civil penalty provision (see section 146).

Note 2: If there is no instalment payable for a later instalment period, see section 95.

Note 3: See section 96 for when the employer is taken to have complied with this requirement.

(4) An employer is not required to pay an instalment to a person except in accordance with this section.

73 When an employer has been *paid enough* to fund an instalment

An employer has been ***paid enough*** to fund an instalment for a person as at a day if the total of the PPL funding amounts paid to the employer for the person for a child before that day is at least the total of the following amounts:

(a) the amount of the instalments the employer has previously paid to, or in relation to, the person for the child;

(b) the amount of the instalment;

(c) the amount of any other instalment that is to be paid to, or in relation to, the person on the payday for the instalment.

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74 Method of payment of instalment payable by employer

An instalment payable to a person by an employer must be paid in money by one, or a combination, of the following methods:

(a) cash;

(b) cheque, money order, postal order or similar order, payable to the person;

(c) the use of an electronic funds transfer system to credit an account held by the person.

Note: This section is a civil penalty provision (see section 146).

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Division 3—PPL funding amounts

75 Payment of PPL funding amounts

(1) The Secretary must pay one or more amounts (the ***PPL funding amounts***) to a person's employer if the Secretary is satisfied that:
  (a) an instalment was or is likely to be payable to the person; and
  (b) the employer is or is likely to be required to pay the instalment to the person.

(2) Subsection (1) does not require the Secretary to pay a PPL funding amount in relation to an instalment earlier than a reasonable period before the payroll cut-off for the instalment.

(3) If:
  (a) the Secretary is required under subsection (1) to pay a PPL funding amount to a person's employer in relation to an instalment for the person; and
  (b) the employer has not been paid enough to fund the instalment as at the first payroll cut-off for an instalment for the person after the Secretary becomes required to pay the PPL funding amount;

the Secretary must pay the PPL funding amount to the employer before the next payroll cut-off for an instalment for the person.

76 Rules affecting the amount of a PPL funding amount

(1) A PPL funding amount for a person must not:
  (a) be less than the minimum amount for the PPL funding amount; or
  (b) be more than the sum of the following:
    (i) the minimum amount;
    (ii) the amount that is 30 times the daily national minimum wage amount that applies on the day the PPL funding amount is paid to the employer.

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(2) The ***minimum amount*** for a PPL funding amount is the sum of the amounts of the instalments that:

(a) will have become payable to the person as at the next payday for an instalment for the person after the PPL funding amount is paid to the person's employer; and

(b) do not relate to days in the person's PPL period for which the Secretary has previously paid the employer a PPL funding amount for the person.

(3) The sum of the PPL funding amounts paid to a person's employer for the person must not be more than the sum of the amounts of the instalments that are payable to the person for the person's PPL period.

77 Notice requirements relating to PPL funding amounts

(1) The Secretary must give a written notice to an employer each time the Secretary pays a PPL funding amount to the employer for a person.

(2) The notice must contain the following information:

(a) the name of the person for whom the PPL funding amount has been paid;

(b) the amount of the PPL funding amount;

(c) the PPL days for the person for which the PPL funding amount has been paid;

(d) the daily national minimum wage amount for each of those PPL days;

(e) any information prescribed by the PPL rules.

79 Protection of PPL funding amounts

A PPL funding amount is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise, until it has been paid to the employer.

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Division 4—Obligations of employer relating to paying instalments

80 Giving person record of payment

An employer must, before the end of the next working day after paying an instalment to a person, give the person the information prescribed by the PPL rules in the form (if any) prescribed by the PPL rules.

Note: This section is a civil penalty provision (see section 146).

81 Keeping records

(1) An employer must make, and keep for 7 years, records of the kind prescribed by the PPL rules in relation to each person for whom an employer determination for the employer comes into force.

Note: This subsection is a civil penalty provision (see section 146).

(2) A record must:

(a) if a form is prescribed by the PPL rules for that kind of record—be in that form; and

(b) include any information prescribed by the PPL rules.

Note: This subsection is a civil penalty provision (see section 146).

82 Notifying Secretary if certain events happen

(1) If the Secretary makes an employer determination for a person and the person's employer, the employer must notify the Secretary if any of the following events happen:

(a) the employer's bank account information changes;

(b) the person's instalment period changes;

(c) the day on which the person would usually be paid in relation to the person's performance of work for instalment periods for the person changes;

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(d) the payroll cut-off for instalments payable to the person changes;

(e) the employer becomes aware that the employer has ceased, or is likely to cease, to carry on a business;

(f) the person returns to work for the employer at any time from the birth of the person's child until the end of the person's PPL period;

(g) the person ceases to be employed by the employer before the end of the person's PPL period;

(h) the person is not paid an instalment the employer is required to pay to the person;

(i) the employer is not paid enough to fund a particular instalment for the person as at the payroll cut-off for the instalment;

(j) if the Secretary has agreed to pay a particular PPL funding amount to the employer—the employer is not paid the PPL funding amount as agreed;

(k) in any case—a PPL funding amount paid to the employer is more than the sum of the amounts of the instalments payable for the PPL days for which the PPL funding amount has been paid;

(l) the sum of the PPL funding amounts paid to the employer for the person is more than the sum of the amounts of the instalments that are payable by the employer to the person for the person's PPL period.

(2) The notice must be given:

(a) as soon as practicable after the employer becomes aware that the event has happened (subject to paragraph (b)); and

(b) if paragraph (1)(e) applies—not more than 30 days before the day the employer ceased, or is likely to cease, to carry on the business; and

(c) in the manner set out in a written notice given to the employer under subsection (2B).

Note: This subsection is a civil penalty provision (see section 146).

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(2A) The Secretary must approve a manner of notification that an employer must use when notifying the Secretary of an event under this section.

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

When obligation to notify of certain events ceases

(3) An obligation under subsection (1) that arises because of any of paragraphs (1)(a) to (g) ceases to apply if the event happens on or after the earliest of the following days:

(a) the day a decision is made that has the effect that parental leave pay is not payable to the person (including a decision that there are no days in the person's PPL period);

(b) if the employer determination comes into force:

(i) if the employer determination is not revoked—the day after the end of the person's PPL period; and

(ii) if the employer determination is revoked—the day of the revocation;

(c) if the employer determination never comes into force—the day the Secretary becomes required to pay instalments to the person instead of the employer under the employer determination.

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Part 3-3—Payment of instalments by Secretary

Division 1—Guide to this Part

83 Guide to this Part

This Part is about the payment of instalments to a person by the Secretary.

The Secretary is required to pay instalments directly to a person if an employer determination is never made for the person.

The Secretary is also required to pay instalments directly to a person in certain circumstances where an employer determination is being reviewed or has been revoked, or where a matter has been referred to the Fair Work Ombudsman relating to a failure by an employer to pay an instalment to a person.

In certain circumstances where the Secretary becomes required to pay instalments to a person, the Secretary is also required to pay the person arrears for instalments that had previously become payable, but not been paid, to the person.

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Division 2—Payment of instalments by Secretary

84 When the Secretary pays instalments

(1) If the Secretary is required under this section to pay an instalment to a person, the Secretary must do so on the payday for the instalment.

Note: See section 96 for when the Secretary is taken to have complied with this requirement.

Employer determination never made

(2) The Secretary must pay an instalment that is payable to a person if the Secretary, in accordance with section 101, never made an employer determination for the person and the person's employer.

Employer determination reviewed

(3) The Secretary must pay an instalment that is payable to a person if:
  (a) the person's employer has applied for review under Part 5-1 or 5-2, or to a court for judicial review, in relation to the employer determination made for the person and the employer; and
  (b) the employer determination has not come into force before the 28th day after the start of the person's PPL period; and
  (c) the instalment relates to an instalment period that:
    (i) either includes the day referred to in paragraph (b) or is a later instalment period; and
    (ii) starts before the day (the ***transfer day***) on which the employer determination comes into force (if at all).

Note 1: The Secretary must also pay the person instalments payable to the person for earlier instalment periods (see section 85).

Note 2: If the employer determination never comes into force, the Secretary will pay all instalments to the person.

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Employer determination revoked

(4) The Secretary must pay an instalment that is payable to a person if:
  (a) the Secretary revokes the employer determination for the person and the person's employer; and
  (b) the instalment relates to an instalment period that starts on or after the day (the ***transfer day***) the revocation comes into force.

Note: See sections 85 and 86 for when the Secretary must also pay the person instalments payable to the person for earlier instalment periods.

Referral of matter to Fair Work Ombudsman relating to failure to pay instalment

(5) The Secretary must pay an instalment that is payable to a person if:
  (a) the Secretary has referred a matter to the Fair Work Ombudsman relating to a contravention by the employer of section 70, 72 or 74 (which deal with unauthorised deductions and payment of instalments by an employer) in relation to the person; and
  (b) the instalment relates to an instalment period that starts on or after the day (the ***transfer day***) after the last PPL day for which the Secretary has paid the employer a PPL funding amount for the person; and
  (c) the Secretary is satisfied that it is appropriate to pay the instalment; and
  (d) the Fair Work Ombudsman has not notified the Secretary, before the transfer day, that the employer has not complied with a compliance notice given for the contravention referred to in paragraph (a).

(6) If both subsections (4) and (5) apply in relation to a person, then only the subsection where the transfer day occurs first is taken to apply in relation to the person.

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85 Payment of arrears—employer determination reviewed or revoked before coming into force

(1) This section applies if:

(a) the Secretary is required to pay an instalment to a person under subsection 84(3) (which deals with payment of instalments where an employer determination is reviewed); or

(b) both of the following apply:

(i) the Secretary is required to pay an instalment to a person under subsection 84(4) (which deals with payment of instalments where an employer determination is revoked);

(ii) the employer determination made for the person and the person's employer has never come into force.

(2) The Secretary must pay the person each instalment that is taken to have become payable to the person under section 91 (which deals with the effect of the Secretary or an employer becoming required to pay instalments after the start of a person's PPL period).

(3) The Secretary must pay the instalments on the payday for the first instalment that the Secretary is required to pay as referred to in paragraph (1)(a) or (b) of this section.

Note: See section 96 for when the Secretary is taken to have complied with this requirement.

86 Payment of arrears—employer determination revoked after coming into force

(1) This section applies if:

(a) the Secretary revokes an employer determination that has come into force for a person and the person's employer; and

(b) the employer has not, as at the payday for the instalment, paid all or part of an instalment that was payable to the person by the employer; and

(c) either:

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(i) the Fair Work Ombudsman has notified the Secretary that the employer has not complied with a compliance notice given for a contravention of section 70, 72 or 74 (which deal with unauthorised deductions and payment of instalments by an employer) that relates to the payment of the instalment; or

(ii) the employer determination was revoked because the Secretary was satisfied that the employer was insolvent.

(2) The Secretary must pay the person the instalment, or the part of the instalment, on the payday for the next instalment that the Secretary is required to pay under subsection 84(4) (which deals with payment of instalments where an employer determination is revoked).

Note 1: If there is no instalment payable for a later instalment period, see section 95.

Note 2: See section 96 for when the Secretary is taken to have complied with this requirement.

(3) Subsection (2) does not require the Secretary to pay the person all or part of an instalment to the extent that the instalment or the part of the instalment has been recovered under section 172 (which deals with debts owing by employers to employees).

(4) To avoid doubt, this section applies whether or not the Secretary is required to pay an instalment to the person under subsection 84(4).

87 Payment of arrears—extending PPL period after review

(1) The Secretary must pay a person each instalment that is taken to have become payable to the person under section 92 (which deals with the effect of extending a person's PPL period after a review).

(2) The Secretary must pay the instalments as soon as practicable after the Secretary becomes required to pay the instalments.

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88 Method of payment of instalment payable by Secretary

(1) The Secretary must pay an instalment, or a part of an instalment, that the Secretary is required to pay to a person, to the credit of a bank account nominated and maintained by the person.

(2) The Secretary may direct that the whole or a part of an instalment that the Secretary is required to pay a person is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the instalment, or the part of the instalment, is to be paid in accordance with the direction.

(3) A direction made under subsection (2) is not a legislative instrument.

89 Giving person record of payment

If the Secretary pays an instalment, or part of an instalment, to or in relation to a person, in particular circumstances, the Secretary must give the person the information prescribed by the PPL rules in relation to instalments paid in those circumstances.

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Part 3-4—General rules relevant to paying instalments

Division 1—Guide to this Part

90 Guide to this Part

This Part contains general rules that are relevant to the payment of instalments to a person, whether by the person's employer or the Secretary.

Some of those rules deem instalments to have become payable in certain circumstances (such as when an employer or the Secretary becomes required to pay instalments to a person after the person's PPL period has already started).

Other rules deal with the effect on a person's instalment periods of changing who is required to pay instalments to the person.

There are also rules that relate to what happens when an instalment cannot be paid on the day specified in this Act.

Finally, this Part deals with the interaction of this Chapter with certain Commonwealth, State and Territory laws.

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Division 2—General rules relevant to paying instalments

91 Effect of the Secretary or employer becoming required to pay instalments after start of PPL period

If:

(a) the Secretary or a person's employer (the ***payer***) becomes required to pay an instalment to the person after the start of the person's PPL period; and

(b) neither the Secretary nor the employer is otherwise required to pay an earlier instalment to the person; and

(c) one or more instalments would have been payable to the person on the paydays for the instalments if the payer had been required to pay instalments from the start of the person's PPL period;

then the instalments referred to in paragraph (c) are taken to have become payable on the respective paydays for the instalments.

92 Effect of extending PPL period after review

If:

(a) a person's PPL period ends; and

(b) later, a decision in relation to a payability determination for the person is made that has the effect that the person's PPL period is extended by an additional period; and

(c) one or more instalments that relate to instalment periods that overlap with the additional period would have been payable to the person on the paydays for the instalments if:

(i) the payability determination had always specified the extended PPL period; and

(ii) the Secretary had been required to pay the instalments; and

(d) the Secretary is not otherwise required to pay the instalments;

then the instalments referred to in paragraph (c) are taken to have become payable on the respective paydays for the instalments.

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93 Effect on instalment periods of employer determination coming into force after review

(1) This section applies if:

(a) the Secretary is required to pay an instalment to a person under subsection 84(3) (which deals with payment of instalments where an employer determination is reviewed); and

(b) the employer determination comes into force for the person and the person's employer on the transfer day referred to in that subsection.

(2) The instalment period for the person for the last instalment payable by the Secretary is taken to end on the day before the transfer day.

(3) The instalment period for the person for the first instalment payable by the employer is taken to start on the transfer day.

Note: Subsection (3) does not affect when the instalment period ends.

94 Effect on instalment periods of revocation etc.

(1) This section applies if:

(a) an employer determination has come into force for a person and the person's employer; and

(b) the Secretary becomes required to pay an instalment to the person under either of the following subsections for an instalment period that starts on or after the transfer day referred to in that subsection:

(i) subsection 84(4) (which deals with payment of instalments where an employer determination is revoked);

(ii) subsection 84(5) (which deals with payment of instalments where a matter is referred to the Fair Work Ombudsman relating to a failure to pay an instalment).

(2) The instalment period for the person for the last instalment payable by the employer is taken to end on the day before the transfer day.

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(3) The instalment period for the person for the first instalment payable by the Secretary is taken to start on the transfer day.

Note: Subsection (3) does not affect when the instalment period ends.

95 Paying instalment on payday for later instalment—no later instalment

If:

(a) the Secretary or a person's employer (the ***payer***) is required to pay an instalment to the person on the payday for an instalment for a later instalment period; and

(b) that later instalment is not payable by the payer;

the payer must pay the instalment referred to in paragraph (a) on the day that would have been the payday for the later instalment if it had been payable by the payer.

96 Paying instalment on particular day—complying with obligation

The Secretary or a person's employer (the ***payer***) is taken to have complied with a requirement to pay an instalment on a particular day if the payer pays the instalment:

(a) before that day; or

(b) if the payer cannot pay the instalment on that day—as soon as practicable after that day.

97 Effect of garnishee etc. order

(1) If:

(a) an instalment is being paid, or has been paid, to the credit of an account; and

(b) a court order in the nature of a garnishee order comes into force in relation to the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The ***saved amount*** is worked out as follows:

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Method statement

Step 1. Work out the total amount of the instalments that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

98 Exemption from operation of workers' compensation and accident compensation laws

(1) The payment of an instalment of parental leave pay is not to be taken into account for the purposes of the following provisions or laws:

(a) a provision of a law of the Commonwealth, a State or a Territory, if the provision deals with:

(i) workers' compensation; or

(ii) accident compensation;

(b) a law, or a provision of a law, prescribed by the PPL rules, to the extent that the law or provision deals with a matter referred to in paragraph (a).

(2) The PPL rules may provide that subsection (1) does not apply in relation to a prescribed provision of a law of the Commonwealth, a State or a Territory.

99 PPL period is not a period of paid leave

Despite any law of the Commonwealth, a State or a Territory, or any industrial instrument (however described), a period of unpaid leave is not to be taken to be a period of paid leave just because a person receives instalments of parental leave pay for all or part of that period.

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99A Payment of paid parental leave does not affect other employer obligations

An obligation of an employer to pay a person parental leave pay under this Act is in addition to any other obligation the employer may have in relation to the person, however that other obligation might arise (including, for example, under another law of the Commonwealth, a State or a Territory, or an industrial instrument (however described)).

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Part 3-5—Employer determinations

Division 1—Guide to this Part

100 Guide to this Part

This Part is about employer determinations. If an employer determination is in force for an employer and a person, the employer must pay instalments to the person.

Under Division 2, the Secretary must make an employer determination if the Secretary is satisfied that certain conditions have been met. Not all of those conditions need to be satisfied for a person if the employer has made an election under Division 4 that applies to the person and the person consents to the employer paying the instalments.

If the Secretary makes an employer determination for a person and the person's employer, the employer must either:

(a) give the Secretary certain information to enable the Secretary to pay the employer PPL funding amounts for the person; or

(b) apply for review of the employer determination under Part 5-1 or 5-2.

Division 3 is about when an employer determination is in force. It includes rules about revoking employer determinations.

Under Division 4, an employer may elect to pay instalments to one or more employees.

Division 5 provides for the Secretary to give an employer for whom an employer determination has been made notice of certain other decisions under this Act.

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Division 2—Making employer determinations

101 Making employer determinations

When Secretary must make employer determination

(1) The Secretary must make a determination under this section (the ***employer determination***) that a person's employer is to pay the person instalments if the Secretary is satisfied, when making the determination, that:

(a) a payability determination that parental leave pay is payable to the person, or an initial eligibility determination for the person, is in force; and

(b) instalments are likely, if the determination is made, to be payable by the employer to the person for at least 40 consecutive PPL days that are week days; and

(c) the person has, or will have, been employed by the employer for at least 12 months immediately before:

(i) if the person's claim was made before the birth of the person's child—the expected date of birth of the child; or

(ii) if the person's claim was made after the birth of the person's child—the later of the expected date of birth of the child and the day the child was born; and

(d) the person is likely to be an Australian-based employee of the employer during whichever of the following periods applies:

(i) if the Secretary has made a payability determination that parental leave pay is payable to the person—the person's PPL period;

(ii) otherwise—the period of days for which instalments are likely, if the determination is made, to be payable to the person by the employer; and

(e) the employer has an ABN; and

(f) if paragraphs (c) to (e) are satisfied in relation to more than one employer of the person (other than because of

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subsection (2))—the person nominated the employer in the claim as the employer who would be required to pay instalments to the person.

Effect of election by employer to pay instalments

(2) Paragraphs (1)(b) and (c) do not apply in relation to a person if:
  (a) the person's employer has made an election under section 109 that applies to the person; and
  (b) the person has consented in the claim to the employer paying instalments to the person.

When must employer determination be made

(3) The Secretary must not make an employer determination for a person and the person's employer unless:
  (a) the Secretary is satisfied as referred to in subsection (1); and
  (b) the employer determination is made on or before the day on which the payability determination referred to in paragraph (1)(a) is made.

Note: See section 106 for when the Secretary may, despite this subsection, make an employer determination for a person and the person's employer after the day referred to in paragraph (b).

When Secretary may decide not to make employer determination

(4) Despite subsection (1), the Secretary may decide not to make an employer determination for a person and the person's employer if the Secretary is satisfied of all or any of the following:
  (a) the person's PPL period has ended;
  (b) the person is a tertiary claimant;
  (c) the child in relation to whom parental leave pay is payable to the person is stillborn or has died;
  (d) both of the following apply:
    (i) a primary claimant owes a debt to the Commonwealth in relation to amounts paid to, or in relation to, the primary claimant by way of instalments for a child;

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(ii) the person is a secondary claimant for parental leave pay for the same child;

(e) the employer is not a fit and proper person.

Matters relevant to whether employer is a fit and proper person

(5) The Secretary may take into account the following matters in determining whether an employer is a fit and proper person:

(a) whether the employer is insolvent;

(b) whether the employer has, or is alleged to have, contravened a civil penalty provision of this Act;

(c) whether a matter relating to a contravention of section 70 or Part 3-2 (which deal with unauthorised deductions and payment of instalments by an employer) by the employer has been referred to the Fair Work Ombudsman under section 143;

(d) subject to Part VIIC of the *Crimes Act 1914*, whether the employer has, or is alleged to have, contravened a provision of an industrial law (within the meaning of the Fair Work Act);

(e) subject to Part VIIC of the *Crimes Act 1914*, whether the employer has been convicted of an offence against this Act, or a law of the Commonwealth, a State or a Territory that involves:

(i) fraud or dishonesty; or

(ii) the misapplication of money; or

(iii) the management of the affairs of a body (whether or not incorporated);

(f) any other matter the Secretary considers relevant.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

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Secretary may assume state of affairs will not change

(6) In deciding whether to make a determination under this section, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged.

102 Secretary must give notice of employer determination

(1) If the Secretary makes an employer determination for a person and the person's employer, the Secretary must give the employer and the person a written notice advising them that the determination has been made.

Notice given to person

(2) The notice given to the person must contain the name of the employer and any information prescribed by the PPL rules.

Notice given to employer

(3) The notice given to the employer must contain the following information:
  (a) the name of the person;
  (b) whether the Secretary has made a payability determination that parental leave pay is payable to the person;
  (c) if the Secretary has made such a payability determination for the person—the person's PPL period;
  (d) if the Secretary has not made such a payability determination for the person—the period the Secretary expects to specify as the person's PPL period if he or she were to make such a payability determination for the person;
  (e) in any case—any information prescribed by the PPL rules.

(4) The notice given to the employer must also be dated. The date of the notice must be the date the preparation of the notice was completed.

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Decision not to make employer determination—notice to person

(5) If the Secretary decides not to make an employer determination for a person, the Secretary must give the person a written notice advising the person of that decision. The notice must contain any information prescribed by the PPL rules.

103 Employer must respond to notice of employer determination

Within 14 days after the date of the notice given under section 102, the employer must do one of the following:

(a) give the Secretary a written notice (the ***acceptance notice***) that complies with section 104;

(b) apply for a review of the employer determination under Part 5-1 or 5-2.

Note: This section is a civil penalty provision (see section 146).

104 Requirements for an acceptance notice

Acceptance of obligation to pay instalments

(1) The acceptance notice must contain a declaration to the effect that the employer accepts the employer's obligation to pay instalments to the person.

Bank account information

(2) The acceptance notice must contain the following information (***bank account information***) about an account held and maintained by the employer with a financial institution into which PPL funding amounts can be paid:

(a) the account number;

(b) the BSB number of the account;

(c) the name in which the account is held;

(d) the name of the financial institution.

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Pay cycle information

(3) The acceptance notice must contain the following information (***pay cycle information***) for the person:

(a) the person's instalment period;

(b) the first day of the first instalment period for the person that overlaps with:

(i) if the Secretary has made a payability determination that parental leave pay is payable to the person—the person's PPL period; or

(ii) if the Secretary has not made such a payability determination for the person—the person's expected PPL period referred to in paragraph 102(3)(d);

(c) in any case—the payday and the payroll cut-off for an instalment that would be payable for the instalment period referred to in paragraph (b) of this subsection.

PPL rules may specify additional information

(4) The acceptance notice must also contain any information prescribed by the PPL rules.

Employer may confirm bank account information in election

(5) Subsection (2) does not apply if:

(a) the person's employer has made an election under section 109 that applies to the person; and

(b) the acceptance notice contains a declaration to the effect that the employer's bank account information given in the notice under subsection 109(1) is correct in relation to the person.

105 Giving bank account and pay cycle information etc. after review

(1) This section applies if:

(a) an employer applies for review under Part 5-1 or 5-2, or to a court for judicial review, in relation to an employer determination made for a person and the employer; and

(b) either of the following events happens:

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(i) the employer withdraws the application;
(ii) the employer determination has not been set aside or quashed and is no longer subject to review; and

(c) the person's PPL period has not ended.

(2) The Secretary must, as soon as practicable after becoming aware that the event referred to in paragraph (1)(b) has happened, give the employer a written notice requiring the employer to give the Secretary a written notice containing the following information:

(a) the employer's bank account information;
(b) the pay cycle information for the person;
(c) any information prescribed by the PPL rules.

(2A) The notice given to the employer must also be dated. The date of the notice must be the date the preparation of the notice was completed.

(3) The employer must give the notice to the Secretary within 14 days of the date of the notice given by the Secretary.

Note: This subsection is a civil penalty provision (see section 146).

106 Effect of decision on review that parental leave pay is payable

The Secretary may, despite subsection 101(3), make an employer determination for a person and the person's employer, if:

(a) a decision is made that has the effect that parental leave pay is not payable to the person (whether or not the decision is a payability determination to that effect); and
(b) a later decision is made that has the effect that a payability determination that parental leave pay is payable to the person comes into force; and
(c) the Secretary is satisfied, when making the employer determination, of the matters referred to in the applicable paragraphs of subsection 101(1) in relation to the person and the employer.

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Division 3—When an employer determination is in force

107 When an employer determination comes into force

(1) An employer determination comes into force for a person and the person's employer as set out in subsection (2) or (3). Otherwise, the employer determination does not come into force at all.

Employer gives acceptance notice

(2) If the employer gives the Secretary an acceptance notice for the person in accordance with section 103 or a compliance notice given under section 157, the employer determination comes into force on the day the Secretary receives the acceptance notice.

Employer gives bank account and pay cycle information after review of employer determination

(3) If:

(a) the employer gives a notice to the Secretary in accordance with section 105 (which deals with giving bank account and pay cycle information etc. after a review) in relation to the person; and

(b) the person's PPL period has not ended by the day the Secretary receives the notice;

the employer determination comes into force on the day the Secretary receives the notice.

(4) An employer determination stays in force unless it is revoked.

108 Revocation of an employer determination

When Secretary is required to revoke employer determination

(1) The Secretary must revoke an employer determination made for a person and the person's employer if the Secretary is satisfied of a matter referred to in column 1 of an item in the following table.

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Section 108

The revocation comes into force on the day referred to in column 2 of that item:

Revocation of employer determination		
Item	**Column 1** **Matter of which Secretary must be satisfied**	**Column 2** **Day revocation comes into force**
1	A condition for making the employer determination was not satisfied when the determination was made.	The day of the revocation.
2	The employer has not given an acceptance notice for the person as required by a compliance notice given for a contravention of section 103.	The day of the revocation.
3	A decision is made that has the effect that parental leave pay is not payable to the person (whether or not the decision is a payability determination to that effect).	The day of the decision.
4	The person has ceased to be employed by the employer.	The day the person ceased to be employed by the employer.
5	The employer is insolvent.	The day the employer became insolvent.
6	The Fair Work Ombudsman has notified the Secretary that the employer has not complied with a compliance notice given for a contravention of section 70, 72 or 74 (which deal with unauthorised deductions and payment of instalments by an employer) that relates to the person.	The day of the revocation.

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When Secretary may revoke employer determination

(2) The Secretary may revoke an employer determination made for a person and the person's employer if the Secretary is satisfied of any of the following:
   (a) the employer is not a fit and proper person;
   (b) the child in relation to whom parental leave pay is payable to the person is stillborn or has died;
   (c) for any other reason, it is appropriate to revoke the employer determination.

(3) In determining whether the employer is not a fit and proper person for the purposes of paragraph (2)(a), the Secretary may take into account the matters referred to in paragraphs 101(5)(a) to (f).

(4) If the Secretary revokes the employer determination under subsection (2), the revocation comes into force on the day of the revocation.

Notice of revocation to person and employer

(5) If the Secretary revokes an employer determination for a person and the person's employer, the Secretary must give them a written notice advising them of that decision. The notice must contain any information prescribed by the PPL rules.

Notice of revocation to SSAT

(6) If, when the Secretary revokes an employer determination:
   (a) an application has been made to the SSAT for review in relation to the employer determination; and
   (b) the SSAT has not determined the review;

the Secretary must give the Principal Member written notice of the revocation.

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Division 4—Election by employer to pay instalments

109 Election by employer to pay instalments

(1) An employer may elect to pay instalments to one or more employees of the employer by giving the Secretary a notice in accordance with subsections (2) and (3).

Requirements for elections

(2) The notice must:
  (a) be in the approved form; and
  (b) contain the employer's bank account information.

(3) An election under subsection (1) must be expressed to apply in relation to:
  (a) one or more specified employees of the employer; or
  (b) one or more specified classes of employee of the employer; or
  (c) all employees of the employer.

110 Employer may withdraw an election

(1) The employer may, at any time, withdraw an election by notice given to the Secretary in the form approved by the Secretary.

(2) However, a withdrawal does not affect an employer determination that has already been made.

111 Secretary may cancel an election

(1) The Secretary may cancel an election if the Secretary is satisfied that the employer is not a fit and proper person, and for this purpose may take into account the matters referred to in paragraphs 101(5)(a) to (f).

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(2) However, a cancellation does not affect an employer determination that has already been made.

Note: The Secretary may revoke an employer determination that has already been made for the employer and a person under subsection 108(2).

(3) If the Secretary cancels an election, the Secretary must give the employer a written notice advising the employer of that decision. The notice must contain any information prescribed by the PPL rules.

112 When an election is in force

An election remains in force from the time it is received by the Secretary until one of the following occurs:

(a) if paragraph 109(3)(a) applies—the PPL period for each specified employee ends;

(b) the Secretary receives notice under section 110 that the election has been withdrawn;

(c) the election is cancelled under section 111.

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Division 5—Notice of decisions

113 Notice of outcome of a payability determination

(1) This section applies if:
  (a) the Secretary has made an employer determination for a person and the person's employer; and
  (b) after the employer determination was made, the Secretary makes a payability determination.

(2) The Secretary must give the employer a written notice stating:
  (a) whether parental leave pay is payable to the person; and
  (b) if parental leave pay is payable—the person's PPL period; and
  (c) in any case—any information prescribed by the PPL rules.

Note: If the Secretary determines that parental leave pay is not payable to the person, the Secretary must revoke the employer determination (see subsection 108(1)).

(3) However, the Secretary need not give the notice if the Secretary had previously revoked the employer determination.

114 Notice of varying, setting aside etc. payability determination

(1) This section applies if:
  (a) the Secretary has made an employer determination for a person and the person's employer; and
  (b) a decision is made to vary, set aside or revoke a payability determination (the ***original payability determination***) that parental leave pay is payable to the person.

(2) The Secretary must give the employer a written notice stating:
  (a) the effect of the decision referred to in paragraph (1)(b); and
  (b) if the effect of the decision is that the person has a different PPL period to that specified in the original payability determination—that different PPL period; and

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(c) in any case—any other information prescribed by the PPL rules.

(3) However, the Secretary need not give the notice if the Secretary had previously revoked the employer determination.

115 Notice of other decisions

The PPL rules may provide for the Secretary, in particular circumstances, to give a person a notice containing the information prescribed by the PPL rules in relation to those circumstances, if this Chapter does not otherwise provide for the Secretary to give the person a notice in those circumstances.

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Chapter 3A—Dad and partner pay

Part 3A-1—Key provisions

Division 1—Guide to this Part

115AA Guide to this Part

This Part has the key provisions for this Chapter (which deals with dad and partner pay).

A person can only be paid dad and partner pay if the Secretary makes a determination that dad and partner pay is payable to the person. Part 3A-2 has the rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person has not made a claim for dad and partner pay.

If the Secretary makes a determination that dad and partner pay is payable to a person for a child, the amount of dad and partner pay is worked out by reference to the period for which the person is eligible for dad and partner pay. This period is the person's DAPP period. The maximum period for which any person may be eligible for dad and partner pay is 2 weeks. A person's DAPP period may be the full 2 weeks or a lesser period (if the person is not eligible for dad and partner pay for that full period).

Generally, dad and partner pay is paid by the Secretary as a single payment.

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Division 2—When dad and partner pay is payable to a person

115AB A determination must be made for dad and partner pay to be payable to a person

Dad and partner pay is payable to a person for a child for a period if a determination of the Secretary that dad and partner pay is payable to the person for that period is in force under section 115BB.

Note: See Part 3A-2 for the rules about when the Secretary can make a determination that dad and partner pay is, or is not, payable to a person.

115AC For the determination to be made, the person must be eligible

The Secretary cannot make a determination that dad and partner pay is payable to a person for a child for a period unless the person was or will be eligible for dad and partner pay during the period.

Note: See Part 3A-3 for the rules about when a person is eligible for dad and partner pay.

115AD For the determination to be made, the person must claim

The Secretary cannot make a determination that dad and partner pay is payable to a person for a child for a period unless the person has made an effective claim for the child.

Note: See Part 3A-4 for the rules about how to make an effective claim.

115AE The determination must specify the person's *DAPP period*

(1) If the Secretary makes a determination that dad and partner pay is payable to a person for a child, the Secretary must specify, in the determination, the period for which dad and partner pay is payable to the person. That period is the person's ***DAPP period***.

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Note: For a DAPP claimant's DAPP period, see subsection 115BB(3).

(2) A person's DAPP period must be the same as, or within, the maximum DAPP period for the child.

(3) The ***maximum DAPP period*** for a child is the period that:
  (a) starts on the child's maximum DAPP period start day; and
  (b) ends on the child's maximum DAPP period end day.

(4) The ***maximum DAPP period start day*** for a child is the later of the following days:
  (a) the day the child was born;
  (b) the claimant's nominated start date.

(5) The ***maximum DAPP period end day*** for a child is the earlier of the following days:
  (a) the day that is 13 days after the maximum DAPP period start day;
  (b) the day before the child's first birthday.

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Part 3A-2—Determinations about whether dad and partner pay is payable to a person

Division 1—Guide to this Part

115BA Guide to this Part

This Part is about the Secretary making determinations about whether dad and partner pay is payable to a person. These determinations are payability determinations. A person cannot be paid dad and partner pay unless there is a payability determination that dad and partner pay is payable to the person.

Division 2 has the rules that apply to the Secretary when making a payability determination.

Division 3 has restrictions that apply in particular circumstances to prevent the Secretary from making a payability determination that dad and partner pay is payable to a person (for example, where the child's birth has not been verified or the person has already been paid dad and partner pay for the child).

Division 4 has general rules that apply to payability determinations (for example, if the Secretary makes a determination, the Secretary must give a notice of it to the claimant).

Division 5 deals with initial eligibility determinations. These determinations can be made by the Secretary before the Secretary makes a payability determination. The Secretary can make an initial eligibility determination if the Secretary is satisfied that the person satisfies, or will satisfy, particular eligibility criteria (the work test, the income test and the Australian residency test). If the Secretary makes a determination, the Secretary must give a notice of it to the claimant.

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Division 2—Determinations about whether dad and partner pay is payable to a person

115BB Determination on a claim for dad and partner pay

When Secretary must make determination

(1) If a person has made an effective claim for dad and partner pay for a child, the Secretary must make a determination on the claim.

When dad and partner pay is payable to DAPP claimant

(2) The Secretary must determine that dad and partner pay is payable to the DAPP claimant for the claimant's DAPP period if, when making the determination, the Secretary is satisfied that the DAPP claimant was or will be eligible for dad and partner pay on each day in that period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

DAPP claimant's DAPP period

(3) The Secretary must specify in the determination under subsection (2) that the claimant's DAPP period:

(a) starts on the child's maximum DAPP period start day; and

(b) ends on:

(i) if the Secretary is satisfied that the DAPP claimant was or will be eligible for dad and partner pay on each day in the child's maximum DAPP period—the child's maximum DAPP period end day; or

(ii) if the Secretary is satisfied that the DAPP claimant was or will be eligible for a period that is shorter than the child's maximum DAPP period—the last day in the child's maximum DAPP period that the DAPP claimant was or will be eligible for dad and partner pay.

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When dad and partner pay is not payable to DAPP claimant

(4) The Secretary must determine that dad and partner pay is not payable to the DAPP claimant if the Secretary is not satisfied of the matters in subsection (2).

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Division 3—When the Secretary cannot make a determination that dad and partner pay is payable

115BC The child's birth has not been verified

The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child unless a person has verified the child's birth.

Note: See subsection 18(2) for how a person ***verifies*** a child's birth.

115BD The child was born before 1 January 2013

The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if the child was born before 1 January 2013.

115BE Multiple births

The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if:

(a) the child and another child are born during the same multiple birth; and

(b) dad and partner pay is or was payable to the person or another person for the other child.

115BF Dad and partner pay is already payable to the person etc.

(1) The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if:

(a) there is in force another payability determination that dad and partner pay is payable to the person for the child, in respect of a different claim made by the person; or

(b) there is in force a payability determination that dad and partner pay is payable to another person for the child.

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(2) Paragraph (1)(b) does not apply to a claim that is made in circumstances prescribed by the PPL rules.

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Division 4—General provisions applying to determinations about whether dad and partner pay is payable

115BG Assumptions when making the determination

In deciding whether to make a payability determination about dad and partner pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged.

115BH When the determination is in force

A payability determination about dad and partner pay comes into force on the day it is made and continues in force unless it is:

(a) revoked under section 115BK (which deals with revoking a payability determination on the DAPP claimant's request); or

(b) set aside under Chapter 5 (which deals with review of decisions).

115BJ Notice of the determination

If the Secretary makes a payability determination about dad and partner pay, the Secretary must give a notice of the determination to the DAPP claimant, stating:

(a) whether dad and partner pay is payable; and

(b) if dad and partner pay is payable—the DAPP claimant's DAPP period; and

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

115BK Revoking the determination on request

(1) If:

(a) a payability determination is made that dad and partner pay is payable to a person; and

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(b) the person requests the Secretary to revoke the determination; and

(c) the request is made:

(i) before the start of the person's DAPP period; and

(ii) in a manner approved by the Secretary;

then the Secretary must revoke the determination.

(2) The revocation is taken to have come into force on the day the person requested the Secretary to revoke the determination.

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Division 5—Initial eligibility determinations about dad and partner pay

115BL Initial eligibility determinations

If a person makes an effective claim for dad and partner pay, the Secretary may make a determination (the ***initial eligibility determination***) that the person is initially eligible for dad and partner pay for the child if, when making the determination, the Secretary is satisfied that the person:

(a) satisfies:
  (i) the work test; and
  (ii) the income test; and
  (iii) the Australian residency test; or
(b) will satisfy those tests on the day immediately before the person's nominated start date.

115BM Assumptions when making the initial eligibility determination

In deciding whether to make an initial eligibility determination about dad and partner pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged.

115BN When the initial eligibility determination comes into force

An initial eligibility determination about dad and partner pay comes into force on the day it is made.

115BP Notice of the initial eligibility determination

If the Secretary makes an initial eligibility determination about dad and partner pay, the Secretary must give a notice of the determination to the DAPP claimant.

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Part 3A-3—Eligibility for dad and partner pay

Division 1—Guide to this Part

115CA Guide to this Part

This Part sets out when a person is eligible for dad and partner pay. The Secretary cannot make a payability determination that dad and partner pay is payable if the person is not eligible for it.

Division 2 sets out when a person is eligible for dad and partner pay. Subsection 115CB(2) deals with the main case and requires that for a person to be eligible for dad and partner pay for a child, the person must (broadly):

(a) satisfy the work test, the income test and the Australian residency test; and

(b) be caring for the child; and

(c) not be working.

There are other eligibility criteria that apply for more unusual cases—see subsection 115CB(3) (which deals with when a child is stillborn or dies) and subsection 115CB(4) (which allows the PPL rules to prescribe eligibility criteria).

The work test is mostly in Division 3 of Part 2-3, but Division 3 of this Part has provisions relevant to DAPP claimants. To satisfy the work test, a person must have performed enough paid work or taken enough paid leave in a particular period before the person's nominated start date for dad and partner pay. A previous PPL period and previous DAPP period of the person may be taken into account in working out whether the person satisfies the work test for a subsequent child. Special rules apply in the case of premature birth or complications or illness related to the pregnancy (see

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section 115CE) or if the person is already eligible for parental leave pay (see section 115CF).

The income test is mostly in Division 4 of Part 2-3, but Division 4 of this Part has provisions relevant to DAPP claimants. To satisfy the income test, the person's income for a particular income year must not be more than the PPL income limit (which is $150,000 until 30 June 2017 and then indexed). A special rule applies if the person is already eligible for parental leave pay (see subsection 115CG(2)).

The Australian residency test is in Division 5 of Part 2-3. To satisfy this test, the person must be an Australian resident or be in a special class of visa holder.

Division 6 of this Part sets out when a person is caring for a child. For the main case, a person will not be eligible for dad and partner pay if the person is not caring for the child.

Division 7 of this Part sets out when a person is not working. For the main case, a person will not be eligible for dad and partner pay if the person performs one hour or more of work other than for a purpose of performing the work for a business that the person carries on and that consists of overseeing the business or is an occasional administrative task.

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Division 2—When a DAPP claimant is eligible for dad and partner pay

115CB When a DAPP claimant is *eligible* for dad and partner pay

(1) This section sets out when a DAPP claimant is eligible for dad and partner pay for a child on a day.

Eligible

(2) First, a DAPP claimant is ***eligible*** for dad and partner pay for a child on a day if, on that day:
  (a) the claimant satisfies the work test (see Division 3 of Part 2-3 and sections 115CD, 115CE and 115CF); and
  (b) the claimant satisfies the income test (see Division 4 of Part 2-3 and sections 115CG, 115CH and 115CJ); and
  (c) the claimant satisfies the Australian residency test (see Division 5 of Part 2-3); and
  (d) the claimant is caring for the child (see Division 6 of this Part); and
  (e) the claimant is not working (see Division 7 of this Part).

(3) Second, a DAPP claimant is ***eligible*** for dad and partner pay for a child on a day if:
  (a) the child is stillborn or has died before that day; and
  (b) on that day, the claimant would be eligible under subsection (2) for dad and partner pay for the child, if paragraphs (2)(d) and (e) were disregarded; and
  (c) the claimant would have been caring for the child on that day had the child not been stillborn or died.

(4) Third, a DAPP claimant is ***eligible*** for dad and partner pay for a child on a day if, on that day, the claimant satisfies:
  (a) the work test (see Division 3 of Part 2-3 and sections 115CD, 115CE and 115CF); and

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(b) the income test (see Division 4 of Part 2-3 and sections 115CG, 115CH and 115CJ); and
(c) the Australian residency test (see Division 5 of Part 2-3); and
(d) the conditions prescribed by the PPL rules.

Not eligible—overlap with PPL period

(5) If there is in force a payability determination that parental leave pay is payable to a person for a child for the person's PPL period, then, despite subsections (2), (3) and (4), the person is not ***eligible*** for dad and partner pay for the child on a day that is in the PPL period.

Not eligible—overlap with DAPP period for another child

(6) If there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period, then, despite subsections (2), (3) and (4), the person is not ***eligible*** for dad and partner pay for another child on a day that is in that DAPP period.

Not eligible—excess days

(7) Despite subsections (2), (3) and (4), if:
(a) there is in force a payability determination that parental leave pay is payable to a person for a child for the person's PPL period; and
(b) combined, the total days in the PPL period and the reference period for the person's claim for dad and partner pay for the child exceed 126;

then:
(c) the Secretary must exclude from the reference period the excess number of days; and
(d) the person is not ***eligible*** for dad and partner pay for the child on a day excluded by the Secretary.

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Not eligible—claimant deceased

(8) Despite subsections (2), (3) and (4), a DAPP claimant is not ***eligible*** for dad and partner pay for a child on a day if, on that day, the claimant is deceased.

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Division 3—Applying the work test to claimants for dad and partner pay

115CC When a DAPP claimant satisfies the work test

To work out whether a DAPP claimant satisfies the work test on a day in accordance with section 32, use the method statement in section 32 with the work test period in section 115CD.

Note: Sections 115CE and 115CF in this Division are alternative ways of satisfying the work test for DAPP claimants.

115CD The *work test period*

For the purposes of satisfying the work test in accordance with section 32, the ***work test period*** for a DAPP claimant is the 392 days immediately before the claimant's nominated start date.

Note: Sections 115CE and 115CF in this Division are alternative ways of satisfying the work test for DAPP claimants.

115CE Premature birth

A DAPP claimant also satisfies the ***work test*** on a day if:

(a) the Secretary is satisfied that the child was born prematurely; and

(b) the Secretary is satisfied that the DAPP claimant would have satisfied the work test on the day in accordance with section 32 if the child had not been born prematurely.

115CF DAPP claimant who is already eligible for parental leave pay

A DAPP claimant also satisfies the ***work test*** on a day if the Secretary is satisfied that the DAPP claimant is eligible for parental leave pay for the child.

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Division 4—Applying the income test to claimants for dad and partner pay

115CG When a DAPP claimant satisfies the *income test*

(1) To work out whether a DAPP claimant satisfies the income test in subsection 37(1) on a day, use the income test in subsection 37(1) with the reference income year in section 115CH and the relevant PPL income limit in section 115CJ.

(2) A DAPP claimant also satisfies the ***income test*** on a day if the Secretary is satisfied that the DAPP claimant is eligible for parental leave pay for the child.

115CH The *reference income year*

The ***reference income year*** for a DAPP claimant is the income year that ended before the earlier of the following days:

(a) the day the DAPP claimant made the claim for dad and partner pay;

(b) the DAPP claimant's nominated start date.

115CJ The *relevant PPL income limit*

The ***relevant PPL income limit*** for a DAPP claimant is the PPL income limit that applies on the earlier of the following days:

(a) the day the DAPP claimant made the claim for dad and partner pay;

(b) the DAPP claimant's nominated start date.

Note: For ***PPL income limit***, see section 41. The PPL income limit may be indexed under Subdivision B of Division 4 of Part 2-3.

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Division 5—Applying the Australian residency test to claimants for dad and partner pay

115CK When a DAPP claimant satisfies the *Australian residency test*

To work out whether a DAPP claimant satisfies the Australian residency test on a day, use the Australian residency test in sections 45 and 46.

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Division 6—Caring for a child

115CL When a DAPP claimant is *caring* for a child

(1) A DAPP claimant is ***caring*** for a child on a day in the DAPP claimant's reference period if the child is in the DAPP claimant's care in that period.

(2) A DAPP claimant's ***reference period*** is the period that is determined by the Secretary for the purposes of making a payability determination on the DAPP claimant's claim.

(3) More than one person may be caring for the same child on any particular day. This does not prevent one of the persons being the primary carer of the child under section 47.

(4) Despite subsection (1), a person is not ***caring*** for a child on a day if, before that day, the child has died.

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Division 7—Not working

115CM When a DAPP claimant is *not working*

(1) A DAPP claimant is ***not working*** on a day if neither of the following apply on that day:

(a) the DAPP claimant performs one hour or more of paid work, other than for a purpose that is a permissible purpose under subsection 49(2);

(b) the DAPP claimant is on paid leave.

(2) However, the PPL rules may prescribe circumstances in which a DAPP claimant is taken to be ***not working*** even though paragraph (1)(a) or (b) applies to the claimant.

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Part 3A-4—Claims for dad and partner pay

Division 1—Guide to this Part

115DA Guide to this Part

This Part is about claims for dad and partner pay. A person cannot be paid dad and partner pay unless the person has first made a claim for it.

Division 2 sets out the rules about claims. Section 115DD sets out who can make a claim for dad and partner pay.

The Secretary cannot make a payability determination on a claim unless it is an effective claim. To be effective, the claim must be made by the right person and satisfy the requirements in the provisions listed in section 115DE. One of those requirements is that the claim must be in the form, and contain the information, required by the Secretary (see section 115DF). Another requirement is that the claim must be made in the period set out in section 115DK.

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Division 2—Claims for dad and partner day

115DB Who can claim

Only a natural person can make a claim for dad and partner pay.

115DC Form of claim

A claim for dad and partner pay must be made in the form approved by the Secretary for claims for dad and partner pay.

115DD Who can make a claim for dad and partner pay

Only the following people can make a claim for dad and partner pay for a child:

(a) the biological father of the child;
(b) the partner of the child's birth mother;
(c) an adoptive parent of the child;
(d) a person who satisfies circumstances prescribed by the PPL rules.

115DE When a claim is effective

(1) A claim for dad and partner pay is not effective unless the requirements of the following provisions that apply to the claim are satisfied:
   (a) section 115DF (which deals with the form etc. of the claim);
   (b) section 115DG (which deals with the nominated start date);
   (c) section 115DH (which deals with expected or actual date of birth);
   (d) section 115DJ (which deals with tax file number statements);
   (e) section 115DK (which deals with when to make the claim).

(2) A claim for dad and partner pay is also not effective if it is made by a person who cannot make a claim under section 115DD.

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(3) A claim for dad and partner pay that is not effective is taken not to have been made.

115DF Requirements of the claim

The claim for dad and partner pay must:

(a) be made in the form approved, and the manner required, by the Secretary for dad and partner pay; and

(b) contain any information required by the Secretary; and

(c) be accompanied by any documents required by the Secretary.

115DG Nominated start date

(1) The claim must state a specific date (the ***nominated start date***) which is the first day of the period for which the claimant wants to be paid dad and partner pay.

(2) The nominated start date must be on or after:

(a) if the claim is made before the child is born—the expected date of birth of the child; or

(b) if the claim is made after the child is born—the child's actual date of birth.

(3) Before a payability determination is made on the claim for dad and partner pay, the claimant may change his or her nominated start date by notifying the Secretary of the new nominated start date.

(4) If a payability determination is made that dad and partner pay is payable to the claimant, the claimant may only change his or her nominated start date (the ***old date***) by notifying the Secretary, before the old date, of the new nominated start date.

115DH Expected or actual date of birth

The claim for dad and partner pay for a child must specify the child's expected date of birth or, if made after the child is born, the child's actual date of birth.

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115DJ Tax file number statement

The claim for dad and partner pay must contain the person's tax file number statement, which is a statement of the kind set out in subsection 59(2), (3) or (4).

115DK When to claim

A claim for dad and partner pay for a child must be made in the period that:

(a) starts on the day that is 97 days before the expected date of birth of the child; and

(b) ends on the day before the child's first birthday.

115DL Claim may be withdrawn or varied

(1) After making an effective claim for dad and partner pay, the person may withdraw or vary the claim before a payability determination is made on it.

(2) The person may only do so in a manner approved by the Secretary.

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

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Part 3A-5—Payment of dad and partner pay

Division 1—Guide to this Part

115EA Guide to this Part

This Part is about the payment of dad and partner pay.

Generally, dad and partner pay is paid by the Secretary as a single payment.

The amount is worked out by reference to the period for which the person is eligible for dad and partner pay.

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Division 2—Payment of dad and partner pay

115EB Payment of dad and partner pay

If the Secretary makes a payability determination that dad and partner pay is payable to a person for a child, the Secretary must pay the dad and partner pay to the person as soon as practicable after making the determination (but not before the start of the person's DAPP period).

115EC Amount of dad and partner pay

The amount of dad and partner pay to be paid to the person is the total of the daily national minimum wage amounts for each week day during the person's DAPP period.

Note: See subsection 65(2) for the ***daily national minimum wage amount*** for a day.

115ED Method of payment of dad and partner pay

(1) The Secretary must pay dad and partner pay that is payable to a person to the credit of a bank account nominated and maintained by the person.

(2) The Secretary may direct that the whole or a part of a payment of dad and partner pay is to be paid in a way different from that provided for by subsection (1). If the Secretary gives the direction, the payment is to be paid in accordance with the direction.

(3) A direction made under subsection (2) is not a legislative instrument.

115EE Giving person record of payment

If the Secretary pays dad and partner pay to or in relation to a person, in particular circumstances, the Secretary must give the person the information prescribed by the PPL rules in relation to dad and partner pay paid in those circumstances.

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115EF Effect of extending DAPP period after review

(1) If:

(a) the Secretary has made a payability determination that dad and partner pay is payable to a person; and

(b) after the Secretary has paid the dad and partner pay, a decision is made in relation to the payability determination that has the effect that a higher amount of dad and partner pay is payable to the person;

the Secretary must pay the person the difference between the higher amount and the amount already paid to the person as soon as practicable after the decision is made.

(2) To avoid doubt, any difference worked out under subsection (1) is also dad and partner pay.

115EG Protection of payment

(1) A payment of dad and partner pay is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: Section 115EK (which deals with the effect of a garnishee etc. order) also provides a protection for an account into which dad and partner pay has been paid.

(2) Subsection (1) has effect subject to section 115EH.

115EH Deductions for PAYG withholding

The Secretary may deduct an amount from a payment of dad and partner pay to a person if the Secretary is required to withhold the amount under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*.

115EJ No other deductions

An amount must not be deducted from a payment of dad and partner pay except in accordance with section 115EH. This section

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applies despite any other law of the Commonwealth, a State or a Territory.

115EK Effect of garnishee etc. order

(1) If:

(a) dad and partner pay has been paid to the credit of an account; and

(b) a court order in the nature of a garnishee order comes into force in relation to the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The ***saved amount*** is worked out as follows:

Method statement	
Step 1.	Work out the total amount of dad and partner pay that has been paid to the credit of the account during the 4 week period immediately before the court order came into force.
Step 2.	Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

115EL Exemption from operation of workers' compensation and accident compensation laws

(1) The payment of dad and partner pay is not to be taken into account for the purposes of the following provisions or laws:

(a) a provision of a law of the Commonwealth, a State or a Territory, if the provision deals with:

(i) workers' compensation; or

(ii) accident compensation;

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(b) a law, or a provision of a law, prescribed by the PPL rules, to the extent that the law or provision deals with a matter referred to in paragraph (a).

(2) The PPL rules may provide that subsection (1) does not apply in relation to a prescribed provision of a law of the Commonwealth, a State or a Territory.

115EM DAPP period is not a period of paid leave

Despite any law of the Commonwealth, a State or a Territory, or any industrial instrument (however described), a period of unpaid leave is not to be taken to be a period of paid leave just because a person receives dad and partner pay for all or part of that period.

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Chapter 4—Compliance and enforcement

Part 4-1—Information gathering

Division 1—Guide to this Part

116 Guide to this Part

This Part allows the Secretary to gather information for the purposes of checking compliance with this Act.

Subdivision A of Division 2 allows the Secretary to require a person to give certain information or produce certain documents that are relevant to this Act.

Subdivision B of Division 2 deals with tax file numbers and the purposes for which tax file numbers may be used.

Subdivision C of Division 2 imposes an obligation on a person to whom instalments of parental leave pay are payable, or to whom dad and partner pay is payable, to notify the Secretary of a change of circumstances.

Division 3 deals with the confidentiality of personal and protected information.

Division 4 contains rules relating to offences against Parts 7.3 and 7.4 of the *Criminal Code* (which deal with fraudulent conduct and false and misleading statements) in relation to this Act.

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Division 2—Information gathering

Subdivision A—Gathering information from any person

117 General power to obtain information

(1) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to one or more of the following:

(a) determining whether a person who has made an effective claim for parental leave pay is or was eligible for parental leave pay, or is or was initially eligible for parental leave pay;

(b) determining whether parental leave pay is or was payable to a person;

(c) determining who should pay instalments of parental leave pay to a person;

(d) ensuring the Secretary can pay instalments of parental leave pay into the bank account of a person to whom instalments of parental leave pay are payable;

(e) determining whether to make an employer determination, or whether an employer determination should have been made;

(f) determining whether PPL funding amounts are or were payable to a person;

(g) ensuring that an employer complies or has complied with its obligations under this Act.

Note: The agency specified must be a PPL agency (see subsection 120(4)).

(2) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to one or more of the following:

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(a) determining whether a person who has made an effective claim for dad and partner pay is or was eligible for dad and partner pay, or is or was initially eligible for dad and partner pay;
(b) determining whether dad and partner pay is or was payable to a person;
(c) ensuring the Secretary can pay dad and partner pay into the bank account of a person to whom dad and partner pay is payable.

118 Power to obtain information from a person who owes a debt to the Commonwealth

The Secretary may require a person who owes a debt to the Commonwealth under or because of this Act:

(a) either to:
  (i) give to a specified agency information that is relevant to the person's financial situation; or
  (ii) produce to a specified agency a document that is in the person's custody or under the person's control and is relevant to the person's financial situation; and
(b) if the person's address changes—to inform the specified agency of the new address within 14 days after the change.

Note: The agency specified must be a PPL agency (see subsection 120(4)).

119 Obtaining information about a person who owes a debt to the Commonwealth

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

(a) that would help a specified agency locate another person (the ***debtor***) who owes a debt to the Commonwealth under or because of this Act; or
(b) that is relevant to the debtor's financial situation;

the Secretary may require the person to give the information, or produce the document, to the specified agency.

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Note: The agency specified must be a PPL agency (see subsection 120(4)).

120 Written notice of requirement

Notice to be in writing

(1) A requirement under this Subdivision must be made by written notice given to the person of whom the requirement is made.

Contents of notice

(2) The notice:
  (a) may be given personally or by post or in any other manner approved by the Secretary; and
  (b) must specify:
    (i) how the person is to give the information or produce the document to which the requirement relates; and
    (ii) the period within which the person is to give the information or produce the document; and
    (iii) the agency, and the officer (if any), to whom the information is to be given or the document is to be produced; and
    (iv) that the notice is given under this section.

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

(4) For the purposes of subparagraph (2)(b)(iii), the Secretary must specify a PPL agency.

Requirement to attend interview

(5) The notice may require the person to give the information by appearing before a specified officer to answer questions.

(6) If the notice requires the person to appear before an officer, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the day the notice is given.

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121 Obligations not affected by State or Territory laws

Nothing contained in a law of a State or a Territory operates to prevent a person from:

(a) giving information; or

(b) producing a document; or

(c) giving evidence;

that the person is required to give or produce to a specified agency or an officer for the purposes of this Act.

122 Offence—failure to comply with requirement

(1) A person commits an offence if:

(a) the person is required under this Subdivision (other than under paragraph 117(1)(d) or (2)(c) (which deal with information about bank accounts)) to give information or produce a document; and

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

Penalty: Imprisonment for 6 months.

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

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

Subdivision B—Gathering information relating to tax file numbers

123 Secretary may require Commissioner of Taxation to provide tax file numbers etc.

The Secretary may require the Commissioner of Taxation to provide the Secretary with information (including a tax file number) that is:

(a) about a person who has made an effective claim for parental leave pay or dad and partner pay; and

(b) relevant to the claim; and
(c) contained in a TFN declaration lodged with the Commissioner under Division 3 of Part VA of the *Income Tax Assessment Act 1936*.

124 Purposes for which tax file numbers may be used

(1) Subsection (2) applies to the tax file number of a person that is provided to the Secretary:
  (a) under a provision of this Act, for the purposes of this Act:
    (i) by the person; or
    (ii) by the partner of the person; or
    (iii) by the Commissioner of Taxation on the authority of the person; or
  (b) by the Commissioner of Taxation under section 123.

(2) A tax file number provided to the Secretary as referred to in subsection (1) may be used only for the following purposes:
  (a) to detect cases in which instalments of parental leave pay have been paid when they should not have been paid;
  (b) to verify, in relation to persons who have made effective claims for parental leave pay, the eligibility of those persons for that pay;
  (c) to detect cases in which dad and partner pay has been paid when it should not have been paid;
  (d) to verify, in relation to persons who have made effective claims for dad and partner pay, the eligibility of those persons for that pay.

Subdivision C—Obligation to notify of change of circumstances

125 Obligation to notify of change of circumstances

(1) A person who has made an effective claim for parental leave pay, in respect of which there is not in force any payability determination that parental leave pay is not payable, must notify the Secretary of the following things:

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(a) anything that causes the person to cease to be eligible for parental leave pay on a day;
(b) anything that is likely to have the effect described in paragraph (a).

(2) A person who has made an effective claim for dad and partner pay, in respect of which there is not in force any payability determination that dad and partner pay is not payable, must notify the Secretary of the following things:
(a) anything that causes the person to cease to be eligible for dad and partner pay on a day;
(b) anything that is likely to have the effect described in paragraph (a).

(3) The person must notify the Secretary, in the manner set out in a written notice given to the person under subsection (5), as soon as practicable after the person becomes aware that the thing has happened or is likely to happen.

(4) The Secretary must approve a manner of notification that a person must use when notifying the Secretary of a thing under this section.

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

(6) A person commits an offence if:
(a) the person is required to notify the Secretary of a thing under this section; and
(b) the person refuses or fails to comply with the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

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Division 3—Confidentiality

126 Operation of Division

(1) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:

(a) the *Child Support (Assessment) Act 1989*; or

(b) the *Child Support (Registration and Collection) Act 1988*.

(2) The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

127 Obtaining and using protected information

Obtaining protected information

(1) A person may obtain protected information if the information is obtained for the purposes of this Act.

Using protected information

(2) A person may:

(a) make a record of protected information; or

(b) disclose such information to any person; or

(c) otherwise use such information;

if the record, disclosure or use of the information by the person is made:

(d) for the purposes of this Act; or

(da) for the purposes of the family assistance law; or

(db) for the purposes of the social security law; or

(dc) for the purposes of the *Student Assistance Act 1973*; or

(e) for the purposes for which the information was disclosed to the person under section 128; or

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(f) with the express or implied authorisation of the person to whom the information relates.

128 Disclosing personal information

(1) Despite sections 129 to 132, the Secretary may disclose information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under this Act:

(a) to such persons and for such purposes as the Secretary determines, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases; or

(b) to an Agency Head for the purposes of that Agency (within the meaning of the *Public Service Act 1999*), but only if the disclosure of the information is required by a law of the Commonwealth; or

(c) to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it; or

(d) to the Minister for the purposes of assisting the Minister to consider a complaint or issue in relation to a matter arising under this Act if the Secretary reasonably believes that the disclosure is likely to assist the Minister; or

(e) to an SES employee, or an APS employee, in the Department, for the purposes of briefing, or considering briefing, the Minister if the Secretary reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Note: Information disclosed under this section must also be dealt with in accordance with the Australian Privacy Principles.

(2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines (if any) from time to time in force under subsection (4).

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(3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines (if any) from time to time in force under subsection (4).

(4) The Minister may, in the PPL rules, make guidelines for the exercise of either or both of the following:
  (a) the Secretary's power to give certificates for the purposes of paragraph (1)(a);
  (b) the Secretary's power under paragraph (1)(b).

(5) If a determination or certificate under paragraph (1)(a) is made or given in writing, the determination or certificate is not a legislative instrument.

(6) Despite any other provision of this Part, the Secretary may disclose information of a kind referred to in paragraph (a) or (b) of the definition of ***protected information*** in section 6 that relates to a principal to the principal's payment nominee or correspondence nominee.

129 Offence—unauthorised access to protected information

A person commits an offence if:
  (a) the person obtains information; and
  (b) the person is not authorised under this Act to obtain the information; and
  (c) the information is protected information.

Penalty: Imprisonment for 2 years.

130 Offence—unauthorised use of protected information

A person commits an offence if:
  (a) the person:
    (i) makes a record of information; or
    (ii) discloses information to any other person; or
    (iii) otherwise makes use of information; and

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(b) the person is not authorised or required under this Act to make that record, disclosure or use of the information; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years.

130A Disclosure of information by SSAT members—threat to life, health or welfare

Despite section 130, an SSAT member may disclose information if the information concerns a threat to the life, health or welfare of a person and either of the following applies:

(a) the member believes on reasonable grounds that the disclosure is necessary to prevent or lessen the threat;
(b) there is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against a person and the member discloses the information for the purpose of preventing, investigating or prosecuting such an offence.

131 Offence—soliciting disclosure of protected information

(1) A person commits an offence if:
(a) the person solicits the disclosure of information from an officer or another person; and
(b) the disclosure would be in contravention of this Division; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years.

(2) A person may commit an offence under subsection (1) whether or not any protected information is actually disclosed.

132 Offence—offering to supply protected information

(1) A person commits an offence if:
(a) the person offers to supply (whether to a particular person or otherwise) information about another person; and

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(b) the information is protected information.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) the information is protected information.

Penalty: Imprisonment for 2 years.

(3) Nothing in subsection (1) or (2) makes an officer acting in the performance or exercise of his or her powers, duties or functions under this Act guilty of an offence.

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Division 4—Offences against Parts 7.3 and 7.4 of the Criminal Code

133 Repayment of instalment of parental leave pay, PPL funding amount or dad and partner pay

(1) If a person is convicted of an offence against Part 7.3 or 7.4 of the *Criminal Code* in relation to this Act, the court may:

(a) impose a penalty in relation to the offence; and

(b) order the person to pay the Commonwealth an amount equal to any amount:

(i) paid to, or in relation to, the person by way of an instalment of parental leave pay because of the act, failure or omission that constituted the offence; or

(ii) paid to the person by way of a PPL funding amount because of the act, failure or omission that constituted the offence; or

(iii) paid to, or in relation to, the person by way of dad and partner pay because of the act, failure or omission that constituted the offence.

Note: The Secretary and a court may give a certificate in relation to the amount referred to in paragraph (1)(b) (see sections 138 and 139).

(2) Despite anything in this Act or any other law, a person is not to be imprisoned for failing to pay an amount payable to the Commonwealth under paragraph (1)(b).

134 Penalty where person convicted of more than one offence

(1) If a person is convicted of more than one offence against Part 7.3 or 7.4 of the *Criminal Code* in relation to this Act, the court may, if it considers it appropriate, impose one penalty for all the offences.

(2) However, a single penalty imposed under subsection (1) must not be more than the sum of the maximum penalties that could be imposed if a separate penalty were imposed for each offence.

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135 Joining of charges

Charges against the same person for a number of offences against Part 7.3 or 7.4 of the *Criminal Code* in relation to this Act may be joined in one complaint, information or declaration if those charges:

(a) are founded on the same facts; or

(b) form a series of offences of the same or a similar character; or

(c) are part of a series of offences of the same or a similar character.

136 Particulars of each offence

If 2 or more charges are included in the same complaint, information or declaration, particulars of each offence charged are to be set out in a separate paragraph.

137 Trial of joined charges

If charges are joined, the charges are to be tried together unless:

(a) the court considers it just that any charge should be tried separately; and

(b) the court makes an order to that effect.

138 Evidentiary effect of Secretary's certificate

(1) For the purposes of paragraph 133(1)(b), a certificate signed by the Secretary is evidence of the matters specified in the certificate.

(2) The certificate may specify:

(a) the person to whom an instalment of parental leave pay, a PPL funding amount or dad and partner pay has been paid because of an act, a failure or an omission for which the person or another person has been convicted of an offence against Part 7.3 or 7.4 of the *Criminal Code*; and

(b) the amount paid; and

(c) the act, failure or omission that caused the amount to be paid.

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139 Enforcement of court certificate as judgment

If:

(a) a court makes an order under paragraph 133(1)(b); and

(b) the clerk or other appropriate officer of the court gives a certificate specifying:

(i) the amount ordered to be paid to the Commonwealth; and

(ii) the person by whom the amount is to be paid; and

(c) the certificate is filed in a court (which may be the court that made the order) that has civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgment of the court in which the certificate is filed.

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Part 4-2—Compliance

Division 1—Guide to this Part

140 Guide to this Part

This Part deals with compliance with this Act.

Division 2 allows the Secretary to refer matters to the Fair Work Ombudsman for investigation if the Secretary has reason to believe that an employer has not complied with certain obligations under this Act.

Division 3 deals with civil penalty provisions. These provisions impose obligations on certain persons. Civil penalty orders may be sought in relation to contraventions of civil penalty provisions.

Division 4 deals with compliance notices. A compliance notice can be given to a person who has contravened a civil penalty provision, requiring the person to rectify the contravention.

Division 5 deals with infringement notices. A person who is given an infringement notice can choose to pay a penalty. If the penalty is not paid, a civil penalty order may be sought in relation to the person.

Division 2—Referring matters to the Fair Work Ombudsman

141 Functions of the Fair Work Ombudsman

The Fair Work Ombudsman has the following functions:

(a) to inquire into, and investigate, any matter referred to the Fair Work Ombudsman under section 143;

(b) to commence proceedings in a court in relation to a contravention of section 70 (which deals with unauthorised deductions from instalments) or Part 3-2 (which deals with payment of instalments by an employer);

(c) any other function that is incidental to the function referred to in paragraph (a) or (b).

142 Exercise of compliance powers

(1) A Fair Work Inspector may exercise compliance powers (within the meaning of the Fair Work Act) (other than a power under section 715 or 716 of that Act) for the purpose of determining whether the following provisions of this Act are being, or have been, complied with:

(a) section 70 (which deals with unauthorised deductions from instalments);

(b) Part 3-2 (which deals with payment of instalments by an employer).

(2) For the purposes of the Fair Work Act:

(a) the purpose referred to in subsection (1) of this section is taken to be a compliance purpose; and

(b) a civil penalty provision under section 70 (which deals with unauthorised deductions from instalments) or Part 3-2 of this Act (which deals with payment of instalments by an employer) is taken to be a civil remedy provision.

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143 Referring matters to the Fair Work Ombudsman

(1) The Secretary may refer a matter to the Fair Work Ombudsman for investigation if:

(a) the Secretary has reason to believe that an employer has not complied with an obligation under section 70 (which deals with unauthorised deductions from instalments) or Part 3-2 (which deals with payment of instalments by an employer) in relation to a person; and

(b) the Secretary does not believe that the employer and the person are able to resolve the matter themselves.

(2) The Secretary must inform the employer and the person, in writing, if the Secretary refers the matter to the Fair Work Ombudsman.

(3) The Secretary must give the Fair Work Ombudsman the following information:

(a) if the contravention is in relation to section 70, 72 or 74:

(i) the day on which the Secretary paid a PPL funding amount to the employer for the person; and

(ii) a copy of the notice given to the employer under section 77 in relation to the PPL funding amount;

(b) in any case—any action taken or information obtained by the Secretary in relation to the matter.

144 Fair Work Ombudsman to notify of outcome of investigation

The Fair Work Ombudsman must, as soon as practicable after completing an investigation referred by the Secretary under section 143, notify the Secretary, in writing, of the outcome of the investigation.

Note: If the Fair Work Ombudsman gives a compliance notice, the Fair Work Ombudsman must also notify the Secretary of the outcome of the compliance notice (see section 158).

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Division 3—Civil penalty orders

145 Involvement in contravention treated in same way as actual contravention

(1) A person who is involved in a contravention of a civil penalty provision is taken to have contravened that provision.

(2) A person is ***involved in*** a contravention of a civil penalty provision if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

146 Civil penalty provisions

A provision referred to in column 1 of an item in the table is a ***civil penalty provision***.

Civil penalty provisions

Item	Column 1 Civil penalty provision	Column 2 Maximum penalty
1	Subsection 70(2)	60 penalty units
2	Subsection 72(1)	60 penalty units
3	Subsection 72(2)	60 penalty units
4	Subsection 72(3)	60 penalty units
5	Section 74	60 penalty units
6	Section 80	30 penalty units
7	Subsection 81(1)	30 penalty units

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Civil penalty provisions		
Item	**Column 1** **Civil penalty provision**	**Column 2** **Maximum penalty**
8	Subsection 81(2)	30 penalty units
9	Subsection 82(2)	60 penalty units
10	Section 103	60 penalty units
11	Subsection 105(3)	60 penalty units
12	Subsection 157(4) (in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2))	30 penalty units
13	Subsection 157(4) (in relation to a contravention of a compliance notice given in relation to any other civil penalty provision)	60 penalty units

147 Civil penalty orders

(1) If the Federal Court or the Federal Circuit Court is satisfied that a person has contravened one or more civil penalty provisions, the court may, on the application of the Secretary or the Fair Work Ombudsman, order the person to pay to the Commonwealth such pecuniary penalty, in relation to each contravention, as the court determines to be appropriate.

Note: Subsection (3) sets out the maximum penalty that the court may order the person to pay.

(2) An order under subsection (1) is a ***civil penalty order***.

Determining pecuniary penalty

(3) The pecuniary penalty must not be more than:

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(a) if the person is a body corporate—5 times the maximum number of penalty units referred to in the relevant item in column 2 of the table in section 146; and
(b) otherwise—the maximum number of penalty units referred to in the relevant item in column 2 of the table in section 146.

(4) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
(a) the nature and extent of the contravention; and
(b) the nature and extent of any loss or damage suffered because of the contravention; and
(c) the circumstances in which the contravention took place; and
(d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
(e) the likely impact of the penalty on the person.

Civil enforcement of penalty

(5) The pecuniary penalty is a civil debt payable to the Commonwealth.

(6) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

148 Proceedings may be heard together

The Federal Court or the Federal Circuit Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

149 Time limit for application for an order

Proceedings for a civil penalty order may be commenced no later than 4 years after the contravention.

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150 Civil evidence and procedure rules for civil penalty orders

The Federal Court or the Federal Circuit Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

151 Conduct contravening more than one civil penalty provision

(1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions.

(2) However, the person is not liable to more than one pecuniary penalty under this Act in relation to the same conduct.

152 Civil proceedings after criminal proceedings

Neither the Federal Court nor the Federal Circuit Court may make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

153 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) The proceedings for the order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:
  (a) the civil proceedings are dismissed; and

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(b) costs must not be awarded in relation to the civil proceedings.

154 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

155 Evidence given in proceedings for penalty not admissible in criminal proceedings

(1) Evidence of information given or evidence of production of documents by a natural person is not admissible in criminal proceedings against the person if:

(a) the person previously gave the evidence or produced the documents in proceedings for a civil penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the person in the proceedings for the civil penalty order.

156 Requirement for person to assist in applications for civil penalty orders

(1) A person commits an offence if:

(a) the Secretary requests, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and

(b) the person fails to comply with the request.

Penalty: 10 penalty units.

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Note: This section does not abrogate or affect the law relating to legal professional privilege, or any other immunity, privilege or restriction that applies to the disclosure of information, documents or other things.

(2) A request under subsection (1) is not a legislative instrument.

(3) The Secretary can request a person to assist under subsection (1) only if:

(a) it appears to the Secretary that the person is unlikely to have:

(i) contravened the civil penalty provision to which the application relates; or

(ii) committed an offence constituted by the same, or substantially the same, conduct as the conduct to which the application relates; and

(b) the Secretary suspects or believes that the person can give information relevant to the application.

(4) The Secretary cannot request a person to assist under subsection (1) if the person is or has been a lawyer for the person suspected of contravening the civil penalty provision to which the application relates.

(5) The Federal Court or the Federal Circuit Court may order a person to comply with a request under subsection (1) in a specified way. Only the Secretary may apply to the court for an order under this subsection.

(6) For the purposes of this section, it does not matter whether the application for the civil penalty order has actually been made.

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Division 4—Compliance notices

157 Giving a compliance notice

Compliance notice given by Secretary

(1) This section applies if the Secretary reasonably believes that a person has contravened one or more of the following provisions:
  (a) subsection 82(2) (which deals with notifying the Secretary if certain events happen);
  (b) section 103 (which deals with responding to an employer determination);
  (c) subsection 105(3) (which deals with giving bank account and pay cycle information etc. after a review).

Compliance notice given by Fair Work Ombudsman

(2) This section also applies if the Fair Work Ombudsman reasonably believes that a person has contravened one or more of the following provisions:
  (a) subsection 70(2) (which deals with unauthorised deductions from instalments);
  (b) subsection 72(1), (2) or (3) (which deals with when an employer pays instalments);
  (c) section 74 (which deals with the method of payment of instalments payable by an employer);
  (d) section 80 (which deals with giving a person a record of payment);
  (e) subsection 81(1) or (2) (which deals with keeping records).

Requirements of a compliance notice

(3) The Secretary or the Fair Work Ombudsman may give the person a notice (a ***compliance notice***) requiring the person to do the following within 14 days of the day on which the notice is given:

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(a) take the action set out in the notice to rectify the contravention;
(b) produce reasonable evidence of the person's compliance with the notice.

(4) A person must not fail to comply with a compliance notice.

Note: This subsection is a civil penalty provision (see section 146).

Contents of a compliance notice

(5) A compliance notice must also:
(a) set out the name of the person to whom the notice is given; and
(b) set out the name of the person who gave the notice; and
(c) set out brief details of the alleged contravention; and
(d) explain that a failure to comply with the notice may contravene a civil penalty provision; and
(e) set out any other matters prescribed by the PPL rules.

158 Fair Work Ombudsman to notify of outcome of compliance notice

If the Fair Work Ombudsman gives a compliance notice to a person, the Fair Work Ombudsman must, as soon as practicable, notify the Secretary, in writing, of the outcome of the compliance notice.

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Division 5—Infringement notices

159 Giving an infringement notice

Infringement notice given by Secretary

(1) The Secretary may give a person a notice (an ***infringement notice***) if the Secretary reasonably believes that the person has contravened one or more of the following provisions:

(a) subsection 82(2) (which deals with notifying the Secretary if certain events happen);

(b) section 103 (which deals with responding to an employer determination);

(c) subsection 105(3) (which deals with giving bank account and pay cycle information etc. after a review);

(d) subsection 157(4), in relation to a compliance notice given to the person by the Secretary.

Infringement notice given by Fair Work Ombudsman

(2) The Fair Work Ombudsman may give a person a notice (an ***infringement notice***) if the Fair Work Ombudsman reasonably believes that the person has contravened one or more of the following provisions:

(a) subsection 70(2) (which deals with unauthorised deductions from instalments);

(b) subsection 72(1), (2) or (3) (which deals with when an employer pays instalments);

(c) section 74 (which deals with the method of payment of instalments payable by an employer);

(d) section 80 (which deals with giving a person a record of a payment);

(e) subsection 81(1) or (2) (which deals with keeping records);

(f) subsection 157(4), in relation to a compliance notice given to the person by the Fair Work Ombudsman.

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When infringement notice must be given

(3) The infringement notice must be given within 12 months of:
  (a) if paragraph (1)(d) or (2)(f) applies—the day on which the 14 day period referred to in subsection 157(3) ends; and
  (b) otherwise—the day on which the alleged contravention occurred.

Contents of infringement notice

(4) An infringement notice must:
  (a) set out the name of the person to whom the notice is given; and
  (b) set out the name of the person who gave the notice; and
  (c) set out brief details of the contravention or alleged contravention, including:
    (i) the day referred to in paragraph (3)(a) or (b); and
    (ii) the provision of this Act that was allegedly contravened; and
  (d) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court or the Federal Circuit Court if the penalty specified in the notice is paid to the Commonwealth, within:
    (i) 28 days after the notice is given; or
    (ii) if the Secretary allows a longer period—that longer period; and
  (e) give an explanation of how payment of the penalty is to be made; and
  (f) set out any other matters prescribed by the PPL rules.

Amount of penalties in infringement notices

(5) An infringement notice that is given to a body corporate must specify a pecuniary penalty equal to:
  (a) in relation to a contravention of section 80 (which deals with giving a person a record of payments) or subsection 81(1) or

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(2) (which deals with keeping records)—15 penalty units; and

(b) in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2)—15 penalty units; and

(c) otherwise—30 penalty units.

(6) An infringement notice that is given to a person other than a body corporate must specify a pecuniary penalty equal to:

(a) in relation to a contravention of section 80 (which deals with giving a person a record of payments) or subsection 81(1) or (2) (which deals with keeping records)—3 penalty units; and

(b) in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2)—3 penalty units; and

(c) otherwise—6 penalty units.

160 Withdrawal of an infringement notice

(1) The Secretary may withdraw an infringement notice that has been given to a person by the Secretary.

(2) The Fair Work Ombudsman may withdraw an infringement notice that has been given to a person by the Fair Work Ombudsman.

(3) For a withdrawal to be effective, a written notice that withdraws the infringement notice must be given to the person within 42 days after the infringement notice was given to the person.

(4) Despite subsection (3), a withdrawal may be effective if it is given to a person later than 42 days after an infringement notice is given to the person if the person has applied to a court for judicial review in relation to the making of an employer determination.

Refund of penalty if infringement notice withdrawn

(5) The Commonwealth is liable to refund the amount of the penalty specified in an infringement notice if the infringement notice is withdrawn after the penalty has been paid.

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161 What happens if the penalty is paid

(1) Any liability of a person for an alleged civil penalty is discharged if:

(a) an infringement notice is given to the person in relation to the alleged civil penalty; and

(b) the penalty is paid in accordance with the infringement notice; and

(c) the infringement notice is not withdrawn.

(2) In addition, proceedings under Division 3 must not be brought against the person for the alleged civil penalty.

162 Effect of this Division on civil proceedings

This Division does not:

(a) require an infringement notice to be given in relation to an alleged civil penalty; or

(b) affect the liability of a person to have proceedings under Division 3 brought against the person for an alleged civil penalty if:

(i) the person does not comply with an infringement notice relating to the contravention; or

(ii) an infringement notice relating to the contravention is not given to the person; or

(iii) an infringement notice relating to the contravention is given to the person and later withdrawn; or

(c) limit the discretion of the Federal Court or the Federal Circuit Court to determine the amount of a penalty to be imposed on a person who is found in proceedings under Division 3 to have contravened a civil penalty provision.

163 Further provision in relation to infringement notices

The Minister may further provide in relation to infringement notices in the PPL rules.

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Part 4-3—Debt recovery

Division 1—Guide to this Part

164 Guide to this Part

This Part provides for debts in relation to the paid parental leave scheme, and for the recovery of debts owing to the Commonwealth.

Division 2 provides for the main debts recoverable by the Commonwealth under this Act, as follows:

(a) overpayments or mistaken payments of parental leave pay or dad and partner pay;

(b) PPL funding amounts for a person that are not paid to the person as parental leave pay;

(c) parental leave pay, PPL funding amounts or dad and partner pay paid to the wrong person.

Division 3 allows an employee to recover, as a debt, parental leave pay due from his or her employer.

Division 4 deals with the procedure for raising a debt that is recoverable by the Commonwealth under this Act, and charging interest on the debt. An administrative charge of $50 is also payable if interest is charged.

Division 5 deals with how the Commonwealth can recover debts.

Division 6 allows the Secretary to write off debts. Even if a debt is written off, it can be later recovered if circumstances change.

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Division 7 allows the Secretary to waive debts in various circumstances.

Division 8 provides that debts under this Act apply in relation to matters inside and outside Australia, and to all persons irrespective of nationality or citizenship.

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Division 2—Main debts recoverable under this Act

165 Debts due to the Commonwealth

If an amount has been paid by way of parental leave pay, a PPL funding amount or dad and partner pay, the amount (or an amount equivalent to the amount) is a debt due to the Commonwealth only to the extent expressly provided for under:

(a) this Act; or

(b) the *Data-matching Program (Assistance and Tax) Act 1990*.

Note: The main debts due to the Commonwealth under this Act are provided for in this Division. Other debts due to the Commonwealth are provided for in the following provisions:

(a) section 177 (which deals with interest);

(b) section 179 (which imposes an administrative charge);

(c) section 186 (which deals with non-compliance with garnishee notices).

166 Parental leave pay instalment debts—instalments paid by employer

(1) This section applies if:

(a) the total of amounts paid to a person (the ***first person***) by way of PPL funding amounts in relation to instalments for another person for a child exceeds (by the ***PPL funding excess***) the total of amounts payable to the first person as PPL funding amounts in relation to those instalments; and

(b) the first person pays an amount (the ***employer payment***) to, or in relation to, the other person for the child by way of an instalment; and

(c) the total of employer payments paid for the child exceeds (by the ***instalment excess***) the total of amounts that are payable by the first person to, or in relation to, the other person for the child as instalments under Division 2 of Part 3-2 (which deals with the payment of instalments by employers).

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Note: Instalments may stop being payable with retrospective effect if a payability determination that parental leave is payable to the other person for the child is set aside or varied after the instalments are paid.

(2) An amount equal to the lesser of the PPL funding excess and the instalment excess is a debt due to the Commonwealth by the other person.

Example: If no amounts are payable by the first person to, or in relation to, the other person for a child as instalments, the amount of the instalment excess is the total amount of the employer payments.

(3) The debt under subsection (2) arises:

(a) if the other person has a PPL period for the child—immediately after the end of the person's PPL period; or

(b) otherwise—when subsection (1) starts to apply in relation to an employer payment.

Note 1: The other person does not have a PPL period for the child if a payability determination that parental leave pay is payable to the other person for the child has not been made, or has been set aside. In such a case, a debt will arise as soon as there is an instalment excess.

Note 2: This section may apply to overpayments by way of instalments or amounts that are mistakenly paid. For example, an overpayment or mistaken payment may arise due to administrative error, the setting aside or variation of a payability determination or payments following a stay order under subsection 41(2) of the AAT Act.

167 Parental leave pay instalment debts—instalments paid by Secretary

(1) This section applies if:

(a) the Secretary pays an amount (the ***Secretary payment***) to, or in relation to, a person for a child by way of an instalment; and

(b) the total of Secretary payments paid for the child exceeds the total of amounts that are payable to, or in relation to, the person for the child as instalments under Part 3-3 (which deals with the payment of instalments by the Secretary).

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Note: Instalments may stop being payable with retrospective effect if the payability determination is set aside or varied after the instalments are paid.

(2) An amount equal to the amount of the excess is a debt due to the Commonwealth by the person.

Example: If no amounts are payable to, or in relation to, a person for a child as instalments, the amount of the excess is the total amount of the Secretary payments.

(3) The debt under subsection (2) arises:

(a) if the person has a PPL period for the child—immediately after the end of the person's PPL period; or

(b) otherwise—when subsection (1) starts to apply in relation to a Secretary payment.

Note 1: The person does not have a PPL period for the child if a payability determination that parental leave pay is payable to the person for the child has not been made, or has been set aside. In such a case, a debt will arise as soon as there is an excess as referred to in subsection (1).

Note 2: This section may apply to overpayments by way of instalments or amounts that are mistakenly paid. For example, an overpayment or mistaken payment may arise due to administrative error, the setting aside or variation of a payability determination or payments following a stay order under subsection 41(2) of the AAT Act.

168 PPL funding amount debts—amounts not paid as parental leave pay instalments

(1) This section applies if the total of amounts paid to a person (the ***first person***) by way of PPL funding amounts in relation to instalments for another person for a child exceeds the total of amounts paid by the first person to, or in relation to, the other person by way of such instalments for the child.

(2) The amount of the excess is a debt due to the Commonwealth by the first person.

Example: If the first person has not paid any amounts by way of instalments to the other person, the amount of the excess is the total of amounts paid to the first person by way of PPL funding amounts in relation to instalments for the other person for the child.

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(3) The debt under subsection (2) arises:

(a) if the other person has a PPL period for the child—at the earlier of the following times:

(i) when the Secretary pays one or more of the instalments to, or in relation to, the other person under section 85, 86 or 87 (which deal with the payment of arrears);

(ii) immediately after the end of the other person's PPL period; or

(b) otherwise—when subsection (1) starts to apply in relation to an amount paid to the first person.

Note 1: The other person does not have a PPL period for the child if a payability determination that parental leave pay is payable to the person for the child has not been made, or has been set aside. In such a case, a debt will arise as soon as there is an excess referred to in subsection (1).

Note 2: This section may apply to overpayments by way of PPL funding amounts or amounts that are mistakenly paid. For example, an overpayment or mistaken payment may arise due to administrative error or the revocation or setting aside of an employer determination.

168A Dad and partner pay debts

(1) This section applies if:

(a) the Secretary pays an amount (the ***Secretary payment***) to, or in relation to, a person for a child by way of dad and partner pay; and

(b) the total of Secretary payments paid for the child exceeds the total of amounts that are payable to, or in relation to, the person for the child under Part 3A-5 (which deals with the payment of dad and partner pay by the Secretary).

Note: Dad and partner pay may cease to be payable after it has already been paid, if the payability determination is later set aside or varied.

(2) An amount equal to the amount of the excess is a debt due to the Commonwealth by the person.

Example: If no dad and partner pay is payable to, or in relation to, a person for the child, the amount of the excess is the total amount of the Secretary payments.

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(3) The debt under subsection (2) arises:

(a) if the person has a DAPP period for the child—immediately after the end of the person's DAPP period; or

(b) otherwise—when subsection (1) starts to apply in relation to a Secretary payment.

Note 1: The person does not have a DAPP period for the child if a payability determination that dad and partner pay is payable to the person for the child has not been made, or has been set aside. In such a case, a debt will arise as soon as there is an excess as referred to in subsection (1).

Note 2: This section may apply to overpayments by way of payments that are mistakenly paid. For example, an overpayment or mistaken payment may arise due to administrative error, the setting aside or variation of a payability determination or payments following a stay order under subsection 41(2) of the AAT Act.

169 Wrong person receives parental leave pay instalment, PPL funding amount or dad and partner pay

(1) This section applies if:

(a) an instalment, a PPL funding amount or dad and partner pay (the ***PPL payment***) is paid by the Secretary or an employer; and

(b) a person (the ***wrong recipient***) other than the person (the ***right recipient***) to whom the PPL payment is payable receives the PPL payment (or a part of it); and

(c) the wrong recipient is not authorised by the right recipient, or authorised under law, to receive the PPL payment (or that part).

(2) An amount equal to the PPL payment (or that part of the PPL payment), is a debt due by the wrong recipient to:

(a) if the PPL payment is made by the Secretary—the Commonwealth; or

(b) if the PPL payment is made by an employer—the employer.

Note 1: Because the PPL payment (or part) has not been properly paid to the right recipient, the Secretary or the employer must repay to the right recipient the amount of the PPL payment that ought to have been paid to the right recipient in the first place.

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Note 2: The Secretary may recover a debt due to the Commonwealth under this section from an ADI (see section 192).

170 Joint and several liability for debts arising because of false and misleading statements

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

(a) the recipient is liable under this Division to repay an amount (the ***unauthorised amount***) paid to, or in relation to, the recipient (or an amount equal to such an amount); and

(b) the unauthorised amount was paid because the recipient contravened Part 7.4 of the *Criminal Code* (which deals with false and misleading statements); and

(c) the other person is convicted of an offence:

(i) that is taken to have been committed in relation to that contravention because of section 11.2 or 11.2A of the *Criminal Code* (which deal with complicity, common purpose and joint commission); or

(ii) in relation to that contravention against section 11.4 or 11.5 of the *Criminal Code* (which deal with incitement and conspiracy).

171 Debts under the *Data-matching Program (Assistance and Tax) Act 1990*

An amount is recoverable by the Commonwealth if:

(a) the amount has been paid to, or in relation to, a person by way of an instalment or by way of dad and partner pay; and

(b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*.

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Division 3—Parental leave pay recoverable by employees from employers

172 PPL funding amount debts—debts owing by employers to employees

(1) This section applies if:

(a) a PPL funding amount is paid to an employer in relation to an instalment that is payable to a person; and

(b) the instalment, or part of the instalment, is not paid to, or in relation to, the person in accordance with the following provisions:

(i) section 70 (which deals with unauthorised deductions from instalments);

(ii) Division 2 of Part 3-2 (which deals with the payment of instalments by employers).

(2) So much of the instalment as is not paid to, or in relation to, the person in accordance with section 70 and Division 2 of Part 3-2, or as arrears under section 85, 86 or 87, is a debt due to the person by the employer, and is recoverable by the person in a court of competent jurisdiction.

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Division 4—Debt notices and interest on debts

173 Debt notices—initial notice

Requirement to give initial notice

(1) If a debt due to the Commonwealth under this Act has not been wholly paid, the Secretary must give the debtor a notice stating the following:

(a) the date the preparation of the notice is completed (the ***date of the initial debt notice***);

(b) for a debt under section 168 that relates to a PPL funding amount payable in relation to an instalment (or a debt under this Division in relation to such a debt)—the name of the person to whom, or in relation to whom, the instalment is payable;

(c) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred;

(d) the period to which the debt relates;

(e) the outstanding amount of the debt at the date of the initial debt notice;

(f) the day on which the outstanding amount is due and payable;

(g) that a range of options is available for repayment of the debt;

(h) the contact details for inquiries concerning the debt.

Due date

(2) The outstanding amount of the debt is due and payable on the 28th day after the date of the initial debt notice.

Combining initial and further debt notices

(3) If a notice given under this section states the matters referred to in paragraphs 174(2)(e) and (f) (which relate to interest and an

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administrative charge), the notice is taken also to be a further debt notice given under section 174.

174 Debt notices—further debt notice if repayments not made

When a further debt notice may be given

(1) This section applies if:
  (a) a person has been given a notice under section 173 for a debt; and
  (b) the debt has not been wholly paid; and
  (c) either:
    (i) the person has failed to enter into a debt payment arrangement to pay the outstanding amount of the debt; or
    (ii) the person has entered into a debt payment arrangement, but has failed to make a payment (or payments) in accordance with the arrangement.

Contents of further debt notice

(2) The Secretary may give the person a further notice (the ***further debt notice***) stating the following:
  (a) the date the preparation of the notice is completed (the ***date of the further debt notice***);
  (b) the matters referred to in paragraphs 173(1)(b) to (d);
  (c) the outstanding amount of the debt at the date of the further debt notice;
  (d) the matters referred to in paragraphs 173(1)(f) to (h);
  (e) the effect of sections 175, 176, 177 and 179 (which deal with interest and an administrative charge);
  (f) how the interest under section 175 is to be calculated.

Note: A person may be taken to have been given a notice under this section by the giving of an initial notice under section 173 if the matters stated in paragraphs (2)(e) and (f) of this section are stated in the initial notice (see subsection 173(3)).

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175 Interest on debts—when interest becomes payable

Scope

(1) This section applies if a further debt notice is given under section 174 in relation to a debt.

Final debt payment day

(2) The ***final debt payment day*** for the payment of a debt is the latest of the following days:
  (a) the 90th day after the day on which the outstanding amount of the debt was due and payable;
  (b) the 28th day after the date of the further debt notice;
  (c) if the debtor (or another person) applies in accordance with section 206 for internal review of the decision to give the notice under section 173, or the further debt notice—the 90th day after the day on which an officer makes a decision in relation to the application.

No arrangement made for payment of debt

(3) Subsection (4) applies if:
  (a) the person has not entered into a debt payment arrangement, on or before the final debt payment day, to pay the outstanding amount of the debt; and
  (b) the further debt notice states that the person will be required to pay interest under subsection (4) of this section.

(4) The person is liable to pay interest on any outstanding amount from time to time:
  (a) from and including the first day after the final debt payment day until the debt is wholly paid; and
  (b) at the penalty interest rate.

Failure to pay amount due under an arrangement

(5) Subsection (6) applies if:

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(a) the person has entered into a debt payment arrangement to pay the outstanding amount of the debt; and
(b) the person has failed to make a particular payment in accordance with the arrangement; and
(c) the further debt notice states that the person will be required to pay interest under subsection (6) of this section.

(6) The person is liable to pay interest, at the penalty interest rate, on the outstanding amount from time to time:
(a) if the failure happens on or before the final debt payment day—from and including the first day after the final debt payment day until the debt is wholly paid; or
(b) if the failure happens after the final debt payment day—from and including the day after the day in relation to which the last payment in relation to the debt was made until the debt is wholly paid.

Interest not payable on debts incurred because of Commonwealth administrative error

(7) A person is not liable under this section to pay interest on a debt, or the proportion of a debt, that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.

176 Interest on debts—application

An amount of interest payable on a debt under section 175 that has been paid on the debt is to be applied as follows:
(a) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;
(b) after the debt (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the debt before the debt was fully paid.

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177 Interest on debts—recovery as a debt

The interest payable by a person under section 175 on the outstanding amount of a debt is a debt due to the Commonwealth by the person.

178 Interest exemption determinations

(1) The Secretary may determine (by an ***interest exemption determination***) that interest is not payable, or is not payable in relation to a particular period, by a person on the outstanding amount of a debt.

(2) The Secretary may make an interest exemption determination under this section in circumstances that include the Secretary being satisfied that the person has a reasonable excuse for:
  (a) failing to enter into a debt payment arrangement to pay the outstanding amount of the debt; or
  (b) having entered such an arrangement, failing to make a payment (or payments) in accordance with the arrangement.

(3) An interest exemption determination may:
  (a) relate to a period before, or to a period that includes a period before, the making of the determination; and
  (b) be expressed to be subject to the person complying with one or more stated conditions.

(4) If a person has been given a further debt notice requiring the person to pay interest on the debt, the Secretary must give written notice of the decision to make an interest exemption determination to the person as soon as practicable after the determination is made.

(5) If a person contravenes a condition, or conditions, of an interest exemption determination without reasonable excuse, the determination ceases to have effect from and including the day on which the contravention, or the earliest of the contraventions, occurred.

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(6) The Secretary may cancel or vary an interest exemption determination by written notice given to the person.

179 Administrative charge

(1) When a person first becomes liable to pay interest under section 175 in relation to the outstanding amount of a particular debt, the person is liable to pay an administrative charge of $50 in relation to the outstanding amount of that debt.

(2) An administrative charge payable by a person is a debt due to the Commonwealth by the person.

180 Penalty interest rate

Interest rate

(1) The ***penalty interest rate*** is:
  (a) 20% per year; or
  (b) if a lower rate is prescribed by the PPL rules under subsection (2)—that lower rate.

(2) The PPL rules may prescribe a rate of less than 20% per year as the penalty interest rate.

Guidelines

(3) The PPL rules must prescribe guidelines for the operation of the provisions of this Act dealing with penalty interest.

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Division 5—How the Commonwealth can recover debts

181 Debts to which Division 5 applies

This Division applies to debts due to the Commonwealth under this Act.

Note: See the following provisions:

(a) Division 2 (which provides for the main debts recoverable under this Act);

(b) sections 177, 179 and 186 (which provide for debts relating to interest and garnishee notices).

182 How to recover debts

A debt is recoverable by the Commonwealth from a person by one or more of the following means:

(a) legal proceedings (see section 183);

(b) garnishee notice (see section 184);

(c) debt payment arrangements (see section 190);

(d) deductions from instalments payable to another person for the same child (see section 191);

(e) recovery from an ADI, if the debt arises from a payment to the wrong person, or the amount is to be recovered from a deceased estate (see section 192);

(f) deduction or setting off in relation to a payment to which the debtor (or another person) is entitled under another Act, but only if the other Act expressly provides for recovery of the debt by such deduction or setting off.

Note: A debt can be recovered by deduction or set off in relation to other payments as follows:

(a) sections 84 and 92 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (which deal with family tax benefit);

(b) sections 84A and 92A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (which deal with family assistance);

(c) sections 1231 and 1234A of the Social Security Act (which deal with social security payments).

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(d) section 205 of the *Veterans' Entitlements Act 1986* (which deals with pensions, allowances and other payments).

183 Legal proceedings

A debt is recoverable by the Commonwealth in a court of competent jurisdiction.

Note: See section 189 for time limits on recovery by legal proceedings.

184 Garnishee notices—general

Issue of garnishee notice

(1) The Secretary may, by written notice (the ***garnishee notice***) to any of the following people (the ***garnishee***), require the garnishee to pay the Commonwealth the amount covered by subsection (2) in relation to a debt (the ***original debt***) that is recoverable by the Commonwealth under this Act from a person (the ***original debtor***):

(a) a person by whom any money is due or accruing, or may become due, to the original debtor;

(b) a person who holds or may later hold money for or on account of the original debtor;

(c) a person who holds or may later hold money on account of some other person for payment to the original debtor;

(d) a person who has authority from some other person to pay money to the original debtor.

Note 1: Subsection (3) provides that conditions on the payment of money due to the original debtor are to be ignored for the purposes of this section.

Note 2: See section 189 for time limits on recovery by garnishee notice.

(2) The amount covered by this subsection is:

(a) an amount stated in the garnishee notice, not exceeding the amount of the original debt or the amount of the money referred to in paragraph (1)(a), (b), (c) or (d); or

(b) an amount stated in the garnishee notice out of each payment that the garnishee becomes liable from time to time to make to the original debtor, until the original debt is satisfied; or

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(c) the amount of a percentage stated in the garnishee notice of each payment that the garnishee becomes liable from time to time to make to the original debtor, until the original debt is satisfied.

(3) For the purposes of this section, if, apart from this subsection, money is not due or repayable on demand to the original debtor unless a condition is fulfilled, the money is taken to be due or repayable on demand, even though the condition has not been fulfilled.

Time for compliance

(4) The time for making a payment in compliance with a garnishee notice is the time stated in the notice, but not before:
(a) the money concerned becomes due or is held; or
(b) the end of 14 days after the notice is given.

(5) The Secretary must give a copy of a garnishee notice to the original debtor.

185 Garnishee notices—amounts paid in compliance

(1) A person who makes a payment to the Commonwealth in compliance with a garnishee notice is taken to have made the payment under the authority of the original debtor and of any other person concerned.

(2) If, after a garnishee notice is given to a garnishee, an amount is paid by another person in reduction or in satisfaction of the original debt:
(a) the Secretary must notify the garnishee accordingly; and
(b) the amount of the unpaid debt stated in the garnishee notice is taken to be reduced by an amount equal to the amount paid.

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186 Garnishee notices—debt for failure to comply with notice

(1) This section applies if a garnishee fails to comply with the garnishee notice to the extent that the garnishee is capable of complying with it.

(2) The amount of the debt outstanding (worked out under subsection (3)) is a debt due to the Commonwealth by the garnishee.

(3) The amount of the debt outstanding is the amount equal to the lesser of the following amounts:
  (a) as much of the amount required by the garnishee notice to be paid by the garnishee as the garnishee was able to pay;
  (b) as much of the debt due by the original debtor when the notice was given as remains due from time to time.

(4) If the Commonwealth recovers the whole or part of the debt due by the garnishee under subsection (2), or by the original debtor, then:
  (a) both debts are reduced by the amount that the Commonwealth has so recovered; and
  (b) the amount of the unpaid debt stated in the garnishee notice is taken to be reduced by the amount so recovered.

(5) This section applies to an amount despite any law of a State or a Territory (however expressed) under which the amount is inalienable.

187 Garnishee notices—offence for non-compliance

A person commits an offence if:
  (a) the person is a garnishee; and
  (b) the person is given a garnishee notice; and
  (c) the person refuses or fails to comply with the notice.

Penalty: Imprisonment for 12 months.

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188 Garnishee notices—relationship with other laws

Sections 184 to 187 apply to an amount of money despite any law of a State or a Territory (however expressed) under which the amount is inalienable.

189 Legal proceedings and garnishee notices—time limits for debt recovery

General rule—6 years after officer becomes aware of debt

(1) Action (***debt recovery action***) under section 183 or 184 for the recovery of a debt by legal proceedings or garnishee notice is not to be started after the end of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

Extension of time if debt starts to be paid

(2) If, within the period referred to in subsection (1), part of the amount owing on the debt is paid, debt recovery action may be commenced within 6 years starting on the day of the payment.

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Extension of time if debt acknowledged

(3) If, within the period referred to in subsection (1), the person who owes the debt acknowledges that he or she owes it, debt recovery action may be commenced within 6 years starting on the day of acknowledgment.

Extension of time following earlier debt recovery action

(4) If, within the period referred to in subsection (1), debt recovery action (the ***first action***) by one method (either legal proceedings or garnishee notice) is commenced, debt recovery by the other method may be commenced within 6 years after the end of the first action.

Extension of time following internal Departmental action

(5) If, within the period referred to in subsection (1), an action covered by subsection (6) is commenced, debt recovery action may be commenced within 6 years after the end of the action.

(6) This subsection covers the following actions:
   (a) a review of a file relating to action for the recovery of the debt;
   (b) other internal Departmental action relating to action for the recovery of the debt.

190 Payment of debts by arrangement

(1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement (a ***debt payment arrangement***) with a person who owes a debt, under which the person is to pay the debt, or the outstanding amount of the debt, by part payments in accordance with the terms of the arrangement.

(2) A debt payment arrangement operates, or is taken to have operated, on and after the day stated in the arrangement as the day on which the arrangement starts (whether that day is the day on which the arrangement is entered into or an earlier or later day).

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(3) If a debt payment arrangement does not state a day as referred to in subsection (2), it operates on and after the day on which it is entered into.

(4) The Secretary may terminate or alter a debt payment arrangement:
  (a) at the debtor's request; or
  (b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or
  (c) without notice, if the Secretary is satisfied that the debtor has failed to disclose material information about the debtor's true capacity to repay the debt.

191 Deductions from instalments payable to another person

(1) This section applies if an amount is deducted under subsection 67(2) from an instalment payable to a secondary claimant for a child, if the deduction is for the purposes of the recovery of a debt due to the Commonwealth by the primary claimant in relation to the same child.

(2) The debt due to the Commonwealth by the primary claimant is reduced by an amount equal to the amount of the deduction.

192 Recovery from an ADI

Payment into wrong account or payment for deceased person

(1) This section applies if:
  (a) an instalment, a PPL funding amount or dad and partner pay is paid to an ADI for the credit of an account kept with the ADI in the name of a person or persons; and
  (b) a debt that is recoverable by the Commonwealth under this Act arises (or such debts arise) because either:
    (i) the payment was intended to be paid to someone other than the person, or those persons; or

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(ii) the payment was intended to be paid to the person, or one of those persons, but the person for whom the payment was intended dies before the payment was made.

Notice to ADI requiring repayment and to deceased estate

(2) The Secretary may give a written notice to the ADI setting out the relevant matters referred to in paragraphs (1)(a) and (b) and requiring the ADI to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:
   (a) the amount of the instalment, PPL funding amount or dad and partner pay, as stated in the notice;
   (b) the amount standing to the credit of the account when the notice is given to the ADI.

(3) If the notice relates to a payment to a person who has died, as soon as possible after issuing the notice, the Secretary must inform the deceased estate in writing of:
   (a) the amount sought to be recovered from the deceased person's account; and
   (b) the reasons for the recovery action.

Offence for contravening notice

(4) A body corporate commits an offence if:
   (a) the body is an ADI; and
   (b) the body is given a notice under subsection (2); and
   (c) the body refuses or fails to comply with the notice.

Penalty: 300 penalty units.

Amount recovered reduces debt

(5) Any amount recovered by the Commonwealth from an ADI under this section reduces the amount of a debt referred to in paragraph (1)(b).

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Division 6—Writing off debts

193 When debts can be written off

General

(1) The Secretary may, on behalf of the Commonwealth, decide to write off, for a stated period or otherwise, a debt that is due to the Commonwealth under this Act.

Note: Debts recoverable by the Commonwealth under this Act are provided for by the following provisions:
(a) Division 2 (which provides for the main debts recoverable under this Act);
(b) sections 177, 179 and 186 (which provide for debts relating to interest and garnishee notices).

Write off conditions

(2) The Secretary may decide to write off a debt under subsection (1) if, and only if:
(a) the debt is irrecoverable at law; or
(b) the debtor has no capacity to repay the debt; or
(c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or
(d) it is not cost effective for the Commonwealth to take action to recover the debt.

When a debt is irrecoverable

(3) For the purposes of paragraph (2)(a), a debt is taken to be irrecoverable at law if, and only if:
(a) the debt cannot be recovered under Division 5, for example because a time limit for recovery action under that Division has elapsed; or
(b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

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(c) the debtor is discharged from bankruptcy or administration and the debt was incurred before the debtor became bankrupt or entered into administration, and was not incurred by fraud; or

(d) the debtor has died leaving no estate or not enough funds in the debtor's estate to repay the debt.

When a debtor has capacity to repay by deductions etc.

(4) For the purposes of paragraph (2)(b), a person is taken to have the capacity to repay a debt to which subsection (5) applies, unless recovery by those means would cause the person severe financial hardship.

(5) This subsection applies to a debt if it could be recovered by deduction or setting off in relation to a payment to which the debtor is entitled under another Act.

When write off comes into operation

(6) A decision under subsection (1) to write off a debt comes into operation:

(a) if no day is stated in the decision—on the day the decision is made; or

(b) if a day is stated in the decision—on the stated day (whether that day is before, after or on the day on which the decision is made).

Debt that has been written off may be recovered

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

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Division 7—Waiver of debts

194 Waiver of debts—general

(1) This Division applies to debts that are due to the Commonwealth under this Act.

Note: Debts recoverable by the Commonwealth under this Act are provided for by the following provisions:

(a) Division 2 (which provides for the main debts recoverable under this Act);

(b) sections 177, 179 and 186 (which provide for debts relating to interest and garnishee notices).

(2) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover the whole or a part of a debt, but only if required or allowed to do so under another provision of this Division.

(3) A decision to waive the right to recover a debt (or a part of a debt) comes into operation:

(a) if no day is stated in the decision—on the day the decision is made; or

(b) if a day is stated in the decision—on the stated day (whether that day is before, after or on the day on which the decision is made).

195 Waiver of debts—administrative error

The Secretary must waive the right to recover so much of a debt as is attributable solely to an administrative error made by the Commonwealth, or an agent of the Commonwealth, if:

(a) the debtor received in good faith the payment or payments that gave rise to that proportion of the debt; and

(b) the debtor would suffer severe financial hardship if it were not waived.

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196 Waiver of debts—arising from offence

The Secretary must waive the right to recover so much of a debt as arises from an offence, if:

(a) the debtor is convicted of the offence; and

(b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt.

197 Waiver of debts—small debts

(1) The Secretary must waive the right to recover a debt if:

(a) the debt is, or is likely to be, less than $200; and

(b) it is not cost effective for the Commonwealth to take action to recover the debt.

(2) Subsection (1) does not apply if the debt is at least $50 and could be recovered by deduction or setting off in relation to a payment to which the debtor is entitled under another Act.

198 Waiver of debts—settlement of civil actions

Settlement of civil action

(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the AAT

(2) If the Secretary has agreed to settle proceedings before the AAT relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

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Note: See section 263 (which deals with settlement of proceedings before the AAT).

Waiver where at least 80% of debt recovered and debtor cannot pay more

(3) If:

(a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and

(b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the right to recover the remaining 20% or less of the value of the original debt.

Agreement for part payment in satisfaction of outstanding debt

(4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount (the ***unpaid amount***) of the debt outstanding when the agreement is made, the Secretary must, if the agreed amount is paid, waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part payment in satisfaction of outstanding debt

(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

Working out present value of unpaid amount

(6) For the purposes of subsection (5), the ***present value of the unpaid amount*** is the amount worked out in accordance with the following formula:

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$$\frac{\text{Annual repayment}}{\text{Settlement interest}} \times \left[1 - \frac{1}{\left(1 + \text{Settlement interest}\right)^{rp}} \right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Division 5 in a year if subsection (4) did not apply in relation to the debt.

rp (short for repayment period) is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

settlement interest is an annual rate of interest prescribed for the purposes of this subsection by the PPL rules.

199 Waiver of debts—special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

(a) the debt did not result wholly or partly from the debtor or another person knowingly:
  (i) making a false or misleading statement or representation; or
  (ii) failing or omitting to comply with a provision of this Act; and

(b) there are special circumstances (other than financial hardship alone) that make it desirable to waive the debt (or part); and

(c) it is more appropriate to waive the debt (or part) than to write off the debt (or part).

200 Waiver of debts—determined classes

(1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts (or parts of

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debts) that are included in a class of debts determined by the Minister by legislative instrument.

(2) A determination under subsection (1) may state:

(a) conditions to be met before the Secretary exercises the power to waive the debts (or parts); and

(b) limits on the amounts of the debts to be waived.

(3) A decision under subsection (1) comes into operation:

(a) if no day is stated in the decision—on the day the decision is made; or

(b) if a day is stated in the decision—on the stated day (whether before, after or on the day the decision is made).

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Division 8—Miscellaneous

201 Overseas application of debts

The operation of a provision creating a debt under this Part (except for section 171) extends to:

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

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

Note: Section 171 provides for debts under the *Data-matching Program (Assistance and Tax) Act 1990*.

201A Debts arising from civil penalty orders

This Part does not apply to a debt arising from a civil penalty order.

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Chapter 5—Review of decisions

Part 5-1—Internal review of decisions

Division 1—Guide to this Part

202 Guide to this Part

This Part is about the internal review of decisions of officers under this Act.

Division 2 sets out 3 kinds of internal review of those decisions.

The first kind of review is where the Secretary, on his or her own initiative, reviews those decisions.

The second kind of review is where a person whose interests are affected by certain decisions (which are "claimant decisions") applies for internal review of the decision.

The third kind of review is where an employer applies for internal review of certain decisions that affect the employer (those decisions are "employer determination decisions" and "employer funding amount decisions"). Employer determination decisions can only be reviewed on application, and not on the Secretary's own initiative.

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Division 2—Internal review of decisions

203 Internal review—own-initiative review by Secretary

(1) The Secretary may, on his or her own initiative, review a decision of an officer under this Act if the Secretary is satisfied that there is enough reason to review the decision.

(2) However, the Secretary must not, on his or her own initiative, review a decision of an officer under section 101 to make an employer determination.

Note 1: An employer may apply for review of a decision to make an employer determination (see section 207).

Note 2: For revocation of employer determinations, see section 108.

(3) The Secretary may review a decision:
(a) whether or not any person has applied for review of the decision; and
(b) even though an application has been made to the SSAT or the AAT for review of the decision.

(4) On review of a decision, the Secretary may:
(a) affirm the decision; or
(b) vary the decision; or
(c) set the decision aside and substitute a new decision.

(5) A reference in subsection (1) to a decision of an officer under this Act includes a reference to a determination that the Secretary is taken, because of a provision of this Act, to have made.

204 Internal review—own-initiative review and tribunal review

(1) The Secretary must give the Principal Member written notice of a decision under subsection 203(4) if, when the Secretary makes the decision, an application has been made to the SSAT for review in relation to the decision that was reviewed by the Secretary.

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(2) The Secretary must give the Registrar of the AAT written notice of a decision under subsection 203(4) if, when the Secretary makes the decision, an application has been made to the AAT for review in relation to the decision that was reviewed by the Secretary.

205 Internal review—review following application

(1) If an application is made under section 206, 207 or 208 for review of a decision, the Secretary or an authorised review officer must:
  (a) review the decision; and
  (b) do one of the following:
    (i) affirm the decision;
    (ii) vary the decision;
    (iii) set the decision aside and substitute a new decision.

(2) However, an authorised review officer must not, under subsection (1), review a decision relating to the exercise of the Secretary's power under section 263 (settlement of proceedings before the AAT).

206 Internal review—application for review of claimant decision

Claimant decisions

(1) This section applies to a decision of an officer under this Act, unless the decision is:
  (a) a decision under Part 3-2 (which deals with the payment of instalments by employer); or
  (b) a decision under Part 3-5 (which deals with employer determinations); or
  (c) a decision under Part 4-2 (which deals with compliance); or
  (d) a decision under the PPL rules, if the PPL rules state that this section does not apply to the decision; or
  (e) a decision under the regulations, if the regulations state that this section does not apply to the decision.

(2) A reference in subsection (1) to a decision of an officer under this Act includes a reference to a determination that the Secretary is taken, because of a provision of this Act, to have made.

(3) A decision to which this section applies is a ***claimant decision***.

Application for review

(4) A person whose interests are affected by a claimant decision may apply to the Secretary for review of the decision, unless the decision was made personally by a PPL agency representative.

(5) An application under subsection (4) may only be made:
  (a) within 28 days after the day the decision was made; or
  (b) if the Secretary is satisfied that a longer period should apply—within the longer period.

(6) A person cannot make an application under subsection (4) in the person's capacity as an employer.

207 Internal review—application for review of employer determination decision

Scope

(1) This section applies to a decision (an ***employer determination decision***) of an officer under section 101 to make an employer determination.

(2) A reference in subsection (1) to a decision of an officer includes a reference to a determination that the Secretary is taken, because of a provision of this Act, to have made.

Application

(3) An employer may apply, in writing, to the Secretary for review of an employer determination decision that relates to the employer and a person if the employer believes that:
  (a) both:

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(i) a condition in paragraph 101(1)(b) or (c) is not satisfied in relation to the employer determination; and

(ii) the employer has not made an election under section 109 that applies to the person; or

(b) a condition in paragraph 101(1)(d) or (e) is not satisfied in relation to the employer determination.

Note 1: The conditions in paragraphs 101(1)(b) to (e) relate to the employment by an employer of someone to whom parental leave pay is payable.

Note 2: Section 109 allows an employer to elect to pay instalments to an employee, a class of employees or all employees of the employer. Subsection 101(2) deals with the application of paragraphs 101(1)(b) and (c) if the employer has made an election under section 109 that applies to the person.

(4) However, the employer cannot make an application under subsection (3) for review of an employer determination decision that was made personally by a PPL agency representative.

(5) An application under subsection (3) may only be made within the 14 day period referred to in section 103.

Note: Section 103 requires an employer for which an employer determination has been made to, within a 14 day period, either provide a notice to the Secretary accepting the determination or apply for review of the employer determination.

(6) An application under subsection (3) must:

(a) specify the condition or conditions that the employer believes are not satisfied; and

(b) if paragraph (3)(a) applies to the application—state whether the employer believes that an election under section 109 applies to the person; and

(c) be signed by a person authorised by the employer; and

(d) be accompanied by:

(i) documentary evidence supporting the application; or

(ii) if the applicant is unable to provide documentary evidence—a statutory declaration supporting the application.

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(7) The disclosure of personal information (within the meaning of the *Privacy Act 1988*) for the purposes of making an application under subsection (3) is taken to be authorised by this Act for the purposes of:

(a) the *Privacy Act 1988*; and

(b) any provision of a law of a State or a Territory that provides that personal information may be used or disclosed if the use or disclosure is authorised by law.

208 Internal review—application for review of employer funding amount decision

Scope

(1) This section applies to a decision of an officer under section 75 to pay a PPL funding amount to an employer.

(2) A reference in subsection (1) to a decision of an officer includes a reference to a determination that the Secretary is taken, because of a provision of this Act, to have made.

(3) A decision to which this section applies is an ***employer funding amount decision***.

Application

(4) An employer may apply, in writing, to the Secretary for review of an employer funding amount decision that relates to the employer if:

(a) the employer believes that the Secretary has contravened subsection 75(3) in relation to the decision; and

(b) the decision was not made personally by a PPL agency representative.

Note: Subsection 75(3) requires the Secretary to pay a PPL funding amount to an employer within a certain time.

(5) An application under subsection (4) must be signed by a person authorised by the employer.

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(6) An application under subsection (4) in relation to a PPL funding amount may only be made within 14 days after the second payroll cut-off referred to in subsection 75(3) in relation to the PPL funding amount.

209 Internal review—withdrawal of application

(1) A person or an employer who has applied to the Secretary for review of a decision may withdraw the application at any time before the review has been completed.

(2) If an application for review of a decision, other than an application under section 207 (which deals with application for review of employer determination decisions), is withdrawn, the application is taken never to have been made.

(3) An application may be withdrawn orally or in writing or in any other manner approved by the Secretary.

210 Internal review—when decision made on review comes into force

(1) A decision under subsection 203(4) or paragraph 205(1)(b) (the ***review decision***) to vary a decision or to set aside a decision and substitute a new decision comes into force on the day that would give full effect to the review decision.

(2) However, a decision comes into force immediately on the giving of the decision if it is a decision under subsection 203(4) or paragraph 205(1)(b) to:

(a) vary an employer determination decision or an employer funding amount decision; or

(b) set aside an employer determination decision or an employer funding amount decision and substitute a new decision.

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211 Internal review—notice of decision on review of claimant decision

Scope

(1) This section applies if a person (the ***decision-maker***) makes a decision under subsection 203(4) or paragraph 205(1)(b) in relation to a claimant decision.

Notice

(2) The decision-maker must give written notice of the decision to:
  (a) any natural person (other than an employer) if the decision-maker is satisfied that his or her interests are affected by the decision; and
  (b) for a decision under paragraph 205(1)(b) in response to an application—the applicant.

(3) If the decision relates to a child, the decision-maker must also give written notice of the decision to:
  (a) any natural person who has made a claim in relation to the child; and
  (b) any natural person who has notified the Secretary that he or she intends to make a claim in relation to the child, if the decision-maker is satisfied that the claim has or would have a reasonable prospect of success.

(4) A notice under subsection (2) or (3) given to a person in relation to a decision must include:
  (a) a statement to the effect that the person may, subject to this Act, apply to the SSAT for review of the decision; and
  (b) a statement to the effect that, if the person is dissatisfied with the decision of the SSAT, application may, subject to the AAT Act, be made to the AAT for review of the decision of the SSAT.

(5) Subsection (4) does not apply in relation to a decision referred to in subsection 215(2).

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Note: Subsection 215(2) excludes certain claimant decisions from SSAT review.

(6) A notice under subsection (2) or (3) given to a particular person in relation to a decision may also, if the decision-maker considers it appropriate, include a statement that does one or more of the following, in whole or in part:

(a) sets out the reasons for the decision;

(b) sets out the findings by the decision-maker on material questions of fact;

(c) refers to the evidence or other material on which those findings were based.

212 Internal review—notice of decision relating to employer

Scope

(1) This section applies if a person (the ***decision-maker***) makes a decision under subsection 203(4) or paragraph 205(1)(b) in relation to:

(a) an employer funding amount decision; or

(b) any other decision under Part 3-2 (which deals with payment of instalments by employers); or

(c) an employer determination decision; or

(d) any other decision under Part 3-5 (which deals with employer determinations); or

(e) a decision under Part 4-2 (which deals with compliance); or

(f) any other decision under this Act that directly affects the interests of an employer.

(2) To avoid doubt, paragraph (1)(f) does not apply to a decision if the only effect of the decision on the interests of an employer is that the decision could result in an employer determination for the employer being made, varied, set aside or revoked.

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Notice

(3) The decision-maker must give written notice of the decision to the employer concerned.

(4) The notice must include a statement that:
  (a) sets out the reasons for the decision; and
  (b) sets out the findings by the decision-maker on material questions of fact; and
  (c) refers to the evidence or other material on which those findings were based.

(5) A notice in relation to a decision referred to in paragraph (1)(a) or (1)(c) must include a statement to the effect that the employer may, subject to this Act, apply to the SSAT for review of the decision.

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Part 5-2—Review by the Social Security Appeals Tribunal

Division 1—Guide to this Part

213 Guide to this Part

This Part is about the review by the Social Security Appeals Tribunal (SSAT) of decisions that have been reviewed under Part 5-1, and of decisions made personally by particular PPL agency representatives (which are not subject to internal review).

Division 2 allows people whose interests are affected by claimant decisions to apply for SSAT review.

Division 3 allows employers to apply for SSAT review of employer determination decisions and employer funding amount decisions.

214 SSAT objective under this Act

(1) In carrying out its functions under this Act, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

(2) That objective must also be pursued by the Principal Member in performing or exercising his or her functions and powers under this Act.

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Division 2—Review by SSAT of claimant decisions

215 Application of this Division

(1) This Division applies to the following decisions:

(a) if a claimant decision has been affirmed under paragraph 203(4)(a) or subparagraph 205(1)(b)(i)—the claimant decision as affirmed;

(b) if a claimant decision has been varied under paragraph 203(4)(b) or subparagraph 205(1)(b)(ii)—the claimant decision as varied;

(c) if a claimant decision has been set aside under paragraph 203(4)(c) or subparagraph 205(1)(b)(iii) and substituted with a new decision—the new decision;

(d) a claimant decision made personally by a PPL agency representative.

(2) However, this Division does not apply to any of the following decisions:

(a) a decision under one of the following provisions (which deal with the making of claims, the form and manner of claims, the form and manner of notices etc.):

(i) subsection 18(4);

(ii) subparagraph 25(1)(c)(ii);

(iii) subsections 53(2), (3) and (4);

(iv) section 56;

(v) subsection 61(2);

(va) subsection 82(2A);

(vi) paragraph 109(2)(a);

(vii) subsection 110(1);

(viia) subparagraph 115BK(1)(c)(ii);

(viib) section 115DC;

(viic) section 115DF;

(viid) subsection 115DL(2);

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(viii) paragraph 120(2)(a);
(ix) subsection 125(4);
(x) paragraph 286(2)(b);
(xi) paragraph 288(2)(b);
(xii) paragraph 289(2)(b);
(xiii) subsection 289(5);

(b) a decision under subsection 69(2) (which deals with deductions relating to child support);

(c) a decision under section 117, 118 or 119 (which deal with gathering information from any person);

(d) a decision relating to the Secretary's power under section 263 to settle proceedings before the AAT;

(e) a decision under the PPL rules, if the PPL rules state that this Division does not apply to the decision;

(f) a decision under the regulations, if the regulations state that this Division does not apply to the decision.

(3) A decision to which this Division applies is an ***SSAT reviewable claimant decision***.

216 SSAT review of claimant decision—application for review

(1) A person whose interests are affected by an SSAT reviewable claimant decision may apply to the SSAT for review of the decision.

Note: See section 217 (which deals with making an application).

(2) An application under subsection (1) may only be made:

(a) within 28 days after the day the SSAT reviewable claimant decision was made; or

(b) if the SSAT is satisfied that a longer period should apply—within the longer period.

(3) A person cannot make an application under subsection (1) in the person's capacity as an employer.

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217 SSAT review of claimant decision—making of application

(1) A person may apply to the SSAT for review of an SSAT reviewable claimant decision by:
  (a) sending or delivering a written application to:
    (i) an office of the SSAT; or
    (ii) an office of the Department; or
    (iii) if the decision was made by the Chief Executive Centrelink, the Chief Executive Medicare or an APS employee in the Human Services Department—an office of the Human Services Department; or
  (b) going to an office of the SSAT and making an oral application; or
  (c) contacting an office of the SSAT by telephone and making an oral application.

(2) If a person makes an oral application in accordance with paragraph (1)(b) or (c), the person receiving the oral application must make a written record of the details of the oral application and note on the record the day on which the application is made.

(3) If a written record of an oral application is made in accordance with subsection (2), Part 5-3 has effect as if the written record were a written application.

(4) An application may include a statement of the reasons for seeking a review of the decision.

218 SSAT review of claimant decision—review following application

If a person applies to the SSAT for review of an SSAT reviewable claimant decision, the SSAT must:
  (a) affirm the decision; or
  (b) vary the decision; or
  (c) set the decision aside and:
    (i) substitute a new decision; or

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(ii) send the matter back to a PPL agency representative for reconsideration in accordance with any directions or recommendations of the SSAT.

219 SSAT review of claimant decision—powers of the SSAT

The SSAT may, for the purposes of reviewing a decision under this Division, exercise all the powers and discretions that are conferred by this Act on the Secretary.

220 SSAT review of claimant decision—when SSAT decision comes into force

A decision of the SSAT under this Division to vary a decision or to set aside a decision and substitute a new decision comes into force on the day that would give full effect to the decision of the SSAT.

221 SSAT review of claimant decision—variation of decision before review completed

(1) If an officer varies an SSAT reviewable claimant decision after an application has been made to the SSAT for review of the decision but before the determination of the review, the application for review is taken to be an application for review of the decision as varied.

(2) If an officer sets aside an SSAT reviewable claimant decision and substitutes a new decision after an application has been made to the SSAT for review of the original decision but before the determination of the review, the application for review is taken to be an application for review of the new decision.

(3) Subsection (4) applies if:
  (a) a person applies to the SSAT for review of an SSAT reviewable claimant decision; and
  (b) before determination of the review, an officer varies the decision or sets it aside and substitutes a new decision.

(4) The person may:

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(a) proceed with the application for review of the decision as varied or the new decision; or
(b) request the Principal Member to dismiss the application under section 251; or
(c) notify, under section 252, the SSAT that the application is discontinued or withdrawn.

222 SSAT review of claimant decision—parties to review

(1) The parties to a review by the SSAT under this Division are:
(a) the applicant; and
(b) the Secretary; and
(c) if the claimant decision was made by the Chief Executive Centrelink or an APS employee in the Human Services Department—the Chief Executive Centrelink; and
(d) if the claimant decision was made by the Chief Executive Medicare—the Chief Executive Medicare; and
(e) any other person who has been made a party to the review under subsection (3).

(2) If a person has applied under section 216 for review of an SSAT reviewable claimant decision, any other person whose interests (other than interests the person has in the person's capacity as an employer) are affected by the decision may apply, in writing, to the Principal Member to be made a party to the review.

(3) The Principal Member may direct that a person who has applied under subsection (2) be made a party to the review.

Principal Member may remove parties

(4) The Principal Member may direct that a party to a review no longer be a party to the review if:
(a) the party consents; or
(b) the Principal Member is satisfied that the party does not intend to participate in or proceed with the review:
(i) after having communicated with the party; or

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(ii) after having made reasonable attempts to communicate with the party and having failed to do so; or

(c) the party contravenes a direction or order of the SSAT or of the Principal Member given in relation to the review; or

(d) the party fails to attend the hearing.

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Division 3—Review by SSAT of employer decisions

223 Application of this Division

(1) This Division applies to the following decisions:

(a) if an employer determination decision or an employer funding amount decision has been affirmed under Part 5-1—the decision as affirmed;

(b) if an employer determination decision or an employer funding amount decision has been varied under Part 5-1—the decision as varied;

(c) if an employer determination decision or an employer funding amount decision has been set aside and substituted with a new decision under Part 5-1—the new decision;

(d) an employer determination decision or an employer funding amount decision made personally by a PPL agency representative.

Note: Part 5-1 deals with internal review.

(2) A decision to which this Division applies is an ***SSAT reviewable employer decision***.

224 SSAT review of employer decision—application for review

(1) An employer may apply to the SSAT for review of an SSAT reviewable employer decision that relates to the employer and a person if the decision is an employer determination decision and the employer believes that:

(a) both:

(i) a condition in paragraph 101(1)(b) or (c) is not satisfied in relation to the employer determination; and

(ii) the employer has not made an election under section 109 that applies to the person; or

(b) a condition in paragraph 101(1)(d) or (e) is not satisfied in relation to the employer determination.

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Note 1: See section 225 (which deals with making an application).

Note 2: The conditions in paragraphs 101(1)(b) to (e) relate to the employment by an employer of someone to whom parental leave pay is payable.

Note 3: Section 109 allows an employer to elect to pay instalments to an employee, a class of employees or all employees of the employer. Subsection 101(2) deals with the application of paragraphs 101(1)(b) and (c) if the employer has made an election under section 109 that applies to the person.

(2) An employer may apply to the SSAT for review of an SSAT reviewable employer decision that relates to the employer if the decision is an employer funding amount decision.

Note: See section 225 (which deals with making an application).

(3) An application under subsection (1) or (2) may only be made within 14 days after the day on which the SSAT reviewable employer decision was made.

225 SSAT review of employer decision—making of application

(1) An employer may apply to the SSAT for review of an SSAT reviewable employer decision by sending or delivering a written application to an office of the SSAT.

(2) The application must:
  (a) be in the form approved by the Principal Member; and
  (b) if the application is for review of an employer determination decision:
    (i) specify the condition or conditions that the employer believes are not satisfied; and
    (ii) if paragraph 224(1)(a) applies to the application—state whether the employer believes that an election under section 109 applies to the person; and
  (c) be accompanied by a statutory declaration verifying the application; and
  (d) be accompanied by any other documents required or allowed by the form.

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(3) An application may include a statement of the reasons for seeking a review of the decision.

226 SSAT review of employer decision—review following application

If an employer applies to the SSAT for review of an SSAT reviewable employer decision, the SSAT must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set the decision aside and:

(i) substitute a new decision; or

(ii) send the matter back to a PPL agency representative for reconsideration in accordance with any directions or recommendations of the SSAT.

227 SSAT review of employer decision—powers of the SSAT

The SSAT may, for the purposes of reviewing a decision under this Division, exercise all the powers and discretions that are conferred by this Act on the Secretary.

228 SSAT review of employer decision—when SSAT decision comes into force

A decision of the SSAT under this Division comes into force immediately on the giving of the decision.

229 SSAT review of employer decision—variation of decision before review completed

(1) If an officer varies an SSAT reviewable employer decision after an application has been made to the SSAT for review of the decision but before determination of the review, the application for review is taken to be an application for review of the decision as varied.

(2) If an officer sets aside an SSAT reviewable employer decision and substitutes a new decision after an application has been made to the

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SSAT for review of the original decision but before the determination of the review, the application for review is taken to be an application for review of the new decision.

(3) Subsection (4) applies if:
  (a) an employer applies to the SSAT for review of an SSAT reviewable employer decision; and
  (b) before determination of the review, an officer varies the decision or sets it aside and substitutes a new decision.

(4) The employer may:
  (a) proceed with the application for review of the decision as varied or the new decision; or
  (b) request the Principal Member to dismiss the application under section 251; or
  (c) notify, under section 252, the SSAT that the application is discontinued or withdrawn.

230 SSAT review of employer decision—parties to review

The parties to a review by the SSAT under this Division are:
  (a) the employer; and
  (b) the Secretary; and
  (c) if the relevant decision was made by the Chief Executive Centrelink or an APS employee in the Human Services Department—the Chief Executive Centrelink; and
  (d) if the relevant decision was made by the Chief Executive Medicare—the Chief Executive Medicare.

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Part 5-3—Procedures for review by the Social Security Appeals Tribunal

Division 1—Guide to this Part

231 Guide to this Part

This Part is about the procedures to be followed when the Social Security Appeals Tribunal (SSAT) is reviewing a decision.

Division 2 requires the Secretary and the Principal Member to prepare for the review, arrange for a hearing and notify parties and potential parties.

Division 3 sets out how people other than PPL agency representatives may make submissions to the SSAT.

Division 4 sets out how PPL agency representatives may make submissions to the SSAT.

Division 5 contains other evidentiary provisions, including the Principal Member's power to obtain information.

Division 6 provides for directions hearings to be held. A directions hearing may result in the SSAT not needing to conduct the review.

Division 7 provides for the hearing of the review.

Division 8 deals with miscellaneous procedural matters.

Division 9 requires the SSAT to give notice of its decision on review.

Division 10 allows obvious errors in decisions and statements of reasons to be corrected.

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Division 11 allows a party to an SSAT review of an employer decision to appeal to the Federal Court, on a question of law, in the same way that a party to an AAT review may do so. It also allows the SSAT to refer questions of law to the Federal Court.

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Division 2—Preliminary procedures

232 Procedure on receipt of application for review by SSAT

(1) If an application for review by the SSAT of a decision is sent or delivered to an office of the Department or of the Human Services Department, the Secretary must send the application to the Principal Member as soon as practicable and, in any case, not later than 7 days after the application is received at the office.

(2) If:

(a) an application for review of a decision is sent or delivered to an office of the SSAT; or

(b) the Secretary sends an application for review of a decision to the Principal Member in accordance with subsection (1);

the Principal Member must give the applicant and the Secretary written notice that the application has been received.

(3) Within 28 days after receiving notice of the making of an application from the Principal Member, the Secretary must send to the Principal Member:

(a) a statement about the decision under review that:

(i) sets out the findings of fact made by the person who made the decision; and

(ii) refers to the evidence on which those findings were based; and

(iii) gives the reasons for the decision; and

(b) the original or a copy of every document or part of a document that:

(i) is in the possession, or under the control, of the Secretary; and

(ii) relates to the applicant; and

(iii) is relevant to the review of the decision.

(4) If the Principal Member asks the Secretary to send the statement and documents referred to in subsection (3) by a day earlier than

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the day fixed by that subsection, the Secretary must take all reasonable steps to comply with the Principal Member's request.

(5) If:

(a) after the end of the period referred to in subsection (3) but before the determination of the review, the Secretary obtains possession of a document; and

(b) the Secretary considers that the document or a part of the document is relevant to the review; and

(c) a copy of the document or the part of the document has not been sent to the Principal Member in accordance with subsection (3);

the Secretary must send a copy of the document or the part of the document to an office of the SSAT as soon as practicable after obtaining possession of the document.

(6) If the Secretary must provide the Principal Member with a document under this section, the Secretary must provide the Principal Member with:

(a) if the Principal Member requests the Secretary to provide a specified number of copies of the document—that number of copies of the document; or

(b) otherwise—2 copies of the document.

233 Parties to be given statements about the decision under review

(1) Within 28 days after receiving the notice under subsection 232(2), the Secretary must give each party to the review a copy of the statement and documents referred to in subsection 232(3).

(2) As soon as practicable after the Secretary sends a document to an office of the SSAT under subsection 232(5), the Secretary must give each party to the review a copy of the document.

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234 Arrangements for hearing of application

(1) If an application is made to the SSAT for review of a decision, the Principal Member must fix a day, time and place for the hearing of the application.

(2) The Principal Member must give the applicant and any other parties to the review written notice of the day, time and place fixed for the hearing of the application.

(3) The notice under subsection (2) must be given a reasonable time before the day fixed for the hearing.

235 Notice of application to person affected by SSAT reviewable claimant decision

(1) If:

(a) an application has been made to the SSAT for review of an SSAT reviewable claimant decision; and

(b) the Principal Member is satisfied that the interests of a person (other than interests the person has in the person's capacity as an employer) who is not a party to the review are affected by the decision;

the Principal Member must take all reasonable steps to give the person written notice that an application has been made to the SSAT for review of the decision.

(2) The notice:

(a) must be in writing; and

(b) must include notice of the person's right under section 222 to apply to the Principal Member to be added as a party to the review; and

(c) may be given at any time before the determination of the review.

(3) The Principal Member must give each party to the review a copy of the notice.

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Division 3—Submissions from parties other than PPL agency representatives

236 Division does not apply in relation to PPL agency representatives

This Division does not apply in relation to a party to a review of a decision who is a PPL agency representative.

237 Submissions to SSAT

(1) A party to a review of a decision may make oral or written submissions to the SSAT, or both oral and written submissions.

Note 1: The Principal Member may direct that a hearing be conducted without oral submissions (see section 238).

Note 2: Also, a hearing may proceed without oral submissions from a party in the circumstances set out in section 239.

(2) The party may, with the permission of the Principal Member, have another person make submissions to the SSAT on the party's behalf.

(2A) In deciding whether to grant permission under subsection (2), the Principal Member must have regard to the wishes of the parties and the need to protect their privacy.

(3) The Principal Member may determine that submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment.

(4) Without limiting subsection (3), the Principal Member may make a determination under subsection (3) in relation to an application if

(a) the application is urgent; or

(b) the party lives in a remote area and unreasonable expense would be incurred if the party or the party's representative had to travel to the place at which the hearing is to be held; or

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(c) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing; or

(d) the party is unable to attend the hearing because of illness or infirmity.

(5) If the party is not proficient in English, the Principal Member may give directions in relation to the use of an interpreter in relation to the hearing of the review.

238 SSAT hearings on written submissions only

(1) The Principal Member may direct that a hearing be conducted without oral submissions from the parties if:

(a) the Principal Member considers that the review could be determined fairly on the basis of written submissions by all the parties to the review; and

(b) all parties to the review consent to the hearing being conducted without oral submissions.

(2) If the Principal Member gives a direction under subsection (1), the Principal Member must give each of the parties to the review written notice:

(a) informing the party of the direction; and

(b) inviting the party to submit written submissions; and

(c) specifying the address to which the written submissions are to be delivered; and

(d) specifying the time within which the written submissions are to be delivered.

(3) The time specified under paragraph (2)(d) must be such as to allow a reasonable period for the parties to make written submissions.

(4) Despite subsection (1), the SSAT, as constituted for the hearing, may, if it considers necessary after taking into account the written submissions made by the parties, make an order permitting the parties to make oral submissions to the SSAT at the hearing of the application for review.

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239 SSAT hearings without oral submissions by party

(1) If a party to a review of a decision has informed the Principal Member that the party does not intend to make oral submissions to the SSAT, the SSAT may proceed to hear the application for review without oral submissions from the party.

(2) If:

(a) the Principal Member has determined that oral submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment; and

(b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party's representative (as the case may be) after taking all reasonable steps to do so;

the Principal Member may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative (as the case may be).

(3) If:

(a) the Principal Member has not determined that oral submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment; and

(b) the party or the party's representative (as the case may be) does not attend the hearing at the time fixed for the hearing;

the Principal Member may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative (as the case may be).

(4) If the Principal Member gives an authorisation under subsection (2) or (3), the SSAT may proceed to hear the application in accordance with the authorisation.

(5) The Principal Member may revoke an authorisation under subsection (2) or (3).

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Division 4—Submissions from PPL agency representatives

240 Submissions from PPL agency representatives

(1) A PPL agency representative who is a party to a review of a decision may make written submissions to the SSAT.

PPL agency representative may request permission to make oral submissions etc.

(2) The PPL agency representative may, by writing, request the Principal Member for permission to make:

(a) oral submissions to the SSAT; or

(b) both oral and written submissions to the SSAT.

The request must explain how such submissions would assist the SSAT.

(3) The Principal Member may, by writing, grant the request if, in the opinion of the Principal Member, such submissions would assist the SSAT.

SSAT may order PPL agency representative to make oral submissions etc.

(4) The Principal Member may order the PPL agency representative to make:

(a) oral submissions to the SSAT; or

(aa) written submissions to the SSAT; or

(b) both oral and written submissions to the SSAT;

if, in the opinion of the Principal Member, such submissions would assist the SSAT.

Oral submissions by telephone etc.

(5) For the purposes of subsections (3) and (4), the Principal Member may determine that oral submissions to the SSAT by the PPL

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agency representative are to be made by telephone or by means of other electronic communications equipment.

(6) Subsection (5) does not limit subsection (3) or (4).

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Division 5—Other evidence provisions

241 Evidence on oath or affirmation

The SSAT may take evidence on oath or affirmation for the purposes of a review of a decision.

242 Provision of further information by Secretary

(1) The Principal Member may ask the Secretary to provide the SSAT with information or a document the Secretary has and that is relevant to the review of a decision.

(2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, not later than 14 days after the request is made.

243 Exercise by Secretary of information-gathering powers

(1) The Principal Member may ask the Secretary to exercise the Secretary's powers under section 117 (which deals with the Secretary's general power to obtain information) if the Principal Member is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of a decision.

(2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, within 7 days after the request is made.

244 Power to obtain information

(1) If the Principal Member reasonably believes that it is necessary for the purposes of a review, he or she may, by written notice, direct a person:

(a) to give to the SSAT, within the period and in the manner specified in the notice, information that is relevant to the review; or

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(b) to produce to the SSAT, within the period and in the manner specified in the notice, documents that are relevant to the review; or

(c) to attend a hearing and answer questions:

(i) at a reasonable time specified in the notice; and

(ii) at a reasonable place specified in the notice.

(2) The period specified in a notice given under paragraph (1)(a) or (b) must be at least 14 days after the notice is given.

Offence

(3) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct contravenes a direction under subsection (1).

Penalty: Imprisonment for 6 months.

Notice to set out the effect of offence provisions

(4) A notice under subsection (1) must set out the effect of the following provisions:

(a) subsection (3);

(b) section 137.1 of the *Criminal Code* (about giving false or misleading information);

(c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

Payment of expenses

(5) If a person is required under this section to attend a hearing, the SSAT must determine that the Commonwealth must pay the reasonable costs that are:

(a) incurred by the person for travel and accommodation in relation to the hearing; and

(b) specified in the determination.

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(6) If the SSAT makes a determination under subsection (5), the costs to which the determination relates are payable by the Commonwealth.

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Division 6—Directions hearings

245 Directions hearings

(1) Before the hearing of a review commences, the Principal Member may convene one or more directions hearings with the parties to the review if he or she considers that it would assist in the conduct and consideration of the review to do so.

(2) At a directions hearing, the Principal Member may:
  (a) fix a day or days for the hearing; and
  (b) give directions about the time within which submissions are to be made to the SSAT; and
  (c) give directions about the time within which evidence is to be brought before the SSAT; and
  (d) give directions about what information is to be given to the SSAT.

246 Powers of SSAT if parties reach agreement

(1) If:
  (a) at a directions hearing under section 245 with the parties to a review, the parties agree to the terms of a decision of the SSAT:
    (i) in the review; or
    (ii) in relation to a part of the review, or a matter arising out of the review;
  that would be acceptable to the parties; and
  (b) before the hearing of the review commences, the terms of the agreement are:
    (i) put in writing; and
    (ii) signed by or on behalf of the parties; and
    (iii) lodged with the SSAT; and

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(c) before the hearing of the review commences, the SSAT is satisfied that a decision in those terms, or consistent with those terms, would be within the powers of the SSAT;

the SSAT may act in accordance with whichever of subsection (2) or (3) is relevant.

(2) If the agreement reached is an agreement as to the terms of a decision of the SSAT in the review, the SSAT may make a decision in accordance with those terms without holding a hearing of the review.

(3) If the agreement relates to a part of the review, or a matter arising out of the review, the SSAT may in its decision in the review give effect to the terms of the agreement without dealing at the hearing of the review with the part or matter to which the agreement relates.

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Division 7—The hearing

247 Hearing procedure

(1) The SSAT, in reviewing a decision:
  (a) is not bound by legal technicalities, legal forms or rules of evidence; and
  (b) must act as speedily as a proper consideration of the review allows.

(2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.

248 Hearing in private

(1) The hearing of a review must be in private.

(2) The Principal Member may give directions, in writing or otherwise, as to the persons who may be present at any hearing of a review.

(3) In giving directions under subsection (2), the Principal Member must take into account the wishes of the parties and the need to protect their privacy.

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Division 8—Other procedural matters

250 Adjournment of SSAT hearings

(1) The SSAT may adjourn the hearing of a review of a decision from time to time.

(2) Without limiting subsection (1), the SSAT may refuse to adjourn the hearing of a review if the hearing has already been adjourned on 2 or more occasions.

251 Dismissal of application for review by SSAT

(1) The Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision if:

(a) the decision is not reviewable under Part 5-2; or

(b) the application is frivolous or vexatious; or

(c) all of the parties consent; or

(d) the applicant has been removed from the review under subsection 222(4) and all of the remaining parties consent to the dismissal; or

(e) the Principal Member is satisfied:

(i) after having communicated with each party; or

(ii) after having made reasonable attempts to communicate with each party and having failed to do so;

or a combination of both, that none of the parties intend to proceed with the application; or

(f) all of the parties fail to attend the hearing; or

(g) all of the parties have been removed from the review under subsection 222(4).

(2) The Principal Member may dismiss an application under paragraph (1)(b) only if:

(a) one of the following applies:

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(i) the Principal Member has received and considered submissions from the applicant for review;

(ii) the Principal Member has otherwise communicated with the applicant in relation to the grounds of the application;

(iii) the Principal Member has made reasonable attempts to communicate with the applicant in relation to the grounds of the application and has failed to do so; and

(b) all of the parties (other than the applicant) consent to the dismissal.

(3) If the Principal Member dismisses an application under subsection (1) (other than under paragraph (1)(b) or (g)), a party to the review may:

(a) within 28 days after receiving notification that the application has been dismissed; or

(b) within such longer period as the Principal Member, in special circumstances, allows;

request that the Principal Member reinstate the application.

(4) If the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.

(5) If it appears to the Principal Member that an application has been dismissed under subsection (1) in error, he or she may, on the request of a party to the review or on his or her own initiative, reinstate the application and give such directions as he or she considers appropriate in the circumstances.

(6) This section does not apply in relation to a party if the party is the Secretary, the Chief Executive Centrelink or the Chief Executive Medicare.

252 Dismissal of application for review on request of party

(1) An applicant for review may notify the SSAT at any time that the application for review is discontinued or withdrawn.

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(2) If the applicant orally notifies the SSAT, the person who receives the notification must make a written record of the day on which the notification was given.

(3) If notification is given under subsection (1), the Principal Member is taken to have dismissed the application.

(4) If the Principal Member dismisses an application under subsection (3), a party to the review may:

(a) within 28 days after receiving notification that the application has been dismissed; or

(b) within such longer period as the Principal Member, in special circumstances, allows;

request that the Principal Member reinstate the application.

(5) If the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.

(6) This section does not apply in relation to a party if the party is the Secretary, the Chief Executive Centrelink or the Chief Executive Medicare.

253 Presiding member at SSAT hearing

If the SSAT is constituted by 2 or more members for the purposes of the review of a decision, the Principal Member must designate one of those members as the member who must preside at the hearing of the review.

254 Decision of questions before SSAT

(1) This section applies if the SSAT is constituted by 2 or more members for the purposes of the review of a decision.

(2) A question arising before the SSAT on a review must be decided according to the opinion of a majority of the members constituting the SSAT for the purposes of the review.

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(3) However, if, on a question arising on a review, the opinions of the members of the SSAT are equally divided, the question must be decided according to the opinion of the member presiding.

255 Directions as to procedure for hearings

Directions by Principal Member

(1) The Principal Member:
  (a) may give general directions as to the procedure to be followed in relation to the review of decisions under this Act; and
  (b) may give directions as to the procedure to be followed in relation to a particular review.

Note: Directions may be given to the SSAT or to parties to reviews.

(2) A direction under subsection (1) must not be inconsistent with any provision of this Act.

(3) A direction under paragraph (1)(b) may be given before or after the hearing of the particular review has commenced.

Directions by presiding member

(4) The presiding member of the SSAT as constituted for the purposes of a particular review may give directions as to the procedure to be followed in relation to the review.

(5) A direction under subsection (4) must not be inconsistent with:
  (a) any provision of this Act; or
  (b) a direction under subsection (1) of this section.

(6) A direction under subsection (4) may be given before or after the hearing of the particular review has commenced.

Legislative instrument status of directions

(8) A general direction made under paragraph (1)(a) is a legislative instrument.

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(9) A direction made under paragraph (1)(b) or subsection (4) is not a legislative instrument.

256 Costs of review

General rule

(1) A party to a review must bear any expenses incurred by the party in relation to the review.

When the Commonwealth must pay

(2) The SSAT may determine that the Commonwealth must pay the reasonable costs that are:
  (a) incurred by a party for travel and accommodation in relation to the review; and
  (b) specified in the determination.

(3) If the SSAT arranges for the provision of a medical service in relation to a party to a review, the SSAT may determine that the Commonwealth must pay the costs of the provision of the service.

(4) If the SSAT makes a determination under subsection (2) or (3), the costs to which the determination relates are payable by the Commonwealth.

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Division 9—Notice of decisions

257 Procedure following SSAT decision

SSAT affirms decision

(1) If the SSAT makes a decision on a review to affirm an SSAT reviewable claimant decision or an SSAT reviewable employer decision, the SSAT must:

(a) prepare a written statement (the ***initial statement***) that sets out the decision of the SSAT on the review; and

(b) give each party to the review a copy of the initial statement within 14 days after making the decision; and

(c) within 14 days after making the decision, either:

(i) give reasons for the decision orally to each party to the review and explain that the party may make a written request for a statement referred to in subparagraph (ii) within 14 days after the copy of the initial statement is given to the party; or

(ii) give each party to the review a written statement (whether or not as part of the initial statement) that sets out the reasons for the decision, sets out the findings on any material questions of fact and refers to evidence or other material on which the findings of fact are based; and

(d) return to the Secretary any document that the Secretary has provided to the SSAT in relation to the review; and

(e) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact are based.

(2) If the SSAT does not give a written statement to a party under subparagraph (1)(c)(ii), the party may, within 14 days after the copy of the initial statement is given to the party, make a written request of the SSAT for such a statement.

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(3) A PPL agency representative may also make a written request of the SSAT for a written statement referred to in subparagraph (1)(c)(ii) if:
  (a) the SSAT has not given such a statement to the PPL agency representative; and
  (b) a person applies to the AAT under section 261 for review of the decision of the SSAT on the review referred to in subsection (1).

(4) The SSAT must comply with a request under subsection (2) or (3) within 14 days after the day on which it receives the request.

SSAT varies decision or sets decision aside

(5) If the SSAT makes a decision on a review to vary or set aside an SSAT reviewable claimant decision or an SSAT reviewable employer decision, the SSAT must:
  (a) prepare a written statement that:
    (i) sets out the decision of the SSAT on the review; and
    (ii) sets out the reasons for the decision; and
    (iii) sets out the findings on any material questions of fact; and
    (iv) refers to evidence or other material on which the findings of fact are based; and
  (b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the making of the decision in relation to the review; and
  (c) return to the Secretary any document that the Secretary has provided to the SSAT in relation to the review; and
  (d) give the Secretary a copy of any document that contains evidence or material on which the findings of fact are based.

Notice of further review right

(6) When the SSAT determines a review in relation to an SSAT reviewable claimant decision, the Principal Member must give each party to the review (other than a PPL agency representative) a

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written notice that includes a statement to the effect that, if the party is dissatisfied with the decision of the SSAT, application may, subject to the AAT Act, be made to the AAT for review of the decision.

(7) A failure to comply with subsection (6) in relation to a decision of the SSAT does not affect the validity of the decision.

257A Notice to persons removed as parties

If SSAT affirms decision

(1) If subsection 257(1) applies in relation to a review, the SSAT must, in relation to any person who was removed as a party to the review under subsection 222(4):

(a) give the person a copy of the initial statement referred to in paragraph 257(1)(a), within 14 days after making the decision; and

(b) if a written statement referred to in subparagraph 257(1)(c)(ii) was not part of the initial statement—do at least one of the following:

(i) give reasons for the decision orally to the person, within 14 days after making the decision;

(ii) give the person a copy of any written statement referred to in subparagraph 257(1)(c)(ii), at the same time as giving it to the parties to the review.

If SSAT varies or sets aside decision

(2) If subsection 257(5) applies in relation to a review, the SSAT must give any person who was removed as a party to the review under subsection 222(4) a copy of the statement referred to in paragraph 257(5)(a), within 14 days after making the decision.

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Division 10—Correction of errors in decisions or statements of reasons

258 Correction of errors in decisions or statements of reasons

Correction of errors

(1) If:
  (a) the SSAT makes a decision on a review; and
  (b) the presiding member of the SSAT as constituted for the purposes of the review, or the Principal Member, is satisfied that there is an obvious error in:
    (i) the text of the decision; or
    (ii) a written statement of reasons for the decision;

the presiding member or the Principal Member may alter the text of the decision or statement.

(2) If the text of a decision or statement is altered under subsection (1), the altered text is taken to be the decision of the SSAT or the statement of reasons for the decision (as the case may be).

Examples of obvious errors

(3) Examples of obvious errors in the text of a decision or statement of reasons are:
  (a) an obvious clerical or typographical error in the text of the decision or statement; and
  (b) an inconsistency between the decision and the statement.

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Division 11—Appeals and references of questions of law from the SSAT to the Federal Court

259 Appeals and references of questions of law in relation to SSAT review of employer decisions

Scope

(1) This section applies to proceedings before the SSAT for review of an SSAT reviewable employer decision (***SSAT employer proceedings***).

Object

(2) The object of this section is to allow SSAT employer proceedings to be subject to judicial review as if they were proceedings before the AAT.

(3) In order to achieve this object, this section is intended to allow:
  (a) a party to SSAT employer proceedings to appeal to the Federal Court, on a question of law, from any decision of the SSAT in those proceedings; and
  (b) a question of law arising in SSAT employer proceedings to be referred to the Federal Court for decision.

Modification of AAT Act

(4) Without limiting subsection (3), Part IVA of the AAT Act applies in relation to SSAT employer proceedings as if:
  (a) references to the Tribunal in that Part were references to the SSAT; and
  (b) paragraph 44(2A)(a) of the AAT Act allowed an appeal to be instituted within the time prescribed by rules of court made under the *Federal Court of Australia Act 1976*, or such further time as is allowed under those rules; and

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(c) the reference to section 43AA of the AAT Act in paragraph 44(2B)(b) of that Act were a reference to section 258 of this Act (which allows correction of errors in decisions or statements of reasons); and

(d) the reference to the President in paragraph 45(1)(a) of the AAT Act were a reference to the Principal Member; and

(e) any other necessary changes were made.

Note 1: Paragraph 44(2A)(a) of the AAT Act sets a time limit within which an appeal must be instituted, unless the Federal Court allows further time to appeal.

Note 2: Paragraph 44(2B)(b) of the AAT Act provides that the Federal Court may allow further time to appeal if the text of a decision or a statement of reasons for a decision has been altered under section 43AA of the AAT Act (which allows errors to be corrected).

Note 3: Paragraph 45(1)(a) of the AAT Act requires the President of the AAT to concur before the AAT can refer a question of law arising in proceedings before the AAT to the Federal Court.

(5) However, the following provisions of Part IVA of the AAT Act do not apply in relation to SSAT employer proceedings:

(a) subsection 44(2) (which allows certain appeals about standing before the AAT to be made);

(b) paragraphs 44(3)(b) and (c) (which require appeals to be heard by the Full Court of the Federal Court in some circumstances);

(c) subsection 44AA(2) (which prevents appeals being transferred to the Federal Circuit Court in some circumstances).

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Part 5-4—Review of claimant decisions by the Administrative Appeals Tribunal

Division 1—Guide to this Part

260 Guide to this Part

This Part is about how the Secretary or people whose interests are affected by a decision of the Social Security Appeals Tribunal (SSAT) may apply to the Administrative Appeals Tribunal (AAT) for review of the SSAT's decision. Employers may not seek AAT review of SSAT decisions.

Division 2 allows an application to be made for AAT review of a decision. It also sets out what happens if the SSAT's decision is varied after an application is made to the AAT, and allows the Secretary to settle proceedings relating to the recovery of a debt.

Division 3 modifies the AAT Act for the purposes of reviews of decisions made under this Act.

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Division 2—Right to review by AAT

261 Review of decisions by AAT

(1) The Secretary or a person whose interests are affected by a decision of the SSAT to affirm, vary or set aside an SSAT reviewable claimant decision may apply to the AAT for review of the decision of the SSAT.

(2) For the purposes of subsection (1), the decision of the SSAT is taken to be:

(a) where the SSAT affirms an SSAT reviewable claimant decision—that decision as affirmed; and

(b) where the SSAT varies an SSAT reviewable claimant decision—that decision as varied; and

(c) where the SSAT sets aside an SSAT reviewable claimant decision and substitutes a new decision—the new decision; and

(d) where the SSAT sets aside an SSAT reviewable claimant decision and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT—the directions or recommendations of the SSAT.

(3) A person cannot make an application under subsection (1) in the person's capacity as an employer.

(4) Subsection (1) has effect subject to section 29 of the AAT Act.

262 Variation of decision under section 261 before AAT review completed

(1) If an officer varies a decision after an application has been made under section 261 to the AAT for review of that decision but before the determination of the application, the application must be treated as if:

(a) the decision as varied had been affirmed by the SSAT; and

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(b) the application were an application for review of the decision as varied.

(2) If an officer sets a decision aside and substitutes a new decision after an application has been made under section 261 to the AAT for review of the original decision but before the determination of the application, the application must be treated as if:

(a) the SSAT had set aside the original decision and substituted the new decision; and

(b) the application were an application for review of the new decision.

(3) If:

(a) a person applies to the AAT for review of a decision under section 261; and

(b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;

the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

263 Settlement of proceedings before the AAT

(1) The Secretary may agree with other parties to proceedings before the AAT that relate to the recovery of a debt that the proceedings be settled. The agreement must be in writing.

(2) If proceedings are settled and the Secretary gives the AAT a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

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Division 3—Modification of AAT Act in relation to section 261 review applications

264 Notice of application for review

The AAT Act applies to an application under section 261 for review of a decision as if the reference in subsection 29(11) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the party who made the application under section 261).

265 Parties to a review by the AAT

The AAT Act applies to an application under section 261 for review as if the reference in paragraph 30(1)(b) of the AAT Act to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

266 Lodgment of documents with the AAT

(1) The AAT Act applies to an application under section 261 for review as if references in section 37 of the AAT Act to the person who made the decision the subject of the application were references to the following person (the ***deemed decision-maker***):

(a) if the decision that was reviewed by the SSAT was made by the Chief Executive Centrelink or an APS employee in the Human Services Department—the Chief Executive Centrelink;

(b) if the decision that was reviewed by the SSAT was made by the Chief Executive Medicare—the Chief Executive Medicare;

(c) otherwise—the Secretary.

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(2) If a person applies to the AAT under section 261 for review of a decision, the deemed decision-maker is taken to have complied with his or her obligations under paragraph 37(1)(a) of the AAT Act in relation to the decision if he or she gives the AAT the required number of copies of:

(a) if the decision was affirmed by the SSAT—a statement referred to in subparagraph 257(1)(c)(ii); or

(b) otherwise—the statement prepared by the SSAT under paragraph 257(5)(a).

(3) Subsection (2) does not limit the powers of the AAT under section 38 of the AAT Act.

267 Power of AAT to obtain additional information

The AAT Act applies to an application under section 261 for review as if references in section 38 of the AAT Act to the person who lodges a statement referred to in paragraph 37(1)(a) of that Act with the AAT were references to the Principal Member.

268 Operation and implementation of the decision under review

(1) The AAT Act applies to an application under section 261 for review of a decision as if references in subsection 41(4) of the AAT Act to the person who made the decision were references to each party to the review by the SSAT.

(2) The AAT Act applies to an application under section 261 for review of a decision as if references in section 41 of the AAT Act to the decision to which the relevant proceedings relate were references to:

(a) if the SSAT affirmed the original decision—the original decision; or

(b) if the SSAT varied the original decision:

(i) the original decision as varied by the SSAT; and

(ii) the original decision; or

(c) if the SSAT set aside the original decision and substituted a new decision:

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(i) the new decision; and

(ii) the original decision; or

(d) if the SSAT set aside the original decision and sent the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT:

(i) any decision made because of that reconsideration; and

(ii) the original decision.

(3) For the purposes of subsection (2), the original decision is the decision that was reviewed by the SSAT.

269 Failure of party to appear

The AAT Act applies to the review of a decision on an application under section 261 as if the reference in subsection 42A(2) of the AAT Act to the person who made the decision were a reference to the Secretary.

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Part 5-5—Other matters relating to review

Division 1—Guide to this Part

270 Guide to this Part

This Part contains miscellaneous provisions relating to reviews.

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Division 2—Other matters relating to review

271 Authorised review officers

The Secretary may, in writing, authorise an officer to be an authorised review officer for the purposes of this Act.

272 Review body may determine events to have happened, or not to have happened

(1) This section applies if the Secretary, the SSAT or the AAT (the ***review body***) is reviewing a decision under this Chapter.

(2) If the review body is satisfied that an event did not happen that would have happened if the decision had not been made, the review body may, if satisfied that it is reasonable to do so, determine that this Act is to apply as if the event had happened.

(3) If the review body is satisfied that an event happened that would not have happened if the decision had not been made, the review body may, if satisfied that it is reasonable to do so, determine that this Act is to apply as if the event had not happened.

273 Certain income test determinations not to be changed on review

(1) This section applies to a review being done for the purposes of this Chapter by an officer, the SSAT or the AAT (the ***review body***) if:

(a) the review involves (wholly or partly) a review of a decision (the ***decision being reviewed***) that:

(i) a person is or is not eligible for parental leave pay or dad and partner pay; or

(ii) parental leave pay, or dad and partner pay, is or is not payable to a person; and

(b) the review has involved (wholly or partly) the consideration of a determination (the ***income determination***) that the person satisfies the income test; and

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(c) the income determination was taken into account in the making of a decision that parental leave pay or dad and partner pay is payable to the person; and

(d) the person did not knowingly make a false or misleading representation or provide false or misleading information or documents to the Secretary, the SSAT or the AAT in relation to the income determination.

Note: For the income test, see section 37.

(2) Despite any provision of this Chapter or of the AAT Act, the review body must not vary the decision being reviewed, or set aside the decision being reviewed and substitute a new decision, in a way that has the effect of:

(a) varying the income determination so that the person is taken not to have satisfied the income test; or

(b) substituting a new determination that the person did not satisfy the income test.

273A Orders restricting disclosure of information

(1) The Principal Member may make an order directing a person:

(a) not to disclose information specified in the order; or

(b) not to disclose information specified in the order except in the circumstances, or for the purposes, specified in the order; or

(c) not to disclose information specified in the order, except to a specified person or class of persons.

(2) An order may only specify information that has been disclosed to the person for purposes relating to a review under this Part.

(3) A person commits an offence if:

(a) the Principal Member makes an order under subsection (1) in relation to the person; and

(b) the person contravenes the order.

Penalty: Imprisonment for 2 years.

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(4) An order made under subsection (1) in relation to a person does not apply to information which the person knew before the disclosure referred to in subsection (2) was made.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

273B Varying an order to permit certain disclosures

(1) A person in relation to whom an order has been made under subsection 273A(1) may request the Principal Member to vary the order to allow the person to disclose particular information specified in the order:

(a) in particular circumstances or for particular purposes; or

(b) to a particular person or class of persons.

(2) The Principal Member may vary the order in accordance with the request.

(3) This section does not limit the Principal Member's power to vary or revoke an order.

Note: For variation and revocation apart from under this section, see subsection 33(3) of the *Acts Interpretation Act 1901*.

273C Orders restricting secondary disclosures of information

(1) If an order (the ***primary order***) under subsection 273A(1) directs a person not to disclose information specified in the order, except to any of the following (an ***authorised recipient***):

(a) a specified person;

(b) a member of a specified class of persons;

the Principal Member may make another order, directing an authorised recipient not to disclose the information specified in the primary order.

(2) A person commits an offence if:

(a) the Principal Member makes an order under subsection (1) in relation to the person; and

(b) the person contravenes the order.

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Penalty: Imprisonment for 2 years.

(3) An order made under subsection (1) in relation to a person does not apply to information which the person knew before the disclosure of the information in accordance with the primary order was made.

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

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Chapter 6—Miscellaneous

Part 6-1—How this Act applies in particular circumstances

Division 1—Guide to this Part

274 Guide to this Part

This Part has rules that modify this Act so that it applies correctly in 3 limited kinds of cases—adoption, claims made in exceptional circumstances etc. and Commonwealth employment.

Division 2 modifies this Act so that it applies correctly for adopted children aged under 16. For example, where a provision of this Act refers to the day a child was born, Division 2 modifies that provision so that, when applying that provision to the adopted child, the provision has the effect of referring to the day the adopted child becomes entrusted to care (instead of the day the adopted child was born).

Division 3 modifies this Act so that it applies correctly for claims that are made in exceptional circumstances and other special cases. For example, where a provision of this Act refers to the day a child was born, Division 3 modifies that provision so that, when applying that provision in relation to a claim that is made in exceptional circumstance, the provision has the effect of referring to the day the claimant became the child's primary carer (instead of the day the child was born).

Division 4 modifies this Act so that it applies correctly to Commonwealth employment.

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Division 2—How this Act applies to an adopted child

275 How this Act applies to an adopted child

(1) This Act applies in relation to an adopted child that satisfies the requirements of subsection (2) as if:

(a) a reference to the birth of a child were a reference to the placement of the child; and

(b) a reference to the day the child was born were a reference to the day the child becomes entrusted to the care of a person as mentioned in subsection (2); and

(c) a reference to the expected date of birth of the child were a reference to the day expected to be the day the child will become entrusted to the care of a person as mentioned in subsection (2); and

(d) a reference to a child's first birthday were a reference to the first anniversary of the day the child became entrusted to the care of a person as mentioned in subsection (2); and

(e) a reference to a completed birth verification form for a child were a reference to information required by the Secretary about the adoption of the child; and

(f) a reference to a child being born during the same multiple birth were a reference to the child being adopted during the same multiple adoption.

When a child satisfies this subsection

(2) A child satisfies the requirements of this subsection if:

(a) the child becomes, or is to become, entrusted (within the meaning of the Family Assistance Act) to the care of the person; and

(b) it is an authorised party that entrusts, or is to entrust, the child to the care of the person; and

(c) the authorised party does so, or is to do so, as part of the process for the adoption of the child by the person; and

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(d) the child is, or will be, aged under 16 on the day the child becomes entrusted to the care of the person.

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Division 3—How this Act applies to claims made in exceptional circumstances and other cases

276 How this Act applies to claims made in exceptional circumstances

This Act (other than subsection 18(3), which deals with birth registration) applies in relation to a claim that is made in exceptional circumstances as if:

(a) a reference to the birth of a child were a reference to the claimant becoming the child's primary carer; and

(b) a reference to the day the child was born were a reference to the day the claimant became the child's primary carer; and

(c) a reference to the expected date of birth of the child were a reference to the day the claimant expects to become the child's primary carer; and

(d) a reference to a child's first birthday were a reference to the first anniversary of the day the claimant became the child's primary carer; and

(e) a reference to a completed birth verification form for a child were a reference to information required by the Secretary about the claimant becoming the child's primary carer; and

(f) a reference to a child being born during the same multiple birth were a reference to the claimant becoming the primary carer of the child at the same time as becoming the primary carer of another child.

277 Primary carers when a child is stillborn or dies

(1) If:

(a) a claim is made for parental leave pay for a child; and

(b) before or after the claim is made, the child is stillborn or dies;

then this Act (other than sections 31 and 47) applies as if a reference to the claimant becoming or being the child's primary

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carer were a reference to the claimant having become or been the child's primary carer had the child not been stillborn or died.

Note: Section 31 deals with eligibility for parental leave pay and section 47 defines who is a primary carer.

(1A) If:

(a) a claim is made for dad and partner pay for a child; and

(b) before or after the claim is made, the child is stillborn or dies;

then this Act (other than sections 115CB and 115CL) applies as if a reference to the DAPP claimant caring for the child were a reference to the DAPP claimant caring for the child had the child not been stillborn or died.

Note: Section 115CB deals with eligibility for dad and partner pay and section 115CL defines when a person is caring for a child for the purposes of dad and partner pay.

(2) The PPL rules may modify the operation of subsection (1) or (1A).

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Division 3A—How this Act applies to claims for dad and partner pay made in prescribed circumstances

277A How this Act applies to claims for dad and partner pay made in prescribed circumstances

(1) This section applies to a claim for dad and partner pay that is made in circumstances prescribed by the PPL rules as being circumstances in which this section applies.

(2) This Act (other than subsection 18(3), which deals with birth registration) applies in relation to the claim as if:

(a) a reference to the birth of a child were a reference to the earlier of:

(i) the claimant beginning to care for the child; and

(ii) the claimant's partner (if any) beginning to care for the child; and

(b) a reference to the day the child was born were a reference to the earlier of:

(i) the day the claimant began to care for the child; and

(ii) the day the claimant's partner (if any) began to care for the child; and

(c) a reference to the expected date of birth of the child were a reference to the earlier of:

(i) the day the claimant expects to begin to care for the child; and

(ii) the day the claimant's partner (if any) expects to begin to care for the child; and

(d) a reference to a child's first birthday were a reference to the first anniversary of the earlier of:

(i) the day the claimant began to care for the child; and

(ii) the day the claimant's partner (if any) began to care for the child; and

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(e) a reference to a completed birth verification form for a child were a reference to information required by the Secretary about the earlier of:

(i) the claimant beginning to care for the child; and

(ii) the claimant's partner (if any) beginning to care for the child; and

(f) a reference to a child being born during the same multiple birth were a reference to:

(i) unless subparagraph (ii) applies—the claimant beginning to care for the child at the same time as beginning to care for another child; or

(ii) if the claimant's partner (if any) begins to care for the child before the claimant—the claimant's partner beginning to care for the child at the same time as beginning to care for another child.

(3) This section does not limit Division 2 of this Part (which deals with how this Act applies to an adopted child).

Note: Not all circumstances to which paragraph 115DD(d) applies must be prescribed as being circumstances in which this section applies. For example, the adoption of a child could be prescribed for the purposes of that paragraph but not for the purposes of this section, in which case section 275 (which deals with how this Act applies to an adopted child) would apply.

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Division 4—How this Act applies to Commonwealth employment

278 How this Act applies to Commonwealth employment

(1) This Act applies in relation to a person who is engaged by or on behalf of the Commonwealth as an employee, to perform functions in a Commonwealth agency as if:

(a) the employee were employed by the agency (rather than the Commonwealth) for whom the person is to perform functions; and

(b) the agency were a body corporate; and

(c) the head of the agency (however described) has all the rights, duties and powers of an employer in relation to the employee.

(2) However, for the purposes of working out for the purposes of paragraph 101(1)(c) (which deals with when the Secretary must make an employer determination) whether the person has, or will have, been employed by the Commonwealth agency for at least 12 months:

(a) treat the reference in that paragraph to the employer as being a reference to the Commonwealth; and

(b) disregard subsection (1) of this section.

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Division 5—Loss of parental leave pay or dad and partner pay for persons on security grounds

278A Simplified outline of this Division

Persons who might prejudice the security of Australia or a foreign country may lose parental leave pay or dad and partner pay.

278B Loss of parental leave pay or dad and partner pay for persons on security grounds

(1) If a security notice is given to the Minister in relation to a person, then while the notice is in force:

(a) no parental leave pay or dad and partner pay is to be paid to the person; and

(b) the person is not eligible for parental leave pay or dad and partner pay; and

(c) parental leave pay or dad and partner pay is not payable to the person.

Note: A security notice is a notice under section 278C.

(2) If:

(a) a security notice is given to the Minister in relation to a person; and

(b) a payability determination that parental leave pay or dad and partner pay is payable to the person is in force at the end of the day (the ***relevant day***) before the day the notice is given; and

(c) the day the notice is given is in the person's PPL period, or DAPP period, that is specified in that determination;

then that determination is taken to be varied so that the person's PPL period or DAPP period, as the case requires, ends at the end of the relevant day.

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(3) If a security notice given to the Minister in relation to a person ceases to be in force, then for any day while the notice was in force:

(a) the person is not eligible for parental leave pay or dad and partner pay; and

(b) parental leave pay or dad and partner pay is not payable to the person.

(4) Subsections (1) to (3) have effect despite any other provision of this Act.

(5) If a payability determination for a person is varied by subsection (2), the Secretary must cause reasonable steps to be taken to notify the person of the variation.

278C Security notice from Attorney-General

(1) The Attorney-General may give the Minister a written notice requiring that this Division apply in relation to a specified person if:

(a) the Foreign Affairs Minister gives the Attorney-General a notice under section 278D in relation to the person; or

(b) the Immigration Minister gives the Attorney-General a notice under section 278E in relation to the person.

(2) Before giving a notice under this section, the Attorney-General must have regard to the following:

(a) the extent (if any) that any payments of parental leave pay or dad and partner pay of the person are being, or may be, used for a purpose that might prejudice the security of Australia or a foreign country, if the Attorney-General is aware of that extent;

(b) the likely effect of the operation of section 278B on the person's dependants, if the Attorney-General is aware of those dependants.

(3) The Attorney-General's Secretary must:

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(a) seek the advice of the Human Services Secretary in relation to paragraph (2)(b); and

(b) inform the Attorney-General of that advice.

(4) Subsection (2) does not limit the matters to which regard may be had.

278D Notice from Foreign Affairs Minister

If:

(a) either:

(i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian passport; or

(ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian passport; and

(b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and

(c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;

the Foreign Affairs Minister may give the Attorney-General a written notice setting out those matters.

278E Notice from Immigration Minister

If:

(a) the Immigration Minister cancels a person's visa under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

(b) the Immigration Minister cancels a person's visa under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and decides not to revoke that cancellation under subsection 134C(3) of that Act; or

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(c) the Immigration Minister cancels a person's visa under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);

the Immigration Minister may give the Attorney-General a written notice setting out those matters.

278F Copy of security notice to be given to Secretaries

The Minister must give a copy of a security notice to:

(a) the Secretary of the Department; and

(b) the Secretary of the Human Services Department.

278G Period security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

278GA Annual review of security notice

Before the end of the following periods, the Attorney-General must consider whether to revoke a security notice (if it has not already been revoked):

(a) 12 months after it came into force;

(b) 12 months after the Attorney-General last considered whether to revoke it.

278H Revoking a security notice

(1) The Attorney-General may, by written notice given to the Minister, revoke a security notice.

(2) The revocation takes effect on the day it is made.

(3) The Minister must give a copy of a notice under subsection (1) to:

(a) the Secretary of the Department; and

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(b) the Secretary of the Human Services Department.

(4) If:

(a) a payability determination for a person is varied by subsection 278B(2); and

(b) the Attorney-General revokes the security notice concerned;

the Secretary of the Department must cause reasonable steps to be taken to notify the person of the revocation.

278J Notices may contain personal information

A notice under this Division in relation to a person may contain personal information (within the meaning of the *Privacy Act 1988*) about the person.

278K Decisions under Division not decisions of officers

For the purposes of Chapter 5, a decision under this Division is taken not to be a decision of an officer under this Act.

278L Notices not legislative instruments

A notice under this Division is not a legislative instrument.

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Part 6-2—Nominees

Division 1—Guide to this Part

279 Guide to this Part

This Part is about payment nominees (who are people who can receive payments of instalments of parental leave pay, or payments of dad and partner pay, on behalf of other people for the purposes of this Act) and correspondence nominees (who are people who can receive notices on behalf of other people for the purposes of this Act).

Division 2 allows the Secretary to appoint a person to be a payment nominee, or a correspondence nominee, for another person for the purposes of this Act.

Divisions 3, 4 and 5 deal with the consequences of such an appointment.

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Division 2—Appointment of nominees

280 Appointment of payment nominee

(1) The Secretary may, in writing:

(a) appoint a person (including a body corporate) to be the payment nominee of another person for the purposes of parental leave pay or dad and partner pay, or both; and

(b) if the appointment is for parental leave pay—direct that the whole or a specified part of an instalment payable by the Secretary to the nominee's principal under Part 3-3 be paid to the nominee; and

(c) if the appointment is for dad and partner pay—direct that the whole or a specified part of a payment of dad and partner pay payable to the nominee's principal be paid to the nominee.

Note: The Secretary must make the appointment in accordance with section 282.

(2) An appointment or a direction made under subsection (1) is not a legislative instrument.

281 Appointment of correspondence nominee

(1) The Secretary may, in writing, appoint a person (including a body corporate) to be the correspondence nominee of another person for the purposes of parental leave pay or dad and partner pay, or both.

Note: The Secretary must make the appointment in accordance with section 282.

(2) An appointment made under subsection (1) is not a legislative instrument.

282 Provisions relating to appointments

(1) A person may be appointed as the payment nominee and the correspondence nominee of the same person.

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(2) The Secretary must not appoint a nominee for a person (the ***proposed principal***) under section 280 or 281 except:
  (a) with the written consent of the person to be appointed; and
  (b) after taking into consideration the wishes (if any) of the proposed principal regarding the making of such an appointment.

(3) The Secretary must cause a copy of an appointment under section 280 or 281 to be given to:
  (a) the nominee; and
  (b) the principal.

283 Suspension and cancellation of nominee appointments

(1) If a person who is appointed as a nominee under section 280 or 281 informs the Secretary in writing that the person no longer wishes to be a nominee under that appointment, the Secretary must, as soon as practicable, cancel the appointment.

(2) If:
  (a) the Secretary gives a nominee a notice under section 288; and
  (b) the nominee informs the Department that:
    (i) an event or change of circumstances has happened or is likely to happen; and
    (ii) the event or change of circumstances is likely to have an effect referred to in paragraph 288(1)(b);

the Secretary may suspend or cancel the nominee's appointment.

(3) If:
  (a) the Secretary gives a nominee a notice under section 288 or 289; and
  (b) the nominee does not comply with the requirement of the notice;

the Secretary may suspend or cancel the nominee's appointment, or each of the nominee's appointments.

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(4) While an appointment is suspended, the appointment has no effect for the purposes of this Act.

(5) The Secretary may, at any time, cancel the suspension of an appointment under subsection (2) or (3).

(6) The suspension or cancellation of an appointment, and the cancellation of such a suspension, must be in writing.

(7) The cancellation of an appointment has effect on and from such day, being later than the day of the cancellation, as is specified in the cancellation.

(8) The Secretary must give the principal and the nominee a copy of:
  (a) a suspension of the nominee's appointment; or
  (b) a cancellation of the nominee's appointment; or
  (c) a cancellation of a suspension of the nominee's appointment.

(9) A suspension or cancellation of an appointment, or a cancellation of such a suspension, under this section is not a legislative instrument.

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Division 3—Payment to payment nominee

284 Payment of instalments to payment nominee

(1) If:

(a) a person has a payment nominee; and

(b) the whole or a part of an instalment is payable to the person; and

(c) the Secretary has given a direction in relation to the instalment under section 280;

the instalment must be paid in accordance with the direction.

(2) An instalment paid to the payment nominee of a person:

(a) is paid to the payment nominee on behalf of the person; and

(b) is taken, for the purposes of this Act (other than this Part), to have been paid to the person and to have been so paid when it was paid to the nominee.

(3) An instalment that is to be paid to the payment nominee of a person must be paid to the credit of a bank account nominated and maintained by the nominee.

(4) The Secretary may direct that the whole or a part of an instalment that is to be paid to a payment nominee be paid to the payment nominee in a different way from that provided for by subsection (3). If the Secretary gives such a direction, an instalment to which the direction relates must be paid in accordance with the direction.

(5) A direction given under subsection (4) is not a legislative instrument.

284A Payment of dad and partner pay to payment nominee

(1) If:

(a) a person has a payment nominee; and

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(b) the whole or a part of a payment of dad and partner pay is payable to the person; and

(c) the Secretary has given a direction in relation to the payment under section 280;

the payment must be paid in accordance with the direction.

(2) A payment of dad and partner pay paid to the payment nominee of a person:

(a) is paid to the payment nominee on behalf of the person; and

(b) is taken, for the purposes of this Act (other than this Part), to have been paid to the person and to have been so paid when it was paid to the nominee.

(3) A payment of dad and partner pay that is to be paid to the payment nominee of a person must be paid to the credit of a bank account nominated and maintained by the nominee.

(4) The Secretary may direct that the whole or a part of a payment of dad and partner pay that is to be paid to a payment nominee be paid to the payment nominee in a different way from that provided for by subsection (3). If the Secretary gives such a direction, a payment to which the direction relates must be paid in accordance with the direction.

(5) A direction given under subsection (4) is not a legislative instrument.

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Division 4—Functions and responsibilities of nominees

285 Actions of correspondence nominee on behalf of principal

Correspondence nominee for parental leave pay

(1) If a person has a correspondence nominee for parental leave pay, any act that may be done by the person under, or for the purposes of, this Act (other than Division 2 or 3) in relation to parental leave pay may be done by that correspondence nominee.

Note: This subsection is subject to section 296 (which deals with the right of the nominee to attend with a principal) and subsection (3) of this section.

(2) Without limiting subsection (1), if a person has a correspondence nominee for parental leave pay, an application or claim that may be made by a person under this Act in relation to parental leave pay may be made by that correspondence nominee on behalf of the person, and an application or claim so made is taken to be made by the person.

(3) If, under a provision of this Act, the Secretary gives a notice in relation to parental leave pay to a person who has a correspondence nominee for parental leave pay, subsection (1) does not extend to an act that is required by the notice to be done by the person.

Correspondence nominee for dad and partner pay

(4) If a person has a correspondence nominee for dad and partner pay, any act that may be done by the person under, or for the purposes of, this Act (other than Division 2 or 3) in relation to dad and partner pay may be done by that correspondence nominee.

Note: This subsection is subject to section 296 (which deals with the right of the nominee to attend with a principal) and subsection (6) of this section.

(5) Without limiting subsection (4), if a person has a correspondence nominee for dad and partner pay, an application or claim that may

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be made by a person under this Act in relation to dad and partner pay may be made by that correspondence nominee on behalf of the person, and an application or claim so made is taken to be made by the person.

(6) If, under a provision of this Act, the Secretary gives a notice in relation to dad and partner pay to a person who has a correspondence nominee for dad and partner pay, subsection (1) does not extend to an act that is required by the notice to be done by the person.

Effect of acts done by correspondence nominee

(7) An act done by a person's correspondence nominee under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the person.

286 Giving of notices to correspondence nominee

(1) If a person has a correspondence nominee for parental leave pay, any notice that the Secretary is required or authorised by this Act to give to the person in relation to parental leave pay may be given by the Secretary to that correspondence nominee.

(1A) If a person has a correspondence nominee for dad and partner pay, any notice that the Secretary is required or authorised by this Act to give to the person in relation to dad and partner pay may be given by the Secretary to that correspondence nominee.

(2) A notice given under subsection (1) or (1A):
  (a) must, in every respect, be in the same form, and in the same terms, as if it were being given to the person; and
  (b) may be given to the correspondence nominee personally or by post or by any other means approved by the Secretary.

(3) If:
  (a) under subsection (1) or (1A), the Secretary gives a notice (the ***nominee notice***) to a person's correspondence nominee; and

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(b) the Secretary afterwards gives the person a notice that:
(i) is expressed to be given under the same provision of this Act as the nominee notice; and
(ii) makes the same requirement of the person as the nominee notice;

section 287 ceases to have effect in relation to the nominee notice.

(4) If:
(a) under subsection (1) or (1A), the Secretary gives a notice (the ***nominee notice***) to a person's correspondence nominee; and
(b) the Secretary has already given to the person a notice that:
(i) is expressed to be given under the same provision of this Act as the nominee notice; and
(ii) makes the same requirement of the person as the nominee notice;

section 287 does not have effect in relation to the nominee notice.

287 Compliance by correspondence nominee

(1) If, under section 286, a notice making a PPL requirement of a person is given to the person's correspondence nominee, the following paragraphs have effect:
(a) for the purposes of this Act, other than this Part, the notice is taken:
(i) to have been given to the person; and
(ii) to have been so given on the day on which the notice was given to the correspondence nominee;
(b) any PPL requirement made of the person may be satisfied by the correspondence nominee;
(c) any act done by the correspondence nominee for the purposes of satisfying a PPL requirement of the notice has effect, for the purposes of this Act, as if it had been done by the person;
(d) if the correspondence nominee fails to satisfy a PPL requirement of the notice, the person is taken, for the purposes of this Act, to have failed to comply with the PPL requirement.

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(2) To avoid doubt, for the purposes of this Act, the person is taken to have complied with a PPL requirement if:

(a) the PPL requirement imposes an obligation on the person to inform the Secretary of a matter, or give the Secretary a statement, within a specified period; and

(b) the correspondence nominee informs the Secretary of the matter, or gives the Secretary the statement (as the case may be) within that period.

(3) To avoid doubt, for the purposes of this Act, the person is taken to have complied with a PPL requirement if:

(a) the PPL requirement imposes an obligation on the person to give information, or produce a document, to an officer within a specified period; and

(b) the correspondence nominee gives the information, or produces the document (as the case may be) to the officer within that period.

(4) To avoid doubt, for the purposes of this Act, the person is taken not to have complied with a PPL requirement if:

(a) the PPL requirement imposes an obligation on the person to inform the Secretary of a matter, or give the Secretary a statement, within a specified period; and

(b) the correspondence nominee does not inform the Secretary of the matter, or give the Secretary the statement (as the case may be) within that period.

(5) To avoid doubt, for the purposes of this Act, the person is taken not to have complied with a PPL requirement if:

(a) the PPL requirement imposes an obligation on the person to give information, or produce a document, to an officer within a specified period; and

(b) the correspondence nominee does not give the information, or produce the document (as the case may be) to the officer within that period.

(6) A ***PPL requirement*** is a requirement, made by the Secretary under this Act, to:

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(a) inform the Secretary of a matter; or
(b) give information, or produce a document, to an officer; or
(c) give a statement to the Secretary.

288 Nominee to inform Department of matters affecting ability to act as nominee

(1) The Secretary may give a nominee of a person a notice that requires the nominee to inform the Department if:
  (a) either:
    (i) an event or change of circumstances happens; or
    (ii) the nominee becomes aware that an event or change of circumstances is likely to happen; and
  (b) the event or change of circumstances is likely to affect:
    (i) the ability of the nominee to act as the payment nominee or correspondence nominee of the person (as the case may be); or
    (ii) the ability of the Secretary to give notices to the nominee under this Act; or
    (iii) the ability of the nominee to comply with notices given to the nominee by the Secretary under this Act.

(2) A notice under subsection (1):
  (a) must be in writing; and
  (b) may be given personally or by post or by any other means approved by the Secretary; and
  (c) must specify how the nominee is to give the information to the Department; and
  (d) must specify the period within which the nominee is to give the information to the Department.

(3) A notice under subsection (1) is not ineffective just because it does not comply with paragraph (2)(c).

(4) The period specified under paragraph (2)(d) must not end earlier than 14 days after:

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(a) the day on which the event or change of circumstances happens; or
(b) the day on which the nominee becomes aware that the event or change of circumstances is likely to happen.

(5) Subsection (4) does not apply to a requirement in a notice for a nominee to inform the Department of any proposal by the nominee to leave Australia.

(6) This section extends to:
(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
(b) all persons, irrespective of their nationality or citizenship.

289 Statement by payment nominee regarding disposal of money

(1) The Secretary may give the payment nominee of a person a notice that requires the nominee to give the Department a statement about a matter relating to the disposal by the nominee of an instalment, or a payment of dad and partner pay, paid to the nominee on behalf of the person.

(2) A notice under subsection (1):
(a) must be in writing; and
(b) may be given personally or by post or by any other means approved by the Secretary; and
(c) must specify how the nominee is to give the statement to the Department; and
(d) must specify the period within which the nominee is to give the statement to the Department.

(3) A notice under subsection (1) is not ineffective just because it does not comply with paragraph (2)(c).

(4) The period specified under paragraph (2)(d) must not end earlier than 14 days after the day the notice is given.

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(5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.

(6) A person commits an offence if:
  (a) the person is a nominee; and
  (b) the person refuses or fails to comply with a notice under subsection (1).

  Penalty: 30 penalty units.

(7) Subsection (6) does not apply if the person has a reasonable excuse.

  Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

(8) An offence against subsection (6) is an offence of strict liability.

(9) This section extends to:
  (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
  (b) all persons, irrespective of their nationality or citizenship.

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Division 5—Other matters relating to nominees

290 Protection of principal against liability for actions of nominee

Nothing in this Part has the effect of rendering a principal guilty of an offence against this Act in relation to any act or omission of the principal's correspondence nominee.

291 Protection of nominee against criminal liability

(1) A nominee of a principal is not subject to any criminal liability under this Act in relation to:

(a) any act or omission of the principal; or

(b) anything done, in good faith, by the nominee in his or her capacity as nominee.

(2) This section has effect subject to section 289 (which deals with a statement by a payment nominee regarding the disposal of money).

292 Duty of nominee to principal

(1) It is the duty of a person who is the payment or correspondence nominee of a principal at all times to act in the best interests of the principal.

(2) A nominee does not commit a breach of the duty imposed by subsection (1) by doing an act if, when the act is done, the nominee reasonably believes that it is in the best interests of the principal that the act be done.

(3) A nominee does not commit a breach of the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, the nominee reasonably believes that it is in the best interests of the principal that the act be not done.

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293 Saving of Secretary's powers of revocation

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

294 Saving of Secretary's powers to give notices to principal

Nothing in this Part is intended in any way to limit or affect the Secretary's powers under other provisions of this Act to give notices to, or make requirements of, a person who has a nominee.

295 Notification of nominee where notice given to principal

If, under a provision of this Act (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee, the Secretary may inform the correspondence nominee of the giving of the notice and of the terms of the notice.

296 Right of nominee to attend with principal

(1) If:

(a) under a provision of this Act (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee; and

(b) the notice requires the person:

(i) to attend the Department; or

(ii) to attend a particular place; and

(c) the Secretary informs the person's correspondence nominee of the giving of the notice;

the correspondence nominee may attend the Department or place (as the case may be) with the person if the person so wishes.

(2) If a person's correspondence nominee is a body corporate, the last reference in subsection (1) to the correspondence nominee is to be read as a reference to an officer or employee of the correspondence nominee.

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Part 6-3—Other matters

Division 1—Guide to this Part

297 Guide to this Part

This Part deals with miscellaneous matters.

Division 2 provides for the Paid Parental Leave Rules. The PPL rules are made by the Minister by legislative instrument. They are subordinate legislation and provide rules that operate in addition to those in this Act.

Division 3 confers jurisdiction on the Federal Court and the Federal Circuit Court.

Division 4 deals with other miscellaneous matters (such as delegations and regulations).

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Division 2—The Paid Parental Leave Rules

298 The PPL rules

The Minister may, by legislative instrument, make rules providing for matters:

(a) required or permitted by this Act to be provided; or

(b) necessary or convenient to be provided in order to carry out or give effect to this Act.

299 Extension of Act to persons who are not employees and employers

(1) The PPL rules or the regulations may provide that the Secretary may make an employer determination under Part 3-5 for persons who are in a relationship that is similar to the relationship between an employer and an employee.

(2) For the purposes of subsection (1), the PPL rules or the regulations may modify (including by adding, omitting or substituting) any provision of this Act in relation to persons provided for in accordance with subsection (1) by the PPL rules or the regulations.

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Division 3—Jurisdiction of courts

300 Jurisdiction of Federal Court

Jurisdiction is conferred on the Federal Court in relation to civil matters arising under this Act.

301 Jurisdiction of Federal Circuit Court

Jurisdiction is conferred on the Federal Circuit Court in relation to civil matters arising under this Act.

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Division 4—Other matters

302 General administration

The Secretary has, subject to any direction of the Minister, the general administration of this Act.

303 Delegation

General powers

(1) The Secretary may, in writing, delegate all or any of his or her powers under this Act (other than Divisions 3 and 5 of Part 4-2 and paragraph 128(1)(b) (which deal with civil penalty orders, infringement notices and disclosing information to Agency Heads)) to:

(a) an officer; or

(b) without limiting paragraph (a), a person engaged (whether as an employee or otherwise) by:

(i) an Agency (within the meaning of the *Public Service Act 1999*); or

(ii) another authority of the Commonwealth; or

(iii) an organisation that performs services for the Commonwealth.

(1A) Paragraphs (1)(a) and (b) do not apply to the Chief Executive Centrelink, Chief Executive Medicare or an APS employee in the Human Services Department.

(2) The Secretary may, in writing, delegate all or any of his or her powers under this Act (other than Divisions 3 and 5 of Part 4-2 and paragraph 128(1)(b) (which deal with civil penalty orders, infringement notices and disclosing information to Agency Heads)) to the Chief Executive Centrelink, the Chief Executive Medicare or an APS employee in the Human Services Department.

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Powers under Division 3 or 5 of Part 4-2

(3) The Secretary may, in writing, delegate the Secretary's powers under Division 3 or 5 of Part 4-2 (which deal with civil penalty orders and infringement notices) to:

(a) the Chief Executive Centrelink; or

(aa) the Chief Executive Medicare; or

(b) an SES employee or an acting SES employee.

(3A) If the Secretary delegates any of his or her powers under Division 3 or 5 of Part 4-2 to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any provision in the *Human Services (Centrelink) Act 1997*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:

(a) an SES employee; nor

(b) an acting SES employee.

(3B) If the Secretary delegates any of his or her powers under Division 3 or 5 of Part 4-2 to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any provision in the *Human Services (Medicare) Act 1973*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:

(a) an SES employee; nor

(b) an acting SES employee.

Power under paragraph 128(1)(b)

(4) The Secretary cannot delegate to anyone except the Chief Executive Centrelink or the Chief Executive Medicare the Secretary's power under paragraph 128(1)(b) to disclose information to an Agency Head (within the meaning of the *Public Service Act 1999*).

(5) If the Secretary delegates his or her power under paragraph 128(1)(b) to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any provision in the *Human*

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Services (Centrelink) Act 1997, delegate that power to a Departmental employee (within the meaning of that Act).

(6) If the Secretary delegates his or her power under paragraph 128(1)(b) to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any provision in the *Human Services (Medicare) Act 1973*, delegate that power to a Departmental employee (within the meaning of that Act).

304 Decisions to be in writing

A decision of an officer under this Act must be in writing.

305 Secretary may arrange for use of computer programs to make decisions

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may make decisions under this Act.

(2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

306 Notice of decisions

(1) Notice of a decision under this Act is taken, for the purposes of this Act, to have been given to a person if written notice of the decision is:

(a) delivered to the person personally; or

(b) left at the address of the place of residence or business of the person last known to the Secretary; or

(c) sent by prepaid post to the postal address of the person last known to the Secretary.

Note: Notice of decisions can also be given electronically in accordance with the *Electronic Transactions Act 1999*.

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(2) Notice of a decision under this Act may be given to a person by properly addressing, prepaying and posting the document as a letter.

(3) Notice of a decision that is given in accordance with subsection (2) is taken to have been given to the person when the notice would be delivered in the ordinary course of the post unless the contrary is proved.

(4) If a provision of this Act requires a notice of a decision to be given to a person, the decision is not ineffective just because the notice:
  (a) was not given or was given late; or
  (b) did not comply with the requirements of the provision.

(5) This section only applies to notices of decisions. Nothing in this section affects the operation of sections 28A and 29 of the *Acts Interpretation Act 1901* in relation to other notices under this Act (for example, a notice that requires a person to inform the Secretary about some matter).

307 Appropriation

Payments under this Act (other than payments of instalments by employers under Division 2 of Part 3-2) are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

307A Review of the operation of this Act

(1) The Minister must cause a comprehensive review of the general operation of this Act to be begun by 31 January 2013.

(2) The review must consider the following matters:
  (a) the amount of time off work that primary carers are taking to care for newborn or newly adopted children;
  (b) the availability and amount of leave and payments provided by employers in relation to the birth or adoption of a child, and the interaction of those entitlements with parental leave pay provided under this Act;
  (c) the operation of the work test;

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(d) whether primary claimants' partners should be paid parental leave pay separately from, or in addition to, primary claimants;
(e) whether employers should make superannuation contributions in relation to parental leave pay;
(f) the results of any evaluations conducted in relation to the operation of this Act;
(g) the administration of this Act;
(h) any other matter relevant to the general operation of this Act.

(3) The Minister must ensure that public submissions are sought in relation to the review.

(4) The Minister must cause a copy of a written report of the review to be tabled in each House of the Parliament within 15 sitting days of the day on which the Minister receives the report.

308 Regulations

The Governor-General may make regulations prescribing matters:
(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

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Endnote 2—Abbreviation key

A = Act
ad = added or inserted
am = amended
amdt = amendment
c = clause(s)
C[x] = Compilation No. x
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expires/expired or ceases/ceased to have effect
F = Federal Register of Legislative Instruments
gaz = gazette
LI = Legislative Instrument
LIA = *Legislative Instruments Act 2003*
(md) = misdescribed amendment
mod = modified/modification
No. = Number(s)
o = order(s)
Ord = Ordinance
orig = original
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
pres = present
prev = previous
(prev…) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)/subsection(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)
underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Paid Parental Leave Act 2010	104, 2010	14 July 2010	1 Oct 2010	
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (item 131): 19 Apr 2011	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Schedule 4 (items 468–505): 1 July 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 901) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Family Assistance and Other Legislation Amendment Act 2011	52, 2011	28 June 2011	Schedule 2 (items 3–5): 30 June 2011	—
Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Act 2012	98, 2012	29 June 2012	Schedule 2 (items 16, 17, 88(1), (3)): 1 Jan 2013	Sch. 2 (item 88(1), (3))
Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012	109, 2012	22 July 2012	Schedule 1 (items 1–105): 1 Oct 2012 Schedule 2 (items 1–8): 1 Oct 2010 (*see* s. 2(1)) Schedule 2 (items 22–48): 23 July 2012	Sch. 2 (item 27)
Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012	154, 2012	17 Nov 2012	Schedule 3 (items 87–116, 170–175): 15 Dec 2012	Sch. 3 (items 170–175)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Schedule 9 (item 1294): 1 Jan 2013	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Schedule 5 (items 69, 70): 12 Mar 2014	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 463, 464): 12 Apr 2013 (s 2(1) item 2) Sche 2 (item 1): 12 Apr 2013 (s 2(1) item 3)	—
Family Assistance and Other Legislation Amendment Act 2013	70, 2013	27 June 2013	Sch 2A (items 48–52, 67(11): 1 Mar 2014 Sch 2A (items 62–66, 68) and Sch 3 (items 47–53, 57, 101, 102): 28 June 2013	Sch. 2A (items 67(11), 68) and Sch. 3 (items 57, 102)
Social Services and Other Legislation Amendment Act 2014	14, 2014	31 Mar 2014	Sch 9 (items 11–14): Royal Assent Sch 10 (items 9–14): 1 July 2014	Sch 10 (item 14)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (items 35, 36): 24 June 2014	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 11 (items 26, 27): 1 July 2014 (s 2(1) item 6)	—
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 2 (items 3, 4, 9): 1 Dec 2014 (s 2(1) item 2)	Sch 2 (item 9)

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Endnote 4—Amendment history

Provision affected	How affected
Title	rs. No. 109, 2012
Chapter 1 heading	
Part 1-1 heading	
Division 1A heading	rs. No. 109, 2012
s. 3A	am. No. 109, 2012
Division 2 heading	
s. 4	am. No. 109, 2012; No 70, 2013
Part 1-2 heading	
Division 2 heading	
s. 6	am. Nos. 5, 32 and 46, 2011; Nos. 109 and 154, 2012; Nos. 13 and 70, 2013; No 31, 62 and 116, 2014
Chapter 2 heading	
Part 2-2 heading	
Division 3 heading	
s. 21	am. No. 109, 2012
Division 4 heading	
s. 22	am. No. 109, 2012
s. 23	am. No. 109, 2012
s. 24	am. No. 109, 2012
Division 5 heading	am No 109, 2012
s. 27	am. No. 109, 2012
s. 28	am. No. 109, 2012
s. 29	am. No. 109, 2012
Part 2-3 heading	
Division 1 heading	
s. 30	am. No. 52, 2011; No. 109, 2012; No. 70, 2013; No 14, 2014
Division 2 heading	
s. 31	am. No. 109, 2012; No 70, 2013

Provision affected	How affected
Division 3 heading	
s 32	am. No 109, 2012; No 70, 2013
s 33	am No 109, 2012
s. 34	am. No. 70, 2013
s. 35A	ad. No. 70, 2013
s. 36A	ad. No. 109, 2012
s. 36B	ad. No. 109, 2012
Division 4 heading	
Subdivision A heading	
s. 37	am. No. 109, 2012
s 39	am. No. 109, 2012
s 40	am. No. 109, 2012
s. 41	am. No. 52, 2011; No 14, 2014
Subdivision B heading	
s. 42	am. No. 52, 2011; No 14, 2014
Division 5 heading	
s. 45	am. No. 98, 2012
s 46	am No 98, 2012; No 14, 2014
Division 7 heading	
s. 50	am. No. 109, 2012
Part 2-4 heading	
Division 2 heading	
s. 52	am. No. 109, 2012
s. 53	am. No. 109, 2012
s. 55	am. No. 109, 2012
s. 56	am. No. 109, 2012
s. 59	am. No. 109, 2012
s. 60	am. No. 109, 2012
s. 61	am. No. 109, 2012
Chapter 3 heading	
Part 3-1 heading	

Endnote 4—Amendment history

Provision affected	How affected
Division 2 heading	
s. 65	am. No. 174, 2012
Part 3-2 heading	
Division 3 heading	
s 78	rep No 62, 2014
Division 4 heading	
s. 82	am. No. 109, 2012
Part 3-5 heading	
Division 2 heading	
s. 105	am. No. 109, 2012
Chapter 3A heading	
Chapt. 3A	ad. No. 109, 2012
Part 3A-1 heading	
Division 1 heading	
s. 115AA	ad. No. 109, 2012
Division 2 heading	
s. 115AB	ad. No. 109, 2012
s. 115AC	ad. No. 109, 2012
s. 115AD	ad. No. 109, 2012
s. 115AE	ad. No. 109, 2012
Part 3A-2 heading	
Division 1 heading	
s. 115BA	ad. No. 109, 2012
Division 2 heading	
s. 115BB	ad. No. 109, 2012
Division 3 heading	
s. 115BC	ad. No. 109, 2012
s. 115BD	ad. No. 109, 2012
s. 115BE	ad. No. 109, 2012
s. 115BF	ad. No. 109, 2012
Division 4 heading	

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Provision affected	How affected
s. 115BG	ad. No. 109, 2012
s. 115BH	ad. No. 109, 2012
s. 115BJ	ad. No. 109, 2012
s. 115BK	ad. No. 109, 2012
Division 5 heading	
s. 115BL	ad. No. 109, 2012
s. 115BM	ad. No. 109, 2012
s. 115BN	ad. No. 109, 2012
s. 115BP	ad. No. 109, 2012
Part 3A-3 heading	
Division 1 heading	
s. 115CA	ad. No. 109, 2012
	am. No. 70, 2013; No 14, 2014
Division 2 heading	
s. 115CB	ad. No. 109, 2012
Division 3 heading	
s. 115CC	ad. No. 109, 2012
s. 115CD	ad. No. 109, 2012
s. 115CE	ad. No. 109, 2012
s. 115CF	ad. No. 109, 2012
Division 4 heading	
s. 115CG	ad. No. 109, 2012
s. 115CH	ad. No. 109, 2012
s. 115CJ	ad. No. 109, 2012
Division 5 heading	
s. 115CK	ad. No. 109, 2012
Division 6 heading	
s. 115CL	ad. No. 109, 2012
Division 7 heading	
s. 115CM	ad. No. 109, 2012
Part 3A-4 heading	

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Endnote 4—Amendment history

Provision affected	How affected
Division 1 heading	
s. 115DA	ad. No. 109, 2012
Division 2 heading	
s. 115DB	ad. No. 109, 2012
s. 115DC	ad. No. 109, 2012
s. 115DD	ad. No. 109, 2012
s. 115DE	ad. No. 109, 2012
s. 115DF	ad. No. 109, 2012
s. 115DG	ad. No. 109, 2012
s. 115DH	ad. No. 109, 2012
s. 115DJ	ad. No. 109, 2012
s. 115DK	ad. No. 109, 2012
s. 115DL	ad. No. 109, 2012
Part 3A-5 heading	
Division 1 heading	
s. 115EA	ad. No. 109, 2012
Division 2 heading	
s. 115EB	ad. No. 109, 2012
s. 115EC	ad. No. 109, 2012
s. 115ED	ad. No. 109, 2012
s. 115EE	ad. No. 109, 2012
s. 115EF	ad. No. 109, 2012
s. 115EG	ad. No. 109, 2012
s. 115EH	ad. No. 109, 2012
s. 115EJ	ad. No. 109, 2012
s. 115EK	ad. No. 109, 2012
s. 115EL	ad. No. 109, 2012
s. 115EM	ad. No. 109, 2012
Chapter 4 heading	
Part 4-1 heading	
Division 1 heading	

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Provision affected	How affected
s. 116	am. No. 109, 2012
Division 2 heading	
Subdivision A heading	
s. 117	am. No. 109, 2012
s. 122	am. No. 109, 2012
Subdivision B heading	
s. 123	am. No. 109, 2012
s. 124	am. No. 109, 2012
Subdivision C heading	
s. 125	am. No. 109, 2012
Division 3 heading	
s. 127	am. No. 32, 2011
s 128	am No 197, 2012
s. 130A	ad. No. 154, 2012
s. 131	am. No. 109, 2012
Division 4 heading	
s. 133	am. No. 109, 2012
s. 138	am. No. 109, 2012
Part 4-2 heading	
Division 3 heading	
s. 147	am. No. 13, 2013
s. 148	am. No. 13, 2013
s. 150	am. No. 13, 2013
s. 152	am. No. 13, 2013
s. 156	am. No. 13, 2013
Division 5 heading	
s. 159	am. No. 13, 2013
s. 162	am. No. 13, 2013
Part 4-3 heading	
Division 1 heading	
s. 164	am. No. 109, 2012

Endnote 4—Amendment history

Provision affected	How affected
Division 2 heading	
s. 165	am. No. 109, 2012
s. 168A	ad. No. 109, 2012
s. 169	am. No. 109, 2012
s. 171	am. No. 109, 2012
Division 5 heading	
s. 192	am. No. 109, 2012
Division 8 heading	
s. 201A	ad. No. 109, 2012
Chapter 5 heading	
Part 5-1 heading	
Division 2 heading	
s. 206	am. No. 32, 2011
s. 207	am. No. 32, 2011; No 197, 2012
s. 208	am. No. 32, 2011
Part 5-2 heading	
Division 1 heading	
s. 213	am. No. 32, 2011
s. 214	am. No. 154, 2012
Division 2 heading	
s. 215	am. No. 32, 2011; No. 109, 2012
s. 217	am. No. 32, 2011
s. 218	am. No. 32, 2011
s. 221	am. No. 154, 2012
s. 222	am. No. 32, 2011
Division 3 heading	
s. 223	am. No. 32, 2011
s. 226	am. No. 32, 2011
s. 229	am. No. 154, 2012
s. 230	am. No. 32, 2011
Part 5-3 heading	

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Provision affected	How affected
Division 1 heading	
s. 231	am. No. 32, 2011; No. 154, 2012
Division 2 heading	
s. 232	am. No. 32, 2011
s. 233	am. No. 154, 2012
Division 3 heading	rs. No. 32, 2011
s. 236	am. No. 32, 2011
s. 237	am. No. 154, 2012
Division 4 heading	rs No 32, 2011
s. 240	am. No. 32, 2011; No. 154, 2012
Division 6 heading	rs. No. 154, 2012
s. 245	am. No. 154, 2012
s. 246	am. No. 154, 2012
Division 7 heading	
s. 247	am. No. 154, 2012
s. 249	rep. No. 154, 2012
Division 8 heading	
s. 250	am. No. 154, 2012
s. 251	rs. No. 154, 2012
s. 252	rs. No. 154, 2012
s. 255	am. No. 154, 2012
Division 9 heading	
s. 257	am. No. 32, 2011; No. 109, 2012
s. 257A	ad. No. 154, 2012
Part 5-3 heading	
Division 11 heading	
s. 259	am. No. 13, 2013
Part 5-4 heading	
Division 3 heading	
s. 266	am. No. 32, 2011
Part 5-5 heading	

Endnote 4—Amendment history

Provision affected	How affected
Division 2 heading	
s. 273	am. No. 109, 2012
s. 273A	ad. No. 154, 2012
s. 273B	ad. No. 154, 2012
s. 273C	ad. No. 154, 2012
Chapter 6 heading	
Part 6-1 heading	
Division 1 heading	
s. 274	am. No. 70, 2013
Division 2 heading	
s. 275	am. No. 70, 2013
Division 3 heading	
s. 277	am. No. 109, 2012
Division 3A heading	ad No 70, 2013
s. 277A	ad. No. 70, 2013
Division 4 heading	
s. 278	am. No. 109, 2012
Division 5 heading	ad No 116, 2014
s 278A	ad No 116, 2014
s 278B	ad No 116, 2014
s 278C	ad No 116, 2014
s 278D	ad No 116, 2014
s 278E	ad No 116, 2014
s 278F	ad No 116, 2014
s 278G	ad No 116, 2014
s 278GA	ad No 116, 2014
s 278H	ad No 116, 2014
s 278J	ad No 116, 2014
s 278K	ad No 116, 2014
s 278L	ad No 116, 2014
Part 6-2 heading	

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Provision affected	How affected
Division 1 heading	
s. 279	am. No. 109, 2012
Division 2 heading	
s. 280	am. No. 109, 2012
s. 281	am. No. 109, 2012
Division 3 heading	rs. No. 109, 2012
s. 284A	ad. No. 109, 2012
Division 4 heading	
s. 285	rs. No. 109, 2012
s. 286	am. No. 109, 2012
s. 289	am. No. 109, 2012
Part 6-3 heading	
Division 1 heading	
s. 297	am. No. 13, 2013
Division 3 heading	
s. 301	am. No. 13, 2013
Division 4 heading	
s. 303	am. No. 32, 2011; No. 109, 2012