



Business Services Wage Assessment Tool Payment Scheme Act 2015

No. 111, 2015

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

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

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Simplified outline of this Act	2
3A Constitutional basis	3
3B Principles for nominees	3
4 Definitions	4
Part 2—Key elements of BSWAT payment scheme	7
5 Simplified outline of this Part	7
6 Eligibility	7
7 Definition of <i>intellectual impairment</i>	8
8 Payment amount	8
8A Indexation	9
9 Effect on representative proceedings	11
10 Effect on certain claims	12
11 Evidence of eligibility	13
Part 3—How to obtain a payment under the BSWAT payment scheme	14
Division 1—Simplified outline of this Part	14
12 Simplified outline of this Part	14
Division 2—Registration and application	16
13 Registration	16
14 When a person cannot be included on the register	16
15 Application	16
16 When a person cannot make an application	17
Division 3—Determinations, offers and refusals	18
17 Determination of application	18
18 Certain applications must not be determined	18
19 Offer	19
20 Refusal	20
21 Certain circumstances in which offers and refusals cannot be given	21
22 Extensions	22
Division 4—Internal review	23
23 Internal review at Secretary’s initiative	23
24 Internal review on application	23

25	Withdrawal of application for internal review	24
Division 5—External review		25
26	Application for external review	25
27	Appointing external reviewer	25
28	External review	26
29	Material that may be considered by external reviewer	26
30	External reviewer may request Secretary to seek further information	28
31	Withdrawal of application for external review	28
32	Notice of decision on external review	29
Division 6—Determinations made on a review		30
33	Substituting determinations on a review	30
34	Effect of review on previous offer or refusal	31
Division 7—Accepting an offer		32
35	Accepting an offer	32
36	Legal advice certificate	32
37	Financial counselling certificate	32
38	Effective acceptance	33
39	Notice to Federal Court	33
40	Payment of amount	34
41	Declining an offer	34
Part 4—Nominees		35
Division 1—Introduction		35
42	Simplified outline of this Part	35
43	Definition of <i>participant</i>	35
44	Act that may be done	35
Division 2—Functions and responsibilities of nominee		36
45	Actions on behalf of participant	36
46	Duties of nominee to participant	36
47	Giving of notices to nominee	37
48	Compliance by nominee	38
49	Nominee to inform Secretary of matters affecting ability to act as nominee	39
Division 3—Appointment and cancellation or suspension of appointment		40
50	Appointment of nominee	40
51	Provisions relating to appointments	40

52	Circumstances in which the Secretary must cancel appointment of nominees.....	41
53	General circumstances in which Secretary may cancel or suspend appointment of nominees.....	42
54	Suspension etc. of appointment of nominees in cases of physical, mental or financial harm.....	43
55	Other matters relating to cancellation or suspension of appointment.....	45
56	Rules may prescribe requirements etc.	45
57	Secretary's powers of revocation.....	45
Division 4—Review of certain decisions about nominees		46
58	Review of certain decisions about nominees	46
59	Application for review.....	46
60	Withdrawal of application	47
61	Review of decisions following application under section 59.....	47
62	Notice and date of effect.....	47
Division 5—Other matters relating to nominees		49
63	Secretary's powers to give notices to participant.....	49
64	Notification of nominee where notice is given to participant	49
65	Protection of participant against liability for actions of nominee	49
66	Protection of nominee against criminal liability	49
Part 5—Administration		50
Division 1—Introduction		50
67	Simplified outline of this Part.....	50
Division 2—Information gathering		51
68	Further information from applicant	51
69	General power to obtain information.....	51
70	Power to obtain information from a person who owes a debt to the Commonwealth.....	52
71	Obtaining information about a person who owes a debt to the Commonwealth	52
72	Written notice.....	53
73	Offence	53
74	Obligations not affected by State or Territory laws	54
Division 3—Privacy		55
75	Protection of information.....	55
76	Offence—unauthorised access to protected information	55
77	Offence—unauthorised use or disclosure of protected information	55

78	Offence—soliciting disclosure of protected information.....	56
79	Offence—offering to supply protected information	56
80	Protection of certain documents etc. from production to court etc.	57
81	Disclosure of information by Secretary	57
82	Rules for exercise of Secretary’s disclosure powers.....	58
83	Part does not affect the operation of the <i>Freedom of Information Act 1982</i>	58
Division 4—Debt recovery		59
84	Debts due to the Commonwealth.....	59
85	Joint and several liability for debts arising because of false and misleading statements	60
86	Legal proceedings.....	60
87	Arrangement for payment of debt.....	60
88	Recovery of amounts from financial institutions	61
89	Overseas application of debts	62
Division 5—Non-recovery of debts		63
90	Secretary may write off debt.....	63
91	Power to waive Commonwealth’s right to recover debt	64
92	Waiver of debt arising from error	64
93	Waiver of small debt	64
94	Waiver in relation to settlements	65
95	Waiver in special circumstances.....	65
Part 6—Miscellaneous		67
96	Simplified outline of this Part.....	67
97	Effect of person’s death	67
98	No admissions	67
98A	Certain administrative matters	67
99	Standing appropriation	68
100	Delegation	69
101	Approved forms.....	69
102	Rules.....	69



Business Services Wage Assessment Tool Payment Scheme Act 2015

No. 111, 2015

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

[Assented to 30 June 2015]

The Parliament of Australia enacts:

No. 111, 2015 Business Services Wage Assessment Tool Payment Scheme Act 2015

1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Business Services Wage Assessment Tool Payment Scheme Act 2015*.

2 Commencement

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

3 Simplified outline of this Act

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

A person must make an application before 1 December 2016 if the person wants a payment under the BSWAT payment scheme. Applications can only be made on or after 1 May 2016 by persons already registered for the scheme.

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

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

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

If the person accepts the offer:

- (a) the Secretary will make the payment to the person; and

Section 3A

- (b) by force of this Act, the person will cease to have certain legal rights.

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

Offers will be made before 1 September 2017. While there might be some new offers after this date arising from reviews, all acceptances must be lodged by 31 December 2017.

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

3A Constitutional basis

Without limitation, this Act relies on:

- (a) the Commonwealth's legislative powers under paragraphs 51(xxiiiA) and (xxxix) of the Constitution; and
- (b) any implied legislative powers of the Commonwealth.

3B Principles for nominees

This Act and the rules are intended to reflect, in relation to nominees, the following principles:

- (a) all adults have an equal right to make decisions that affect their lives and to have those decisions respected;
- (b) persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives;
- (c) the will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives;
- (d) laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons

Section 4

who may require decision-making support, including to prevent abuse and undue influence.

Note: The safeguards referred to in paragraph (d) are provided in this Act (see for example section 54) and the rules.

4 Definitions

In this Act:

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

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

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

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

approved form means a form approved under section 101.

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

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

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

BSWAT assessment means an assessment conducted using the BSWAT.

BSWAT payment scheme means the scheme established by this Act.

Section 4

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

effective acceptance has the meaning given by section 38.

eligible day has the meaning given by subsections 6(2) and (2A).

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

Federal Court means the Federal Court of Australia.

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

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

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

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

intellectual impairment has the meaning given by section 7.

legal practitioner means a person who:

- (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and
- (b) holds a practising certificate (however described).

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

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

officer means an APS employee in the Department.

participant has the meaning given by section 43.

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

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

protected information means information about a person:

Section 4

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

register means the register established for the purposes of section 13.

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

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

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

rules means the rules made under section 102.

Secretary means the Secretary of the Department.

Part 2—Key elements of BSWAT payment scheme

5 Simplified outline of this Part

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

- (a) who is eligible to be offered a payment;
- (b) how much will be offered to an eligible person;
- (c) the legal consequences if the person accepts the offer.

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

6 Eligibility

Eligibility

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

Eligible day

- (2) The person meets the condition in this subsection if there is at least one day for the person in the period starting on 1 January 2004 and ending on 31 January 2015 in respect of which:
- (a) the person had an intellectual impairment; and
 - (b) the person was employed by an Australian Disability Enterprise; and
 - (c) the person was provided with employment support by the Australian Disability Enterprise; and
 - (d) either:
 - (i) the person was paid a training wage while waiting for a BSWAT assessment to be completed; or

Section 7

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

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

- (2A) Despite subsection (2), a person does not meet the condition in that subsection, and there is no **eligible day** for the person, if the day that (apart from this subsection) would have been the earliest eligible day for the person is later than 28 May 2014.

Ongoing daily support in the workplace

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

No alternative amount

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

7 Definition of *intellectual impairment*

A person has an **intellectual impairment** if:

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

8 Payment amount

- (1) The **payment amount** for a person is the amount worked out for the person by a method prescribed by the rules.

Section 8A

- (2) The rules may prescribe different methods for different circumstances.
- (3) In making rules for the purposes of this section, the Minister must have regard to the following principles:
 - (a) the amount a person should receive, if the person accepts an offer, should broadly reflect the amount that is 50% of the excess (if any) of a productivity-scored wage over an actual wage, indexed in accordance with the method in section 8A;
 - (b) to ensure that the person retains that amount after tax, the amount should be increased to take account of expected tax;
 - (c) the amount should be nil if a person's productivity-scored wage is the same or less than the person's actual wage.
- (4) Despite subsection (3), the rules may have the following effect:
 - (a) if the amount worked out for a person is less than \$1—that the payment amount for the person is nil;
 - (b) if the amount worked out for the person is at least \$1 but less than \$100—that the amount the person should retain after tax is \$100.
- (5) In this Act:

actual wage means the total wages, worked out in accordance with the rules, that a person was paid in respect of all eligible days for the person.

productivity-scored wage means the total wages, worked out in accordance with the rules, that the person could reasonably have been expected to have been paid in respect of all eligible days for the person if the productivity component of a BSWAT assessment had comprised the whole of the BSWAT assessment.

8A Indexation

- (1) This is how to index the excess of a productivity-scored wage over an actual wage for the purposes of paragraph (3)(a):

Method statement

Section 8A

- Step 1. Work out how much of the excess is attributable to wages in respect of eligible days for the person concerned in each financial year. Each such amount is the ***annual portion*** for the financial year.
- Step 2. Multiply the oldest annual portion by the indexation factor specified in subsection (2) for the financial year to which that portion is attributable. If the result is not an amount of whole dollars, round the result up to the nearest whole dollar.
- Step 3. Take the result of step 2. Add to it any annual portion for the next financial year (unless it is the 2014-2015 financial year, in which case go to step 4). Multiply:
- (a) the total; or
 - (b) if there is no annual portion for the next financial year—the result of step 2;
- by the indexation factor specified in subsection (2) for that next financial year. If the result is not an amount of whole dollars, round the result up to the nearest whole dollar.
- Reapply this step for each subsequent financial year up to and including the 2013-2014 financial year, substituting the result of the previous application of this step for the result of step 2.
- Step 4. Take the result of step 3. Add to it any annual portion for the 2014-2015 financial year.
- Step 5. If the result is not an amount of whole dollars, round the result up to the nearest whole dollar.

- (2) The indexation factors are the following:
- (a) 1.025 for the 2003-2004 financial year;
 - (b) 1.025 for the 2004-2005 financial year;

- (c) 1.04 for the 2005-2006 financial year;
 - (d) 1.021 for the 2006-2007 financial year;
 - (e) 1.044 for the 2007-2008 financial year;
 - (f) 1.014 for the 2008-2009 financial year;
 - (g) 1.031 for the 2009-2010 financial year;
 - (h) 1.035 for the 2010-2011 financial year;
 - (i) 1.02 for the 2011-2012 financial year;
 - (j) 1.024 for the 2012-2013 financial year;
 - (k) 1.03 for the 2013-2014 financial year.
- (3) This section does not apply if:
- (a) the productivity-scored wage does not exceed the actual wage; or
 - (b) all eligible days for the person concerned were in the 2014-2015 financial year.

9 Effect on representative proceedings

- (1) If:
- (a) a person lodges an effective acceptance; and
 - (b) immediately before lodging the acceptance, the person was a group member in relation to a relevant representative proceeding;
- then, at the time the acceptance is lodged and by force of this section, the person ceases to be a group member in relation to the relevant representative proceeding.
- (2) Subsection (1) has effect despite the provisions of Part IVA of the *Federal Court of Australia Act 1976*. In particular, a group member does not need to opt out of the proceeding in accordance with section 33J of that Act in order to cease to be a group member.
- (3) For the purposes of section 33F of the *Federal Court of Australia Act 1976*, the lodging of an effective acceptance by a person or the doing of any other act under this Act or the rules does not constitute the taking of a step in a representative proceeding or conducting part of the proceeding.
- (4) Any of the following is a ***relevant representative proceeding***:

Section 10

- (a) the representative proceeding commenced by originating application in the Federal Court on 20 December 2013 as proceeding number VID 1367 of 2013;
- (b) any other representative proceeding in the Federal Court:
 - (i) in which damages or compensation are claimed in connection with the use of a BSWAT assessment to work out a minimum wage payable to a person; or
 - (ii) in relation to which a person may be a group member on the same, or substantially the same, basis as the conditions in section 6;
- (c) any appeal, application for leave to appeal or application for special leave to appeal from any judgment in a proceeding referred to in paragraph (a) or (b);
- (d) any appeal from any judgment in an appeal referred to in paragraph (c).

10 Effect on certain claims

- (1) If a person lodges an effective acceptance, then, at the time the person lodges the acceptance and by force of this section:
 - (a) the person releases and forever discharges the Commonwealth, each Australian Disability Enterprise and all other persons from all liability in relation to any matter referred to in subsection (2); and
 - (b) the person cannot, whether as an individual, a representative party or a member of a group, bring or continue any claim against the Commonwealth or any other person in relation to any matter referred to in subsection (2).
- (2) The matters are the following, to the extent to which they relate to the use of a BSWAT assessment to work out a minimum wage payable to a person:
 - (a) unlawful discrimination;
 - (b) a contravention or breach of, or failure to comply with, a law, whether written or unwritten, of the Commonwealth, a State or a Territory;

- (c) any other conduct or failure on the part of the Commonwealth, an Australian Disability Enterprise or any other person, that might give rise to a liability to the person.

11 Evidence of eligibility

The rules may prescribe matters relating to the evidence needed to do either or both of the following:

- (a) establish a person's eligibility under section 6;
- (b) work out the amount of the payment to be offered to a person.

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

Division 1—Simplified outline of this Part

12 Simplified outline of this Part

A person who wants a payment under the BSWAT payment scheme must make an application before 1 December 2016. Applications can only be made on or after 1 May 2016 by persons already registered for the scheme.

If a person makes an application before 1 December 2016, the Secretary must determine the application by deciding whether the person is eligible for the scheme, and if so, what amount (if any) to offer the person.

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

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

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

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

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

Section 12

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

The BSWAT payment scheme only operates until the end of 2017. Offers cannot be made on or after 1 September 2017, except as a consequence of a review of an earlier determination, and no offers at all can be made on or after 1 December 2017. A person who wants to accept an offer must do so on or before 31 December 2017.

Division 2—Registration and application

13 Registration

- (1) The Secretary must establish a register for the purposes of this section.
- (2) If a person contacts the Secretary before 1 May 2016 to register for the BSWAT payment scheme, the Secretary must include the person on the register by adding to it the following details:
 - (a) the person's name and contact details;
 - (b) any other details the Secretary considers appropriate.
- (3) The contact may be made by any of the following means:
 - (a) telephone;
 - (b) email or other electronic means;
 - (c) any other means approved by the Secretary.
- (4) A person who makes an application for the BSWAT payment scheme before 1 May 2016 is taken to be on the register.

14 When a person cannot be included on the register

- (1) The Secretary cannot include on the register a person for whom there is an alternative amount.
- (2) The Secretary cannot include on the register a person who first contacts the Secretary to register for the BSWAT payment scheme on or after 1 May 2016.
- (3) This section has effect despite anything else in this Act.

15 Application

- (1) A person may make an application for the BSWAT payment scheme during the period:
 - (a) starting on 1 July 2015; and
 - (b) ending on 30 November 2016.

- (2) The application must be:
 - (a) in an approved form; and
 - (b) lodged in a manner prescribed by the rules; and
 - (c) made before 1 December 2016.
- (3) The application must be accompanied by the information and documents prescribed by the rules.

16 When a person cannot make an application

- (1) A person cannot make an application if there is an alternative amount for the person.
- (2) A person who is not on the register cannot make an application on or after 1 May 2016.
- (3) An application cannot be made on or after 1 December 2016.
- (4) This section has effect despite anything else in this Act.

Division 3—Determinations, offers and refusals

17 Determination of application

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

18 Certain applications must not be determined

- (1) The Secretary must not determine an application made by a person if:
 - (a) the person has already lodged an effective acceptance; or
 - (b) the person has made an application (the *earlier application*) that has not been finally determined; or
 - (c) there is an alternative amount for the person.
- (2) The Secretary must not determine an application made on or after 1 December 2016.
- (3) An earlier application made by a person has been *finally determined* if:

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

19 Offer

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

Section 20

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

20 Refusal

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

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

21 Certain circumstances in which offers and refusals cannot be given

- (1) The Secretary must not make an offer or give a refusal to a person whose application has been determined if there is an alternative amount for the person.
- (2) The Secretary must not make an offer or give a refusal to a person on or after 1 September 2017, except as a consequence of a review of a determination made before that day.
- (3) The Secretary must not make an offer or give a refusal to a person on or after 1 December 2017.
- (4) Subsections (2) and (3) prevent the Secretary from making an offer or giving a refusal after a date specified in those subsections even if, on the specified date, the Secretary is waiting for further

Section 22

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

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

22 Extensions

- (1) The Secretary may, on request made in accordance with the rules (if any), extend, by no more than 28 days:
- (a) the acceptance period for an offer; or
 - (b) the 21 day period referred to in subsection 24(3) or 26(3) for applying for a review in relation to a refusal.

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

- (2) A period extended under paragraph (1)(a) must end on or before 31 December 2017.
- (3) A period extended under paragraph (1)(b) must end on or before 30 November 2017.
- (4) A request to extend a period must be received before the end of the original period.
- (5) The Secretary may only extend a period once.

Division 4—Internal review

23 Internal review at Secretary's initiative

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

24 Internal review on application

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

Section 25

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

25 Withdrawal of application for internal review

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

Division 5—External review

26 Application for external review

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

27 Appointing external reviewer

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

Section 28

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

28 External review

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

29 Material that may be considered by external reviewer

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

Material given by Secretary at time of appointment

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

Section 29

- (i) sets out the findings of fact made for the purposes of the determination; and
- (ii) refers to the evidence on which those findings were based; and
- (iii) gives the reasons for the determination; 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 determination.

Material given by applicant at time of application

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

Additional material given by Secretary

- (5) If:
 - (a) after the material mentioned in subsection (2) or (3) is given to the external reviewer, but before the completion of the review, a document comes into the possession or under the control of the Secretary; 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 given to the external reviewer in accordance with subsection (2) or (4);the Secretary must, as soon as practicable, give a copy of the document or the part of the document to the external reviewer.

Section 30

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

30 External reviewer may request Secretary to seek further information

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

31 Withdrawal of application for external review

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

32 Notice of decision on external review

The external reviewer must give the Secretary:

- (a) a copy of the external reviewer's decision on the review; and
- (b) reasons for the decision.

Division 6—Determinations made on a review

33 Substituting determinations on a review

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

Review of determination involving payment amount

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

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

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

Review of determination that applicant ineligible

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

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

34 Effect of review on previous offer or refusal

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

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

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

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

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

- (a) any offer or refusal that ceased to be current under subsection (1) or (2) becomes current again from the time of the withdrawal; and
- (b) for an offer—at the time of the withdrawal, the number of days remaining in the acceptance period is taken to be the number of days that remained immediately before the application was made.

Division 7—Accepting an offer

35 Accepting an offer

- (1) A person who wants to accept an offer must do so in accordance with this section.
- (2) The acceptance must be:
 - (a) in an approved form; and
 - (b) lodged in a manner prescribed by the rules; and
 - (c) lodged before the end of the acceptance period for the offer.
- (3) The acceptance must be accompanied by:
 - (a) a legal advice certificate that complies with section 36; and
 - (b) a financial counselling certificate that complies with section 37; and
 - (c) an acknowledgement that the person understands the effect of accepting the offer; and
 - (d) any other information or documents prescribed by the rules.

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

36 Legal advice certificate

A certificate complies with this section if the certificate:

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

37 Financial counselling certificate

- (1) A certificate complies with this section if the certificate:
 - (a) is in the approved form; and
 - (b) certifies, as required by the form, one or more of the matters specified in the form; and

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

(2) In this Act:

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

38 Effective acceptance

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

- (a) the person accepts the offer in accordance with section 35;
and
- (b) the acceptance is lodged before 1 January 2018; and
- (c) at the time the acceptance is lodged:
 - (i) if the offer had ceased to be current as mentioned in subsection 34(1) or (2)—the offer has become current again as mentioned in subsection 34(3); and
 - (ii) there is no alternative amount for the person; and
 - (iii) the person is not the representative party in a relevant representative proceeding.

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

39 Notice to Federal Court

- (1) The Secretary must notify the Federal Court if a person lodges an effective acceptance.
- (2) The notice must:
 - (a) be in writing; and
 - (b) be accompanied by copies of:
 - (i) the acceptance; and
 - (ii) the legal advice certificate that complies with section 36 and the financial counselling certificate that complies with section 37.

Section 40

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

40 Payment of amount

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

41 Declining an offer

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

Part 4—Nominees

Division 1—Introduction

42 Simplified outline of this Part

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

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

43 Definition of *participant*

Any person who:

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

is a *participant*.

44 Act that may be done

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

Division 2—Functions and responsibilities of nominee

45 Actions on behalf of participant

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

Note: See section 50 for the appointment of nominees.

- (2) Without limiting subsection (1), a request or application that may be made under this Act by a participant may be made by the person's nominee on behalf of the participant.
- (3) An act done by a participant's nominee because of this section has effect for the purposes of this Act (other than this Part) as if it had been done by the participant.
- (4) If the participant's nominee was appointed on the initiative of the Secretary, the nominee may only do an act if the nominee considers that the participant is not capable of doing, or being supported to do, the act.

46 Duties of nominee to participant

- (1) It is the duty of a nominee of a participant to ascertain the preferences of the participant in relation to the BSWAT payment scheme and to act in a manner that gives effect to those preferences.
- (2) A nominee does not breach the duty imposed by subsection (1) by doing an act if, when the act is done, the nominee reasonably believes that:
 - (a) the nominee has ascertained the preferences of the participant in relation to the act; and
 - (b) the doing of the act gives effect to those preferences.
- (3) A nominee does not breach the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, the nominee reasonably believes that:

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

47 Giving of notices to nominee

- (1) Any notice that the Secretary is authorised or required by this Act to give to a participant must be given by the Secretary to the participant's nominee.
- (2) The notice:
 - (a) must, in every respect, be in the same form, and in the same terms, as if it were being given to the participant; and
 - (b) may be given to the nominee personally, by post or by any other means approved by the Secretary.
- (3) If:
 - (a) under subsection (1), the Secretary gives a notice (the **nominee notice**) to a participant's nominee; and
 - (b) the Secretary has already given, or afterwards gives, the participant 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 participant as the nominee notice;

Section 48

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

48 Compliance by nominee

- (1) If, under section 47, a notice is given to a participant's 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 participant; and
 - (ii) to have been so given on the day the notice was given to the nominee;
 - (b) any requirement made of the person to:
 - (i) inform the Secretary of a matter; or
 - (ii) provide information or a document to the Secretary;may be satisfied by the nominee;
 - (c) any act done by the nominee for the purposes of satisfying such a requirement has effect, for the purposes of this Act, as if it had been done by the participant;
 - (d) if the nominee fails to satisfy such a requirement, the participant is taken, for the purposes of this Act, to have failed to comply with the requirement.
- (2) To avoid doubt, for the purposes of this Act, the participant is taken to have complied with a requirement if:
 - (a) the requirement imposes an obligation on the participant to inform the Secretary of a matter, or provide information or a document, within a specified period; and
 - (b) the nominee does so within that period.
- (3) To avoid doubt, for the purposes of this Act, the participant is taken not to have complied with a requirement if:
 - (a) the requirement imposes an obligation on the participant to inform the Secretary of a matter, or provide information or a document, within a specified period; and
 - (b) the nominee does not do so within that period.

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

- (1) The Secretary may give a nominee of a participant a written notice that requires the nominee to inform the Secretary 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 nominee of the participant; 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) must specify:
 - (a) how the nominee is to inform the Secretary; and
 - (b) the period within which the nominee is to inform the Secretary, which must be a period of at least 14 days starting on whichever of the following days is applicable:
 - (i) the day on which the event or change of circumstances happens;
 - (ii) the day on which the nominee becomes aware that the event or change of circumstances is likely to happen.
- (3) A notice under subsection (1) is not ineffective only because it does not comply with paragraph (2)(a).
- (4) 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.

Division 3—Appointment and cancellation or suspension of appointment

50 Appointment of nominee

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

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

- (2) An appointment may be made:
 - (a) at the request of the participant; or
 - (b) on the initiative of the Secretary.
- (3) An appointment may limit the matters in relation to which the appointee is the nominee of the participant.
- (4) An appointment may provide that it has effect for a specified term.
- (5) Without limiting the manner of specifying a term for the purposes of subsection (4), it may be specified by reference to the expiry of a specified period or the occurrence of a specified event.
- (6) To avoid doubt, the Secretary may appoint more than one person to be a nominee of a participant for the purposes of this Act.

51 Provisions relating to appointments

- (1) The Secretary must not appoint a person as a nominee of a participant under section 50 except:
 - (a) with the written consent of the appointee; and
 - (b) after taking into consideration the preferences (if any) of the participant regarding the making of the appointment.
- (2) In appointing a person as a nominee of a participant under section 50, the Secretary must consider whether the person is able to comply with section 46.

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

52 Circumstances in which the Secretary must cancel appointment of nominees

At the request of a participant

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

Section 53

Nominee no longer wishes to be a nominee

- (3) If:
- (a) a person is appointed as a nominee of a participant under section 50; and
 - (b) the person 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 by written instrument.

Copy of instrument of cancellation to be given

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

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

At the request of a participant

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

Ability to act as a nominee affected

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

Failure to comply with a notice under section 49

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

Copy of instrument of cancellation or suspension to be given

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

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

Suspension of appointment

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

Section 54

- (b) the person has failed to fulfil the person's duty under subsection 46(1).
- (2) Any financial harm that might be caused to the participant by the nominee acting in a manner that gives effect to the participant's preferences in relation to the BSWAT payment scheme is to be disregarded for the purposes of subsection (1).
- (3) If the person's appointment is suspended under subsection (1), the Secretary must:
 - (a) give the person and participant a copy of the instrument of suspension; and
 - (b) by written notice given to the person, request the person to give the Secretary, within 28 days after the notice is given, a statement setting out reasons why the person's appointment should not be cancelled by the Secretary under this section.

Cancellation of appointment following suspension

- (4) If the person gives the Secretary the statement within the 28 day period, the Secretary may, by written instrument, cancel the person's appointment.
- (5) The Secretary must decide whether to cancel the person's appointment under subsection (4) as soon as practicable after receiving the statement.
- (6) If the Secretary decides not to cancel the person's appointment under subsection (4):
 - (a) the suspension of the person's appointment ends; and
 - (b) the Secretary must give the person and participant written notice of the Secretary's decision.
- (7) If the person does not give the Secretary the statement within the 28 day period, the Secretary must, by written instrument, cancel the person's appointment as soon as practicable after that period ends.

Copy of instrument of cancellation to be given

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

55 Other matters relating to cancellation or suspension of appointment

- (1) While a person's appointment as a nominee is suspended, the appointment has no effect for the purposes of this Act.
- (2) If a person's appointment as a nominee of a participant is suspended under section 53 or 54, the Secretary may appoint another person under section 50 to be the nominee of the participant for a period specified in the instrument of appointment.

56 Rules may prescribe requirements etc.

The rules may prescribe:

- (a) requirements with which the Secretary must comply relating to the appointment of nominees or the cancellation or suspension of the appointment of nominees; and
- (b) criteria the Secretary is to apply or matters to which the Secretary is to have regard in appointing nominees or cancelling or suspending the appointment of nominees.

57 Secretary's powers of revocation

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

Division 4—Review of certain decisions about nominees

58 Review of certain decisions about nominees

- (1) The Secretary may, on his or her own initiative, review any of the following if the Secretary is satisfied that there is enough reason to do so:
 - (a) a decision under section 50 to appoint a person to be the nominee of a participant;
 - (b) a decision under section 52, 53 or 54 to cancel or suspend, or not to cancel or suspend, the appointment of a nominee.
- (2) On review of a decision, the Secretary must:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.

59 Application for review

- (1) A person whose interests are affected by a decision referred to in subsection 58(1) may apply to the Secretary for review of the decision within 28 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision.
- (2) The person must give reasons for the application.
- (3) The application must be made by:
 - (a) sending or delivering a written application to the Secretary in accordance with the rules (if any); or
 - (b) making an oral application, in person or by telephone or other means, to the Secretary in accordance with the rules (if any).
- (4) If a person makes an oral application in accordance with paragraph (3)(b), the person receiving the oral application must:
 - (a) make a written record of the details of the application; and
 - (b) note on the record the day the application is made.

60 Withdrawal of application

- (1) A person who has applied for review of a decision may withdraw the application at any time before a decision is made under section 61, by:
 - (a) sending or delivering a written notice to the Secretary in accordance with the rules (if any); or
 - (b) contacting the Secretary and withdrawing the application orally, whether in person, by telephone or by other means in accordance with the rules (if any).
- (2) If an application is withdrawn in accordance with paragraph (1)(b), the person receiving the oral withdrawal must make a written record of the details of the withdrawal and note on the record the day the withdrawal is made.
- (3) If an application for review of a decision is withdrawn, the application is taken never to have been made.

61 Review of decisions following application under section 59

If a person applies under section 59 for review of a decision, the Secretary 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.

62 Notice and date of effect

- (1) The Secretary's decision (the ***decision on review***) to affirm, vary or set aside a decision takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.

Part 4 Nominees

Division 4 Review of certain decisions about nominees

Section 62

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

Division 5—Other matters relating to nominees

63 Secretary's powers to give notices to participant

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

64 Notification of nominee where notice is given to participant

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

65 Protection of participant against liability for actions of nominee

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

66 Protection of nominee against criminal liability

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

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

Part 5—Administration

Division 1—Introduction

67 Simplified outline of this Part

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

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

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

Division 2—Information gathering

68 Further information from applicant

- (1) The Secretary may, by written notice given to a person who has made an application for the BSWAT payment scheme, request the person to give further information to the Department if the Secretary considers that the information would assist in determining the application.
- (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) the nature of the information that is requested; and
 - (ii) how the person is to give the information; and
 - (iii) the period within which the person is to give the information; and
 - (iv) the officer or class of officer (if any) to whom the information is to be given; and
 - (v) that the notice is given under this section.
- (3) A notice is not invalid merely because it does not comply with subparagraph (2)(b)(ii) or (v).
- (4) The period specified under subparagraph (2)(b)(iii) must not end earlier than 14 days after the notice is given.
- (5) The application need not be determined until the further information is provided.

69 General power to obtain information

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

Section 70

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

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

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

- (a) either to:
 - (i) give to the Department information that is relevant to the person's financial situation; or
 - (ii) produce to the Department 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 Department of the new address within 14 days after the change.

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

72 Written notice

- (1) A requirement under section 69, 70 or 71 must be made by written notice given to the person of whom the requirement is made.
- (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 to the Department; and
 - (iii) the officer or class of 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) A notice is not invalid merely because it does not comply with subparagraph (2)(b)(i) or (iv).
- (4) The period specified under subparagraph (2)(b)(ii) must not end earlier than 14 days after the notice is given.

73 Offence

- (1) A person commits an offence if:
 - (a) the person is required under section 69, 70 or 71 to give information or produce a document; and
 - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

- (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*).

Section 74

74 Obligations not affected by State or Territory laws

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

Division 3—Privacy**75 Protection of information**

- (1) A person may obtain protected information for the purposes of this Act.
- (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 person is doing so:
 - (d) for the purposes of this Act; or
 - (e) for the purpose for which the information was disclosed to the person under section 81; or
 - (f) with the express or implied consent of the person to whom the information relates.

76 Offence—unauthorised access to protected information

A person commits an offence if:

- (a) the person obtains information; and
- (b) the person is not authorised or required by or under this Act to obtain the information; and
- (c) the information is protected information.

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

77 Offence—unauthorised use or disclosure 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

Section 78

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

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

78 Offence—soliciting disclosure of protected information

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

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

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

79 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
- (b) the person knows the information is protected information.

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

- (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 person knows the information is protected information.

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

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

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

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

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

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

81 Disclosure of information by Secretary

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

- (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by a person in the performance of his or her functions or duties or in the exercise of his or her powers under this Act to such persons and for such purposes as the Secretary determines; or
- (b) disclose any such information:
 - (i) to the Secretary of a Department of State of the Commonwealth, or to the head of an authority of the Commonwealth, for the purposes of that Department or authority; or
 - (ii) to a person who has the express or implied consent of the person to whom the information relates to collect it; or
 - (iii) to the Chief Executive Centrelink for the purposes of a centrelink program; or
 - (iv) to the Chief Executive Medicare for the purposes of a medicare program.

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

Section 82

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

82 Rules for exercise of Secretary's disclosure powers

The rules may make provision for and in relation to the exercise of either or both of the following:

- (a) the Secretary's power to certify for the purposes of paragraph 81(1)(a);
- (b) the Secretary's power under subparagraph 81(1)(b)(i) to disclose information to a person.

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

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

Division 4—Debt recovery

84 Debts due to the Commonwealth

- (1) If a payment amount has been paid in respect of a person, the amount (or an amount equivalent to the amount) is a debt due to the Commonwealth only to the extent expressly provided for by this section.
- (2) If an amount is paid to a person (the *recipient*) but was not payable because:
 - (a) the amount was paid to the wrong person; or
 - (b) there is no determination of a payment amount, or no effective acceptance, that relates to the payment; or
 - (c) the amount exceeds the payment amount determined for a person;the amount paid (or an amount equivalent to that amount), or the amount of the excess, is a debt due to the Commonwealth by the recipient.
- (3) If:
 - (a) a payment amount is paid to a person (the *recipient*) under this Act; and
 - (b) the amount was paid wholly or partly because of a false or misleading statement, or a misrepresentation, by the recipient or another person;then an amount equal to so much of the payment amount as is attributable to the false or misleading statement, or the misrepresentation, is a debt due to the Commonwealth by the recipient.

Note: See also section 85 (joint and several liability for debts arising because of false and misleading statements).
- (4) A debt due by a person under this section in respect of an amount arises at the time the amount is paid to the person.

Section 85

85 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 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).

86 Legal proceedings

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

87 Arrangement for payment of debt

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

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

88 Recovery of amounts from financial institutions

- (1) If:
 - (a) an amount is paid under this Act to a financial institution for the credit of an account kept with the institution; and
 - (b) the Secretary is satisfied that the payment was intended to be made to someone who was not the person or one of the persons in whose name or names the account was kept;the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a reasonable period stated in the notice, the lesser of the following amounts:
 - (c) an amount specified in the notice that is equal to the amount that was paid as mentioned in paragraph (a);
 - (d) the amount standing to the credit of the account when the notice is received by the institution.
- (2) A financial institution must comply with a notice given to it under subsection (1).

Penalty: 300 penalty units.
- (3) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) if the financial institution proves that it was incapable of complying with the notice.
- (4) If a notice is given to a financial institution under subsection (1) in respect of an amount paid under this Act, any amount recovered by the Commonwealth from the institution in respect of the payment

Section 89

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

(5) In this Act:

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

89 Overseas application of debts

The operation of a provision creating a debt under this Part 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.

Division 5—Non-recovery of debts

90 Secretary may write off debt

- (1) Subject to subsection (2), the Secretary may, on behalf of the Commonwealth, decide to write off a debt, for a stated period or otherwise.
- (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.
- (3) For the purposes of paragraph (2)(a), a debt is irrecoverable at law if, and only if:
 - (a) the debt cannot be recovered by means of legal proceedings because the period during which such proceedings may be brought has ended; or
 - (b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or
 - (c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or
 - (d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.
- (4) A decision made under subsection (1) takes effect:
 - (a) if no day is specified in the decision—on the day the decision is made; or
 - (b) if a day is specified in the decision—on the day so specified (whether that day is before, on or after the day the decision is made).

Section 91

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

91 Power to waive Commonwealth's right to recover debt

- (1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 92, 93, 94 or 95.
- (2) A waiver takes effect:
- (a) on the day specified in the waiver (whether that day is before, on or after the day the decision to waive is made); or
 - (b) if the waiver does not specify when it takes effect—on the day the decision to waive is made.

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

92 Waiver of debt arising from error

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

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

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

93 Waiver of small debt

The Secretary may 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.

94 Waiver in relation to settlements

- (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.
- (2) 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 remaining 20% or less of the value of the original debt.
- (3) 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 that is less than the amount of the debt outstanding at the time of the agreement (the **unpaid amount**), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.
- (4) The Secretary must not make an agreement described in subsection (3) 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.
- (5) For the purposes of subsection (4), the present value of the unpaid amount is the amount worked out in accordance with the method prescribed by the rules.

95 Waiver in special circumstances

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

- (a) the debt did not arise in whole or part as a result of:
 - (i) a contravention of this Act or the rules; or

Part 5 Administration

Division 5 Non-recovery of debts

Section 95

- (ii) a false or misleading statement or a misrepresentation;
and
- (b) there are special circumstances (other than financial hardship or the disability of the debtor) that the Secretary is satisfied make waiver appropriate; and
- (c) the Secretary is satisfied that waiver is more appropriate than writing off the debt.

Part 6—Miscellaneous

96 Simplified outline of this Part

This Part deals with miscellaneous matters.

97 Effect of person's death

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

98 No admissions

None of the following:

- (a) the determination of a payment amount for a person;
- (b) the making of an offer to a person;
- (c) the paying of a payment amount to a person;
- (d) anything else done under this Act or the rules;
- (e) anything in this Act or the rules;

constitutes an admission by the Commonwealth that it is liable for unlawful discrimination or any other matter referred to in subsection 10(2), or that a particular method should be adopted in assessing damages or compensation claimed by a person in connection with the use of a BSWAT assessment to work out a minimum wage payable to a person.

98A Certain administrative matters

- (1) The Commonwealth may do any or all of the following:
 - (a) inform people about the BSWAT payment scheme;

Section 99

- (b) engage one or more persons to undertake activities (whether or not on behalf of the Commonwealth) in relation to informing people about the BSWAT payment scheme and make payments for services provided under such engagements;
 - (c) publish contact details and background information on behalf of legal practitioners who have indicated their availability to provide services in relation to legal advice certificates referred to in section 36;
 - (d) publish contact details and background information on behalf of financial counsellors who have indicated their availability to provide services in relation to financial counselling certificates referred to in section 37;
 - (e) make payments, in accordance with the rules, in discharge of costs, expenses or other obligations incurred by a person in connection with obtaining a legal advice certificate that complies with section 36 or a financial counselling certificate that complies with section 37 or otherwise in connection with a person's participation in the BSWAT payment scheme.
- (2) A power conferred on the Commonwealth by subsection (1) may be exercised on behalf of the Commonwealth by the Secretary.
- (3) This section does not, by implication, limit the executive power of the Commonwealth.

99 Standing appropriation

- (1) The Consolidated Revenue Fund is appropriated for the purposes of making:
- (a) payments that the Secretary is satisfied are required to be paid under section 40; and
 - (b) payments of amounts under subsection 27(4); and
 - (c) payments under subsection 98A(1).
- (2) Paragraph (1)(c) does not extend to payments in relation to the employment of APS employees in the Department.

100 Delegation

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

101 Approved forms

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

102 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.
 - (3) However, to avoid doubt, rules that make provision in relation to:
 - (a) the payment amount for a person; or
 - (b) amounts of remuneration or allowances for the purposes of subsection 27(4); or
 - (c) amounts of costs, expenses or other obligations for the purposes of paragraph 98A(1)(e);
-

Section 102

are not to be taken to set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act for the purposes of paragraph (2)(d) of this section.

*[Minister's second reading speech made in—
House of Representatives on 5 June 2014
Senate on 19 June 2014]*

(121/14)
