



Social Security (Penalty Interest) Determination 2001

I, AMANDA ELOISE VANSTONE, Minister for Family and Community Services, make this Determination under subsections 1229B (2) and 1229C (1) of the *Social Security Act 1991*.

Dated 31 July 2001

AMANDA VANSTONE
Minister for Family and Community Services

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Section 1

Part 1 Preliminary**1 Name of Determination**

This Determination is the *Social Security (Penalty Interest) Determination 2001*.

2 Commencement

This Determination commences on gazettal.

3 Social Security (Penalty Interest Charge Guidelines) Determination No. 1 — revocation

The Social Security (Penalty Interest Charge Guidelines) Determination No. 1, as published in *Gazette* No. S 227 on 27 June 1994, is revoked.

4 Definitions

In this Determination, unless the contrary intention appears:

Act means the *Social Security Act 1991*.

determination means a determination under section 1229AA of the Act.

Part 2 **Penalty interest rate**

5 **Penalty interest rate**

For subsection 1229B (2) of the Act, the penalty interest rate is 3% per year.

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Part 3 Penalty interest guidelines

6 Purpose of Part 3

- (1) For subsection 1229C (1) of the Act, this Part sets out guidelines for the operation of the provisions of the Act dealing with penalty interest.
- (2) In deciding whether to make a determination under section 1229AA of the Act that interest is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt, the Secretary must comply with the guidelines set out in this Part.

7 Arrangement entered into after final payment day

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 1229A (2) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person if, after the final payment day, the person:
 - (a) has entered into an arrangement under section 1234 of the Act to pay the outstanding amount of the debt; and
 - (b) is making payments in accordance with the arrangement.
- (3) If the Secretary makes a determination in the circumstance mentioned in subsection (2), the Secretary should:
 - (a) determine that interest is not payable on and after the day when the first payment made in accordance with the arrangement is received by, or on behalf of, the Commonwealth Services Delivery Agency (Centrelink); and
 - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the arrangement.
- (4) In this section:
final payment day has the meaning given by subsection 1229A (4) of the Act.

8 Payments resumed in accordance with existing arrangement or new arrangement entered into after failure day

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 1229A (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person if, after the failure day:
 - (a) the person has resumed making payments in accordance with the arrangement mentioned in subsection 1229A (3) (the *existing arrangement*); or

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- (b) the person:
 - (i) has entered into a new arrangement under section 1234 of the Act (the *new arrangement*) to pay the outstanding amount of the debt; and
 - (ii) is making payments in accordance with the new arrangement.
- (3) If the Secretary makes a determination in the circumstance mentioned in paragraph (2) (a), the Secretary should:
 - (a) determine that interest is not payable on and after:
 - (i) the day when the first payment made in accordance with the existing arrangement, after the failure day, is received by, or on behalf of, the Commonwealth Services Delivery Agency (Centrelink); or
 - (ii) if that day occurs before the liability day — the liability day; and
 - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the existing arrangement.
- (4) If the Secretary makes a determination in the circumstance mentioned in paragraph (2) (b), the Secretary should:
 - (a) determine that interest is not payable on and after:
 - (i) the day when the first payment made in accordance with the new arrangement is received by, or on behalf of, the Commonwealth Services Delivery Agency (Centrelink); or
 - (ii) if that day occurs before the liability day — the liability day; and
 - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the new arrangement.

- (5) In this section:

failure day, in relation to a person to whom subsection 1229A (3) of the Act applies, means the day when the person failed to make the payment mentioned in paragraph 1229A (3) (b) of the Act.

liability day, in relation to a person's liability to pay interest on the outstanding amount of a debt under subsection 1229A (3) of the Act, means the day mentioned in paragraph 1229A (3) (d) or (e) of the Act from and including which the person is liable to pay interest on the outstanding amount.

9 Garnishee notice issued in respect of debt

- (1) This section applies in relation to a person (the *debtor*) who is liable to pay interest on the outstanding amount of a debt under subsection 1229A (2) or (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the debtor in respect of a particular period if a notice (a *garnishee notice*) has been given to another person under subsection 1233 (1) of the Act

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requiring the other person to pay to the Commonwealth an amount under paragraph 1233 (1) (f) or (g) of the Act in respect of the debt.

- (3) If the Secretary makes a determination in the circumstance mentioned in subsection (2), the Secretary should determine that interest is not payable only in respect of the period:
 - (a) beginning on the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the first payment to which the garnishee notice applies; and
 - (b) ending at the end of the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the last payment to which the garnishee notice applies.

10 No capacity to pay debt

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 1229A (2) or (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person in respect of a particular period if, during that period, the person had or has no capacity to repay the debt.