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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Paid Parental Leave Bill 2010

No. , 2010

(Families, Housing, Community Services and Indigenous Affairs)

**A Bill for an Act to provide for the payment of
parental leave pay, and for related purposes**

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1 **A Bill for an Act to provide for the payment of**
2 **parental leave pay, and for related purposes**

3 The Parliament of Australia enacts:

4 **Chapter 1—Introduction**

5 **Part 1-1—Introduction**

6 **Division 1—Preliminary**

7 **1 Short title**

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

Section 2

1 **2 Commencement**

2 This Act commences on 1 October 2010.

3 **3 Act binds Crown**

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

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

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

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

1

2 **Division 2—Guide to this Act**

3 **4 Guide to this Act**

4

Overview

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

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

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

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

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

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

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

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

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Section 4

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(b) be the child’s primary carer; and

(c) not have returned to work; and

(d) not be entitled to baby bonus.

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

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

Chapter 3—Payment of parental leave pay

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

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

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

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

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

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

Chapter 4—Compliance and enforcement

Chapter 4 deals with compliance and enforcement.

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

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

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

Chapter 5—Review of decisions

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

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

Chapter 1 Introduction

Part 1-1 Introduction

Division 2 Guide to this Act

Section 4

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

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

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

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

Chapter 6—Miscellaneous

Chapter 6 has miscellaneous provisions.

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

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

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

1

2 **Part 1-2—Definitions**

3 **Division 1—Guide to this Part**

4 **5 Guide to this Part**

5

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

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

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Section 6

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2 **Division 2—The Dictionary**

3 **6 The Dictionary**

4 In this Act:

5 *AAT* means the Administrative Appeals Tribunal.

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

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

10 *acceptance notice*: see section 103.

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

13 *adjusted taxable income*: see section 38.

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

17 *Australian-based employee* means an employee:

- 18 (a) whose primary place of work is in Australia; or
19 (b) who is employed by an Australian government employer.

20 *Australian government employer* means:

- 21 (a) the Commonwealth; or
22 (b) a State; or
23 (c) a Territory; or
24 (d) a body corporate established for a public purpose by or under
25 a law of the Commonwealth, a State or a Territory; or
26 (e) a body corporate:
27 (i) incorporated under a law of the Commonwealth, a State
28 or a Territory; and

1 (ii) in which the Commonwealth, a State or a Territory, has
2 a controlling interest.

3 ***Australian residency test***: see sections 45 and 46.

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

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

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

14 ***baby bonus*** has the same meaning as in the Family Assistance Act.

15 ***bank account*** includes an account held with an ADI.

16 ***bank account information***: see subsection 104(2).

17 ***birth verification form***: see subsection 18(4).

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

20 ***calendar month*** means one of the 12 months of the year.

21 ***CEO*** means:

- 22 (a) in relation to the Commonwealth Services Delivery
23 Agency—the Chief Executive Officer of the Agency; and
24 (b) in relation to Medicare Australia—the Chief Executive
25 Officer of Medicare Australia.

26 ***civil penalty order***: see subsection 147(2).

27 ***civil penalty provision***: see section 146.

28 ***claim*** means a primary claim, a secondary claim or a tertiary claim
29 for parental leave pay for a child.

Section 6

- 1 ***claimant*** means a person who is a primary claimant, secondary
2 claimant or tertiary claimant.
- 3 ***claimant decision***: see section 206.
- 4 ***Commonwealth agency*** means any of the following:
5 (a) a Department of State;
6 (b) a Department of the Parliament;
7 (c) a prescribed Agency (within the meaning of the *Financial*
8 *Management and Accountability Act 1997*) that forms part of
9 the Commonwealth;
10 (d) any other unincorporated body established for a public
11 purpose by or under a law of the Commonwealth.
- 12 ***compliance notice***: see subsection 157(3).
- 13 ***controls*** an entity: see subsection 35(4).
- 14 ***correspondence nominee*** means a person who is appointed as a
15 correspondence nominee under section 281.
- 16 ***daily national minimum wage amount***: see subsection 65(2).
- 17 ***date of the further debt notice***: see section 174.
- 18 ***date of the initial debt notice***: see section 173.
- 19 ***day of placement*** of a child with a person: see subsection 275(3).
- 20 ***debt payment arrangement***: see section 190.
- 21 ***decision*** has the same meaning as in the AAT Act.
- 22 ***defence force member*** means a member of the Australian Defence
23 Force.
- 24 ***effective claim*** means a claim that is made in accordance with
25 Part 2-4.
- 26 ***eligible*** for parental leave pay: see section 31.
- 27 ***employee*** has its ordinary meaning and:

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

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

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

6 **employer determination**: see section 101.

7 **employer determination decision**: see section 207.

8 **employer funding amount decision**: see section 208.

9 **engage in conduct** means:

10 (a) do an act; or

11 (b) omit to perform an act.

12 **entity** means any of the following:

13 (a) a natural person;

14 (b) a body corporate;

15 (c) a body politic;

16 (d) a partnership;

17 (e) any other unincorporated association or body of persons;

18 (f) a trust.

19 **exceptional circumstances**: a claim is made in **exceptional**
20 **circumstances** if it is made by a person who satisfies:

21 (a) paragraph 54(1)(c) (which deals with primary claims); or

22 (b) paragraph 54(2)(d) (which deals with secondary claims); or

23 (c) subsection 54(3) (which deals with tertiary claims).

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

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

27 **Federal Court** means the Federal Court of Australia.

28 **final debt payment day**: see section 175.

29 **financial institution** means:

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- 1 (a) an ADI; or
2 (b) the Reserve Bank of Australia; or
3 (c) a person who carries on State banking within the meaning of
4 paragraph 51(xiii) of the Constitution.

5 ***further debt notice***: see section 174.

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

7 ***garnishee notice***: see section 184.

8 ***holder***, of a visa, has the same meaning as in the *Migration Act*
9 *1958*.

10 ***income test***: see section 37.

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

13 ***indexation day***: see subsection 42(1).

14 ***indexation factor***: see subsection 43(1).

15 ***indexed amount***: see subsection 42(2).

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

17 ***initial eligibility determination***: see section 26.

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

- 19 (a) for a natural person:
20 (i) the person is an insolvent under administration (within
21 the meaning of the *Corporations Act 2001*); or
22 (ii) the person is a debtor in relation to a debt agreement
23 under Part IX of the *Bankruptcy Act 1966* that has not
24 ended or been terminated; and
25 (b) for a person that is or was a body corporate:
26 (i) the person is an externally-administered body corporate
27 (within the meaning of the *Corporations Act 2001*) or
28 an entity with a similar status under a law of a foreign
29 country; or

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- 1 (ii) a provisional liquidator has been appointed in relation to
2 the person under section 472 of the *Corporations Act*
3 *2001*; or
4 (iii) a person with a similar status to a provisional liquidator
5 has been appointed in relation to the person under a law
6 of a foreign country.

7 ***instalment*** means an instalment of parental leave pay.

8 ***instalment period*** for a person: see section 64.

9 ***interest exemption determination***: see subsection 178(1).

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

12 ***keeping in touch day***: see section 50.

13 ***law enforcement officer*** means:

- 14 (a) a member of a police force or police service of the
15 Commonwealth, a State or a Territory; or
16 (b) a person appointed to a position for the purposes of being
17 trained as a member of a police force or police service of the
18 Commonwealth, a State or a Territory; or
19 (c) a person who has the powers and duties of a member of a
20 police force or police service of the Commonwealth, a State
21 or a Territory;

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

26 ***maximum PPL period***: see subsection 11(3).

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

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

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

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

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- 1 ***nominated start date***: see subsection 57(1).
- 2 ***nominee*** means a correspondence nominee or a payment nominee.
- 3 ***officer*** means a person performing duties, or exercising powers or
4 functions, under or in relation to this Act.
- 5 ***original debt***: see section 184.
- 6 ***original debtor***: see section 184.
- 7 ***paid enough*** to fund an instalment: see section 73.
- 8 ***paid work***: see section 35.
- 9 ***parent***:
- 10 (a) when used in relation to a child who has been adopted—
11 means an adoptive parent of the child; and
- 12 (b) when used in relation to a child born because of the carrying
13 out of an artificial conception procedure—means a person
14 who is a parent of the child under section 60H of the *Family*
15 *Law Act 1975*; and
- 16 (c) when used in relation to a child born because of a surrogacy
17 arrangement—includes a person who is a parent of the child
18 under section 60HB of the *Family Law Act 1975*.
- 19 ***parental leave pay*** means payments of parental leave pay under
20 this Act.
- 21 ***partner*** has the same meaning as in the Social Security Act.
- 22 ***payability determination*** means a determination made under
23 section 13, 14, 15, 16 or 17 that parental leave pay is, or is not,
24 payable to a person for a child.
- 25 ***pay cycle information***: see subsection 104(3).
- 26 ***payday*** for an instalment: see section 64.
- 27 ***payment nominee*** means a person who is appointed as a payment
28 nominee under section 280.

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

5 **penalty interest rate**: see section 180.

6 **penalty unit** has the same meaning as in section 4AA of the *Crimes*
7 *Act 1914*.

8 **permissible break**: see subsection 36(1).

9 **permissible purpose**: see section 49.

10 **PPL** is short for paid parental leave.

11 **PPL agency** means:

- 12 (a) the Department; or
13 (b) the Commonwealth Services Delivery Agency; or
14 (c) Medicare Australia.

15 **PPL agency head** means:

- 16 (a) for the Department—the Secretary; or
17 (b) for the Commonwealth Services Delivery Agency—the CEO
18 of the Agency; or
19 (c) for Medicare Australia—the CEO of Medicare Australia.

20 **PPL day**: see subsection 63(3).

21 **PPL funding amount**: see subsection 75(1).

22 **PPL income limit**: see section 41.

23 **PPL period**: see subsection 11(1).

24 **PPL requirement**: see subsection 287(6).

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

27 **primary carer**: see section 47.

28 **primary claim**: see subsection 53(2).

Section 6

- 1 **primary claimant** means a person who has made an effective
2 primary claim for parental leave pay for a child.
- 3 **principal** in relation to a nominee, means the person in relation to
4 whom the nominee was appointed.
- 5 **Principal Member** means the Principal Member of the Social
6 Security Appeals Tribunal.
- 7 **protected information** means:
8 (a) information about a person that is or was held in the records
9 of the Department or the Commonwealth Services Delivery
10 Agency; or
11 (b) information about a person obtained by an officer under this
12 Act that is or was held in the records of Medicare Australia;
13 or
14 (c) information to the effect that there is no information about a
15 person held in the records of a PPL agency.
- 16 **provisional indexed amount**: see section 42.
- 17 **qualifying period**: see section 32.
- 18 **qualifying work**: see section 34.
- 19 **reference income year**: see section 39.
- 20 **reference period**: see subsection 47(2).
- 21 **relevant PPL income limit**: see section 40.
- 22 **resides in Australia** has the same meaning as in the Social Security
23 Act.
- 24 **returns to work**: see section 48.
- 25 **saved amount**: see subsection 97(2).
- 26 **secondary claim**: see subsection 53(3).
- 27 **secondary claimant** means a person who has made an effective
28 secondary claim for parental leave pay for a child for which
29 another person has made a primary claim.

1 **Secretary** means the Secretary of the Department.

2 **service arrangements** has the same meaning as in:

- 3 (a) in relation to the CEO of the Commonwealth Services
4 Delivery Agency—section 3 of the *Commonwealth Services*
5 *Delivery Agency Act 1997*; and
6 (b) in relation to the CEO of Medicare Australia—section 3 of
7 the *Medicare Australia Act 1973*.

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

9 **special category visa** has the same meaning as in the *Migration Act*
10 1958.

11 **SSAT** means the Social Security Appeals Tribunal.

12 **SSAT reviewable claimant decision**: see section 215.

13 **SSAT reviewable employer decision**: see section 223.

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

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

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

- 21 (a) any applicable time limits for applying for a review (however
22 described) or lodging an appeal (however described) of or in
23 relation to the determination have expired; and
24 (b) if there is such a review or appeal of or in relation to the
25 determination—the review or appeal (and any later reviews
26 or appeals) have been finally disposed of.

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

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

30 **tertiary claim**: see subsection 53(4).

Section 6

- 1 **tertiary claimant** means a person who has made an effective
2 tertiary claim for parental leave pay for a child for which another
3 person has made a secondary claim.
- 4 **this Act** includes the PPL rules and the regulations.
- 5 **transfer day**: see subsections 84(3), (4) and (5).
- 6 **verifies** a child's birth: see section 18.
- 7 **week day** means a day that is not a Saturday or a Sunday.
- 8 **working day** means a day that is not a Saturday, a Sunday or a
9 public holiday.
- 10 **work test**: see section 32.
- 11 **work test period**: see section 33.

1
2 **Chapter 2—When parental leave pay is**
3 **payable to a person**

4 **Part 2-1—Key provisions**

5 **Division 1—Guide to this Part**

6 **7 Guide to this Part**

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

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

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

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

27 If a secondary or tertiary claim is made, that claim will be for the
28 part of the maximum 18 week period (or lesser period) in which
29 parental leave pay was not payable to the primary claimant. The

Chapter 2 When parental leave pay is payable to a person

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person's employer or the Secretary will pay instalments of parental leave pay for that period (see Chapter 3 for the rules about how the person is paid parental leave pay).

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

4 **8 A determination must be made for parental leave pay to be**
5 **payable to a person**

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

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

12 **9 For the determination to be made, the person must be eligible**

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

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

18 **10 For the determination to be made, the person must claim**

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

- 22 (a) an effective primary claim for the child (in which case the
23 person is the primary claimant); or
24 (b) an effective secondary claim for the child (in which case the
25 person is the secondary claimant); or
26 (c) an effective tertiary claim for the child (in which case the
27 person is the tertiary claimant).

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

Section 11

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

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

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

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

- (3) The *maximum PPL period* for a child is the period that:

- (a) starts on the child's maximum PPL period start day; and
(b) ends on the child's maximum PPL period end day.

- (4) The *maximum PPL period start day* for a child is:

- (a) if, on or before the day (the *relevant day*) that is 28 days after the day the child was born, the primary claimant both made an effective claim for parental leave pay for the child and verified the child's birth—the later of the following days:

- (i) the day the child was born;
(ii) the primary claimant's nominated start date; and

- (b) if, on or before the relevant day, the primary claimant made an effective claim for parental leave pay for the child but did not verify the child's birth—the later of the following days:

- (i) the day the primary claimant verifies the child's birth;
(ii) the primary claimant's nominated start date; and

- (c) if the primary claimant makes an effective claim for parental leave pay for the child after the relevant day—the later of the following days:

- (i) the day the claim is made;
(ii) the primary claimant's nominated start date.

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

- (a) the day that is 125 days after the maximum PPL period start day (which is 18 weeks from (and including) that start day);

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

Key provisions **Part 2-1**

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

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(b) the day before the child's first birthday.

Section 12

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

4 **Division 1—Guide to this Part**

5 **12 Guide to this Part**

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

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

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

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

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

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

4 **13 Determination on a primary claim made alone**

5 *When a claim is to be determined under this section*

- 6 (1) If:
- 7 (a) a primary claimant has made an effective primary claim for
 - 8 parental leave pay for a child; and
 - 9 (b) another person has not made an effective secondary claim for
 - 10 parental leave pay for the child at the same time;
- 11 the Secretary must make a determination on the primary claim
12 under this section.

13 *When parental leave pay is payable to primary claimant*

- 14 (2) The Secretary must determine that parental leave pay is payable to
15 the primary claimant for the primary claimant's PPL period if,
16 when making the determination, the Secretary is satisfied that the
17 primary claimant was or will be eligible for parental leave pay on
18 each day in the period that:
- 19 (a) starts on the day the child was born; and
 - 20 (b) ends on the last day of the primary claimant's PPL period.

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

23 *Primary claimant's PPL period*

- 24 (3) The Secretary must specify in the determination under
25 subsection (2) that the primary claimant's PPL period:
- 26 (a) starts on the child's maximum PPL period start day; and
 - 27 (b) ends on:
 - 28 (i) if the Secretary is satisfied that the primary claimant
 - 29 was or will be eligible on each day in the child's
 - 30 maximum PPL period—the child's maximum PPL
 - 31 period end day; or

Chapter 2 When parental leave pay is payable to a person

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

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

6 *When parental leave pay is not payable to primary claimant*

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

10 **14 Determination on primary and secondary claims made jointly—**
11 **claimants sharing parental leave pay**

12 *When a claim is to be determined under this section*

- 13 (1) If:
14 (a) a primary claimant has made an effective primary claim for
15 parental leave pay for a child; and
16 (b) a secondary claimant has made an effective secondary claim
17 for parental leave pay for the child at the same time; and
18 (c) in the primary claim, the primary claimant requested that
19 parental leave pay that is or may be payable for the child be
20 shared between the primary claimant and the secondary
21 claimant;
22 the Secretary must make a determination on the primary claim and
23 the secondary claim under this section.

24 *When parental leave pay is payable to primary claimant*

- 25 (2) The Secretary must determine that parental leave pay is payable to
26 the primary claimant for the primary claimant's PPL period if,
27 when making the determination, the Secretary is satisfied that the
28 primary claimant was or will be eligible for parental leave pay on
29 each day in the period that:
30 (a) starts on the day the child was born; and
31 (b) ends on the last day of the primary claimant's PPL period.

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

1 *Primary claimant's PPL period*

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

8 *When parental leave pay is not payable to primary claimant*

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

12 *When parental leave pay is payable to secondary claimant*

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

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

23 *Secondary claimant's PPL period*

- 24 (6) The Secretary must specify in the determination under
25 subsection (5) that the secondary claimant's PPL period:
26 (a) starts on the first day after the primary claimant's PPL period
27 ends; and
28 (b) ends on:
29 (i) if the Secretary is satisfied that the secondary claimant
30 was or will be eligible on each day that remains in the
31 child's maximum PPL period—the child's maximum
32 PPL period end day; or

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

Section 15

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

4 *When parental leave pay is not payable to secondary claimant*

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

8 **15 Determination on primary and secondary claims made jointly—**
9 **secondary claimant to get all the parental leave pay**

10 *When a claim is to be determined under this section*

- 11 (1) If:
12 (a) a primary claimant has made an effective primary claim for
13 parental leave pay for a child; and
14 (b) a secondary claimant has made an effective secondary claim
15 for parental leave pay for the child at the same time; and
16 (c) in the primary claim, the primary claimant requested that the
17 secondary claimant be paid the full amount of parental leave
18 pay that is or may be payable for the child;
19 the Secretary must make a determination on the primary claim and
20 the secondary claim under this section.

21 *When parental leave pay is not payable to primary claimant*

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

24 *When parental leave pay is payable to secondary claimant*

- 25 (3) The Secretary must determine that parental leave pay is payable to
26 the secondary claimant for the secondary claimant’s PPL period if,
27 when making the determination, the Secretary is satisfied that:
28 (a) the primary claimant:
29 (i) satisfies the work test and income test on that day; and
30 (ii) satisfied the Australian residency test on the day the
31 child was born; and

- 1 (b) the secondary claimant was or will be eligible for parental
2 leave pay on each day in the secondary claimant's PPL
3 period; and
4 (c) if the secondary claimant's PPL period starts after the day the
5 child was born—subsection (4) applies to the period that:
6 (i) starts on the day the child was born; and
7 (ii) ends on the day before the start of the secondary
8 claimant's PPL period.

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

- 11 (4) This subsection applies to the period referred to in paragraph (3)(c)
12 if:
13 (a) the primary claimant was or will be eligible for parental leave
14 pay on each day in that period; or
15 (b) the secondary claimant was or will be eligible for parental
16 leave pay on each day in that period; or
17 (c) both of the following are satisfied:
18 (i) the primary claimant was or will be eligible for parental
19 leave pay on each day in the first part of that period;
20 (ii) the secondary claimant was or will be eligible for
21 parental leave pay on each day in the last part of that
22 period.

23 *Secondary claimant's PPL period*

- 24 (5) The Secretary must specify in the determination under
25 subsection (3) that the secondary claimant's PPL period:
26 (a) starts on the maximum PPL period start day; and
27 (b) ends on:
28 (i) if the Secretary is satisfied that the secondary claimant
29 was or will be eligible on each day in the child's
30 maximum PPL period—the child's maximum PPL
31 period end day; or
32 (ii) if the Secretary is satisfied that the secondary claimant
33 was or will be eligible for a period that is shorter than
34 the child's maximum PPL period—the last day in the
35 child's maximum PPL period that the Secretary is

Section 16

1 satisfied that the secondary claimant was or will be
2 eligible.

3 *When parental leave pay is not payable to secondary claimant*

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

7 **16 Determination on a secondary claim made after the primary**
8 **claim**

9 *When a claim is to be determined under this section*

- 10 (1) If:
11 (a) a primary claimant makes an effective primary claim for
12 parental leave pay for a child; and
13 (b) a secondary claimant makes an effective secondary claim for
14 parental leave pay for the child at a later time;
15 the Secretary must make a determination on the secondary claim
16 under this section.
- 17 (2) However, the Secretary cannot make a determination on the
18 secondary claim under this section until the Secretary has first
19 made a determination on the primary claim.

20 *When parental leave pay is payable to secondary claimant*

- 21 (3) The Secretary must determine that parental leave pay is payable to
22 the secondary claimant for the secondary claimant's PPL period if,
23 when making the determination, the Secretary is satisfied that:
24 (a) a determination under section 13 or 14 that parental leave pay
25 is payable to the primary claimant was or will be in force on
26 the day before the start of the secondary claimant's PPL
27 period; and
28 (b) the secondary claimant was or will be eligible for parental
29 leave pay for the child on each day in the secondary
30 claimant's PPL period.

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

1 *Secondary claimant's PPL period*

- 2 (4) The Secretary must specify in the determination under
3 subsection (3) that the secondary claimant's PPL period:
4 (a) starts on the first day after the primary claimant's PPL period
5 ends; and
6 (b) ends on:
7 (i) if the Secretary is satisfied that the secondary claimant
8 was or will be eligible on each day that remains in the
9 child's maximum PPL period—the child's maximum
10 PPL period end day; or
11 (ii) otherwise—the last day in the child's maximum PPL
12 period that the Secretary is satisfied the secondary
13 claimant was or will be eligible.

14 *When parental leave pay is not payable to secondary claimant*

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

18 **17 Determination on a tertiary claim**

19 *When a tertiary claim is to be determined under this section*

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

23 *When parental leave pay is payable to tertiary claimant*

- 24 (2) The Secretary must determine that parental leave pay is payable to
25 the tertiary claimant for the tertiary claimant's PPL period if, when
26 making the determination, the Secretary is satisfied that:
27 (a) a determination under section 14, 15 or 16 that parental leave
28 pay is payable to the secondary claimant was or will be in
29 force on the day before the start of the tertiary claimant's
30 PPL period; and
31 (b) the tertiary claimant was or will be eligible for parental leave
32 pay on each day in the tertiary claimant's PPL period.

Chapter 2 When parental leave pay is payable to a person

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

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

Section 17

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

3 *Tertiary claimant's PPL period*

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

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

8 (b) ends on:

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

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

16 *When parental leave pay is not payable to tertiary claimant*

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

1
2 **Division 3—When the Secretary cannot make a**
3 **determination that parental leave pay is payable**

4 **18 The child's birth has not been verified**

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

8 *Verifying a child's birth*

- 9 (2) A person *verifies* a child's birth if:
10 (a) the person gives the Secretary a completed birth verification
11 form for the child; and
12 (b) if subsection (3) applies to the person, the person satisfies the
13 requirement of that subsection.
- 14 (3) If:
15 (a) the person is the parent (other than an adoptive parent) of the
16 child; and
17 (b) the child is not stillborn; and
18 (c) the person is, under a law of a State or a Territory,
19 responsible (whether alone or jointly) for registering the birth
20 of the child under the law;
21 then the person must give the Secretary information showing that:
22 (d) the child's birth has been registered under the law; or
23 (e) the person has applied to have the birth of the child registered
24 under the law.
- 25 (4) The Secretary may approve a form (a *birth verification form*) for
26 the purposes of verifying the birth of a child.

27 **19 The child was born before 1 January 2011**

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

Chapter 2 When parental leave pay is payable to a person

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

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

Section 20

1

20 Multiple births

2

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

3

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

5

6

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

7

8

21 The person etc. has already been paid parental leave pay

9

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

10

11

(a) the person has been paid parental leave pay for the child under a different claim; or

12

13

(b) if the person is the primary claimant:

14

(i) the person's partner has been paid parental leave pay for the child; or

15

16

(ii) a former partner of the person was paid parental leave pay for the child when he or she was the person's partner; or

17

18

19

(c) if the person is the secondary claimant:

20

(i) the person's partner has been paid parental leave pay for the child (other than as the primary claimant to which the person's secondary claim relates); or

21

22

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

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

28

1

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

4 **22 Assumptions when making the determination**

5 In deciding whether to make a payability determination, the
6 Secretary may act on the assumption that the state of affairs known
7 to the Secretary when making the determination will remain
8 unchanged.

9 **23 When the determination is in force**

10 A payability determination comes into force on the day it is made
11 and continues in force unless it is:

- 12 (a) revoked under section 25 (which deals with revoking a
13 payability determination on the claimant's request); or
14 (b) set aside under Chapter 5 (which deals with review of
15 decisions).

16 **24 Notice of the determination**

17 If the Secretary makes a payability determination, the Secretary
18 must give a notice of the determination to the claimant, stating:

- 19 (a) whether parental leave pay is payable; and
20 (b) if parental leave pay is payable—the claimant's PPL period;
21 and
22 (c) that the claimant may apply for review of the determination
23 in the manner set out in Chapter 5.

24 **25 Revoking the determination on request**

25 (1) If:

- 26 (a) a payability determination is made that parental leave pay is
27 payable to a person; and
28 (b) the person requests the Secretary to revoke the determination;
29 and
30 (c) the request is made:

Chapter 2 When parental leave pay is payable to a person

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

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

Section 25

- 1 (i) before the start of the person's PPL period; and
2 (ii) in a manner approved by the Secretary;
3 then the Secretary must revoke the determination.
4 (2) The revocation is taken to have come into force on the day the
5 person requested the Secretary to revoke the determination.

1

2 **Division 5—Initial eligibility determinations**

3 **26 Initial eligibility determinations**

4 *Primary claimants*

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

13 *Secondary claimants*

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

25 **27 Assumptions when making the initial eligibility determination**

26 In deciding whether to make an initial eligibility determination, the
27 Secretary may act on the assumption that the state of affairs known
28 to the Secretary when making the determination will remain
29 unchanged.

Section 28

1 **28 When the initial eligibility determination comes into force**

2 An initial eligibility determination comes into force on the day it is
3 made.

4 **29 Notice of the initial eligibility determination**

5 If the Secretary makes an initial eligibility determination, the
6 Secretary must give a notice of the determination to the claimant.

1

2 **Part 2-3—Eligibility for parental leave pay**

3 **Division 1—Guide to this Part**

4 **30 Guide to this Part**

5

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

6

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

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11

12

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

13

14

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

15

(c) not have returned to work; and

16

(d) not be entitled to baby bonus.

17

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

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Division 3 has the work test. To satisfy the work test, a person must have performed enough paid work or taken enough paid leave in a particular period before the day the child was born (for a primary claimant) or the day the person became the child's primary carer (for a secondary claimant).

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Division 4 has the income test. To satisfy the income test, the person's income for a particular income year must not be more

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Chapter 2 When parental leave pay is payable to a person

Part 2-3 Eligibility for parental leave pay

Division 1 Guide to this Part

Section 30

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than the PPL income limit (which is \$150,000 until 30 June 2012 and then indexed).

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

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

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

1

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

4 **31 When a person is *eligible* for parental leave pay**

- 5 (1) This section sets out when a person is eligible for parental leave
6 pay for a child on a day.
- 7 (2) First, a person is *eligible* for parental leave pay for a child on a day
8 if, on that day:
- 9 (a) the person satisfies the work test (see Division 3); and
 - 10 (b) the person satisfies the income test (see Division 4); and
 - 11 (c) the person satisfies the Australian residency test (see
12 Division 5); and
 - 13 (d) the person is the primary carer of the child (see Division 6);
14 and
 - 15 (e) the person has not returned to work (see Division 7); and
 - 16 (f) both of the following are satisfied:
 - 17 (i) the person and the person's partner are not entitled to
18 baby bonus for the child;
 - 19 (ii) a former partner of the person was not entitled to baby
20 bonus for the child when he or she was the person's
21 partner.
- 22 (3) Second, a person is *eligible* for parental leave pay for a child on a
23 day if:
- 24 (a) the child is stillborn or has died before that day; and
 - 25 (b) on that day, the person would be eligible under subsection (2)
26 for parental leave pay for the child, if paragraphs (2)(d) and
27 (e) were disregarded; and
 - 28 (c) the person would have been the child's primary carer on that
29 day had the child not been stillborn or died.
- 30 (4) Third, a person is *eligible* for parental leave pay for a child on a
31 day if, on that day:
- 32 (a) if the person is the primary claimant:

Chapter 2 When parental leave pay is payable to a person

Part 2-3 Eligibility for parental leave pay

Division 2 When a person is eligible for parental leave pay

Section 31

- 1 (i) the person satisfies the work test (see Division 3); and
2 (ii) the person satisfies the income test (see Division 4); and
3 (iii) the person satisfies the Australian residency test (see
4 Division 5); and
5 (iv) the person satisfies the conditions prescribed by the PPL
6 rules; and
7 (b) if the person is a secondary claimant or tertiary claimant—the
8 person satisfies the conditions prescribed by the PPL rules.
- 9 (5) Despite subsections (2), (3) and (4), a person is not *eligible* for
10 parental leave pay for a child on a day if, on that day, the person is
11 deceased.

1

2 **Division 3—The work test**

3 **32 When a person satisfies the *work test***

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

6 *Method statement*

7 Step 1. Work out the person’s work test period under section 33.

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

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

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

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

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

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

20 (b) that fall within a permissible break.

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

Section 33

1 **33 The work test period**

2 *Primary claimant's work test period*

- 3 (1) The **work test period** for a primary claimant is the 392 days
4 immediately before:
- 5 (a) if the child is born on or before the expected date of birth of
6 the child—the day the child is born; or
- 7 (b) if the child is born after the expected date of birth of the
8 child—either:
- 9 (i) the day the child is born; or
- 10 (ii) if the person does not satisfy the work test in the work
11 test period that applies under subparagraph (i), the
12 expected date of birth of the child.
- 13 (2) However, for the purposes of making an initial eligibility
14 determination on a primary claim that is made before the child is
15 born, the **work test period** for the primary claimant is the 392 days
16 immediately before the expected date of birth of the child.

17 *Secondary claimant's work test period*

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

21 **34 When a person performs qualifying work**

- 22 (1) A person performs **qualifying work** if:
- 23 (a) the person performs at least one hour of paid work on a day;
24 or
- 25 (b) the person takes a period of paid leave of at least one hour on
26 a day.
- 27 (2) For the purposes of paragraph (1)(b), the PPL rules may prescribe
28 what is, or is not, taken to be paid leave.

1 **35 When a person performs *paid work***

2 *People other than self-employed*

- 3 (1) A person performs ***paid work*** on a day if, on that day, the person
4 performs work (whether as an employee, a contractor or otherwise
5 and whether or not in Australia) for another entity for remuneration
6 or other financial benefit.
- 7 (2) However, a person is taken not to perform ***paid work*** for the
8 purposes of subsection (1) if the other entity is controlled by the
9 person (whether alone or with others).

10 *Self-employed*

- 11 (3) A person performs ***paid work*** on a day if, on that day, the person
12 performs work for the purposes of a business that is carried on for
13 profit (whether in or outside of Australia) by:
14 (a) the person (whether alone or with others); or
15 (b) an entity that is controlled by the person (whether alone or
16 with others).

17 *When a person controls an entity*

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

21 *PPL rules about what paid work is*

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

24 **36 When there is a *permissible break***

- 25 (1) A ***permissible break*** is any of the periods in subsections (2) and
26 (3).

27 *Permissible break between 2 qualifying work days*

- 28 (2) If, between a day on which the person performed qualifying work
29 (a ***qualifying work day***) in the work test period and the next
-

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Division 3 The work test

Section 36

1 qualifying work day, there was at least 1 day but not more than 56
2 consecutive days on which the person did not perform qualifying
3 work—the day or period of consecutive days between those 2
4 qualifying work days is a *permissible break*.

5 *Permissible break at the start of the work test period*

6 (3) If:

- 7 (a) a person performed qualifying work on a day (the *earlier*
8 *qualifying work day*) before the first day in the work test
9 period; and
10 (b) the person next performed qualifying work on a day (the
11 *later qualifying work day*) after the first day in the work test
12 period; and
13 (c) the later qualifying work day was no more than 56
14 consecutive days after the earlier qualifying work day;

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

1

2 **Division 4—The income test**

3 **Subdivision A—The income test**

4 **37 When a person satisfies the *income test***

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

8 **38 A person's *adjusted taxable income***

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

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

15 **39 The *reference income year***

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

- 17 (a) if the person is a primary claimant—the income year that
18 ended before the earlier of:
- 19 (i) the day the person made the claim; and
 - 20 (ii) the day the child was born; and
- 21 (b) if the person is a secondary claimant—the income year that
22 ended before the earlier of:
- 23 (i) the day the person made the claim; and
 - 24 (ii) the day the person became the child's primary carer.

25 **40 The *relevant PPL income limit***

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

- 27 (a) if the person is a primary claimant—the PPL income limit
28 that applies on the earlier of the following days:
- 29 (i) the day the person made the claim;

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- 1 (ii) the day the child was born; or
2 (b) if the person is a secondary claimant—the PPL income limit
3 that applies on the earlier of the following days:
4 (i) the day the person made the claim;
5 (ii) the day the person became the child’s primary carer.

6 **41 The PPL income limit**

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

- 8 (a) if the day is on or after 1 October 2010 but before 1 July
9 2012—\$150,000; and
10 (b) if the day is on or after an indexation day (the *relevant*
11 *indexation day*) but before the next indexation day—the
12 indexed amount on the relevant indexation day worked out
13 under Subdivision B.

14 **Subdivision B—Indexation of the PPL income limit**

15 **42 Indexation of the PPL income limit**

- 16 (1) The amount of the PPL income limit in section 41 is to be indexed
17 under this Subdivision on 1 July each year (the *indexation day*)
18 starting on 1 July 2012.

19 *Working out the indexed amount for the PPL income limit*

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

22 *Method statement*

23 Step 1. Work out the amount (the *previous amount*) for the PPL
24 income limit that applied on the day immediately before
25 the indexation day.

26 Step 2. Use section 43 to work out the indexation factor on the
27 indexation day.

1 Step 3. Multiply the previous amount by the indexation factor:
2 the result is the *provisional indexed amount*.

3 Step 4. Use section 44 to round off the provisional indexed
4 amount: the result is the *indexed amount*.

5 **43 The indexation factor**

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

8
$$\frac{\text{Index number for the reference December quarter}}{\text{Index number for the base December quarter}}$$

9 where:

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

14 *index number*, for a quarter, means the All Groups Consumer
15 Price Index number that is the weighted average of the 8 capital
16 cities and is published by the Australian Statistician in relation to
17 that quarter.

18 *reference December quarter* means the last December quarter
19 before the indexation day.

- 20 (2) The indexation factor is to be worked out to 3 decimal places, but
21 increased by 0.001 if the fourth decimal place is more than 4.
- 22 (3) If an indexation factor worked out under subsections (1) and (2)
23 would be less than 1, that indexation factor is to be increased to 1.

24 *Changes to CPI reference base and publication of substituted*
25 *index numbers*

- 26 (4) Amounts are to be worked out under this section:

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Division 4 The income test

Section 44

- 1 (a) using only the index numbers published in terms of the most
2 recently published reference base for the Consumer Price
3 Index; and
4 (b) disregarding index numbers published in substitution for
5 previously published index numbers (except where the
6 substituted numbers are published to take account of changes
7 in the reference base).

8 **44 Rounding off indexed amounts**

- 9 (1) If a provisional indexed amount is a multiple of \$1.00, the
10 provisional indexed amount becomes the indexed amount.
11 (2) If a provisional indexed amount is not a multiple of \$1.00, the
12 indexed amount is the provisional indexed amount rounded up or
13 down to the nearest multiple of \$1.00.
14 (3) If a provisional indexed amount is not a multiple of \$1.00 but is a
15 multiple of \$0.50, the indexed amount is the provisional indexed
16 amount rounded up to the nearest multiple of \$1.00.

1

2 **Division 5—The Australian residency test**

3 **45 When a person satisfies the *Australian residency test***

- 4 (1) A person satisfies the *Australian residency test* on a day if, on that
5 day, the person:
6 (a) is an Australian resident; or
7 (b) is a special category visa holder residing in Australia; or
8 (c) satisfies subsection (2).

9 *When a person satisfies this subsection*

- 10 (2) A person satisfies this subsection if the person is the holder of a
11 visa determined by the Minister for the purposes of subparagraph
12 729(2)(f)(v) of the Social Security Act, and either of the following
13 applies:
14 (a) the person is in Australia;
15 (b) the person:
16 (i) is temporarily absent from Australia for not more than
17 13 weeks; and
18 (ii) the absence is an allowable absence in relation to special
19 benefit within the meaning of Part 4.2 of that Act.

20 **46 Effect of absence from Australia on Australian residency test**

- 21 (1) Despite section 45, a person does not satisfy the *Australian*
22 *residency test* on a day (the *relevant day*) if:
23 (a) before the relevant day, the person left Australia; and
24 (b) on the relevant day, the person has been absent from
25 Australia for more than 3 years since the day the person left
26 Australia.

27 *Effect of a person's return to Australia within 3 years*

- 28 (2) If:
29 (a) a person who has been absent from Australia for more than
30 13 weeks, but not more than 3 years, returns to Australia; and

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Division 5 The Australian residency test

Section 46

1 (b) the person leaves Australia again less than 13 weeks later;
2 then the person is taken not to have returned to Australia for the
3 purposes of subsection (1).

4 *Effect of a person's return to Australia after 3 years*

5 (3) If:

- 6 (a) a person satisfies the Australian residency test while the
7 person is absent from Australia; and
8 (b) the person then ceases to satisfy the Australian residency test
9 because of the application of subsection (1) or a previous
10 application of this subsection; and
11 (c) the person returns to Australia; and
12 (d) the person leaves Australia again less than 13 weeks later;
13 then, despite section 45, the person does not satisfy the ***Australian***
14 ***residency test*** at any time during:
15 (e) the person's return to Australia referred to in paragraph (c);
16 or
17 (f) the person's absence from Australia referred to in
18 paragraph (d).

1

2 **Division 6—Primary carer**

3 **47 When a person is the *primary carer* of a child**

- 4 (1) A person is the *primary carer* of a child on a day in the person's
5 reference period if:
6 (a) the child is in the person's care in that period; and
7 (b) the person meets the child's physical needs more than anyone
8 else in that period.
- 9 (2) A person's *reference period* is the period that is determined by the
10 Secretary for the purposes of making a payability determination on
11 the person's claim.
- 12 (3) Only one person can be a child's primary carer on a particular day.
- 13 (4) Despite subsection (1), a person is not the *primary carer* of a child
14 on a day if, before that day, the child has died.

Section 48

1

2 **Division 7—Return to work**

3 **48 When a person *returns to work***

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

7 **49 When paid work is for a *permissible purpose***

8 *Permissible purpose for people other than self-employed*

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

19 *Permissible purpose for self-employed*

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

25 **50 Performing paid work on a *keeping in touch day***

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

- 29 (a) the purpose of performing the work is to enable the person to
30 keep in touch with his or her employment or engagement in

Section 50

- 1 order to facilitate a return to that employment or engagement
2 after the end of the period of leave; and
3 (b) both the person and the entity consent to the person
4 performing work for the entity on that day; and
5 (c) the day is not within 14 days after the day the child was born.

Section 51

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2 **Part 2-4—Claims for parental leave pay**

3 **Division 1—Guide to this Part**

4 **51 Guide to this Part**

5

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

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

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

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2 **Division 2—Claims for parental leave pay**

3 **52 Who can claim**

4 Only a natural person can make a claim.

5 **53 Types of claims**

6 (1) There are 3 types of claims:

- 7 (a) a primary claim; and
- 8 (b) a secondary claim; and
- 9 (c) a tertiary claim.

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

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

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

16 (5) For the purposes of subsections (2), (3) and (4), the Secretary may
17 approve:

- 18 (a) different forms for different types of claims; and
- 19 (b) different forms for the same type of claim.

20 **54 Who can make a primary claim, secondary claim or tertiary**
21 **claim**

22 *Primary claim*

23 (1) Only the following people can make a primary claim for a child:

- 24 (a) the child's birth mother;
- 25 (b) an adoptive parent of the child;
- 26 (c) a person who satisfies the circumstances prescribed by the
27 PPL rules as being exceptional circumstances in which a
28 primary claim can be made.

Section 55

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Secondary claim

2

(2) Only the following people can make a secondary claim for a child:

3

(a) the partner of a primary claimant;

4

(b) a person who:

5

(i) is a parent of the child; and

6

(ii) is not the primary claimant;

7

(c) a partner of a person covered by paragraph (b);

8

(d) a person who satisfies the circumstances prescribed by the

9

PPL rules as being exceptional circumstances in which a

10

secondary claim can be made.

11

Tertiary claim

12

(3) Only a person who satisfies the circumstances prescribed by the

13

PPL rules as being exceptional circumstances in which a tertiary

14

claim can be made can make a tertiary claim for a child.

15

55 When a claim is effective

16

(1) A claim is not effective unless the requirements of the following provisions that apply to the claim are satisfied:

17

(a) section 56 (which deals with the form etc. of the claim);

18

(b) section 57 (which deals with the nominated start date);

19

(c) section 58 (which deals with expected date of birth etc.);

20

(d) section 59 (which deals with tax file number statements);

21

(e) section 60 (which deals with when to make the claim).

22

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

23

24

25

(3) A claim that is not effective is taken not to have been made.

26

56 Requirements of the claim

27

(1) The claim must:

28

(a) be made in the form approved, and the manner required, by

29

the Secretary for that type of claim; and

- 1 (b) contain any information (including information about the
2 claimant's employer or the claimant's employment with that
3 employer) required by the Secretary; and
4 (c) be accompanied by any documents required by the Secretary.
- 5 (2) For the purposes of paragraphs (1)(b) and (c), the Secretary may
6 require that different information be contained in, and different
7 documents accompany:
8 (a) different types of claims; or
9 (b) different claims of the same type of claim.

10 **57 Nominated start date**

- 11 (1) If the claim is a primary claim, the claim must state a specific date
12 (the *nominated start date*) on which the primary claimant wants
13 parental leave pay to start being paid.
- 14 Note 1: For the purposes of subsection (1), "6 months after the birth of the
15 child" would not be a specific date. However, the "date of birth of the
16 child" would be.
- 17 Note 2: Even though a primary claimant nominates a specific date, parental
18 leave pay may not be payable from that date because, for example, the
19 primary claimant has not verified the child's birth before that date: see
20 subsection 11(4).
- 21 (2) Before a payability determination is made on the primary claim,
22 the primary claimant may change his or her nominated start date by
23 notifying the Secretary of the new nominated start date.
- 24 (3) If a payability determination is made that parental leave pay is
25 payable to the primary claimant, the primary claimant may only
26 change his or her nominated start date (the *old date*) by:
27 (a) notifying the Secretary, before the old date, of the new
28 nominated start date; and
29 (b) nominating a new nominated start date that is on or after the
30 day the person notifies the Secretary of the change.

Section 58

1 **58 Expected date of birth and expected day of primary care**

2 *Primary claim*

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

5 *Secondary claim*

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

10 **59 Tax file number statement**

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

13 *Statement of tax file number*

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

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

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

24 *Statement that an application for a tax file number is pending*

- 25 (4) The third kind is a statement that the person:
26 (a) has an application for a tax file number pending; and
27 (b) authorises the Commissioner of Taxation to tell the
28 Secretary:

Section 60

- 1 (i) if a tax file number is issued to the person—that
2 number; or
3 (ii) if the application is refused—that the application has
4 been refused; or
5 (iii) if the application is withdrawn—that the application has
6 been withdrawn.

7 **60 When to claim**

- 8 A claim must be made in the period that:
9 (a) starts on the day that is 97 days before the expected date of
10 birth of the child; and
11 (b) ends on the day before the child's first birthday.

12 **61 Claim may be withdrawn or varied**

- 13 (1) After making an effective claim, the person may withdraw or vary
14 the claim before a payability determination is made on it.
15 (2) The person may only do so in a manner approved by the Secretary.
16 (3) If a claim is withdrawn, it is taken never to have been made.

Section 62

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Chapter 3—Payment of parental leave pay

Part 3-1—Instalments of parental leave pay

Division 1—Guide to this Part

62 Guide to this Part

This Part is about instalments of parental leave pay.

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

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

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

1

2 **Division 2—Instalments of parental leave pay**

3 **63 Instalments of parental leave pay**

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

5 *Who pays an instalment*

6 (2) An instalment is payable to a person, in accordance with
7 sections 72, 84, 85, 86 and 87, by either:

- 8 (a) the person's employer; or
9 (b) the Secretary.

10 *When an instalment is payable*

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

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

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

17 **64 A person's *instalment period* and the *payday* for an instalment**

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

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

23 *Instalment to be paid by employer—regular pay period*

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

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

Section 65

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

5 *Instalment to be paid by employer—no regular pay period*

- 6 (3) If the instalment is to be paid by the person's employer and there is
7 not a regular period for which the person would usually be paid in
8 relation to the person's performance of work:
9 (a) the person's *instalment period* is each calendar month; and
10 (b) the *payday* for the instalment is the first day after the end of
11 the instalment period to which the instalment relates.

12 *Instalment to be paid by Secretary*

- 13 (4) If the instalment is to be paid by the Secretary:
14 (a) the person's *instalment period* is the period of 14 days
15 starting on a day the Secretary considers appropriate for the
16 person (or a class of person in which the person is included)
17 and each successive 14 day period; and
18 (b) the *payday* for the instalment is a day that the Secretary
19 considers appropriate that occurs after the instalment period
20 to which the instalment relates.

21 **65 The amount of an instalment**

- 22 (1) The amount of an instalment is the total of the daily national
23 minimum wage amounts for each week day, during the instalment
24 period to which the instalment relates, that is also a PPL day.
25 (2) The *daily national minimum wage amount* for a day is 7.6 times
26 the amount of the national minimum wage (when expressed as a
27 monetary amount per hour) set by a national minimum wage order
28 that is in operation on that day (whether or not the order has also
29 taken effect on that day).

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

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

- 1 (a) the national minimum wage is taken to be the wage set by the
2 national minimum wage order for employees in relation to
3 whom no exceptional circumstances exist (see subsection
4 287(2) of the Fair Work Act); and
5 (b) if:
6 (i) Fair Work Australia makes a determination under
7 section 296 of the Fair Work Act varying a national
8 minimum wage order; and
9 (ii) the day the determination comes into operation under
10 section 297 of that Act is earlier than the day the
11 determination is made;
12 the determination is taken to come into operation on the day
13 the determination is made.

14 **66 Protection of instalment**

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

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

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

23 **67 Deductions authorised by person**

- 24 (1) An employer or the Secretary may deduct an amount from an
25 instalment that is payable to a person if the deduction is:
26 (a) authorised by the person; and
27 (b) principally for the person's benefit.

28 Note: A deduction by an employer in accordance with a salary sacrifice or
29 other arrangement, under which a person chooses to:
30 (a) forgo an amount payable to the person in relation to an
31 instalment; but
32 (b) receive some other form of benefit or remuneration;
33 will be permitted if it is made in accordance with this section.

Section 68

- 1 (2) The Secretary may deduct an amount from an instalment that is
2 payable to a secondary claimant for a child if:
3 (a) a primary claimant owes a debt to the Commonwealth in
4 relation to amounts paid to, or in relation to, the primary
5 claimant by way of instalments for the same child; and
6 (b) the deduction is authorised by the secondary claimant for the
7 purposes of the recovery of the debt.
- 8 (3) An authorisation for the purposes of paragraph (1)(a) or (2)(b):
9 (a) must be in writing; and
10 (b) must specify the amount of the deduction; and
11 (c) may be withdrawn in writing by the person at any time.
- 12 (4) Any variation in the amount of the authorised deduction must also
13 be authorised in writing by the person.

14 **68 Deductions for PAYG withholding**

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

19 **69 Deductions relating to child support**

- 20 (1) An employer may deduct an amount from an instalment that is
21 payable to a person if the employer is required to deduct the
22 amount under section 46 or 72A of the *Child Support (Registration
23 and Collection) Act 1988*.
- 24 (2) The Secretary, in accordance with a notice given to the Secretary
25 under section 72AD of the *Child Support (Registration and
26 Collection) Act 1988* in relation to a person to whom an instalment
27 is payable, must:
28 (a) make deductions from an instalment that is payable to the
29 person (subject to subsections (3) and (4) of that section); and
30 (b) pay the amounts deducted to the Child Support Registrar.

1 **70 No other deductions**

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

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

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

Section 71

1

2 **Part 3-2—Payment of instalments by employer**

3 **Division 1—Guide to this Part**

4 **71 Guide to this Part**

5

6

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

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

12

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14

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

15

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

1

2 **Division 2—Payment of instalments by employer**

3 **72 When an employer pays instalments**

4 *Employer determination in force on day during instalment period*

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

- 7 (a) the instalment is payable to the person; and
8 (b) an employer determination is in force for the employer and
9 the person on a day during the instalment period to which the
10 instalment relates; and
11 (c) as at the payroll cut-off for the instalment, the employer has
12 been paid enough to fund the instalment.

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

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

16 *Employer determination comes into force after instalment period*

17 (2) If:

- 18 (a) a person's employer becomes required under subsection (1)
19 to pay an instalment after the start of the person's PPL
20 period; and
21 (b) an earlier instalment is taken to have become payable to the
22 person under section 91 (which deals with the effect of the
23 Secretary or an employer becoming required to pay
24 instalments after the start of a person's PPL period); and
25 (c) as at the payroll cut-off for the instalment referred to in
26 subsection (1), the employer has been paid enough to fund
27 the earlier instalment;

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

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

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

Section 73

1 *Employer determination in force and employer paid enough at*
2 *later time*

- 3 (3) If:
- 4 (a) an employer is not required under subsection (1) or (2) to pay
5 an instalment only because paragraph (1)(c) or (2)(c) (as the
6 case may be) was not satisfied; and
- 7 (b) that paragraph is satisfied as at the payroll cut-off for an
8 instalment for a later instalment period;
- 9 the employer must pay the instalment to the person on the payday
10 for the instalment for that later instalment period.

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

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

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

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

18 **73 When an employer has been *paid enough* to fund an instalment**

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

- 23 (a) the amount of the instalments the employer has previously
24 paid to, or in relation to, the person for the child;
- 25 (b) the amount of the instalment;
- 26 (c) the amount of any other instalment that is to be paid to, or in
27 relation to, the person on the payday for the instalment.

28 **74 Method of payment of instalment payable by employer**

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

- 31 (a) cash;
- 32 (b) cheque, money order, postal order or similar order, payable
33 to the person;

Section 74

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

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

Section 75

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2 **Division 3—PPL funding amounts**

3 **75 Payment of PPL funding amounts**

4

(1) The Secretary must pay one or more amounts (the *PPL funding amounts*) to a person's employer if the Secretary is satisfied that:

5

6

(a) an instalment was or is likely to be payable to the person; and

7

(b) the employer is or is likely to be required to pay the instalment to the person.

8

9

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

10

11

12

(3) If:

13

(a) the Secretary is required under subsection (1) to pay a PPL funding amount to a person's employer in relation to an instalment for the person; and

14

15

16

(b) the employer has not been paid enough to fund the instalment as at the first payroll cut-off for an instalment for the person after the Secretary becomes required to pay the PPL funding amount;

17

18

19

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

20

21

22 **76 Rules affecting the amount of a PPL funding amount**

23

(1) A PPL funding amount for a person must not:

24

(a) be less than the minimum amount for the PPL funding amount; or

25

26

(b) be more than the sum of the following:

27

(i) the minimum amount;

28

(ii) the amount that is 30 times the daily national minimum wage amount that applies on the day the PPL funding amount is paid to the employer.

29

30

- 1 (2) The *minimum amount* for a PPL funding amount is the sum of the
2 amounts of the instalments that:
3 (a) will have become payable to the person as at the next payday
4 for an instalment for the person after the PPL funding amount
5 is paid to the person's employer; and
6 (b) do not relate to days in the person's PPL period for which the
7 Secretary has previously paid the employer a PPL funding
8 amount for the person.
- 9 (3) The sum of the PPL funding amounts paid to a person's employer
10 for the person must not be more than the sum of the amounts of the
11 instalments that are payable to the person for the person's PPL
12 period.

13 **77 Notice requirements relating to PPL funding amounts**

- 14 (1) The Secretary must give a written notice to an employer each time
15 the Secretary pays a PPL funding amount to the employer for a
16 person.
- 17 (2) The notice must contain the following information:
18 (a) the name of the person for whom the PPL funding amount
19 has been paid;
20 (b) the amount of the PPL funding amount;
21 (c) the PPL days for the person for which the PPL funding
22 amount has been paid;
23 (d) the daily national minimum wage amount for each of those
24 PPL days;
25 (e) any information prescribed by the PPL rules.

26 **78 PPL funding amounts not public money**

27 To avoid doubt, a PPL funding amount paid by the Secretary to an
28 employer (other than an Agency within the meaning of the
29 *Financial Management and Accountability Act 1997*) is not public
30 money for the purposes of that Act.

Section 79

1 **79 Protection of PPL funding amounts**

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

1

2 **Division 4—Obligations of employer relating to paying**
3 **instalments**

4 **80 Giving person record of payment**

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

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

10 **81 Keeping records**

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

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

15 (2) A record must:

- 16 (a) if a form is prescribed by the PPL rules for that kind of
17 record—be in that form; and
18 (b) include any information prescribed by the PPL rules.

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

20 **82 Notifying Secretary if certain events happen**

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

- 24 (a) the employer's bank account information changes;
25 (b) the person's instalment period changes;
26 (c) the day on which the person would usually be paid in relation
27 to the person's performance of work for instalment periods
28 for the person changes;
29 (d) the payroll cut-off for instalments payable to the person
30 changes;

Section 82

- 1 (e) the employer becomes aware that the employer has ceased, or
2 is likely to cease, to carry on a business;
- 3 (f) the person returns to work for the employer at any time from
4 the birth of the person's child until the end of the person's
5 PPL period;
- 6 (g) the person ceases to be employed by the employer before the
7 end of the person's PPL period;
- 8 (h) the person is not paid an instalment the employer is required
9 to pay to the person;
- 10 (i) the employer is not paid enough to fund a particular
11 instalment for the person as at the payroll cut-off for the
12 instalment;
- 13 (j) if the Secretary has agreed to pay a particular PPL funding
14 amount to the employer—the employer is not paid the PPL
15 funding amount as agreed;
- 16 (k) in any case—a PPL funding amount paid to the employer is
17 more than the sum of the amounts of the instalments payable
18 for the PPL days for which the PPL funding amount has been
19 paid;
- 20 (l) the sum of the PPL funding amounts paid to the employer for
21 the person is more than the sum of the amounts of the
22 instalments that are payable by the employer to the person for
23 the person's PPL period.
- 24 (2) The notice must be given:
- 25 (a) as soon as practicable after the employer becomes aware that
26 the event has happened (subject to paragraph (b)); and
- 27 (b) if paragraph (1)(e) applies—not more than 30 days before the
28 day the employer ceased, or is likely to cease, to carry on the
29 business; and
- 30 (c) in writing.
- 31 Note: This subsection is a civil penalty provision (see section 146).
- 32 *When obligation to notify of certain events ceases*
- 33 (3) An obligation under subsection (1) that arises because of any of
34 paragraphs (1)(a) to (g) ceases to apply if the event happens on or
35 after the earliest of the following days:
-

- 1 (a) the day a decision is made that has the effect that parental
2 leave pay is not payable to the person (including a decision
3 that there are no days in the person's PPL period);
4 (b) if the employer determination comes into force:
5 (i) if the employer determination is not revoked—the day
6 after the end of the person's PPL period; and
7 (ii) if the employer determination is revoked—the day of
8 the revocation;
9 (c) if the employer determination never comes into force—the
10 day the Secretary becomes required to pay instalments to the
11 person instead of the employer under the employer
12 determination.

Section 83

1

2 **Part 3-3—Payment of instalments by Secretary**

3 **Division 1—Guide to this Part**

4 **83 Guide to this Part**

5

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

6

7

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

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

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

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2 **Division 2—Payment of instalments by Secretary**

3 **84 When the Secretary pays instalments**

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

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

9 *Employer determination never made*

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

13 *Employer determination reviewed*

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

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

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

30 *Employer determination revoked*

31 (4) The Secretary must pay an instalment that is payable to a person if:

Section 85

- 1 (a) the Secretary revokes the employer determination for the
2 person and the person's employer; and
3 (b) the instalment relates to an instalment period that starts on or
4 after the day (the *transfer day*) the revocation comes into
5 force.

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

8 *Referral of matter to Fair Work Ombudsman relating to failure to*
9 *pay instalment*

- 10 (5) The Secretary must pay an instalment that is payable to a person if:
11 (a) the Secretary has referred a matter to the Fair Work
12 Ombudsman relating to a contravention by the employer of
13 section 70, 72 or 74 (which deal with unauthorised
14 deductions and payment of instalments by an employer) in
15 relation to the person; and
16 (b) the instalment relates to an instalment period that starts on or
17 after the day (the *transfer day*) after the last PPL day for
18 which the Secretary has paid the employer a PPL funding
19 amount for the person; and
20 (c) the Secretary is satisfied that it is appropriate to pay the
21 instalment; and
22 (d) the Fair Work Ombudsman has not notified the Secretary,
23 before the transfer day, that the employer has not complied
24 with a compliance notice given for the contravention referred
25 to in paragraph (a).
- 26 (6) If both subsections (4) and (5) apply in relation to a person, then
27 only the subsection where the transfer day occurs first is taken to
28 apply in relation to the person.

29 **85 Payment of arrears—employer determination reviewed or**
30 **revoked before coming into force**

- 31 (1) This section applies if:
32 (a) the Secretary is required to pay an instalment to a person
33 under subsection 84(3) (which deals with payment of

- 1 instalments where an employer determination is reviewed);
2 or
3 (b) both of the following apply:
4 (i) the Secretary is required to pay an instalment to a
5 person under subsection 84(4) (which deals with
6 payment of instalments where an employer
7 determination is revoked);
8 (ii) the employer determination made for the person and the
9 person's employer has never come into force.
- 10 (2) The Secretary must pay the person each instalment that is taken to
11 have become payable to the person under section 91 (which deals
12 with the effect of the Secretary or an employer becoming required
13 to pay instalments after the start of a person's PPL period).
- 14 (3) The Secretary must pay the instalments on the payday for the first
15 instalment that the Secretary is required to pay as referred to in
16 paragraph (1)(a) or (b) of this section.
- 17 Note: See section 96 for when the Secretary is taken to have complied with
18 this requirement.

19 **86 Payment of arrears—employer determination revoked after**
20 **coming into force**

- 21 (1) This section applies if:
22 (a) the Secretary revokes an employer determination that has
23 come into force for a person and the person's employer; and
24 (b) the employer has not, as at the payday for the instalment,
25 paid all or part of an instalment that was payable to the
26 person by the employer; and
27 (c) either:
28 (i) the Fair Work Ombudsman has notified the Secretary
29 that the employer has not complied with a compliance
30 notice given for a contravention of section 70, 72 or 74
31 (which deal with unauthorised deductions and payment
32 of instalments by an employer) that relates to the
33 payment of the instalment; or
34 (ii) the employer determination was revoked because the
35 Secretary was satisfied that the employer was insolvent.

Section 87

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

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

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

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

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

16 **87 Payment of arrears—extending PPL period after review**

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

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

22 **88 Method of payment of instalment payable by Secretary**

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

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

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

1 **89 Giving person record of payment**

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

Section 90

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Part 3-4—General rules relevant to paying instalments

Division 1—Guide to this Part

90 Guide to this Part

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

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

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

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

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

1

2 **Division 2—General rules relevant to paying instalments**

3 **91 Effect of the Secretary or employer becoming required to pay**
4 **instalments after start of PPL period**

5 If:

- 6 (a) the Secretary or a person's employer (the *payer*) becomes
7 required to pay an instalment to the person after the start of
8 the person's PPL period; and
9 (b) neither the Secretary nor the employer is otherwise required
10 to pay an earlier instalment to the person; and
11 (c) one or more instalments would have been payable to the
12 person on the paydays for the instalments if the payer had
13 been required to pay instalments from the start of the
14 person's PPL period;

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

17 **92 Effect of extending PPL period after review**

18 If:

- 19 (a) a person's PPL period ends; and
20 (b) later, a decision in relation to a payability determination for
21 the person is made that has the effect that the person's PPL
22 period is extended by an additional period; and
23 (c) one or more instalments that relate to instalment periods that
24 overlap with the additional period would have been payable
25 to the person on the paydays for the instalments if:
26 (i) the payability determination had always specified the
27 extended PPL period; and
28 (ii) the Secretary had been required to pay the instalments;
29 and

30 (d) the Secretary is not otherwise required to pay the instalments;
31 then the instalments referred to in paragraph (c) are taken to have
32 become payable on the respective paydays for the instalments.

Section 93

1 **93 Effect on instalment periods of employer determination coming**
2 **into force after review**

3 (1) This section applies if:

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

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

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

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

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

16 **94 Effect on instalment periods of revocation etc.**

17 (1) This section applies if:

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

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

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

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

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

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

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

2 **95 Paying instalment on payday for later instalment—no later**
3 **instalment**

4 If:

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

8 (b) that later instalment is not payable by the payer;
9 the payer must pay the instalment referred to in paragraph (a) on
10 the day that would have been the payday for the later instalment if
11 it had been payable by the payer.

12 **96 Paying instalment on particular day—complying with obligation**

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

16 (a) before that day; or

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

19 **97 Effect of garnishee etc. order**

20 (1) If:

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

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

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

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

Section 98

Method statement

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

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

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

- (1) The payment of an instalment of parental leave pay is not to be taken into account for the purposes of the following provisions or laws:
- (a) a provision of a law of the Commonwealth, a State or a Territory, if the provision deals with:
 - (i) workers' compensation; or
 - (ii) accident compensation;
 - (b) a law, or a provision of a law, prescribed by the PPL rules, to the extent that the law or provision deals with a matter referred to in paragraph (a).
- (2) The PPL rules may provide that subsection (1) does not apply in relation to a prescribed provision of a law of the Commonwealth, a State or a Territory.

99 PPL period is not a period of paid leave

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

1

2 **Part 3-5—Employer determinations**

3 **Division 1—Guide to this Part**

4 **100 Guide to this Part**

5

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

6

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8

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

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

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

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19

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

20

21

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

22

23

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

24

25

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

26

27

Section 101

1

2 **Division 2—Making employer determinations**

3 **101 Making employer determinations**

4 *When Secretary must make employer determination*

- 5 (1) The Secretary must make a determination under this section (the
6 ***employer determination***) that a person's employer is to pay the
7 person instalments if the Secretary is satisfied, when making the
8 determination, that:
- 9 (a) a payability determination that parental leave pay is payable
10 to the person, or an initial eligibility determination for the
11 person, is in force; and
 - 12 (b) instalments are likely, if the determination is made, to be
13 payable by the employer to the person for at least 40
14 consecutive PPL days that are week days; and
 - 15 (c) the person has, or will have, been employed by the employer
16 for at least 12 months immediately before:
 - 17 (i) if the person's claim was made before the birth of the
18 person's child—the expected date of birth of the child;
19 or
 - 20 (ii) if the person's claim was made after the birth of the
21 person's child—the later of the expected date of birth of
22 the child and the day the child was born; and
 - 23 (d) the person is likely to be an Australian-based employee of the
24 employer during whichever of the following periods applies:
 - 25 (i) if the Secretary has made a payability determination that
26 parental leave pay is payable to the person—the
27 person's PPL period;
 - 28 (ii) otherwise—the period of days for which instalments are
29 likely, if the determination is made, to be payable to the
30 person by the employer; and
 - 31 (e) the employer has an ABN; and
 - 32 (f) if paragraphs (c) to (e) are satisfied in relation to more than
33 one employer of the person (other than because of
34 subsection (2))—the person nominated the employer in the

Section 101

1 claim as the employer who would be required to pay
2 instalments to the person.

3 *Effect of election by employer to pay instalments*

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

9 *When must employer determination be made*

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

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

19 *When Secretary may decide not to make employer determination*

- 20 (4) Despite subsection (1), the Secretary may decide not to make an
21 employer determination for a person and the person's employer if
22 the Secretary is satisfied of all or any of the following:
23 (a) the person's PPL period has ended;
24 (b) the person is a tertiary claimant;
25 (c) the child in relation to whom parental leave pay is payable to
26 the person is stillborn or has died;
27 (d) both of the following apply:
28 (i) a primary claimant owes a debt to the Commonwealth
29 in relation to amounts paid to, or in relation to, the
30 primary claimant by way of instalments for a child;
31 (ii) the person is a secondary claimant for parental leave pay
32 for the same child;
33 (e) the employer is not a fit and proper person.

Section 101

1

Matters relevant to whether employer is a fit and proper person

2

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

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(a) whether the employer is insolvent;

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

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7

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

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

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

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(i) fraud or dishonesty; or

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(ii) the misapplication of money; or

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

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(f) any other matter the Secretary considers relevant.

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

29

Secretary may assume state of affairs will not change

30

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

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33

1 **102 Secretary must give notice of employer determination**

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

6 *Notice given to person*

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

9 *Notice given to employer*

- 10 (3) The notice given to the employer must contain the following
11 information:
12 (a) the name of the person;
13 (b) whether the Secretary has made a payability determination
14 that parental leave pay is payable to the person;
15 (c) if the Secretary has made such a payability determination for
16 the person—the person's PPL period;
17 (d) if the Secretary has not made such a payability determination
18 for the person—the period the Secretary expects to specify as
19 the person's PPL period if he or she were to make such a
20 payability determination for the person;
21 (e) in any case—any information prescribed by the PPL rules.
- 22 (4) The notice given to the employer must also be dated. The date of
23 the notice must be the date the preparation of the notice was
24 completed.

25 *Decision not to make employer determination—notice to person*

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

Section 103

1 **103 Employer must respond to notice of employer determination**

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

- 4 (a) give the Secretary a written notice (the *acceptance notice*)
5 that complies with section 104;
6 (b) apply for a review of the employer determination under
7 Part 5-1 or 5-2.

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

9 **104 Requirements for an acceptance notice**

10 *Acceptance of obligation to pay instalments*

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

14 *Bank account information*

- 15 (2) The acceptance notice must contain the following information
16 (*bank account information*) about an account held and maintained
17 by the employer with a financial institution into which PPL
18 funding amounts can be paid:
19 (a) the account number;
20 (b) the BSB number of the account;
21 (c) the name in which the account is held;
22 (d) the name of the financial institution.

23 *Pay cycle information*

- 24 (3) The acceptance notice must contain the following information (*pay*
25 *cycle information*) for the person:
26 (a) the person's instalment period;
27 (b) the first day of the first instalment period for the person that
28 overlaps with:
29 (i) if the Secretary has made a payability determination that
30 parental leave pay is payable to the person—the
31 person's PPL period; or

- 1 (ii) if the Secretary has not made such a payability
2 determination for the person—the person’s expected
3 PPL period referred to in paragraph 102(3)(d);
4 (c) in any case—the payday and the payroll cut-off for an
5 instalment that would be payable for the instalment period
6 referred to in paragraph (b) of this subsection.

7 *PPL rules may specify additional information*

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

10 *Employer may confirm bank account information in election*

- 11 (5) Subsection (2) does not apply if:
12 (a) the person’s employer has made an election under
13 section 109 that applies to the person; and
14 (b) the acceptance notice contains a declaration to the effect that
15 the employer’s bank account information given in the notice
16 under subsection 109(1) is correct in relation to the person.

17 **105 Giving bank account and pay cycle information etc. after review**

- 18 (1) This section applies if:
19 (a) an employer applies for review under Part 5-1 or 5-2, or to a
20 court for judicial review, in relation to an employer
21 determination made for a person and the employer; and
22 (b) either of the following events happens:
23 (i) the employer withdraws the application;
24 (ii) the employer determination has not been set aside or
25 quashed and is no longer subject to review; and
26 (c) the person’s PPL period has not ended.
27 (2) The Secretary must, as soon as practicable after becoming aware
28 that the event referred to in paragraph (1)(b) has happened, give the
29 employer a written notice requiring the employer to give the
30 Secretary a written notice containing the following information:
31 (a) the employer’s bank account information;
32 (b) the pay cycle information for the person;

Section 106

1 (c) any information prescribed by the PPL rules.

2 (3) The employer must give the notice within 14 days of the date of
3 the notice given by the Secretary.

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

5 **106 Effect of decision on review that parental leave pay is payable**

6 The Secretary may, despite subsection 101(3), make an employer
7 determination for a person and the person's employer, if:

8 (a) a decision is made that has the effect that parental leave pay
9 is not payable to the person (whether or not the decision is a
10 payability determination to that effect); and

11 (b) a later decision is made that has the effect that a payability
12 determination that parental leave pay is payable to the person
13 comes into force; and

14 (c) the Secretary is satisfied, when making the employer
15 determination, of the matters referred to in the applicable
16 paragraphs of subsection 101(1) in relation to the person and
17 the employer.

1

2 **Division 3—When an employer determination is in force**

3 **107 When an employer determination comes into force**

4 (1) An employer determination comes into force for a person and the
5 person's employer as set out in subsection (2) or (3). Otherwise,
6 the employer determination does not come into force at all.

7 *Employer gives acceptance notice*

8 (2) If the employer gives the Secretary an acceptance notice for the
9 person in accordance with section 103 or a compliance notice
10 given under section 157, the employer determination comes into
11 force on the day the Secretary receives the acceptance notice.

12 *Employer gives bank account and pay cycle information after
13 review of employer determination*

14 (3) If:
15 (a) the employer gives a notice to the Secretary in accordance
16 with section 105 (which deals with giving bank account and
17 pay cycle information etc. after a review) in relation to the
18 person; and
19 (b) the person's PPL period has not ended by the day the
20 Secretary receives the notice;
21 the employer determination comes into force on the day the
22 Secretary receives the notice.

23 (4) An employer determination stays in force unless it is revoked.

24 **108 Revocation of an employer determination**

25 *When Secretary is required to revoke employer determination*

26 (1) The Secretary must revoke an employer determination made for a
27 person and the person's employer if the Secretary is satisfied of a
28 matter referred to in column 1 of an item in the following table.

Chapter 3 Payment of parental leave pay
Part 3-5 Employer determinations
Division 3 When an employer determination is in force

Section 108

1
2
3

The revocation comes into force on the day referred to in column 2 of that item:

Revocation of employer determination

Item	Column 1 Matter of which Secretary must be satisfied	Column 2 Day revocation comes into force
1	A condition for making the employer determination was not satisfied when the determination was made.	The day of the revocation.
2	The employer has not given an acceptance notice for the person as required by a compliance notice given for a contravention of section 103.	The day of the revocation.
3	A decision is made that has the effect that parental leave pay is not payable to the person (whether or not the decision is a payability determination to that effect).	The day of the decision.
4	The person has ceased to be employed by the employer.	The day the person ceased to be employed by the employer.
5	The employer is insolvent.	The day the employer became insolvent.
6	The Fair Work Ombudsman has notified the Secretary that the employer has not complied with a compliance notice given for a contravention of section 70, 72 or 74 (which deal with unauthorised deductions and payment of instalments by an employer) that relates to the person.	The day of the revocation.

4

1 *When Secretary may revoke employer determination*

- 2 (2) The Secretary may revoke an employer determination made for a
3 person and the person's employer if the Secretary is satisfied of
4 any of the following:
5 (a) the employer is not a fit and proper person;
6 (b) the child in relation to whom parental leave pay is payable to
7 the person is stillborn or has died;
8 (c) for any other reason, it is appropriate to revoke the employer
9 determination.
- 10 (3) In determining whether the employer is not a fit and proper person
11 for the purposes of paragraph (2)(a), the Secretary may take into
12 account the matters referred to in paragraphs 101(5)(a) to (f).
- 13 (4) If the Secretary revokes the employer determination under
14 subsection (2), the revocation comes into force on the day of the
15 revocation.

16 *Notice of revocation to person and employer*

- 17 (5) If the Secretary revokes an employer determination for a person
18 and the person's employer, the Secretary must give them a written
19 notice advising them of that decision. The notice must contain any
20 information prescribed by the PPL rules.

21 *Notice of revocation to SSAT*

- 22 (6) If, when the Secretary revokes an employer determination:
23 (a) an application has been made to the SSAT for review in
24 relation to the employer determination; and
25 (b) the SSAT has not determined the review;
26 the Secretary must give the Principal Member written notice of the
27 revocation.

Section 109

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2 **Division 4—Election by employer to pay instalments**

3 **109 Election by employer to pay instalments**

- 4 (1) An employer may elect to pay instalments to one or more
5 employees of the employer by giving the Secretary a notice in
6 accordance with subsections (2) and (3).

7 *Requirements for elections*

- 8 (2) The notice must:
9 (a) be in the approved form; and
10 (b) contain the employer's bank account information.
- 11 (3) An election under subsection (1) must be expressed to apply in
12 relation to:
13 (a) one or more specified employees of the employer; or
14 (b) one or more specified classes of employee of the employer;
15 or
16 (c) all employees of the employer.

17 **110 Employer may withdraw an election**

- 18 (1) The employer may, at any time, withdraw an election by notice
19 given to the Secretary in the form approved by the Secretary.
- 20 (2) However, a withdrawal does not affect an employer determination
21 that has already been made.

22 **111 Secretary may cancel an election**

- 23 (1) The Secretary may cancel an election if the Secretary is satisfied
24 that the employer is not a fit and proper person, and for this
25 purpose may take into account the matters referred to in paragraphs
26 101(5)(a) to (f).
- 27 (2) However, a cancellation does not affect an employer determination
28 that has already been made.

Section 113

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2 **Division 5—Notice of decisions**

3 **113 Notice of outcome of a payability determination**

- 4 (1) This section applies if:
- 5 (a) the Secretary has made an employer determination for a
 - 6 person and the person’s employer; and
 - 7 (b) after the employer determination was made, the Secretary
 - 8 makes a payability determination.

- 9 (2) The Secretary must give the employer a written notice stating:
- 10 (a) whether parental leave pay is payable to the person; and
 - 11 (b) if parental leave pay is payable—the person’s PPL period;
 - 12 and
 - 13 (c) in any case—any information prescribed by the PPL rules.

14 Note: If the Secretary determines that parental leave pay is not payable to
15 the person, the Secretary must revoke the employer determination (see
16 subsection 108(1)).

- 17 (3) However, the Secretary need not give the notice if the Secretary
18 had previously revoked the employer determination.

19 **114 Notice of varying, setting aside etc. payability determination**

- 20 (1) This section applies if:
- 21 (a) the Secretary has made an employer determination for a
 - 22 person and the person’s employer; and
 - 23 (b) a decision is made to vary, set aside or revoke a payability
 - 24 determination (the *original payability determination*) that
 - 25 parental leave pay is payable to the person.

- 26 (2) The Secretary must give the employer a written notice stating:
- 27 (a) the effect of the decision referred to in paragraph (1)(b); and
 - 28 (b) if the effect of the decision is that the person has a different
 - 29 PPL period to that specified in the original payability
 - 30 determination—that different PPL period; and

Section 115

1 (c) in any case—any other information prescribed by the PPL
2 rules.

3 (3) However, the Secretary need not give the notice if the Secretary
4 had previously revoked the employer determination.

5 **115 Notice of other decisions**

6 The PPL rules may provide for the Secretary, in particular
7 circumstances, to give a person a notice containing the information
8 prescribed by the PPL rules in relation to those circumstances, if
9 this Chapter does not otherwise provide for the Secretary to give
10 the person a notice in those circumstances.

Chapter 4 Compliance and enforcement

Part 4-1 Information gathering

Division 1 Guide to this Part

Section 116

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Chapter 4—Compliance and enforcement

2

Part 4-1—Information gathering

3

Division 1—Guide to this Part

4

116 Guide to this Part

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This Part allows the Secretary to gather information for the purposes of checking compliance with this Act.

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Subdivision A of Division 2 allows the Secretary to require a person to give certain information or produce certain documents that are relevant to this Act.

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Subdivision B of Division 2 deals with tax file numbers and the purposes for which tax file numbers may be used.

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Subdivision C of Division 2 imposes an obligation on a person to whom instalments of parental leave pay are payable to notify the Secretary of a change of circumstances.

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Division 3 deals with the confidentiality of personal and protected information.

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Division 4 contains rules relating to offences against Parts 7.3 and 7.4 of the *Criminal Code* (which deal with fraudulent conduct and false and misleading statements) in relation to this Act.

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2 **Division 2—Information gathering**

3 **Subdivision A—Gathering information from any person**

4 **117 General power to obtain information**

5 The Secretary may require a person to give information, or produce
6 a document that is in the person’s custody or under the person’s
7 control, to a specified agency if the Secretary considers that the
8 information or document may be relevant to one or more of the
9 following:

- 10 (a) determining whether a person who has made an effective
11 claim for parental leave pay is or was eligible for parental
12 leave pay, or is or was initially eligible for parental leave
13 pay;
- 14 (b) determining whether parental leave pay is or was payable to a
15 person;
- 16 (c) determining who should pay instalments of parental leave
17 pay to a person;
- 18 (d) ensuring the Secretary can pay instalments of parental leave
19 pay into the bank account of a person to whom instalments of
20 parental leave pay are payable;
- 21 (e) determining whether to make an employer determination, or
22 whether an employer determination should have been made;
- 23 (f) determining whether PPL funding amounts are or were
24 payable to a person;
- 25 (g) ensuring that an employer complies or has complied with its
26 obligations under this Act.

27 Note: The agency specified must be a PPL agency (see subsection 120(4)).

28 **118 Power to obtain information from a person who owes a debt to**
29 **the Commonwealth**

30 The Secretary may require a person who owes a debt to the
31 Commonwealth under or because of this Act:

- 32 (a) either to:

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Part 4-1 Information gathering

Division 2 Information gathering

Section 119

- 1 (i) give to a specified agency information that is relevant to
2 the person's financial situation; or
3 (ii) produce to a specified agency a document that is in the
4 person's custody or under the person's control and is
5 relevant to the person's financial situation; and
6 (b) if the person's address changes—to inform the specified
7 agency of the new address within 14 days after the change.

8 Note: The agency specified must be a PPL agency (see subsection 120(4)).

9 **119 Obtaining information about a person who owes a debt to the**
10 **Commonwealth**

11 If the Secretary believes that a person may have information or a
12 document:

- 13 (a) that would help a specified agency locate another person (the
14 *debtor*) who owes a debt to the Commonwealth under or
15 because of this Act; or
16 (b) that is relevant to the debtor's financial situation;
17 the Secretary may require the person to give the information, or
18 produce the document, to the specified agency.

19 Note: The agency specified must be a PPL agency (see subsection 120(4)).

20 **120 Written notice of requirement**

21 *Notice to be in writing*

- 22 (1) A requirement under this Subdivision must be made by written
23 notice given to the person of whom the requirement is made.

24 *Contents of notice*

- 25 (2) The notice:
26 (a) may be given personally or by post or in any other manner
27 approved by the Secretary; and
28 (b) must specify:
29 (i) how the person is to give the information or produce the
30 document to which the requirement relates; and

Section 121

- 1 (ii) the period within which the person is to give the
2 information or produce the document; and
3 (iii) the agency, and the officer (if any), to whom the
4 information is to be given or the document is to be
5 produced; and
6 (iv) that the notice is given under this section.
- 7 (3) The period specified under subparagraph (2)(b)(ii) must not end
8 earlier than 14 days after the day the notice is given.
- 9 (4) For the purposes of subparagraph (2)(b)(iii), the Secretary must
10 specify a PPL agency.
- 11 *Requirement to attend interview*
- 12 (5) The notice may require the person to give the information by
13 appearing before a specified officer to answer questions.
- 14 (6) If the notice requires the person to appear before an officer, the
15 notice must specify a time and place at which the person is to
16 appear. The time must be at least 14 days after the day the notice is
17 given.

18 **121 Obligations not affected by State or Territory laws**

- 19 Nothing contained in a law of a State or a Territory operates to
20 prevent a person from:
21 (a) giving information; or
22 (b) producing a document; or
23 (c) giving evidence;
24 that the person is required to give or produce to a specified agency
25 or an officer for the purposes of this Act.

26 **122 Offence—failure to comply with requirement**

- 27 (1) A person commits an offence if:
28 (a) the person is required under this Subdivision (other than
29 under paragraph 117(d) (which deals with information about
30 bank accounts)) to give information or produce a document;
31 and

Chapter 4 Compliance and enforcement

Part 4-1 Information gathering

Division 2 Information gathering

Section 123

1 (b) the person refuses or fails to comply with the requirement.

2 Penalty: Imprisonment for 6 months.

3 (2) Subsection (1) does not apply if the person has a reasonable
4 excuse.

5 Note: A defendant bears an evidential burden in relation to the matter in
6 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

7 **Subdivision B—Gathering information relating to tax file**
8 **numbers**

9 **123 Secretary may require Commissioner of Taxation to provide tax**
10 **file numbers etc.**

11 The Secretary may require the Commissioner of Taxation to
12 provide the Secretary with information (including a tax file
13 number) that is:

14 (a) about a person who has made an effective claim for parental
15 leave pay; and

16 (b) relevant to the claim; and

17 (c) contained in a TFN declaration lodged with the
18 Commissioner under Division 3 of Part VA of the *Income*
19 *Tax Assessment Act 1936*.

20 **124 Purposes for which tax file numbers may be used**

21 (1) Subsection (2) applies to the tax file number of a person that is
22 provided to the Secretary:

23 (a) under a provision of this Act, for the purposes of this Act:

24 (i) by the person; or

25 (ii) by the partner of the person; or

26 (iii) by the Commissioner of Taxation on the authority of the
27 person; or

28 (b) by the Commissioner of Taxation under section 123.

29 (2) A tax file number provided to the Secretary as referred to in
30 subsection (1) may be used only for the following purposes:

- 1 (a) to detect cases in which instalments of parental leave pay
2 have been paid when they should not have been paid;
3 (b) to verify, in relation to persons who have made effective
4 claims for parental leave pay, the eligibility of those persons
5 for that pay.

6 **Subdivision C—Obligation to notify of change of circumstances**

7 **125 Obligation to notify of change of circumstances**

- 8 (1) This section requires a person to notify the Secretary of certain
9 things if:
10 (a) the person makes an effective claim for parental leave pay;
11 and
12 (b) the Secretary does not make a payability determination that
13 parental leave pay is not payable to the person.
- 14 (2) The person must notify the Secretary of the following things:
15 (a) anything that causes the person to cease to be eligible for
16 parental leave pay on a day;
17 (b) anything that is likely to have the effect described in
18 paragraph (a).
- 19 (3) The person must notify the Secretary, in the manner set out in a
20 written notice given to the person under subsection (5), as soon as
21 practicable after the person becomes aware that the thing has
22 happened or is likely to happen.
- 23 (4) The Secretary must approve a manner of notification that a person
24 must use when notifying the Secretary of a thing under this section.
- 25 (5) The Secretary must, by written notice, notify the person of the
26 approved manner of notification.
- 27 (6) A person commits an offence if:
28 (a) the person is required to notify the Secretary of a thing under
29 this section; and
30 (b) the person refuses or fails to comply with the requirement.
- 31 Penalty for contravention of this subsection: Imprisonment for 6
32 months.

Section 126

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2 **Division 3—Confidentiality**

3 **126 Operation of Division**

- 4 (1) Nothing in this Division prevents a person from disclosing
5 information to another person if the information is disclosed for the
6 purposes of:
7 (a) the *Child Support (Assessment) Act 1989*; or
8 (b) the *Child Support (Registration and Collection) Act 1988*.
- 9 (2) The provisions of this Division that relate to the disclosure of
10 information do not affect the operation of the *Freedom of*
11 *Information Act 1982*.

12 **127 Obtaining and using protected information**

13 *Obtaining protected information*

- 14 (1) A person may obtain protected information if the information is
15 obtained for the purposes of this Act.

16 *Using protected information*

- 17 (2) A person may:
18 (a) make a record of protected information; or
19 (b) disclose such information to any person; or
20 (c) otherwise use such information;
21 if the record, disclosure or use of the information by the person is
22 made:
23 (d) for the purposes of this Act; or
24 (e) for the purposes for which the information was disclosed to
25 the person under section 128; or
26 (f) with the express or implied authorisation of the person to
27 whom the information relates.

1 **128 Disclosing personal information**

- 2 (1) Despite sections 129 to 132, the Secretary may disclose
3 information acquired by an officer in the exercise of the officer's
4 powers, or the performance of the officer's duties or functions,
5 under this Act:
- 6 (a) to such persons and for such purposes as the Secretary
7 determines, if the Secretary certifies that it is necessary in the
8 public interest to do so in a particular case or class of cases;
9 or
 - 10 (b) to an Agency Head for the purposes of that Agency (within
11 the meaning of the *Public Service Act 1999*), but only if the
12 disclosure of the information is required by a law of the
13 Commonwealth; or
 - 14 (c) to a person who is expressly or impliedly authorised by the
15 person to whom the information relates to obtain it; or
 - 16 (d) to the Minister for the purposes of assisting the Minister to
17 consider a complaint or issue in relation to a matter arising
18 under this Act if the Secretary reasonably believes that the
19 disclosure is likely to assist the Minister; or
 - 20 (e) to an SES employee, or an APS employee, in the
21 Department, for the purposes of briefing, or considering
22 briefing, the Minister if the Secretary reasonably believes the
23 disclosure is likely to assist the Minister to consider a
24 complaint or issue in relation to a matter arising under this
25 Act.

26 Note: Information disclosed under this section must also be dealt with in
27 accordance with section 14 of the *Privacy Act 1988*.

- 28 (2) In giving certificates for the purposes of paragraph (1)(a), the
29 Secretary must act in accordance with guidelines (if any) from time
30 to time in force under subsection (4).
- 31 (3) In disclosing information under paragraph (1)(b), the Secretary
32 must act in accordance with guidelines (if any) from time to time in
33 force under subsection (4).
- 34 (4) The Minister may, in the PPL rules, make guidelines for the
35 exercise of either or both of the following:

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Part 4-1 Information gathering

Division 3 Confidentiality

Section 129

- 1 (a) the Secretary's power to give certificates for the purposes of
2 paragraph (1)(a);
3 (b) the Secretary's power under paragraph (1)(b).
- 4 (5) If a determination or certificate under paragraph (1)(a) is made or
5 given in writing, the determination or certificate is not a legislative
6 instrument.
- 7 (6) Despite any other provision of this Part, the Secretary may disclose
8 information of a kind referred to in paragraph (a) or (b) of the
9 definition of *protected information* in section 6 that relates to a
10 principal to the principal's payment nominee or correspondence
11 nominee.

12 **129 Offence—unauthorised access to protected information**

13 A person commits an offence if:

- 14 (a) the person obtains information; and
15 (b) the person is not authorised under this Act to obtain the
16 information; and
17 (c) the information is protected information.

18 Penalty: Imprisonment for 2 years.

19 **130 Offence—unauthorised use of protected information**

20 A person commits an offence if:

- 21 (a) the person:
22 (i) makes a record of information; or
23 (ii) discloses information to any other person; or
24 (iii) otherwise makes use of information; and
25 (b) the person is not authorised or required under this Act to
26 make that record, disclosure or use of the information; and
27 (c) the information is protected information.

28 Penalty: Imprisonment for 2 years.

29 **131 Offence—soliciting disclosure of protected information**

- 30 (1) A person commits an offence if:
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Section 132

- 1 (a) the person solicits the disclosure of protected information
2 from an officer or another person; and
3 (b) the disclosure would be in contravention of this Subdivision;
4 and
5 (c) the information is protected information.

6 Penalty: Imprisonment for 2 years.

- 7 (2) A person may commit an offence under subsection (1) whether or
8 not any protected information is actually disclosed.

9 **132 Offence—offering to supply protected information**

- 10 (1) A person commits an offence if:
11 (a) the person offers to supply (whether to a particular person or
12 otherwise) information about another person; and
13 (b) the information is protected information.

14 Penalty: Imprisonment for 2 years.

- 15 (2) A person commits an offence if:
16 (a) the person holds himself or herself out as being able to
17 supply (whether to a particular person or otherwise)
18 information about another person; and
19 (b) the information is protected information.

20 Penalty: Imprisonment for 2 years.

- 21 (3) Nothing in subsection (1) or (2) makes an officer acting in the
22 performance or exercise of his or her powers, duties or functions
23 under this Act guilty of an offence.

Section 133

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**Division 4—Offences against Parts 7.3 and 7.4 of the
Criminal Code**

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**133 Repayment of instalment of parental leave pay or PPL funding
amount**

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(1) If a person is convicted of an offence against Part 7.3 or 7.4 of the
Criminal Code in relation to this Act, the court may:

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(a) impose a penalty in relation to the offence; and

9

(b) order the person to pay the Commonwealth an amount equal
to any amount:

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(i) paid to, or in relation to, the person by way of an
instalment of parental leave pay because of the act,
failure or omission that constituted the offence; or

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(ii) paid to the person by way of a PPL funding amount
because of the act, failure or omission that constituted
the offence.

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Note: The Secretary and a court may give a certificate in relation to the
amount referred to in paragraph (1)(b) (see sections 138 and 139).

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(2) Despite anything in this Act or any other law, a person is not to be
imprisoned for failing to pay an amount payable to the
Commonwealth under paragraph (1)(b).

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134 Penalty where person convicted of more than one offence

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(1) If a person is convicted of more than one offence against Part 7.3
or 7.4 of the *Criminal Code* in relation to this Act, the court may, if
it considers it appropriate, impose one penalty for all the offences.

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(2) However, a single penalty imposed under subsection (1) must not
be more than the sum of the maximum penalties that could be
imposed if a separate penalty were imposed for each offence.

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135 Joining of charges

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Charges against the same person for a number of offences against
Part 7.3 or 7.4 of the *Criminal Code* in relation to this Act may be

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1 joined in one complaint, information or declaration if those
2 charges:

- 3 (a) are founded on the same facts; or
4 (b) form a series of offences of the same or a similar character;
5 or
6 (c) are part of a series of offences of the same or a similar
7 character.

8 **136 Particulars of each offence**

9 If 2 or more charges are included in the same complaint,
10 information or declaration, particulars of each offence charged are
11 to be set out in a separate paragraph.

12 **137 Trial of joined charges**

13 If charges are joined, the charges are to be tried together unless:

- 14 (a) the court considers it just that any charge should be tried
15 separately; and
16 (b) the court makes an order to that effect.

17 **138 Evidentiary effect of Secretary's certificate**

18 (1) For the purposes of paragraph 133(1)(b), a certificate signed by the
19 Secretary is evidence of the matters specified in the certificate.

20 (2) The certificate may specify:

- 21 (a) the person to whom an instalment of parental leave pay or a
22 PPL funding amount has been paid because of an act, a
23 failure or an omission for which the person or another person
24 has been convicted of an offence against Part 7.3 or 7.4 of the
25 *Criminal Code*; and
26 (b) the amount paid; and
27 (c) the act, failure or omission that caused the amount to be paid.

28 **139 Enforcement of court certificate as judgment**

29 If:

- 30 (a) a court makes an order under paragraph 133(1)(b); and
-

Chapter 4 Compliance and enforcement

Part 4-1 Information gathering

Division 4 Offences against Parts 7.3 and 7.4 of the Criminal Code

Section 139

- 1 (b) the clerk or other appropriate officer of the court gives a
2 certificate specifying:
3 (i) the amount ordered to be paid to the Commonwealth;
4 and
5 (ii) the person by whom the amount is to be paid; and
6 (c) the certificate is filed in a court (which may be the court that
7 made the order) that has civil jurisdiction to the extent of the
8 amount to be paid;
9 the certificate is enforceable in all respects as a final judgment of
10 the court in which the certificate is filed.

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2 **Part 4-2—Compliance**

3 **Division 1—Guide to this Part**

4 **140 Guide to this Part**

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This Part deals with compliance with this Act.

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Division 2 allows the Secretary to refer matters to the Fair Work Ombudsman for investigation if the Secretary has reason to believe that an employer has not complied with certain obligations under this Act.

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Division 3 deals with civil penalty provisions. These provisions impose obligations on certain persons. Civil penalty orders may be sought in relation to contraventions of civil penalty provisions.

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Division 4 deals with compliance notices. A compliance notice can be given to a person who has contravened a civil penalty provision, requiring the person to rectify the contravention.

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Division 5 deals with infringement notices. A person who is given an infringement notice can choose to pay a penalty. If the penalty is not paid, a civil penalty order may be sought in relation to the person.

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Section 141

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2 **Division 2—Referring matters to the Fair Work**
3 **Ombudsman**

4 **141 Functions of the Fair Work Ombudsman**

5 The Fair Work Ombudsman has the following functions:

- 6 (a) to inquire into, and investigate, any matter referred to the Fair
7 Work Ombudsman under section 143;
- 8 (b) to commence proceedings in a court in relation to a
9 contravention of section 70 (which deals with unauthorised
10 deductions from instalments) or Part 3-2 (which deals with
11 payment of instalments by an employer);
- 12 (c) any other function that is incidental to the function referred to
13 in paragraph (a) or (b).

14 **142 Exercise of compliance powers**

- 15 (1) A Fair Work Inspector may exercise compliance powers (within
16 the meaning of the Fair Work Act) (other than a power under
17 section 715 or 716 of that Act) for the purpose of determining
18 whether the following provisions of this Act are being, or have
19 been, complied with:
- 20 (a) section 70 (which deals with unauthorised deductions from
21 instalments);
- 22 (b) Part 3-2 (which deals with payment of instalments by an
23 employer).
- 24 (2) For the purposes of the Fair Work Act:
- 25 (a) the purpose referred to in subsection (1) of this section is
26 taken to be a compliance purpose; and
- 27 (b) a civil penalty provision under section 70 (which deals with
28 unauthorised deductions from instalments) or Part 3-2 of this
29 Act (which deals with payment of instalments by an
30 employer) is taken to be a civil remedy provision.

1 **143 Referring matters to the Fair Work Ombudsman**

- 2 (1) The Secretary may refer a matter to the Fair Work Ombudsman for
3 investigation if:
- 4 (a) the Secretary has reason to believe that an employer has not
5 complied with an obligation under section 70 (which deals
6 with unauthorised deductions from instalments) or Part 3-2
7 (which deals with payment of instalments by an employer) in
8 relation to a person; and
- 9 (b) the Secretary does not believe that the employer and the
10 person are able to resolve the matter themselves.
- 11 (2) The Secretary must inform the employer and the person, in writing,
12 if the Secretary refers the matter to the Fair Work Ombudsman.
- 13 (3) The Secretary must give the Fair Work Ombudsman the following
14 information:
- 15 (a) if the contravention is in relation to section 70, 72 or 74:
- 16 (i) the day on which the Secretary paid a PPL funding
17 amount to the employer for the person; and
- 18 (ii) a copy of the notice given to the employer under
19 section 77 in relation to the PPL funding amount;
- 20 (b) in any case—any action taken or information obtained by the
21 Secretary in relation to the matter.

22 **144 Fair Work Ombudsman to notify of outcome of investigation**

23 The Fair Work Ombudsman must, as soon as practicable after
24 completing an investigation referred by the Secretary under
25 section 143, notify the Secretary, in writing, of the outcome of the
26 investigation.

27 Note: If the Fair Work Ombudsman gives a compliance notice, the Fair
28 Work Ombudsman must also notify the Secretary of the outcome of
29 the compliance notice (see section 158).

Section 145

1

2 **Division 3—Civil penalty orders**

3 **145 Involvement in contravention treated in same way as actual**
4 **contravention**

- 5 (1) A person who is involved in a contravention of a civil penalty
6 provision is taken to have contravened that provision.
- 7 (2) A person is *involved in* a contravention of a civil penalty provision
8 if, and only if, the person:
- 9 (a) has aided, abetted, counselled or procured the contravention;
10 or
 - 11 (b) has induced the contravention, whether by threats or
12 promises or otherwise; or
 - 13 (c) has been in any way, by act or omission, directly or
14 indirectly, knowingly concerned in or party to the
15 contravention; or
 - 16 (d) has conspired with others to effect the contravention.

17 **146 Civil penalty provisions**

18 A provision referred to in column 1 of an item in the table is a *civil*
19 *penalty provision*.

20

Civil penalty provisions		
Item	Column 1 Civil penalty provision	Column 2 Maximum penalty
1	Subsection 70(2)	60 penalty units
2	Subsection 72(1)	60 penalty units
3	Subsection 72(2)	60 penalty units
4	Subsection 72(3)	60 penalty units
5	Section 74	60 penalty units
6	Section 80	30 penalty units
7	Subsection 81(1)	30 penalty units
8	Subsection 81(2)	30 penalty units

Section 147

Civil penalty provisions		
Item	Column 1 Civil penalty provision	Column 2 Maximum penalty
9	Subsection 82(2)	60 penalty units
10	Section 103	60 penalty units
11	Subsection 105(3)	60 penalty units
12	Subsection 157(4) (in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2))	30 penalty units
13	Subsection 157(4) (in relation to a contravention of a compliance notice given in relation to any other civil penalty provision)	60 penalty units

1

2 **147 Civil penalty orders**

3 (1) If the Federal Court or the Federal Magistrates Court is satisfied
4 that a person has contravened one or more civil penalty provisions,
5 the court may, on the application of the Secretary or the Fair Work
6 Ombudsman, order the person to pay to the Commonwealth such
7 pecuniary penalty, in relation to each contravention, as the court
8 determines to be appropriate.

9 Note: Subsection (3) sets out the maximum penalty that the court may order
10 the person to pay.

11 (2) An order under subsection (1) is a *civil penalty order*.

12 *Determining pecuniary penalty*

13 (3) The pecuniary penalty must not be more than:
14 (a) if the person is a body corporate—5 times the maximum
15 number of penalty units referred to in the relevant item in
16 column 2 of the table in section 146; and
17 (b) otherwise—the maximum number of penalty units referred to
18 in the relevant item in column 2 of the table in section 146.

Section 148

- 1 (4) In determining the pecuniary penalty, the court must take into
2 account all relevant matters, including:
3 (a) the nature and extent of the contravention; and
4 (b) the nature and extent of any loss or damage suffered because
5 of the contravention; and
6 (c) the circumstances in which the contravention took place; and
7 (d) whether the person has previously been found by a court in
8 proceedings under this Act to have engaged in any similar
9 conduct; and
10 (e) the likely impact of the penalty on the person.

11 *Civil enforcement of penalty*

- 12 (5) The pecuniary penalty is a civil debt payable to the
13 Commonwealth.
14 (6) The Commonwealth may enforce a civil penalty order as if it were
15 an order made in civil proceedings against the person to recover a
16 debt due by the person. The debt arising from the order is taken to
17 be a judgment debt.

18 **148 Proceedings may be heard together**

19 The Federal Court or the Federal Magistrates Court may direct that
20 2 or more proceedings for civil penalty orders are to be heard
21 together.

22 **149 Time limit for application for an order**

23 Proceedings for a civil penalty order may be commenced no later
24 than 4 years after the contravention.

25 **150 Civil evidence and procedure rules for civil penalty orders**

26 The Federal Court or the Federal Magistrates Court must apply the
27 rules of evidence and procedure for civil matters when hearing
28 proceedings for a civil penalty order.

Section 151

151 Conduct contravening more than one civil penalty provision

- 1
- 2 (1) If conduct constitutes a contravention of 2 or more civil penalty
- 3 provisions, proceedings may be instituted under this Act against a
- 4 person in relation to the contravention of any one or more of those
- 5 provisions.
- 6 (2) However, the person is not liable to more than one pecuniary
- 7 penalty under this Act in relation to the same conduct.

152 Civil proceedings after criminal proceedings

8

9 Neither the Federal Court nor the Federal Magistrates Court may

10 make a civil penalty order against a person for a contravention of a

11 civil penalty provision if the person has been convicted of an

12 offence constituted by conduct that is substantially the same as the

13 conduct constituting the contravention.

153 Criminal proceedings during civil proceedings

- 14
- 15 (1) Proceedings for a civil penalty order against a person for a
- 16 contravention of a civil penalty provision are stayed if:
- 17 (a) criminal proceedings are commenced or have already been
- 18 commenced against the person for an offence; and
- 19 (b) the offence is constituted by conduct that is the same, or
- 20 substantially the same, as the conduct alleged to constitute
- 21 the contravention.
- 22 (2) The proceedings for the order (the *civil proceedings*) may be
- 23 resumed if the person is not convicted of the offence. Otherwise:
- 24 (a) the civil proceedings are dismissed; and
- 25 (b) costs must not be awarded in relation to the civil proceedings.

154 Criminal proceedings after civil proceedings

26

27 Criminal proceedings may be commenced against a person for

28 conduct that is substantially the same as conduct constituting a

29 contravention of a civil penalty provision regardless of whether a

30 civil penalty order has been made against the person.

Section 155

1 **155 Evidence given in proceedings for penalty not admissible in**
2 **criminal proceedings**

- 3 (1) Evidence of information given or evidence of production of
4 documents by a natural person is not admissible in criminal
5 proceedings against the person if:
6 (a) the person previously gave the evidence or produced the
7 documents in proceedings for a civil penalty order against the
8 person for a contravention of a civil penalty provision
9 (whether or not the order was made); and
10 (b) the conduct alleged to constitute the offence is the same, or
11 substantially the same, as the conduct alleged to constitute
12 the contravention.
- 13 (2) However, subsection (1) does not apply to criminal proceedings in
14 relation to the falsity of the evidence given by the person in the
15 proceedings for the civil penalty order.

16 **156 Requirement for person to assist in applications for civil penalty**
17 **orders**

- 18 (1) A person commits an offence if:
19 (a) the Secretary requests, in writing, the person to give all
20 reasonable assistance in connection with an application for a
21 civil penalty order; and
22 (b) the person fails to comply with the request.

23 Penalty: 10 penalty units.

24 Note: This section does not abrogate or affect the law relating to legal
25 professional privilege, or any other immunity, privilege or restriction
26 that applies to the disclosure of information, documents or other
27 things.

- 28 (2) A request under subsection (1) is not a legislative instrument.
- 29 (3) The Secretary can request a person to assist under subsection (1)
30 only if:
31 (a) it appears to the Secretary that the person is unlikely to have:
32 (i) contravened the civil penalty provision to which the
33 application relates; or

Section 156

- 1 (ii) committed an offence constituted by the same, or
2 substantially the same, conduct as the conduct to which
3 the application relates; and
4 (b) the Secretary suspects or believes that the person can give
5 information relevant to the application.
- 6 (4) The Secretary cannot request a person to assist under
7 subsection (1) if the person is or has been a lawyer for the person
8 suspected of contravening the civil penalty provision to which the
9 application relates.
- 10 (5) The Federal Court or the Federal Magistrates Court may order a
11 person to comply with a request under subsection (1) in a specified
12 way. Only the Secretary may apply to the court for an order under
13 this subsection.
- 14 (6) For the purposes of this section, it does not matter whether the
15 application for the civil penalty order has actually been made.

Section 157

1

2 **Division 4—Compliance notices**

3 **157 Giving a compliance notice**

4 *Compliance notice given by Secretary*

- 5 (1) This section applies if the Secretary reasonably believes that a
6 person has contravened one or more of the following provisions:
7 (a) subsection 82(2) (which deals with notifying the Secretary if
8 certain events happen);
9 (b) section 103 (which deals with responding to an employer
10 determination);
11 (c) subsection 105(3) (which deals with giving bank account and
12 pay cycle information etc. after a review).

13 *Compliance notice given by Fair Work Ombudsman*

- 14 (2) This section also applies if the Fair Work Ombudsman reasonably
15 believes that a person has contravened one or more of the
16 following provisions:
17 (a) subsection 70(2) (which deals with unauthorised deductions
18 from instalments);
19 (b) subsection 72(1), (2) or (3) (which deals with when an
20 employer pays instalments);
21 (c) section 74 (which deals with the method of payment of
22 instalments payable by an employer);
23 (d) section 80 (which deals with giving a person a record of
24 payment);
25 (e) subsection 81(1) or (2) (which deals with keeping records).

26 *Requirements of a compliance notice*

- 27 (3) The Secretary or the Fair Work Ombudsman may give the person a
28 notice (a **compliance notice**) requiring the person to do the
29 following within 14 days of the day on which the notice is given:
30 (a) take the action set out in the notice to rectify the
31 contravention;

Section 158

1 (b) produce reasonable evidence of the person's compliance with
2 the notice.

3 (4) A person must not fail to comply with a compliance notice.

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

5 *Contents of a compliance notice*

6 (5) A compliance notice must also:

7 (a) set out the name of the person to whom the notice is given;
8 and

9 (b) set out the name of the person who gave the notice; and

10 (c) set out brief details of the alleged contravention; and

11 (d) explain that a failure to comply with the notice may
12 contravene a civil penalty provision; and

13 (e) set out any other matters prescribed by the PPL rules.

14 **158 Fair Work Ombudsman to notify of outcome of compliance**
15 **notice**

16 If the Fair Work Ombudsman gives a compliance notice to a
17 person, the Fair Work Ombudsman must, as soon as practicable,
18 notify the Secretary, in writing, of the outcome of the compliance
19 notice.

Section 159

1

2 **Division 5—Infringement notices**

3 **159 Giving an infringement notice**

4 *Infringement notice given by Secretary*

- 5 (1) The Secretary may give a person a notice (an *infringement notice*)
6 if the Secretary reasonably believes that the person has
7 contravened one or more of the following provisions:
- 8 (a) subsection 82(2) (which deals with notifying the Secretary if
9 certain events happen);
 - 10 (b) section 103 (which deals with responding to an employer
11 determination);
 - 12 (c) subsection 105(3) (which deals with giving bank account and
13 pay cycle information etc. after a review);
 - 14 (d) subsection 157(4), in relation to a compliance notice given to
15 the person by the Secretary.

16 *Infringement notice given by Fair Work Ombudsman*

- 17 (2) The Fair Work Ombudsman may give a person a notice (an
18 *infringement notice*) if the Fair Work Ombudsman reasonably
19 believes that the person has contravened one or more of the
20 following provisions:
- 21 (a) subsection 70(2) (which deals with unauthorised deductions
22 from instalments);
 - 23 (b) subsection 72(1), (2) or (3) (which deals with when an
24 employer pays instalments);
 - 25 (c) section 74 (which deals with the method of payment of
26 instalments payable by an employer);
 - 27 (d) section 80 (which deals with giving a person a record of a
28 payment);
 - 29 (e) subsection 81(1) or (2) (which deals with keeping records);
 - 30 (f) subsection 157(4), in relation to a compliance notice given to
31 the person by the Fair Work Ombudsman.

Section 159

1

When infringement notice must be given

2

(3) The infringement notice must be given within 12 months of:

3

(a) if paragraph (1)(d) or (2)(f) applies—the day on which the 14 day period referred to in subsection 157(3) ends; and

4

5

(b) otherwise—the day on which the alleged contravention occurred.

6

7

Contents of infringement notice

8

(4) An infringement notice must:

9

(a) set out the name of the person to whom the notice is given; and

10

11

(b) set out the name of the person who gave the notice; and

12

(c) set out brief details of the contravention or alleged contravention, including:

13

14

(i) the day referred to in paragraph (3)(a) or (b); and

15

(ii) the provision of this Act that was allegedly contravened; and

16

17

(d) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court or the Federal Magistrates Court if the penalty specified in the notice is paid to the Commonwealth, within:

18

19

20

(i) 28 days after the notice is given; or

21

22

(ii) if the Secretary allows a longer period—that longer period; and

23

24

(e) give an explanation of how payment of the penalty is to be made; and

25

26

(f) set out any other matters prescribed by the PPL rules.

27

Amount of penalties in infringement notices

28

(5) An infringement notice that is given to a body corporate must specify a pecuniary penalty equal to:

29

30

(a) in relation to a contravention of section 80 (which deals with giving a person a record of payments) or subsection 81(1) or (2) (which deals with keeping records)—15 penalty units;

31

32

and

33

Section 160

- 1 (b) in relation to a contravention of a compliance notice given in
2 relation to a contravention of section 80 or subsection 81(1)
3 or (2)—15 penalty units; and
4 (c) otherwise—30 penalty units.
- 5 (6) An infringement notice that is given to a person other than a body
6 corporate must specify a pecuniary penalty equal to:
- 7 (a) in relation to a contravention of section 80 (which deals with
8 giving a person a record of payments) or subsection 81(1) or
9 (2) (which deals with keeping records)—3 penalty units; and
10 (b) in relation to a contravention of a compliance notice given in
11 relation to a contravention of section 80 or subsection 81(1)
12 or (2)—3 penalty units; and
13 (c) otherwise—6 penalty units.

14 **160 Withdrawal of an infringement notice**

- 15 (1) The Secretary may withdraw an infringement notice that has been
16 given to a person by the Secretary.
- 17 (2) The Fair Work Ombudsman may withdraw an infringement notice
18 that has been given to a person by the Fair Work Ombudsman.
- 19 (3) For a withdrawal to be effective, a written notice that withdraws
20 the infringement notice must be given to the person within 42 days
21 after the infringement notice was given to the person.
- 22 (4) Despite subsection (3), a withdrawal may be effective if it is given
23 to a person later than 42 days after an infringement notice is given
24 to the person if the person has applied to a court for judicial review
25 in relation to the making of an employer determination.

26 *Refund of penalty if infringement notice withdrawn*

- 27 (5) The Commonwealth is liable to refund the amount of the penalty
28 specified in an infringement notice if the infringement notice is
29 withdrawn after the penalty has been paid.

Section 161

1 **161 What happens if the penalty is paid**

2 (1) Any liability of a person for an alleged civil penalty is discharged
3 if:

- 4 (a) an infringement notice is given to the person in relation to the
5 alleged civil penalty; and
6 (b) the penalty is paid in accordance with the infringement
7 notice; and
8 (c) the infringement notice is not withdrawn.

9 (2) In addition, proceedings under Division 3 must not be brought
10 against the person for the alleged civil penalty.

11 **162 Effect of this Division on civil proceedings**

12 This Division does not:

- 13 (a) require an infringement notice to be given in relation to an
14 alleged civil penalty; or
15 (b) affect the liability of a person to have proceedings under
16 Division 3 brought against the person for an alleged civil
17 penalty if:
18 (i) the person does not comply with an infringement notice
19 relating to the contravention; or
20 (ii) an infringement notice relating to the contravention is
21 not given to the person; or
22 (iii) an infringement notice relating to the contravention is
23 given to the person and later withdrawn; or
24 (c) limit the discretion of the Federal Court or the Federal
25 Magistrates Court to determine the amount of a penalty to be
26 imposed on a person who is found in proceedings under
27 Division 3 to have contravened a civil penalty provision.

28 **163 Further provision in relation to infringement notices**

29 The Minister may further provide in relation to infringement
30 notices in the PPL rules.

1

2 **Part 4-3—Debt recovery**

3 **Division 1—Guide to this Part**

4 **164 Guide to this Part**

5

This Part provides for debts in relation to the parental leave pay scheme, and for the recovery of debts owing to the Commonwealth.

6

7

8

Division 2 provides for the main debts recoverable by the Commonwealth under this Act, as follows:

9

10

(a) overpayments or mistaken payments of parental leave pay;

11

(b) PPL funding amounts for a person that are not paid to the person as parental leave pay;

12

13

(c) parental leave pay or PPL funding amounts paid to the wrong person.

14

15

Division 3 allows an employee to recover, as a debt, parental leave pay due from his or her employer.

16

17

Division 4 deals with the procedure for raising a debt that is recoverable by the Commonwealth under this Act, and charging interest on the debt. An administrative charge of \$50 is also payable if interest is charged.

18

19

20

21

Division 5 deals with how the Commonwealth can recover debts.

22

Division 6 allows the Secretary to write off debts. Even if a debt is written off, it can be later recovered if circumstances change.

23

24

Division 7 allows the Secretary to waive debts in various circumstances.

25

Section 164

1
2
3

Division 8 provides that debts under this Act apply in relation to matters inside and outside Australia, and to all persons irrespective of nationality or citizenship.

Section 165

1

2

Division 2—Main debts recoverable under this Act

3

165 Debts due to the Commonwealth

4

If an amount has been paid by way of parental leave pay or a PPL funding amount, the amount (or an amount equivalent to the amount) is a debt due to the Commonwealth only to the extent expressly provided for under:

5

6

7

8

(a) this Act; or

9

(b) the *Data-matching Program (Assistance and Tax) Act 1990*.

10

Note: The main debts due to the Commonwealth under this Act are provided for in this Division. Other debts due to the Commonwealth are provided for in the following provisions:

11

12

13

(a) section 177 (which deals with interest);

14

(b) section 179 (which imposes an administrative charge);

15

(c) section 186 (which deals with non-compliance with garnishee notices).

16

17

166 Parental leave pay instalment debts—instalments paid by employer

18

19

(1) This section applies if:

20

(a) the total of amounts paid to a person (the *first person*) by way of PPL funding amounts in relation to instalments for another person for a child exceeds (by the *PPL funding excess*) the total of amounts payable to the first person as PPL funding amounts in relation to those instalments; and

21

22

23

24

25

(b) the first person pays an amount (the *employer payment*) to, or in relation to, the other person for the child by way of an instalment; and

26

27

28

(c) the total of employer payments paid for the child exceeds (by the *instalment excess*) the total of amounts that are payable by the first person to, or in relation to, the other person for the child as instalments under Division 2 of Part 3-2 (which deals with the payment of instalments by employers).

29

30

31

32

33

Note: Instalments may stop being payable with retrospective effect if a payability determination that parental leave is payable to the other person for the child is set aside or varied after the instalments are paid.

34

35

Section 167

1 (2) An amount equal to the lesser of the PPL funding excess and the
2 instalment excess is a debt due to the Commonwealth by the other
3 person.

4 Example: If no amounts are payable by the first person to, or in relation to, the
5 other person for a child as instalments, the amount of the instalment
6 excess is the total amount of the employer payments.

7 (3) The debt under subsection (2) arises:

8 (a) if the other person has a PPL period for the child—
9 immediately after the end of the person's PPL period; or

10 (b) otherwise—when subsection (1) starts to apply in relation to
11 an employer payment.

12 Note 1: The other person does not have a PPL period for the child if a
13 payability determination that parental leave pay is payable to the other
14 person for the child has not been made, or has been set aside. In such a
15 case, a debt will arise as soon as there is an instalment excess.

16 Note 2: This section may apply to overpayments by way of instalments or
17 amounts that are mistakenly paid. For example, an overpayment or
18 mistaken payment may arise due to administrative error, the setting
19 aside or variation of a payability determination or payments following
20 a stay order under subsection 41(2) of the AAT Act.

21 **167 Parental leave pay instalment debts—instalments paid by**
22 **Secretary**

23 (1) This section applies if:

24 (a) the Secretary pays an amount (the *Secretary payment*) to, or
25 in relation to, a person for a child by way of an instalment;
26 and

27 (b) the total of Secretary payments paid for the child exceeds the
28 total of amounts that are payable to, or in relation to, the
29 person for the child as instalments under Part 3-3 (which
30 deals with the payment of instalments by the Secretary).

31 Note: Instalments may stop being payable with retrospective effect if the
32 payability determination is set aside or varied after the instalments are
33 paid.

34 (2) An amount equal to the amount of the excess is a debt due to the
35 Commonwealth by the person.

Section 168

1 Example: If no amounts are payable to, or in relation to, a person for a child as
2 instalments, the amount of the excess is the total amount of the
3 Secretary payments.

- 4 (3) The debt under subsection (2) arises:
- 5 (a) if the person has a PPL period for the child—immediately
6 after the end of the person’s PPL period; or
7 (b) otherwise—when subsection (1) starts to apply in relation to
8 a Secretary payment.

9 Note 1: The person does not have a PPL period for the child if a payability
10 determination that parental leave pay is payable to the person for the
11 child has not been made, or has been set aside. In such a case, a debt
12 will arise as soon as there is an excess as referred to in subsection (1).

13 Note 2: This section may apply to overpayments by way of instalments or
14 amounts that are mistakenly paid. For example, an overpayment or
15 mistaken payment may arise due to administrative error, the setting
16 aside or variation of a payability determination or payments following
17 a stay order under subsection 41(2) of the AAT Act.

18 **168 PPL funding amount debts—amounts not paid as parental leave**
19 **pay instalments**

20 (1) This section applies if the total of amounts paid to a person (the
21 *first person*) by way of PPL funding amounts in relation to
22 instalments for another person for a child exceeds the total of
23 amounts paid by the first person to, or in relation to, the other
24 person by way of such instalments for the child.

25 (2) The amount of the excess is a debt due to the Commonwealth by
26 the first person.

27 Example: If the first person has not paid any amounts by way of instalments to
28 the other person, the amount of the excess is the total of amounts paid
29 to the first person by way of PPL funding amounts in relation to
30 instalments for the other person for the child.

- 31 (3) The debt under subsection (2) arises:
- 32 (a) if the other person has a PPL period for the child—at the
33 earlier of the following times:
- 34 (i) when the Secretary pays one or more of the instalments
35 to, or in relation to, the other person under section 85,
36 86 or 87 (which deal with the payment of arrears);

- 1 (ii) immediately after the end of the other person's PPL
2 period; or
3 (b) otherwise—when subsection (1) starts to apply in relation to
4 an amount paid to the first person.

5 Note 1: The other person does not have a PPL period for the child if a
6 payability determination that parental leave pay is payable to the
7 person for the child has not been made, or has been set aside. In such a
8 case, a debt will arise as soon as there is an excess referred to in
9 subsection (1).

10 Note 2: This section may apply to overpayments by way of PPL funding
11 amounts or amounts that are mistakenly paid. For example, an
12 overpayment or mistaken payment may arise due to administrative
13 error or the revocation or setting aside of an employer determination.

14 **169 Wrong person receives parental leave pay instalment or PPL**
15 **funding amount**

- 16 (1) This section applies if:
17 (a) an instalment or a PPL funding amount (the *PPL payment*) is
18 paid by the Secretary or an employer; and
19 (b) a person (the *wrong recipient*) other than the person (the
20 *right recipient*) to whom the PPL payment is payable
21 receives the PPL payment (or a part of it); and
22 (c) the wrong recipient is not authorised by the right recipient, or
23 authorised under law, to receive the PPL payment (or that
24 part).

- 25 (2) An amount equal to the PPL payment (or that part of the PPL
26 payment), is a debt due by the wrong recipient to:
27 (a) if the PPL payment is made by the Secretary—the
28 Commonwealth; or
29 (b) if the PPL payment is made by an employer—the employer.

30 Note 1: Because the PPL payment (or part) has not been properly paid to the
31 right recipient, the Secretary or the employer must repay to the right
32 recipient the amount of the PPL payment that ought to have been paid
33 to the right recipient in the first place.

34 Note 2: The Secretary may recover a debt due to the Commonwealth under
35 this section from an ADI (see section 192).

Section 170

1 **170 Joint and several liability for debts arising because of false and**
2 **misleading statements**

3 A person (the *recipient*) and another person are jointly and
4 severally liable to pay a debt if:

- 5 (a) the recipient is liable under this Division to repay an amount
6 (the *unauthorised amount*) paid to, or in relation to, the
7 recipient (or an amount equal to such an amount); and
8 (b) the unauthorised amount was paid because the recipient
9 contravened Part 7.4 of the *Criminal Code* (which deals with
10 false and misleading statements); and
11 (c) the other person is convicted of an offence:
12 (i) that is taken to have been committed in relation to that
13 contravention because of section 11.2 or 11.2A of the
14 *Criminal Code* (which deal with complicity, common
15 purpose and joint commission); or
16 (ii) in relation to that contravention against section 11.4 or
17 11.5 of the *Criminal Code* (which deal with incitement
18 and conspiracy).

19 **171 Debts under the *Data-matching Program (Assistance and Tax)***
20 ***Act 1990***

21 An amount is recoverable by the Commonwealth if:

- 22 (a) the amount has been paid to, or in relation to, a person by
23 way of an instalment; and
24 (b) the amount is a debt due to the Commonwealth under
25 subsection 11(6) of the *Data-matching Program (Assistance*
26 *and Tax) Act 1990*.

1

2 **Division 3—Parental leave pay recoverable by employees**
3 **from employers**

4 **172 PPL funding amount debts—debts owing by employers to**
5 **employees**

6 (1) This section applies if:

7 (a) a PPL funding amount is paid to an employer in relation to an
8 instalment that is payable to a person; and

9 (b) the instalment, or part of the instalment, is not paid to, or in
10 relation to, the person in accordance with the following
11 provisions:

12 (i) section 70 (which deals with unauthorised deductions
13 from instalments);

14 (ii) Division 2 of Part 3-2 (which deals with the payment of
15 instalments by employers).

16 (2) So much of the instalment as is not paid to, or in relation to, the
17 person in accordance with section 70 and Division 2 of Part 3-2, or
18 as arrears under section 85, 86 or 87, is a debt due to the person by
19 the employer, and is recoverable by the person in a court of
20 competent jurisdiction.

Section 173

1

2 **Division 4—Debt notices and interest on debts**

3 **173 Debt notices—initial notice**

4 *Requirement to give initial notice*

5 (1) If a debt due to the Commonwealth under this Act has not been
6 wholly paid, the Secretary must give the debtor a notice stating the
7 following:

- 8 (a) the date the preparation of the notice is completed (the *date*
9 *of the initial debt notice*);
- 10 (b) for a debt under section 168 that relates to a PPL funding
11 amount payable in relation to an instalment (or a debt under
12 this Division in relation to such a debt)—the name of the
13 person to whom, or in relation to whom, the instalment is
14 payable;
- 15 (c) the reason the debt was incurred, including a brief
16 explanation of the circumstances that led to the debt being
17 incurred;
- 18 (d) the period to which the debt relates;
- 19 (e) the outstanding amount of the debt at the date of the initial
20 debt notice;
- 21 (f) the day on which the outstanding amount is due and payable;
- 22 (g) that a range of options is available for repayment of the debt;
- 23 (h) the contact details for inquiries concerning the debt.

24 *Due date*

25 (2) The outstanding amount of the debt is due and payable on the 28th
26 day after the date of the initial debt notice.

27 *Combining initial and further debt notices*

28 (3) If a notice given under this section states the matters referred to in
29 paragraphs 174(2)(e) and (f) (which relate to interest and an
30 administrative charge), the notice is taken also to be a further debt
31 notice given under section 174.

1 **174 Debt notices—further debt notice if repayments not made**

2 *When a further debt notice may be given*

3 (1) This section applies if:

4 (a) a person has been given a notice under section 173 for a debt;
5 and

6 (b) the debt has not been wholly paid; and

7 (c) either:

8 (i) the person has failed to enter into a debt payment
9 arrangement to pay the outstanding amount of the debt;
10 or

11 (ii) the person has entered into a debt payment arrangement,
12 but has failed to make a payment (or payments) in
13 accordance with the arrangement.

14 *Contents of further debt notice*

15 (2) The Secretary may give the person a further notice (the *further*
16 *debt notice*) stating the following:

17 (a) the date the preparation of the notice is completed (the *date*
18 *of the further debt notice*);

19 (b) the matters referred to in paragraphs 173(1)(b) to (d);

20 (c) the outstanding amount of the debt at the date of the further
21 debt notice;

22 (d) the matters referred to in paragraphs 173(1)(f) to (h);

23 (e) the effect of sections 175, 176, 177 and 179 (which deal with
24 interest and an administrative charge);

25 (f) how the interest under section 175 is to be calculated.

26 Note: A person may be taken to have been given a notice under this section
27 by the giving of an initial notice under section 173 if the matters stated
28 in paragraphs (2)(e) and (f) of this section are stated in the initial
29 notice (see subsection 173(3)).

Section 175

1 **175 Interest on debts—when interest becomes payable**

2 *Scope*

- 3 (1) This section applies if a further debt notice is given under
4 section 174 in relation to a debt.

5 *Final debt payment day*

- 6 (2) The **final debt payment day** for the payment of a debt is the latest
7 of the following days:
8 (a) the 90th day after the day on which the outstanding amount
9 of the debt was due and payable;
10 (b) the 28th day after the date of the further debt notice;
11 (c) if the debtor (or another person) applies in accordance with
12 section 206 for internal review of the decision to give the
13 notice under section 173, or the further debt notice—the 90th
14 day after the day on which an officer makes a decision in
15 relation to the application.

16 *No arrangement made for payment of debt*

- 17 (3) Subsection (4) applies if:
18 (a) the person has not entered into a debt payment arrangement,
19 on or before the final debt payment day, to pay the
20 outstanding amount of the debt; and
21 (b) the further debt notice states that the person will be required
22 to pay interest under subsection (4) of this section.
23 (4) The person is liable to pay interest on any outstanding amount
24 from time to time:
25 (a) from and including the first day after the final debt payment
26 day until the debt is wholly paid; and
27 (b) at the penalty interest rate.

28 *Failure to pay amount due under an arrangement*

- 29 (5) Subsection (6) applies if:
30 (a) the person has entered into a debt payment arrangement to
31 pay the outstanding amount of the debt; and

Section 176

- 1 (b) the person has failed to make a particular payment in
2 accordance with the arrangement; and
3 (c) the further debt notice states that the person will be required
4 to pay interest under subsection (6) of this section.
- 5 (6) The person is liable to pay interest, at the penalty interest rate, on
6 the outstanding amount from time to time:
7 (a) if the failure happens on or before the final debt payment
8 day—from and including the first day after the final debt
9 payment day until the debt is wholly paid; or
10 (b) if the failure happens after the final debt payment day—from
11 and including the day after the day in relation to which the
12 last payment in relation to the debt was made until the debt is
13 wholly paid.

14 *Interest not payable on debts incurred because of Commonwealth*
15 *administrative error*

- 16 (7) A person is not liable under this section to pay interest on a debt, or
17 the proportion of a debt, that was incurred because of an
18 administrative error made by the Commonwealth or an agent of the
19 Commonwealth.

20 **176 Interest on debts—application**

21 An amount of interest payable on a debt under section 175 that has
22 been paid on the debt is to be applied as follows:

- 23 (a) until the debt (excluding interest) is fully paid—in
24 satisfaction of the amount of the debt that is due when the
25 payment is made;
26 (b) after the debt (excluding interest) is fully paid—in
27 satisfaction of the interest that had become payable on the
28 debt before the debt was fully paid.

29 **177 Interest on debts—recovery as a debt**

30 The interest payable by a person under section 175 on the
31 outstanding amount of a debt is a debt due to the Commonwealth
32 by the person.

Section 178

1 **178 Interest exemption determinations**

- 2 (1) The Secretary may determine (by an *interest exemption*
3 *determination*) that interest is not payable, or is not payable in
4 relation to a particular period, by a person on the outstanding
5 amount of a debt.
- 6 (2) The Secretary may make an interest exemption determination
7 under this section in circumstances that include the Secretary being
8 satisfied that the person has a reasonable excuse for:
9 (a) failing to enter into a debt payment arrangement to pay the
10 outstanding amount of the debt; or
11 (b) having entered such an arrangement, failing to make a
12 payment (or payments) in accordance with the arrangement.
- 13 (3) An interest exemption determination may:
14 (a) relate to a period before, or to a period that includes a period
15 before, the making of the determination; and
16 (b) be expressed to be subject to the person complying with one
17 or more stated conditions.
- 18 (4) If a person has been given a further debt notice requiring the
19 person to pay interest on the debt, the Secretary must give written
20 notice of the decision to make an interest exemption determination
21 to the person as soon as practicable after the determination is made.
- 22 (5) If a person contravenes a condition, or conditions, of an interest
23 exemption determination without reasonable excuse, the
24 determination ceases to have effect from and including the day on
25 which the contravention, or the earliest of the contraventions,
26 occurred.
- 27 (6) The Secretary may cancel or vary an interest exemption
28 determination by written notice given to the person.

29 **179 Administrative charge**

- 30 (1) When a person first becomes liable to pay interest under
31 section 175 in relation to the outstanding amount of a particular
32 debt, the person is liable to pay an administrative charge of \$50 in
33 relation to the outstanding amount of that debt.

- 1 (2) An administrative charge payable by a person is a debt due to the
2 Commonwealth by the person.

3 **180 Penalty interest rate**

4 *Interest rate*

- 5 (1) The *penalty interest rate* is:
6 (a) 20% per year; or
7 (b) if a lower rate is prescribed by the PPL rules under
8 subsection (2)—that lower rate.
- 9 (2) The PPL rules may prescribe a rate of less than 20% per year as the
10 penalty interest rate.

11 *Guidelines*

- 12 (3) The PPL rules must prescribe guidelines for the operation of the
13 provisions of this Act dealing with penalty interest.

Section 181

1

2

Division 5—How the Commonwealth can recover debts

3

181 Debts to which Division 5 applies

4

This Division applies to debts due to the Commonwealth under this Act.

5

6

Note: See the following provisions:

7

(a) Division 2 (which provides for the main debts recoverable under this Act);

8

9

(b) sections 177, 179 and 186 (which provide for debts relating to interest and garnishee notices).

10

11

182 How to recover debts

12

A debt is recoverable by the Commonwealth from a person by one or more of the following means:

13

14

(a) legal proceedings (see section 183);

15

(b) garnishee notice (see section 184);

16

(c) debt payment arrangements (see section 190);

17

(d) deductions from instalments payable to another person for the same child (see section 191);

18

19

(e) recovery from an ADI, if the debt arises from a payment to the wrong person, or the amount is to be recovered from a deceased estate (see section 192);

20

21

22

(f) deduction or setting off in relation to a payment to which the debtor (or another person) is entitled under another Act, but only if the other Act expressly provides for recovery of the debt by such deduction or setting off.

23

24

25

26

Note: A debt can be recovered by deduction or set off in relation to other payments as follows:

27

28

(a) sections 84 and 92 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (which deal with family tax benefit);

29

30

(b) sections 84A and 92A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (which deal with family assistance);

31

32

(c) sections 1231 and 1234A of the *Social Security Act* (which deal with social security payments).

33

34

35

(d) section 205 of the *Veterans' Entitlements Act 1986* (which deals with pensions, allowances and other payments).

36

1 **183 Legal proceedings**

2 A debt is recoverable by the Commonwealth in a court of
3 competent jurisdiction.

4 Note: See section 189 for time limits on recovery by legal proceedings.

5 **184 Garnishee notices—general**

6 *Issue of garnishee notice*

7 (1) The Secretary may, by written notice (the ***garnishee notice***) to any
8 of the following people (the ***garnishee***), require the garnishee to
9 pay the Commonwealth the amount covered by subsection (2) in
10 relation to a debt (the ***original debt***) that is recoverable by the
11 Commonwealth under this Act from a person (the ***original debtor***):

- 12 (a) a person by whom any money is due or accruing, or may
13 become due, to the original debtor;
- 14 (b) a person who holds or may later hold money for or on
15 account of the original debtor;
- 16 (c) a person who holds or may later hold money on account of
17 some other person for payment to the original debtor;
- 18 (d) a person who has authority from some other person to pay
19 money to the original debtor.

20 Note 1: Subsection (3) provides that conditions on the payment of money due
21 to the original debtor are to be ignored for the purposes of this section.

22 Note 2: See section 189 for time limits on recovery by garnishee notice.

23 (2) The amount covered by this subsection is:

- 24 (a) an amount stated in the garnishee notice, not exceeding the
25 amount of the original debt or the amount of the money
26 referred to in paragraph (1)(a), (b), (c) or (d); or
- 27 (b) an amount stated in the garnishee notice out of each payment
28 that the garnishee becomes liable from time to time to make
29 to the original debtor, until the original debt is satisfied; or
- 30 (c) the amount of a percentage stated in the garnishee notice of
31 each payment that the garnishee becomes liable from time to
32 time to make to the original debtor, until the original debt is
33 satisfied.

Section 185

- 1 (3) For the purposes of this section, if, apart from this subsection,
2 money is not due or repayable on demand to the original debtor
3 unless a condition is fulfilled, the money is taken to be due or
4 repayable on demand, even though the condition has not been
5 fulfilled.

6 *Time for compliance*

- 7 (4) The time for making a payment in compliance with a garnishee
8 notice is the time stated in the notice, but not before:
9 (a) the money concerned becomes due or is held; or
10 (b) the end of 14 days after the notice is given.
- 11 (5) The Secretary must give a copy of a garnishee notice to the original
12 debtor.

13 **185 Garnishee notices—amounts paid in compliance**

- 14 (1) A person who makes a payment to the Commonwealth in
15 compliance with a garnishee notice is taken to have made the
16 payment under the authority of the original debtor and of any other
17 person concerned.
- 18 (2) If, after a garnishee notice is given to a garnishee, an amount is
19 paid by another person in reduction or in satisfaction of the original
20 debt:
21 (a) the Secretary must notify the garnishee accordingly; and
22 (b) the amount of the unpaid debt stated in the garnishee notice is
23 taken to be reduced by an amount equal to the amount paid.

24 **186 Garnishee notices—debt for failure to comply with notice**

- 25 (1) This section applies if a garnishee fails to comply with the
26 garnishee notice to the extent that the garnishee is capable of
27 complying with it.
- 28 (2) The amount of the debt outstanding (worked out under
29 subsection (3)) is a debt due to the Commonwealth by the
30 garnishee.

Section 187

- 1 (3) The amount of the debt outstanding is the amount equal to the
2 lesser of the following amounts:
3 (a) as much of the amount required by the garnishee notice to be
4 paid by the garnishee as the garnishee was able to pay;
5 (b) as much of the debt due by the original debtor when the
6 notice was given as remains due from time to time.
- 7 (4) If the Commonwealth recovers the whole or part of the debt due by
8 the garnishee under subsection (2), or by the original debtor, then:
9 (a) both debts are reduced by the amount that the
10 Commonwealth has so recovered; and
11 (b) the amount of the unpaid debt stated in the garnishee notice is
12 taken to be reduced by the amount so recovered.
- 13 (5) This section applies to an amount despite any law of a State or a
14 Territory (however expressed) under which the amount is
15 inalienable.

16 **187 Garnishee notices—offence for non-compliance**

17 A person commits an offence if:

- 18 (a) the person is a garnishee; and
19 (b) the person is given a garnishee notice; and
20 (c) the person refuses or fails to comply with the notice.

21 Penalty: Imprisonment for 12 months.

22 **188 Garnishee notices—relationship with other laws**

23 Sections 184 to 187 apply to an amount of money despite any law
24 of a State or a Territory (however expressed) under which the
25 amount is inalienable.

26 **189 Legal proceedings and garnishee notices—time limits for debt
27 recovery**

28 *General rule—6 years after officer becomes aware of debt*

- 29 (1) Action (*debt recovery action*) under section 183 or 184 for the
30 recovery of a debt by legal proceedings or garnishee notice is not

Chapter 4 Compliance and enforcement

Part 4-3 Debt recovery

Division 5 How the Commonwealth can recover debts

Section 189

1 to be started after the end of 6 years starting on the first day on
2 which an officer becomes aware, or could reasonably be expected
3 to have become aware, of the circumstances that gave rise to the
4 debt.

5 *Extension of time if debt starts to be paid*

6 (2) If, within the period referred to in subsection (1), part of the
7 amount owing on the debt is paid, debt recovery action may be
8 commenced within 6 years starting on the day of the payment.

9 *Extension of time if debt acknowledged*

10 (3) If, within the period referred to in subsection (1), the person who
11 owes the debt acknowledges that he or she owes it, debt recovery
12 action may be commenced within 6 years starting on the day of
13 acknowledgment.

14 *Extension of time following earlier debt recovery action*

15 (4) If, within the period referred to in subsection (1), debt recovery
16 action (the **first action**) by one method (either legal proceedings or
17 garnishee notice) is commenced, debt recovery by the other
18 method may be commenced within 6 years after the end of the first
19 action.

20 *Extension of time following internal Departmental action*

21 (5) If, within the period referred to in subsection (1), an action covered
22 by subsection (6) is commenced, debt recovery action may be
23 commenced within 6 years after the end of the action.

24 (6) This subsection covers the following actions:

- 25 (a) a review of a file relating to action for the recovery of the
26 debt;
- 27 (b) other internal Departmental action relating to action for the
28 recovery of the debt.

1 **190 Payment of debts by arrangement**

- 2 (1) The Secretary may, on behalf of the Commonwealth, enter into an
3 arrangement (a *debt payment arrangement*) with a person who
4 owes a debt, under which the person is to pay the debt, or the
5 outstanding amount of the debt, by part payments in accordance
6 with the terms of the arrangement.
- 7 (2) A debt payment arrangement operates, or is taken to have operated,
8 on and after the day stated in the arrangement as the day on which
9 the arrangement starts (whether that day is the day on which the
10 arrangement is entered into or an earlier or later day).
- 11 (3) If a debt payment arrangement does not state a day as referred to in
12 subsection (2), it operates on and after the day on which it is
13 entered into.
- 14 (4) The Secretary may terminate or alter a debt payment arrangement:
15 (a) at the debtor's request; or
16 (b) after giving 28 days' notice to the debtor of the proposed
17 termination or alteration; or
18 (c) without notice, if the Secretary is satisfied that the debtor has
19 failed to disclose material information about the debtor's true
20 capacity to repay the debt.

21 **191 Deductions from instalments payable to another person**

- 22 (1) This section applies if an amount is deducted under subsection
23 67(2) from an instalment payable to a secondary claimant for a
24 child, if the deduction is for the purposes of the recovery of a debt
25 due to the Commonwealth by the primary claimant in relation to
26 the same child.
- 27 (2) The debt due to the Commonwealth by the primary claimant is
28 reduced by an amount equal to the amount of the deduction.

29 **192 Recovery from an ADI**

30 *Payment into wrong account or payment for deceased person*

- 31 (1) This section applies if:
-

Section 192

- 1 (a) an instalment or a PPL funding amount is paid to an ADI for
2 the credit of an account kept with the ADI in the name of a
3 person or persons; and
4 (b) a debt that is recoverable by the Commonwealth under this
5 Act arises (or such debts arise) because either:
6 (i) the payment was intended to be paid to someone other
7 than the person, or those persons; or
8 (ii) the payment was intended to be paid to the person, or
9 one of those persons, but the person for whom the
10 payment was intended dies before the payment was
11 made.

12 *Notice to ADI requiring repayment and to deceased estate*

- 13 (2) The Secretary may give a written notice to the ADI setting out the
14 relevant matters referred to in paragraphs (1)(a) and (b) and
15 requiring the ADI to pay to the Commonwealth, within a period
16 (being a reasonable period) stated in the notice, the lesser of the
17 following amounts:
18 (a) the amount of the instalment or PPL funding amount, as
19 stated in the notice;
20 (b) the amount standing to the credit of the account when the
21 notice is given to the ADI.
- 22 (3) If the notice relates to a payment to a person who has died, as soon
23 as possible after issuing the notice, the Secretary must inform the
24 deceased estate in writing of:
25 (a) the amount sought to be recovered from the deceased
26 person's account; and
27 (b) the reasons for the recovery action.

28 *Offence for contravening notice*

- 29 (4) A body corporate commits an offence if:
30 (a) the body is an ADI; and
31 (b) the body is given a notice under subsection (2); and
32 (c) the body refuses or fails to comply with the notice.

33 Penalty: 300 penalty units.

1 *Amount recovered reduces debt*

2 (5) Any amount recovered by the Commonwealth from an ADI under
3 this section reduces the amount of a debt referred to in
4 paragraph (1)(b).

Section 193

1

2 **Division 6—Writing off debts**

3 **193 When debts can be written off**

4 *General*

5 (1) The Secretary may, on behalf of the Commonwealth, decide to
6 write off, for a stated period or otherwise, a debt that is due to the
7 Commonwealth under this Act.

8 Note: Debts recoverable by the Commonwealth under this Act are provided
9 for by the following provisions:

- 10 (a) Division 2 (which provides for the main debts recoverable under
11 this Act);
12 (b) sections 177, 179 and 186 (which provide for debts relating to
13 interest and garnishee notices).

14 *Write off conditions*

15 (2) The Secretary may decide to write off a debt under subsection (1)
16 if, and only if:

- 17 (a) the debt is irrecoverable at law; or
18 (b) the debtor has no capacity to repay the debt; or
19 (c) the debtor's whereabouts are unknown after all reasonable
20 efforts have been made to locate the debtor; or
21 (d) it is not cost effective for the Commonwealth to take action
22 to recover the debt.

23 *When a debt is irrecoverable*

24 (3) For the purposes of paragraph (2)(a), a debt is taken to be
25 irrecoverable at law if, and only if:

- 26 (a) the debt cannot be recovered under Division 5, for example
27 because a time limit for recovery action under that Division
28 has elapsed; or
29 (b) there is no proof of the debt capable of sustaining legal
30 proceedings for its recovery; or
31 (c) the debtor is discharged from bankruptcy or administration
32 and the debt was incurred before the debtor became bankrupt

Section 193

- 1 or entered into administration, and was not incurred by fraud;
2 or
3 (d) the debtor has died leaving no estate or not enough funds in
4 the debtor's estate to repay the debt.

5 *When a debtor has capacity to repay by deductions etc.*

- 6 (4) For the purposes of paragraph (2)(b), a person is taken to have the
7 capacity to repay a debt to which subsection (5) applies, unless
8 recovery by those means would cause the person severe financial
9 hardship.
- 10 (5) This subsection applies to a debt if it could be recovered by
11 deduction or setting off in relation to a payment to which the
12 debtor is entitled under another Act.

13 *When write off comes into operation*

- 14 (6) A decision under subsection (1) to write off a debt comes into
15 operation:
16 (a) if no day is stated in the decision—on the day the decision is
17 made; or
18 (b) if a day is stated in the decision—on the stated day (whether
19 that day is before, after or on the day on which the decision is
20 made).

21 *Debt that has been written off may be recovered*

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

Section 194

1

2 **Division 7—Waiver of debts**

3 **194 Waiver of debts—general**

4 (1) This Division applies to debts that are due to the Commonwealth
5 under this Act.

6 Note: Debts recoverable by the Commonwealth under this Act are provided
7 for by the following provisions:

- 8 (a) Division 2 (which provides for the main debts recoverable under
9 this Act);
10 (b) sections 177, 179 and 186 (which provide for debts relating to
11 interest and garnishee notices).

12 (2) The Secretary may, on behalf of the Commonwealth, decide to
13 waive the Commonwealth's right to recover the whole or a part of
14 a debt, but only if required or allowed to do so under another
15 provision of this Division.

16 (3) A decision to waive the right to recover a debt (or a part of a debt)
17 comes into operation:

- 18 (a) if no day is stated in the decision—on the day the decision is
19 made; or
20 (b) if a day is stated in the decision—on the stated day (whether
21 that day is before, after or on the day on which the decision is
22 made).

23 **195 Waiver of debts—administrative error**

24 The Secretary must waive the right to recover so much of a debt as
25 is attributable solely to an administrative error made by the
26 Commonwealth, or an agent of the Commonwealth, if:

- 27 (a) the debtor received in good faith the payment or payments
28 that gave rise to that proportion of the debt; and
29 (b) the debtor would suffer severe financial hardship if it were
30 not waived.

1 **196 Waiver of debts—arising from offence**

2 The Secretary must waive the right to recover so much of a debt as
3 arises from an offence, if:

- 4 (a) the debtor is convicted of the offence; and
5 (b) the court indicated in sentencing the debtor that it imposed a
6 longer custodial sentence on the debtor because he or she was
7 unable or unwilling to pay the debt.

8 **197 Waiver of debts—small debts**

- 9 (1) The Secretary must waive the right to recover a debt if:
10 (a) the debt is, or is likely to be, less than \$200; and
11 (b) it is not cost effective for the Commonwealth to take action
12 to recover the debt.
- 13 (2) Subsection (1) does not apply if the debt is at least \$50 and could
14 be recovered by deduction or setting off in relation to a payment to
15 which the debtor is entitled under another Act.

16 **198 Waiver of debts—settlement of civil actions**

17 *Settlement of civil action*

- 18 (1) If the Commonwealth has agreed to settle a civil action against a
19 debtor for recovery of a debt for less than the full amount of the
20 debt, the Secretary must waive the right to recover the difference
21 between the debt and the amount that is the subject of the
22 settlement.

23 *Settlement of proceedings before the AAT*

- 24 (2) If the Secretary has agreed to settle proceedings before the AAT
25 relating to recovery of a debt on the basis that the debtor will pay
26 less than the full amount of the debt, the Secretary must waive the
27 right to recover the difference between the debt and the amount
28 that is the subject of the settlement.

29 Note: See section 263 (which deals with settlement of proceedings before
30 the AAT).

Section 198

1 *Waiver where at least 80% of debt recovered and debtor cannot*
2 *pay more*

3 (3) If:

4 (a) the Commonwealth has recovered at least 80% of the original
5 value of a debt from a debtor; and

6 (b) the Commonwealth and the debtor agree that the recovery is
7 in full satisfaction for the whole of the debt; and

8 (c) the debtor cannot repay a greater proportion of the debt;
9 the Secretary must waive the right to recover the remaining 20% or
10 less of the value of the original debt.

11 *Agreement for part payment in satisfaction of outstanding debt*

12 (4) If the Secretary and a debtor agree that the debtor's debt will be
13 fully satisfied if the debtor pays the Commonwealth an agreed
14 amount less than the amount (the **unpaid amount**) of the debt
15 outstanding when the agreement is made, the Secretary must, if the
16 agreed amount is paid, waive the right to recover the difference
17 between the unpaid amount and the agreed amount.

18 *Limits on agreement to accept part payment in satisfaction of*
19 *outstanding debt*

20 (5) The Secretary must not make an agreement described in
21 subsection (4) unless the Secretary is satisfied that the agreed
22 amount is at least the present value of the unpaid amount if it is
23 repaid in instalments of amounts, and at times, determined by the
24 Secretary.

25 *Working out present value of unpaid amount*

26 (6) For the purposes of subsection (5), the **present value of the unpaid**
27 **amount** is the amount worked out in accordance with the following
28 formula:

29
$$\frac{\text{Annual repayment}}{\text{Settlement interest}} \times \left[1 - \frac{1}{\left(1 + \text{Settlement interest}\right)^n} \right]$$

Section 199

1 where:

2 **annual repayment** is the amount of the debt that the Secretary
3 believes would be recovered under Division 5 in a year if
4 subsection (4) did not apply in relation to the debt.

5 **rp** (short for repayment period) is the number of years needed to
6 repay the unpaid amount if repayments equal to the annual
7 repayment were made each year.

8 **settlement interest** is an annual rate of interest prescribed for the
9 purposes of this subsection by the PPL rules.

10 **199 Waiver of debts—special circumstances**

11 The Secretary may waive the right to recover all or part of a debt if
12 the Secretary is satisfied that:

- 13 (a) the debt did not result wholly or partly from the debtor or
14 another person knowingly:
- 15 (i) making a false or misleading statement or
16 representation; or
 - 17 (ii) failing or omitting to comply with a provision of this
18 Act; and
- 19 (b) there are special circumstances (other than financial hardship
20 alone) that make it desirable to waive the debt (or part); and
- 21 (c) it is more appropriate to waive the debt (or part) than to write
22 off the debt (or part).

23 **200 Waiver of debts—determined classes**

24 (1) The Secretary may, on behalf of the Commonwealth, decide to
25 waive the Commonwealth's right to recover debts (or parts of
26 debts) that are included in a class of debts determined by the
27 Minister by legislative instrument.

28 (2) A determination under subsection (1) may state:

- 29 (a) conditions to be met before the Secretary exercises the power
30 to waive the debts (or parts); and
- 31 (b) limits on the amounts of the debts to be waived.

Chapter 4 Compliance and enforcement

Part 4-3 Debt recovery

Division 7 Waiver of debts

Section 200

- 1 (3) A decision under subsection (1) comes into operation:
2 (a) if no day is stated in the decision—on the day the decision is
3 made; or
4 (b) if a day is stated in the decision—on the stated day (whether
5 before, after or on the day the decision is made).

1

2 **Division 8—Miscellaneous**

3 **201 Overseas application of debts**

4 The operation of a provision creating a debt under this Part (except
5 for section 171) extends to:

- 6 (a) acts, omissions, matters and things outside Australia, whether
7 or not in a foreign country; and
8 (b) all persons, irrespective of their nationality or citizenship.

9 Note: Section 171 provides for debts under the *Data-matching Program*
10 (*Assistance and Tax*) Act 1990.

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Chapter 5—Review of decisions

Part 5-1—Internal review of decisions

Division 1—Guide to this Part

202 Guide to this Part

This Part is about the internal review of decisions of officers under this Act.

Division 2 sets out 3 kinds of internal review of those decisions.

The first kind of review is where the Secretary, on his or her own initiative, reviews those decisions.

The second kind of review is where a person whose interests are affected by certain decisions (which are “claimant decisions”) applies for internal review of the decision.

The third kind of review is where an employer applies for internal review of certain decisions that affect the employer (those decisions are “employer determination decisions” and “employer funding amount decisions”). Employer determination decisions can only be reviewed on application, and not on the Secretary’s own initiative.

1

2 **Division 2—Internal review of decisions**

3 **203 Internal review—own-initiative review by Secretary**

4 (1) The Secretary may, on his or her own initiative, review a decision
5 of an officer under this Act if the Secretary is satisfied that there is
6 enough reason to review the decision.

7 (2) However, the Secretary must not, on his or her own initiative,
8 review a decision of an officer under section 101 to make an
9 employer determination.

10 Note 1: An employer may apply for review of a decision to make an employer
11 determination (see section 207).

12 Note 2: For revocation of employer determinations, see section 108.

13 (3) The Secretary may review a decision:

14 (a) whether or not any person has applied for review of the
15 decision; and

16 (b) even though an application has been made to the SSAT or the
17 AAT for review of the decision.

18 (4) On review of a decision, the Secretary may:

19 (a) affirm the decision; or

20 (b) vary the decision; or

21 (c) set the decision aside and substitute a new decision.

22 (5) A reference in subsection (1) to a decision of an officer under this
23 Act includes a reference to a determination that the Secretary is
24 taken, because of a provision of this Act, to have made.

25 **204 Internal review—own-initiative review and tribunal review**

26 (1) The Secretary must give the Principal Member written notice of a
27 decision under subsection 203(4) if, when the Secretary makes the
28 decision, an application has been made to the SSAT for review in
29 relation to the decision that was reviewed by the Secretary.

Section 205

- 1 (2) The Secretary must give the Registrar of the AAT written notice of
2 a decision under subsection 203(4) if, when the Secretary makes
3 the decision, an application has been made to the AAT for review
4 in relation to the decision that was reviewed by the Secretary.

5 **205 Internal review—review following application**

- 6 (1) If an application is made under section 206, 207 or 208 for review
7 of a decision, the Secretary or an authorised review officer must:
8 (a) review the decision; and
9 (b) do one of the following:
10 (i) affirm the decision;
11 (ii) vary the decision;
12 (iii) set the decision aside and substitute a new decision.
- 13 (2) However, an authorised review officer must not, under
14 subsection (1), review a decision relating to the exercise of the
15 Secretary’s power under section 263 (settlement of proceedings
16 before the AAT).

17 **206 Internal review—application for review of claimant decision**

18 *Claimant decisions*

- 19 (1) This section applies to a decision of an officer under this Act,
20 unless the decision is:
21 (a) a decision under Part 3-2 (which deals with the payment of
22 instalments by employer); or
23 (b) a decision under Part 3-5 (which deals with employer
24 determinations); or
25 (c) a decision under Part 4-2 (which deals with compliance); or
26 (d) a decision under the PPL rules, if the PPL rules state that this
27 section does not apply to the decision; or
28 (e) a decision under the regulations, if the regulations state that
29 this section does not apply to the decision.
- 30 (2) A reference in subsection (1) to a decision of an officer under this
31 Act includes a reference to a determination that the Secretary is
32 taken, because of a provision of this Act, to have made.

1 (3) A decision to which this section applies is a *claimant decision*.

2 *Application for review*

3 (4) A person whose interests are affected by a claimant decision may
4 apply to the Secretary for review of the decision, unless the
5 decision was made personally by a PPL agency head.

6 (5) An application under subsection (4) may only be made:
7 (a) within 28 days after the day the decision was made; or
8 (b) if the Secretary is satisfied that a longer period should
9 apply—within the longer period.

10 (6) A person cannot make an application under subsection (4) in the
11 person's capacity as an employer.

12 **207 Internal review—application for review of employer**
13 **determination decision**

14 *Scope*

15 (1) This section applies to a decision (an *employer determination*
16 *decision*) of an officer under section 101 to make an employer
17 determination.

18 (2) A reference in subsection (1) to a decision of an officer includes a
19 reference to a determination that the Secretary is taken, because of
20 a provision of this Act, to have made.

21 *Application*

22 (3) An employer may apply, in writing, to the Secretary for review of
23 an employer determination decision that relates to the employer
24 and a person if the employer believes that:

25 (a) both:
26 (i) a condition in paragraph 101(1)(b) or (c) is not satisfied
27 in relation to the employer determination; and
28 (ii) the employer has not made an election under
29 section 109 that applies to the person; or

Section 207

- 1 (b) a condition in paragraph 101(1)(d) or (e) is not satisfied in
2 relation to the employer determination.
- 3 Note 1: The conditions in paragraphs 101(1)(b) to (e) relate to the employment
4 by an employer of someone to whom parental leave pay is payable.
- 5 Note 2: Section 109 allows an employer to elect to pay instalments to an
6 employee, a class of employees or all employees of the employer.
7 Subsection 101(2) deals with the application of paragraphs 101(1)(b)
8 and (c) if the employer has made an election under section 109 that
9 applies to the person.
- 10 (4) However, the employer cannot make an application under
11 subsection (3) for review of an employer determination decision
12 that was made personally by a PPL agency head.
- 13 (5) An application under subsection (3) may only be made within the
14 14 day period referred to in section 103.
- 15 Note: Section 103 requires an employer for which an employer
16 determination has been made to, within a 14 day period, either provide
17 a notice to the Secretary accepting the determination or apply for
18 review of the employer determination.
- 19 (6) An application under subsection (3) must:
- 20 (a) specify the condition or conditions that the employer believes
21 are not satisfied; and
- 22 (b) if paragraph (3)(a) applies to the application—state whether
23 the employer believes that an election under section 109
24 applies to the person; and
- 25 (c) be signed by a person authorised by the employer; and
- 26 (d) be accompanied by:
- 27 (i) documentary evidence supporting the application; or
28 (ii) if the applicant is unable to provide documentary
29 evidence—a statutory declaration supporting the
30 application.
- 31 (7) The disclosure of personal information (within the meaning of the
32 *Privacy Act 1988*) for the purposes of making an application under
33 subsection (3) is taken to be authorised by law for the purposes of:
- 34 (a) the *Privacy Act 1988*; and
35 (b) any provision of a law of a State or a Territory that provides
36 that personal information may be used or disclosed if the use
37 or disclosure is authorised by law.

1 **208 Internal review—application for review of employer funding**
2 **amount decision**

3 *Scope*

- 4 (1) This section applies to a decision of an officer under section 75 to
5 pay a PPL funding amount to an employer.
- 6 (2) A reference in subsection (1) to a decision of an officer includes a
7 reference to a determination that the Secretary is taken, because of
8 a provision of this Act, to have made.
- 9 (3) A decision to which this section applies is an ***employer funding***
10 ***amount decision***.

11 *Application*

- 12 (4) An employer may apply, in writing, to the Secretary for review of
13 an employer funding amount decision that relates to the employer
14 if:
15 (a) the employer believes that the Secretary has contravened
16 subsection 75(3) in relation to the decision; and
17 (b) the decision was not made personally by a PPL agency head.
- 18 Note: Subsection 75(3) requires the Secretary to pay a PPL funding amount
19 to an employer within a certain time.
- 20 (5) An application under subsection (4) must be signed by a person
21 authorised by the employer.
- 22 (6) An application under subsection (4) in relation to a PPL funding
23 amount may only be made within 14 days after the second payroll
24 cut-off referred to in subsection 75(3) in relation to the PPL
25 funding amount.

26 **209 Internal review—withdrawal of application**

- 27 (1) A person or an employer who has applied to the Secretary for
28 review of a decision may withdraw the application at any time
29 before the review has been completed.
- 30 (2) If an application for review of a decision, other than an application
31 under section 207 (which deals with application for review of

Section 210

1 employer determination decisions), is withdrawn, the application is
2 taken never to have been made.

3 (3) An application may be withdrawn orally or in writing or in any
4 other manner approved by the Secretary.

5 **210 Internal review—when decision made on review comes into**
6 **force**

7 (1) A decision under subsection 203(4) or paragraph 205(1)(b) (the
8 **review decision**) to vary a decision or to set aside a decision and
9 substitute a new decision comes into force on the day that would
10 give full effect to the review decision.

11 (2) However, a decision comes into force immediately on the giving of
12 the decision if it is a decision under subsection 203(4) or paragraph
13 205(1)(b) to:

14 (a) vary an employer determination decision or an employer
15 funding amount decision; or

16 (b) set aside an employer determination decision or an employer
17 funding amount decision and substitute a new decision.

18 **211 Internal review—notice of decision on review of claimant**
19 **decision**

20 *Scope*

21 (1) This section applies if a person (the **decision-maker**) makes a
22 decision under subsection 203(4) or paragraph 205(1)(b) in relation
23 to a claimant decision.

24 *Notice*

25 (2) The decision-maker must give written notice of the decision to:

26 (a) any natural person (other than an employer) if the
27 decision-maker is satisfied that his or her interests are
28 affected by the decision; and

29 (b) for a decision under paragraph 205(1)(b) in response to an
30 application—the applicant.

Section 212

- 1 (3) If the decision relates to a child, the decision-maker must also give
2 written notice of the decision to:
- 3 (a) any natural person who has made a claim in relation to the
4 child; and
- 5 (b) any natural person who has notified the Secretary that he or
6 she intends to make a claim in relation to the child, if the
7 decision-maker is satisfied that the claim has or would have a
8 reasonable prospect of success.
- 9 (4) A notice under subsection (2) or (3) given to a person in relation to
10 a decision must include:
- 11 (a) a statement to the effect that the person may, subject to this
12 Act, apply to the SSAT for review of the decision; and
- 13 (b) a statement to the effect that, if the person is dissatisfied with
14 the decision of the SSAT, application may, subject to the
15 AAT Act, be made to the AAT for review of the decision of
16 the SSAT.
- 17 (5) Subsection (4) does not apply in relation to a decision referred to in
18 subsection 215(2).
- 19 Note: Subsection 215(2) excludes certain claimant decisions from SSAT
20 review.
- 21 (6) A notice under subsection (2) or (3) given to a particular person in
22 relation to a decision may also, if the decision-maker considers it
23 appropriate, include a statement that does one or more of the
24 following, in whole or in part:
- 25 (a) sets out the reasons for the decision;
- 26 (b) sets out the findings by the decision-maker on material
27 questions of fact;
- 28 (c) refers to the evidence or other material on which those
29 findings were based.

30 **212 Internal review—notice of decision relating to employer**

31 *Scope*

- 32 (1) This section applies if a person (the *decision-maker*) makes a
33 decision under subsection 203(4) or paragraph 205(1)(b) in relation
34 to:
-

Section 212

- 1 (a) an employer funding amount decision; or
2 (b) any other decision under Part 3-2 (which deals with payment
3 of instalments by employers); or
4 (c) an employer determination decision; or
5 (d) any other decision under Part 3-5 (which deals with employer
6 determinations); or
7 (e) a decision under Part 4-2 (which deals with compliance); or
8 (f) any other decision under this Act that directly affects the
9 interests of an employer.
- 10 (2) To avoid doubt, paragraph (1)(f) does not apply to a decision if the
11 only effect of the decision on the interests of an employer is that
12 the decision could result in an employer determination for the
13 employer being made, varied, set aside or revoked.
- 14 *Notice*
- 15 (3) The decision-maker must give written notice of the decision to the
16 employer concerned.
- 17 (4) The notice must include a statement that:
18 (a) sets out the reasons for the decision; and
19 (b) sets out the findings by the decision-maker on material
20 questions of fact; and
21 (c) refers to the evidence or other material on which those
22 findings were based.
- 23 (5) A notice in relation to a decision referred to in paragraph (1)(a) or
24 (1)(c) must include a statement to the effect that the employer may,
25 subject to this Act, apply to the SSAT for review of the decision.

1

2 **Part 5-2—Review by the Social Security Appeals**
3 **Tribunal**

3

4 **Division 1—Guide to this Part**

4

5 **213 Guide to this Part**

5

6

This Part is about the review by the Social Security Appeals Tribunal (SSAT) of decisions that have been reviewed under Part 5-1, and of decisions made personally by particular PPL agency heads (which are not subject to internal review).

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Division 2 allows people whose interests are affected by claimant decisions to apply for SSAT review.

11

12

Division 3 allows employers to apply for SSAT review of employer determination decisions and employer funding amount decisions.

13

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15 **214 SSAT objective under this Act**

16

In carrying out its functions under this Act, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

17

18

Section 215

1

2 **Division 2—Review by SSAT of claimant decisions**

3 **215 Application of this Division**

4

(1) This Division applies to the following decisions:

5

(a) if a claimant decision has been affirmed under paragraph
203(4)(a) or subparagraph 205(1)(b)(i)—the claimant
decision as affirmed;

6

7

8

(b) if a claimant decision has been varied under paragraph
203(4)(b) or subparagraph 205(1)(b)(ii)—the claimant
decision as varied;

9

10

11

(c) if a claimant decision has been set aside under paragraph
203(4)(c) or subparagraph 205(1)(b)(iii) and substituted with
a new decision—the new decision;

12

13

14

(d) a claimant decision made personally by a PPL agency head.

15

16

(2) However, this Division does not apply to any of the following
decisions:

17

(a) a decision under one of the following provisions (which deal
with the making of claims, the form and manner of claims,
the form and manner of notices etc.):

18

19

20

(i) subsection 18(4);

21

(ii) subparagraph 25(1)(c)(ii);

22

(iii) subsections 53(2), (3) and (4);

23

(iv) section 56;

24

(v) subsection 61(2);

25

(vi) paragraph 109(2)(a);

26

(vii) subsection 110(1);

27

(viii) paragraph 120(2)(a);

28

(ix) subsection 125(4);

29

(x) paragraph 286(2)(b);

30

(xi) paragraph 288(2)(b);

31

(xii) paragraph 289(2)(b);

32

(xiii) subsection 289(5);

- 1 (b) a decision under subsection 69(2) (which deals with
2 deductions relating to child support);
3 (c) a decision under section 117, 118 or 119 (which deal with
4 gathering information from any person);
5 (d) a decision relating to the Secretary's power under section 263
6 to settle proceedings before the AAT;
7 (e) a decision under the PPL rules, if the PPL rules state that this
8 Division does not apply to the decision;
9 (f) a decision under the regulations, if the regulations state that
10 this Division does not apply to the decision.
- 11 (3) A decision to which this Division applies is an *SSAT reviewable*
12 *claimant decision*.

13 **216 SSAT review of claimant decision—application for review**

- 14 (1) A person whose interests are affected by an SSAT reviewable
15 claimant decision may apply to the SSAT for review of the
16 decision.
- 17 Note: See section 217 (which deals with making an application).
- 18 (2) An application under subsection (1) may only be made:
19 (a) within 28 days after the day the SSAT reviewable claimant
20 decision was made; or
21 (b) if the SSAT is satisfied that a longer period should apply—
22 within the longer period.
- 23 (3) A person cannot make an application under subsection (1) in the
24 person's capacity as an employer.

25 **217 SSAT review of claimant decision—making of application**

- 26 (1) A person may apply to the SSAT for review of an SSAT
27 reviewable claimant decision by:
28 (a) sending or delivering a written application to:
29 (i) an office of the SSAT; or
30 (ii) an office of the Department; or

Chapter 5 Review of decisions

Part 5-2 Review by the Social Security Appeals Tribunal

Division 2 Review by SSAT of claimant decisions

Section 218

- 1 (iii) if the decision was made by the CEO or an employee of
2 the Commonwealth Services Delivery Agency—an
3 office of the Agency; or
4 (iv) if the decision was made by the CEO or an employee of
5 Medicare Australia—an office of Medicare Australia; or
6 (b) going to an office of the SSAT and making an oral
7 application; or
8 (c) contacting an office of the SSAT by telephone and making an
9 oral application.
- 10 (2) If a person makes an oral application in accordance with
11 paragraph (1)(b) or (c), the person receiving the oral application
12 must make a written record of the details of the oral application
13 and note on the record the day on which the application is made.
- 14 (3) If a written record of an oral application is made in accordance
15 with subsection (2), Part 5-3 has effect as if the written record were
16 a written application.
- 17 (4) An application may include a statement of the reasons for seeking
18 a review of the decision.

218 SSAT review of claimant decision—review following application

- 19 If a person applies to the SSAT for review of an SSAT reviewable
20 claimant decision, the SSAT must:
21 (a) affirm the decision; or
22 (b) vary the decision; or
23 (c) set the decision aside and:
24 (i) substitute a new decision; or
25 (ii) send the matter back to a PPL agency head for
26 reconsideration in accordance with any directions or
27 recommendations of the SSAT.
28

219 SSAT review of claimant decision—powers of the SSAT

- 29 The SSAT may, for the purposes of reviewing a decision under this
30 Division, exercise all the powers and discretions that are conferred
31 by this Act on the Secretary.
32

1 **220 SSAT review of claimant decision—when SSAT decision comes**
2 **into force**

3 A decision of the SSAT under this Division to vary a decision or to
4 set aside a decision and substitute a new decision comes into force
5 on the day that would give full effect to the decision of the SSAT.

6 **221 SSAT review of claimant decision—variation of decision before**
7 **review completed**

- 8 (1) If an officer varies an SSAT reviewable claimant decision after an
9 application has been made to the SSAT for review of the decision
10 but before the determination of the review, the application for
11 review is taken to be an application for review of the decision as
12 varied.
- 13 (2) If an officer sets aside an SSAT reviewable claimant decision and
14 substitutes a new decision after an application has been made to the
15 SSAT for review of the original decision but before the
16 determination of the review, the application for review is taken to
17 be an application for review of the new decision.
- 18 (3) Subsection (4) applies if:
19 (a) a person applies to the SSAT for review of an SSAT
20 reviewable claimant decision; and
21 (b) before determination of the review, an officer varies the
22 decision or sets it aside and substitutes a new decision.
- 23 (4) The person may either:
24 (a) proceed with the application for review of the decision as
25 varied or the new decision; or
26 (b) withdraw the application under section 251.

27 **222 SSAT review of claimant decision—parties to review**

- 28 (1) The parties to a review by the SSAT under this Division are:
29 (a) the applicant; and
30 (b) the Secretary; and

Chapter 5 Review of decisions

Part 5-2 Review by the Social Security Appeals Tribunal

Division 2 Review by SSAT of claimant decisions

Section 222

- 1 (c) if the claimant decision was made by the CEO or an
2 employee of the Commonwealth Services Delivery
3 Agency—the CEO of the Agency; and
4 (d) if the claimant decision was made by the CEO or an
5 employee of Medicare Australia—the CEO of Medicare
6 Australia; and
7 (e) any other person who has been made a party to the review
8 under subsection (3).
- 9 (2) If a person has applied under section 216 for review of an SSAT
10 reviewable claimant decision, any other person whose interests
11 (other than interests the person has in the person’s capacity as an
12 employer) are affected by the decision may apply, in writing, to the
13 Principal Member to be made a party to the review.
- 14 (3) The Principal Member may direct that a person who has applied
15 under subsection (2) be made a party to the review.
- 16 *Principal Member may remove parties*
- 17 (4) The Principal Member may direct that a party to a review no longer
18 be a party to the review if:
19 (a) the party consents; or
20 (b) the Principal Member is satisfied that the party does not
21 intend to participate in or proceed with the review:
22 (i) after having communicated with the party; or
23 (ii) after having made reasonable attempts to communicate
24 with the party and having failed to do so; or
25 (c) the party contravenes a direction or order of the SSAT or of
26 the Principal Member given in relation to the review; or
27 (d) the party fails to attend the hearing.

1

2 **Division 3—Review by SSAT of employer decisions**

3 **223 Application of this Division**

- 4 (1) This Division applies to the following decisions:
- 5 (a) if an employer determination decision or an employer
6 funding amount decision has been affirmed under Part 5-1—
7 the decision as affirmed;
- 8 (b) if an employer determination decision or an employer
9 funding amount decision has been varied under Part 5-1—the
10 decision as varied;
- 11 (c) if an employer determination decision or an employer
12 funding amount decision has been set aside and substituted
13 with a new decision under Part 5-1—the new decision;
- 14 (d) an employer determination decision or an employer funding
15 amount decision made personally by a PPL agency head.

16 Note: Part 5-1 deals with internal review.

- 17 (2) A decision to which this Division applies is an *SSAT reviewable*
18 *employer decision*.

19 **224 SSAT review of employer decision—application for review**

- 20 (1) An employer may apply to the SSAT for review of an SSAT
21 reviewable employer decision that relates to the employer and a
22 person if the decision is an employer determination decision and
23 the employer believes that:
- 24 (a) both:
- 25 (i) a condition in paragraph 101(1)(b) or (c) is not satisfied
26 in relation to the employer determination; and
- 27 (ii) the employer has not made an election under
28 section 109 that applies to the person; or
- 29 (b) a condition in paragraph 101(1)(d) or (e) is not satisfied in
30 relation to the employer determination.

31 Note 1: See section 225 (which deals with making an application).

Chapter 5 Review of decisions

Part 5-2 Review by the Social Security Appeals Tribunal

Division 3 Review by SSAT of employer decisions

Section 225

1 Note 2: The conditions in paragraphs 101(1)(b) to (e) relate to the employment
2 by an employer of someone to whom parental leave pay is payable.

3 Note 3: Section 109 allows an employer to elect to pay instalments to an
4 employee, a class of employees or all employees of the employer.
5 Subsection 101(2) deals with the application of paragraphs 101(1)(b)
6 and (c) if the employer has made an election under section 109 that
7 applies to the person.

8 (2) An employer may apply to the SSAT for review of an SSAT
9 reviewable employer decision that relates to the employer if the
10 decision is an employer funding amount decision.

11 Note: See section 225 (which deals with making an application).

12 (3) An application under subsection (1) or (2) may only be made
13 within 14 days after the day on which the SSAT reviewable
14 employer decision was made.

15 **225 SSAT review of employer decision—making of application**

16 (1) An employer may apply to the SSAT for review of an SSAT
17 reviewable employer decision by sending or delivering a written
18 application to an office of the SSAT.

19 (2) The application must:

20 (a) be in the form approved by the Principal Member; and

21 (b) if the application is for review of an employer determination
22 decision:

23 (i) specify the condition or conditions that the employer
24 believes are not satisfied; and

25 (ii) if paragraph 224(1)(a) applies to the application—state
26 whether the employer believes that an election under
27 section 109 applies to the person; and

28 (c) be accompanied by a statutory declaration verifying the
29 application; and

30 (d) be accompanied by any other documents required or allowed
31 by the form.

32 (3) An application may include a statement of the reasons for seeking
33 a review of the decision.

1 **226 SSAT review of employer decision—review following**
2 **application**

3 If an employer applies to the SSAT for review of an SSAT
4 reviewable employer decision, the SSAT must:

- 5 (a) affirm the decision; or
6 (b) vary the decision; or
7 (c) set the decision aside and:
8 (i) substitute a new decision; or
9 (ii) send the matter back to a PPL agency head for
10 reconsideration in accordance with any directions or
11 recommendations of the SSAT.

12 **227 SSAT review of employer decision—powers of the SSAT**

13 The SSAT may, for the purposes of reviewing a decision under this
14 Division, exercise all the powers and discretions that are conferred
15 by this Act on the Secretary.

16 **228 SSAT review of employer decision—when SSAT decision comes**
17 **into force**

18 A decision of the SSAT under this Division comes into force
19 immediately on the giving of the decision.

20 **229 SSAT review of employer decision—variation of decision before**
21 **review completed**

- 22 (1) If an officer varies an SSAT reviewable employer decision after an
23 application has been made to the SSAT for review of the decision
24 but before determination of the review, the application for review
25 is taken to be an application for review of the decision as varied.
- 26 (2) If an officer sets aside an SSAT reviewable employer decision and
27 substitutes a new decision after an application has been made to the
28 SSAT for review of the original decision but before the
29 determination of the review, the application for review is taken to
30 be an application for review of the new decision.
- 31 (3) Subsection (4) applies if:

Chapter 5 Review of decisions

Part 5-2 Review by the Social Security Appeals Tribunal

Division 3 Review by SSAT of employer decisions

Section 230

- 1 (a) an employer applies to the SSAT for review of an SSAT
2 reviewable employer decision; and
3 (b) before determination of the review, an officer varies the
4 decision or sets it aside and substitutes a new decision.
- 5 (4) The employer may either:
6 (a) proceed with the application for review of the decision as
7 varied or the new decision; or
8 (b) withdraw the application under section 251.

9 **230 SSAT review of employer decision—parties to review**

10 The parties to a review by the SSAT under this Division are:

- 11 (a) the employer; and
12 (b) the Secretary; and
13 (c) if the relevant decision was made by the CEO or an employee
14 of the Commonwealth Services Delivery Agency—the CEO
15 of the Agency; and
16 (d) if the relevant decision was made by the CEO or an employee
17 of Medicare Australia—the CEO of Medicare Australia.

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2 **Part 5-3—Procedures for review by the Social**
3 **Security Appeals Tribunal**

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Division 1—Guide to this Part

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231 Guide to this Part

6

This Part is about the procedures to be followed when the Social Security Appeals Tribunal (SSAT) is reviewing a decision.

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Division 2 requires the Secretary and the Principal Member to prepare for the review, arrange for a hearing and notify parties and potential parties.

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Division 3 sets out how people other than PPL agency heads may make submissions to the SSAT.

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Division 4 sets out how PPL agency heads may make submissions to the SSAT.

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Division 5 contains other evidentiary provisions, including the Principal Member's power to obtain information.

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Division 6 provides for pre-hearing conferences to be held. A pre-hearing conference may result in the SSAT not needing to conduct the review.

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Division 7 provides for the hearing of the review.

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Division 8 deals with miscellaneous procedural matters.

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Division 9 requires the SSAT to give notice of its decision on review.

23

24

Division 10 allows obvious errors in decisions and statements of reasons to be corrected.

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Chapter 5 Review of decisions

Part 5-3 Procedures for review by the Social Security Appeals Tribunal

Division 1 Guide to this Part

Section 231

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Division 11 allows a party to an SSAT review of an employer decision to appeal to the Federal Court, on a question of law, in the same way that a party to an AAT review may do so. It also allows the SSAT to refer questions of law to the Federal Court.

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2 **Division 2—Preliminary procedures**

3 **232 Procedure on receipt of application for review by SSAT**

4 (1) If an application for review by the SSAT of a decision is sent or
5 delivered to an office of the Department, of the Commonwealth
6 Services Delivery Agency or of Medicare Australia, the Secretary
7 must send the application to the Principal Member as soon as
8 practicable and, in any case, not later than 7 days after the
9 application is received at the office.

10 (2) If:
11 (a) an application for review of a decision is sent or delivered to
12 an office of the SSAT; or
13 (b) the Secretary sends an application for review of a decision to
14 the Principal Member in accordance with subsection (1);
15 the Principal Member must give the applicant and the Secretary
16 written notice that the application has been received.

17 (3) Within 28 days after receiving notice of the making of an
18 application from the Principal Member, the Secretary must send to
19 the Principal Member:
20 (a) a statement about the decision under review that:
21 (i) sets out the findings of fact made by the person who
22 made the decision; and
23 (ii) refers to the evidence on which those findings were
24 based; and
25 (iii) gives the reasons for the decision; and
26 (b) the original or a copy of every document or part of a
27 document that:
28 (i) is in the possession, or under the control, of the
29 Secretary; and
30 (ii) relates to the applicant; and
31 (iii) is relevant to the review of the decision.

Section 233

- 1 (4) If the Principal Member asks the Secretary to send the statement
2 and documents referred to in subsection (3) by a day earlier than
3 the day fixed by that subsection, the Secretary must take all
4 reasonable steps to comply with the Principal Member's request.
- 5 (5) If:
- 6 (a) after the end of the period referred to in subsection (3) but
7 before the determination of the review, the Secretary obtains
8 possession of a document; and
- 9 (b) the Secretary considers that the document or a part of the
10 document is relevant to the review; and
- 11 (c) a copy of the document or the part of the document has not
12 been sent to the Principal Member in accordance with
13 subsection (3);
- 14 the Secretary must send a copy of the document or the part of the
15 document to an office of the SSAT as soon as practicable after
16 obtaining possession of the document.
- 17 (6) If the Secretary must provide the Principal Member with a
18 document under this section, the Secretary must provide the
19 Principal Member with:
- 20 (a) if the Principal Member requests the Secretary to provide a
21 specified number of copies of the document—that number of
22 copies of the document; or
- 23 (b) otherwise—2 copies of the document.

24 **233 Parties to be given statements about the decision under review**

- 25 (1) Within 28 days after receiving the notice under subsection 232(2),
26 the Secretary must give each party to the review a copy of the
27 statement and documents referred to in subsection 232(3).
- 28 (2) As soon as practicable after the Secretary sends a document to an
29 office of the SSAT under subsection 232(5), the Secretary must
30 give each party to the review a copy of the document.
- 31 (3) The Principal Member may direct, in writing, a person who is
32 required to be given a copy of a statement or a document in
33 accordance with subsection (1) or (2):
- 34 (a) not to disclose information in the statement or document; or

- 1 (b) not to disclose information in the statement or document
2 except in the circumstances, or for the purposes, specified in
3 the direction.

4 *Offence*

- 5 (4) A person commits an offence if:
6 (a) the person engages in conduct; and
7 (b) the conduct contravenes a direction under subsection (3).

8 Penalty for contravention of this subsection: Imprisonment for 2
9 years.

10 **234 Arrangements for hearing of application**

- 11 (1) If an application is made to the SSAT for review of a decision, the
12 Principal Member must fix a day, time and place for the hearing of
13 the application.
14 (2) The Principal Member must give the applicant and any other
15 parties to the review written notice of the day, time and place fixed
16 for the hearing of the application.
17 (3) The notice under subsection (2) must be given a reasonable time
18 before the day fixed for the hearing.

19 **235 Notice of application to person affected by SSAT reviewable
20 claimant decision**

- 21 (1) If:
22 (a) an application has been made to the SSAT for review of an
23 SSAT reviewable claimant decision; and
24 (b) the Principal Member is satisfied that the interests of a person
25 (other than interests the person has in the person's capacity as
26 an employer) who is not a party to the review are affected by
27 the decision;
28 the Principal Member must take all reasonable steps to give the
29 person written notice that an application has been made to the
30 SSAT for review of the decision.
31 (2) The notice:
-

Chapter 5 Review of decisions

Part 5-3 Procedures for review by the Social Security Appeals Tribunal

Division 2 Preliminary procedures

Section 235

- 1 (a) must be in writing; and
2 (b) must include notice of the person's right under section 222 to
3 apply to the Principal Member to be added as a party to the
4 review; and
5 (c) may be given at any time before the determination of the
6 review.
- 7 (3) The Principal Member must give each party to the review a copy of
8 the notice.

1

2 **Division 3—Submissions from parties other than PPL**
3 **agency heads**

4 **236 Division does not apply in relation to PPL agency heads**

5 This Division does not apply in relation to a party to a review of a
6 decision who is a PPL agency head.

7 **237 Submissions to SSAT**

8 (1) A party to a review of a decision may make oral or written
9 submissions to the SSAT, or both oral and written submissions.

10 Note 1: The Principal Member may direct that a hearing be conducted without
11 oral submissions (see section 238).

12 Note 2: Also, a hearing may proceed without oral submissions from a party in
13 the circumstances set out in section 239.

14 (2) The party may have another person make submissions to the SSAT
15 on behalf of the party.

16 (3) The Principal Member may determine that submissions to the
17 SSAT by the party or the party's representative are to be made by
18 telephone or by means of other electronic communications
19 equipment.

20 (4) Without limiting subsection (3), the Principal Member may make a
21 determination under subsection (3) in relation to an application if
22 (a) the application is urgent; or
23 (b) the party lives in a remote area and unreasonable expense
24 would be incurred if the party or the party's representative
25 had to travel to the place at which the hearing is to be held; or
26 (c) the party has failed to attend the hearing and has not
27 indicated that he or she intends to attend the hearing; or
28 (d) the party is unable to attend the hearing because of illness or
29 infirmity.

Section 238

- 1 (5) If the party is not proficient in English, the Principal Member may
2 give directions in relation to the use of an interpreter in relation to
3 the hearing of the review.

4 **238 SSAT hearings on written submissions only**

- 5 (1) The Principal Member may direct that a hearing be conducted
6 without oral submissions from the parties if:
7 (a) the Principal Member considers that the review could be
8 determined fairly on the basis of written submissions by all
9 the parties to the review; and
10 (b) all parties to the review consent to the hearing being
11 conducted without oral submissions.
- 12 (2) If the Principal Member gives a direction under subsection (1), the
13 Principal Member must give each of the parties to the review
14 written notice:
15 (a) informing the party of the direction; and
16 (b) inviting the party to submit written submissions; and
17 (c) specifying the address to which the written submissions are
18 to be delivered; and
19 (d) specifying the time within which the written submissions are
20 to be delivered.
- 21 (3) The time specified under paragraph (2)(d) must be such as to allow
22 a reasonable period for the parties to make written submissions.
- 23 (4) Despite subsection (1), the SSAT, as constituted for the hearing,
24 may, if it considers necessary after taking into account the written
25 submissions made by the parties, make an order permitting the
26 parties to make oral submissions to the SSAT at the hearing of the
27 application for review.

28 **239 SSAT hearings without oral submissions by party**

- 29 (1) If a party to a review of a decision has informed the Principal
30 Member that the party does not intend to make oral submissions to
31 the SSAT, the SSAT may proceed to hear the application for
32 review without oral submissions from the party.

- 1 (2) If:
- 2 (a) the Principal Member has determined that oral submissions
- 3 to the SSAT by a party or a party's representative are to be
- 4 made by telephone or by means of other electronic
- 5 communications equipment; and
- 6 (b) on the day fixed for the hearing the presiding member has
- 7 been unable to contact the party or the party's representative
- 8 (as the case may be) after taking all reasonable steps to do so;
- 9 the Principal Member may authorise the SSAT to proceed to hear
- 10 the application without oral submissions from the party or the
- 11 party's representative (as the case may be).
- 12 (3) If:
- 13 (a) the Principal Member has not determined that oral
- 14 submissions to the SSAT by a party or a party's
- 15 representative are to be made by telephone or by means of
- 16 other electronic communications equipment; and
- 17 (b) the party or the party's representative (as the case may be)
- 18 does not attend the hearing at the time fixed for the hearing;
- 19 the Principal Member may authorise the SSAT to proceed to hear
- 20 the application without oral submissions from the party or the
- 21 party's representative (as the case may be).
- 22 (4) If the Principal Member gives an authorisation under
- 23 subsection (2) or (3), the SSAT may proceed to hear the
- 24 application in accordance with the authorisation.
- 25 (5) The Principal Member may revoke an authorisation under
- 26 subsection (2) or (3).

Section 240

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Division 4—Submissions from PPL agency heads

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240 Submissions from PPL agency heads

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- (1) A PPL agency head who is a party to a review of a decision may make written submissions to the SSAT.

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PPL agency head may request permission to make oral submissions etc.

7

8

- (2) The PPL agency head may, by writing, request the Principal Member for permission to make:

9

10

(a) oral submissions to the SSAT; or

11

(b) both oral and written submissions to the SSAT.

12

The request must explain how such submissions would assist the SSAT.

13

14

- (3) The Principal Member may, by writing, grant the request if, in the opinion of the Principal Member taking into account the objective laid down by section 214, such submissions would assist the SSAT.

15

16

17

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SSAT may order PPL agency head to make oral submissions etc.

19

- (4) The Principal Member may order the PPL agency head to make:

20

(a) oral submissions to the SSAT; or

21

(b) both oral and written submissions to the SSAT;

22

if, in the opinion of the Principal Member taking into account the objective laid down by section 214, such submissions would assist the SSAT.

23

24

25

Oral submissions by telephone etc.

26

- (5) For the purposes of subsections (3) and (4), the Principal Member may determine that oral submissions to the SSAT by the PPL agency head are to be made by telephone or by means of other electronic communications equipment.

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(6) Subsection (5) does not limit subsection (3) or (4).

Section 241

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2 **Division 5—Other evidence provisions**

3 **241 Evidence on oath or affirmation**

4 The SSAT may take evidence on oath or affirmation for the
5 purposes of a review of a decision.

6 **242 Provision of further information by Secretary**

7 (1) The Principal Member may ask the Secretary to provide the SSAT
8 with information or a document the Secretary has and that is
9 relevant to the review of a decision.

10 (2) The Secretary must comply with a request under subsection (1) as
11 soon as practicable and, in any event, not later than 14 days after
12 the request is made.

13 **243 Exercise by Secretary of information-gathering powers**

14 (1) The Principal Member may ask the Secretary to exercise the
15 Secretary's powers under section 117 (which deals with the
16 Secretary's general power to obtain information) if the Principal
17 Member is satisfied that a person has information, or has custody
18 or control of a document, that is relevant to the review of a
19 decision.

20 (2) The Secretary must comply with a request under subsection (1) as
21 soon as practicable and, in any event, within 7 days after the
22 request is made.

23 **244 Power to obtain information**

24 (1) If the Principal Member reasonably believes that it is necessary for
25 the purposes of a review, he or she may, by written notice, direct a
26 person:

27 (a) to give to the SSAT, within the period and in the manner
28 specified in the notice, information that is relevant to the
29 review; or

- 1 (b) to produce to the SSAT, within the period and in the manner
2 specified in the notice, documents that are relevant to the
3 review; or
4 (c) to attend a hearing and answer questions:
5 (i) at a reasonable time specified in the notice; and
6 (ii) at a reasonable place specified in the notice.
- 7 (2) The period specified in a notice given under paragraph (1)(a) or (b)
8 must be at least 14 days after the notice is given.

9 *Offence*

- 10 (3) A person commits an offence if:
11 (a) the person engages in conduct; and
12 (b) the conduct contravenes a direction under subsection (1).

13 Penalty: Imprisonment for 6 months.

14 *Notice to set out the effect of offence provisions*

- 15 (4) A notice under subsection (1) must set out the effect of the
16 following provisions:
17 (a) subsection (3);
18 (b) section 137.1 of the *Criminal Code* (about giving false or
19 misleading information);
20 (c) section 137.2 of the *Criminal Code* (about producing false or
21 misleading documents).

22 *Payment of expenses*

- 23 (5) If a person is required under this section to attend a hearing, the
24 SSAT must determine that the Commonwealth must pay the
25 reasonable costs that are:
26 (a) incurred by the person for travel and accommodation in
27 relation to the hearing; and
28 (b) specified in the determination.
- 29 (6) If the SSAT makes a determination under subsection (5), the costs
30 to which the determination relates are payable by the
31 Commonwealth.

Section 245

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2 **Division 6—Pre-hearing conferences**

3 **245 Pre-hearing conferences**

4 (1) Before the hearing of a review commences, the Principal Member
5 may convene one or more conferences with the parties to the
6 review if he or she considers that it would assist in the conduct and
7 consideration of the review to do so.

8 (2) At a conference, the Principal Member may:

9 (a) fix a day or days for the hearing; and

10 (b) give directions about the time within which submissions are
11 to be made to the SSAT; and

12 (c) give directions about the time within which evidence is to be
13 brought before the SSAT; and

14 (d) give directions about what evidence is to be brought before
15 the SSAT.

16 (3) Paragraph (2)(d) does not limit the evidence that may be brought
17 before the SSAT.

18 *Restrictions on disclosure of information obtained at a conference*

19 (4) The Principal Member may direct, in writing, a person who is
20 present at a conference:

21 (a) not to disclose information obtained by the person at the
22 conference; or

23 (b) not to disclose information obtained by the person at the
24 conference except in the circumstances, or for the purposes,
25 specified in the direction.

26 (5) A person commits an offence if:

27 (a) the person engages in conduct; and

28 (b) the conduct contravenes a direction under subsection (4).

29 Penalty for contravention of this subsection: Imprisonment for 2
30 years.

1 **246 Powers of SSAT if parties reach agreement**

2 (1) If:

3 (a) at a pre-hearing conference under section 245 with the parties
4 to a review, the parties agree to the terms of a decision of the
5 SSAT:

6 (i) in the review; or

7 (ii) in relation to a part of the review, or a matter arising out
8 of the review;

9 that would be acceptable to the parties; and

10 (b) before the hearing of the review commences, the terms of the
11 agreement are:

12 (i) put in writing; and

13 (ii) signed by or on behalf of the parties; and

14 (iii) lodged with the SSAT; and

15 (c) before the hearing of the review commences, the SSAT is
16 satisfied that a decision in those terms, or consistent with
17 those terms, would be within the powers of the SSAT;

18 the SSAT may act in accordance with whichever of subsection (2)
19 or (3) is relevant.

20 (2) If the agreement reached is an agreement as to the terms of a
21 decision of the SSAT in the review, the SSAT may make a
22 decision in accordance with those terms without holding a hearing
23 of the review.

24 (3) If the agreement relates to a part of the review, or a matter arising
25 out of the review, the SSAT may in its decision in the review give
26 effect to the terms of the agreement without dealing at the hearing
27 of the review with the part or matter to which the agreement
28 relates.

Section 247

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2 **Division 7—The hearing**

3 **247 Hearing procedure**

- 4 (1) The SSAT, in reviewing a decision:
- 5 (a) is not bound by legal technicalities, legal forms or rules of
6 evidence; and
- 7 (b) must act as speedily as a proper consideration of the review
8 allows; and
- 9 (c) in determining what a proper consideration of the review
10 requires, must take into account the objective laid down by
11 section 214.
- 12 (2) The SSAT may inform itself on any matter relevant to a review of
13 a decision in any manner it considers appropriate.

14 **248 Hearing in private**

- 15 (1) The hearing of a review must be in private.
- 16 (2) The Principal Member may give directions, in writing or
17 otherwise, as to the persons who may be present at any hearing of a
18 review.
- 19 (3) In giving directions under subsection (2), the Principal Member
20 must take into account the wishes of the parties and the need to
21 protect their privacy.

22 **249 Restrictions on disclosure of information obtained at hearing**

- 23 (1) The Principal Member may direct, in writing, a person who is
24 present at the hearing of a review:
- 25 (a) not to disclose information obtained by the person in the
26 course of the hearing; or
- 27 (b) not to disclose information obtained by the person in the
28 course of the hearing except in the circumstances, or for the
29 purposes, specified in the direction.

Section 249

- 1 (2) A person commits an offence if:
2 (a) the person engages in conduct; and
3 (b) the conduct contravenes a direction under subsection (1).
4 Penalty for contravention of this subsection: Imprisonment for 2
5 years.

Section 250

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2 **Division 8—Other procedural matters**

3 **250 Adjournment of SSAT hearings**

- 4 (1) The SSAT may adjourn the hearing of a review of a decision from
5 time to time.
- 6 (2) Without limiting subsection (1), the SSAT may refuse to adjourn
7 the hearing of a review if:
- 8 (a) the hearing has already been adjourned on 2 or more
9 occasions; or
- 10 (b) the SSAT is satisfied that to grant an adjournment would be
11 inconsistent with the pursuit of the objective laid down by
12 section 214.

13 **251 Withdrawal of application for review**

- 14 (1) An applicant for review of a decision may withdraw the application
15 at any time.
- 16 (2) An applicant may withdraw an application by:
- 17 (a) sending by any means, or delivering, written notice of
18 withdrawal of the application to:
- 19 (i) an office of the SSAT; or
- 20 (ii) an office of the Department; or
- 21 (iii) an office of another Commonwealth agency, where the
22 Secretary has approved the office for the purposes of
23 this subparagraph; or
- 24 (b) going to an office of the SSAT and orally withdrawing the
25 application; or
- 26 (c) contacting an office of the SSAT by telephone and orally
27 withdrawing the application.
- 28 (3) If a person withdraws an application in accordance with
29 paragraph (2)(b) or (c), the person who receives the oral
30 withdrawal must make a written record of the day on which the
31 withdrawal was made.

- 1 (4) If a person withdraws an application by sending or delivering
2 written notice of withdrawal to an office of a Commonwealth
3 agency, the head of the agency must send a notice of the
4 withdrawal to the Principal Member as soon as practicable and, in
5 any event, not later than 7 days after the notice of withdrawal is
6 received at the office of the agency.

7 **252 Dismissal of an application**

- 8 (1) If:
9 (a) a person or an employer makes an application to the SSAT
10 for review of a decision; and
11 (b) the Principal Member is satisfied:
12 (i) after having communicated with the applicant; or
13 (ii) after having made reasonable attempts to communicate
14 with the applicant and having failed to do so;
15 that the applicant does not intend to proceed with the
16 application;
17 the Principal Member may dismiss the application.
- 18 (2) If the Principal Member dismisses an application under
19 subsection (1), the application is taken to have been withdrawn
20 when the application was dismissed.

21 **253 Presiding member at SSAT hearing**

22 If the SSAT is constituted by 2 or more members for the purposes
23 of the review of a decision, the Principal Member must designate
24 one of those members as the member who must preside at the
25 hearing of the review.

26 **254 Decision of questions before SSAT**

- 27 (1) This section applies if the SSAT is constituted by 2 or more
28 members for the purposes of the review of a decision.
- 29 (2) A question arising before the SSAT on a review must be decided
30 according to the opinion of a majority of the members constituting
31 the SSAT for the purposes of the review.

Section 255

- 1 (3) However, if, on a question arising on a review, the opinions of the
2 members of the SSAT are equally divided, the question must be
3 decided according to the opinion of the member presiding.

4 **255 Directions as to procedure for hearings**

5 *Directions by Principal Member*

- 6 (1) The Principal Member:
7 (a) may give general directions as to the procedure to be
8 followed in relation to the review of decisions under this Act;
9 and
10 (b) may give directions as to the procedure to be followed in
11 relation to a particular review.

12 Note: Directions may be given to the SSAT or to parties to reviews.

- 13 (2) A direction under subsection (1) must not be inconsistent with any
14 provision of this Act.
15 (3) A direction under paragraph (1)(b) may be given before or after the
16 hearing of the particular review has commenced.

17 *Directions by presiding member*

- 18 (4) The presiding member of the SSAT as constituted for the purposes
19 of a particular review may give directions as to the procedure to be
20 followed in relation to the review.
21 (5) A direction under subsection (4) must not be inconsistent with:
22 (a) any provision of this Act; or
23 (b) a direction under subsection (1) of this section.
24 (6) A direction under subsection (4) may be given before or after the
25 hearing of the particular review has commenced.

26 *Directions must take SSAT objective into account*

- 27 (7) Directions under this section must take into account the objective
28 laid down by section 214.

1 *Legislative instrument status of directions*

2 (8) A general direction made under paragraph (1)(a) is a legislative
3 instrument.

4 (9) A direction made under paragraph (1)(b) or subsection (4) is not a
5 legislative instrument.

6 **256 Costs of review**

7 *General rule*

8 (1) A party to a review must bear any expenses incurred by the party
9 in relation to the review.

10 *When the Commonwealth must pay*

11 (2) The SSAT may determine that the Commonwealth must pay the
12 reasonable costs that are:

13 (a) incurred by a party for travel and accommodation in relation
14 to the review; and

15 (b) specified in the determination.

16 (3) If the SSAT arranges for the provision of a medical service in
17 relation to a party to a review, the SSAT may determine that the
18 Commonwealth must pay the costs of the provision of the service.

19 (4) If the SSAT makes a determination under subsection (2) or (3), the
20 costs to which the determination relates are payable by the
21 Commonwealth.

Section 257

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2 **Division 9—Notice of decisions**

3 **257 Procedure following SSAT decision**

4 *SSAT affirms decision*

- 5 (1) If the SSAT makes a decision on a review to affirm an SSAT
6 reviewable claimant decision or an SSAT reviewable employer
7 decision, the SSAT must:
- 8 (a) prepare a written statement (the *initial statement*) that sets
9 out the decision of the SSAT on the review; and
 - 10 (b) give each party to the review a copy of the initial statement
11 within 14 days after making the decision; and
 - 12 (c) within 14 days after making the decision, either:
 - 13 (i) give reasons for the decision orally to each party to the
14 review and explain that the party may make a written
15 request for a statement referred to in subparagraph (ii)
16 within 14 days after the copy of the initial statement is
17 given to the party; or
 - 18 (ii) give each party to the review a written statement
19 (whether or not as part of the initial statement) that sets
20 out the reasons for the decision, sets out the findings on
21 any material questions of fact and refers to evidence or
22 other material on which the findings of fact are based;
23 and
 - 24 (d) return to the Secretary any document that the Secretary has
25 provided to the SSAT in relation to the review; and
 - 26 (e) give the Secretary a copy of any other document that contains
27 evidence or material on which the findings of fact are based.
- 28 (2) If the SSAT does not give a written statement to a party under
29 subparagraph (1)(c)(ii), the party may, within 14 days after the
30 copy of the initial statement is given to the party, make a written
31 request of the SSAT for such a statement.
- 32 (3) A PPL agency head may also make a written request of the SSAT
33 for a written statement referred to in subparagraph (1)(c)(ii) if:

- 1 (a) the SSAT has not given such a statement to the PPL agency
2 head; and
3 (b) a person applies to the AAT under section 261 for review of
4 the decision of the SSAT on the review referred to in
5 subsection (1).

- 6 (4) The SSAT must comply with a request under subsection (2) or (3)
7 within 14 days after the day on which it receives the request.

8 *SSAT varies decision or sets decision aside*

- 9 (5) If the SSAT makes a decision on a review to vary or set aside an
10 SSAT reviewable claimant decision or an SSAT reviewable
11 employer decision, the SSAT must:
12 (a) prepare a written statement that:
13 (i) sets out the decision of the SSAT on the review; and
14 (ii) sets out the reasons for the decision; and
15 (iii) sets out the findings on any material questions of fact;
16 and
17 (iv) refers to evidence or other material on which the
18 findings of fact are based; and
19 (b) give each party to the review a copy of the statement referred
20 to in paragraph (a) within 14 days after the making of the
21 decision in relation to the review; and
22 (c) return to the Secretary any document that the Secretary has
23 provided to the SSAT in relation to the review; and
24 (d) give the Secretary a copy of any document that contains
25 evidence or material on which the findings of fact are based.

26 *Notice of further review right*

- 27 (6) When the SSAT determines a review in relation to an SSAT
28 reviewable claimant decision, the Principal Member must give
29 each party to the review (other than a PPL agency head) a written
30 notice that includes a statement to the effect that, if the party is
31 dissatisfied with the decision of the SSAT, application may,
32 subject to the AAT Act, be made to the AAT for review of the
33 decision.

Section 258

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2 **Division 10—Correction of errors in decisions or**
3 **statements of reasons**

4 **258 Correction of errors in decisions or statements of reasons**

5 *Correction of errors*

6 (1) If:

- 7 (a) the SSAT makes a decision on a review; and
8 (b) the presiding member of the SSAT as constituted for the
9 purposes of the review, or the Principal Member, is satisfied
10 that there is an obvious error in:
11 (i) the text of the decision; or
12 (ii) a written statement of reasons for the decision;

13 the presiding member or the Principal Member may alter the text
14 of the decision or statement.

15 (2) If the text of a decision or statement is altered under subsection (1),
16 the altered text is taken to be the decision of the SSAT or the
17 statement of reasons for the decision (as the case may be).

18 *Examples of obvious errors*

19 (3) Examples of obvious errors in the text of a decision or statement of
20 reasons are:

- 21 (a) an obvious clerical or typographical error in the text of the
22 decision or statement; and
23 (b) an inconsistency between the decision and the statement.

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2 **Division 11—Appeals and references of questions of law**
3 **from the SSAT to the Federal Court**

4 **259 Appeals and references of questions of law in relation to SSAT**
5 **review of employer decisions**

6 *Scope*

- 7 (1) This section applies to proceedings before the SSAT for review of
8 an SSAT reviewable employer decision (*SSAT employer*
9 *proceedings*).

10 *Object*

- 11 (2) The object of this section is to allow SSAT employer proceedings
12 to be subject to judicial review as if they were proceedings before
13 the AAT.
- 14 (3) In order to achieve this object, this section is intended to allow:
15 (a) a party to SSAT employer proceedings to appeal to the
16 Federal Court, on a question of law, from any decision of the
17 SSAT in those proceedings; and
18 (b) a question of law arising in SSAT employer proceedings to
19 be referred to the Federal Court for decision.

20 *Modification of AAT Act*

- 21 (4) Without limiting subsection (3), Part IVA of the AAT Act applies
22 in relation to SSAT employer proceedings as if:
23 (a) references to the Tribunal in that Part were references to the
24 SSAT; and
25 (b) paragraph 44(2A)(a) of the AAT Act allowed an appeal to be
26 instituted within the time prescribed by rules of court made
27 under the *Federal Court of Australia Act 1976*, or such
28 further time as is allowed under those rules; and
29 (c) the reference to section 43AA of the AAT Act in paragraph
30 44(2B)(b) of that Act were a reference to section 258 of this

Chapter 5 Review of decisions

Part 5-3 Procedures for review by the Social Security Appeals Tribunal

Division 11 Appeals and references of questions of law from the SSAT to the Federal Court

Section 259

- 1 Act (which allows correction of errors in decisions or
2 statements of reasons); and
3 (d) the reference to the President in paragraph 45(1)(a) of the
4 AAT Act were a reference to the Principal Member; and
5 (e) any other necessary changes were made.
- 6 Note 1: Paragraph 44(2A)(a) of the AAT Act sets a time limit within which an
7 appeal must be instituted, unless the Federal Court allows further time
8 to appeal.
- 9 Note 2: Paragraph 44(2B)(b) of the AAT Act provides that the Federal Court
10 may allow further time to appeal if the text of a decision or a
11 statement of reasons for a decision has been altered under
12 section 43AA of the AAT Act (which allows errors to be corrected).
- 13 Note 3: Paragraph 45(1)(a) of the AAT Act requires the President of the AAT
14 to concur before the AAT can refer a question of law arising in
15 proceedings before the AAT to the Federal Court.
- 16 (5) However, the following provisions of Part IVA of the AAT Act do
17 not apply in relation to SSAT employer proceedings:
18 (a) subsection 44(2) (which allows certain appeals about
19 standing before the AAT to be made);
20 (b) paragraphs 44(3)(b) and (c) (which require appeals to be
21 heard by the Full Court of the Federal Court in some
22 circumstances);
23 (c) subsection 44AA(2) (which prevents appeals being
24 transferred to the Federal Magistrates Court in some
25 circumstances).

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2 **Part 5-4—Review of claimant decisions by the**
3 **Administrative Appeals Tribunal**

4 **Division 1—Guide to this Part**

5 **260 Guide to this Part**

6

This Part is about how the Secretary or people whose interests are affected by a decision of the Social Security Appeals Tribunal (SSAT) may apply to the Administrative Appeals Tribunal (AAT) for review of the SSAT's decision. Employers may not seek AAT review of SSAT decisions.

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Division 2 allows an application to be made for AAT review of a decision. It also sets out what happens if the SSAT's decision is varied after an application is made to the AAT, and allows the Secretary to settle proceedings relating to the recovery of a debt.

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Division 3 modifies the AAT Act for the purposes of reviews of decisions made under this Act.

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Section 261

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2 **Division 2—Right to review by AAT**

3 **261 Review of decisions by AAT**

- 4 (1) The Secretary or a person whose interests are affected by a
5 decision of the SSAT to affirm, vary or set aside an SSAT
6 reviewable claimant decision may apply to the AAT for review of
7 the decision of the SSAT.
- 8 (2) For the purposes of subsection (1), the decision of the SSAT is
9 taken to be:
- 10 (a) where the SSAT affirms an SSAT reviewable claimant
11 decision—that decision as affirmed; and
- 12 (b) where the SSAT varies an SSAT reviewable claimant
13 decision—that decision as varied; and
- 14 (c) where the SSAT sets aside an SSAT reviewable claimant
15 decision and substitutes a new decision—the new decision;
16 and
- 17 (d) where the SSAT sets aside an SSAT reviewable claimant
18 decision and sends the matter back to the Secretary for
19 reconsideration in accordance with any directions or
20 recommendations of the SSAT—the directions or
21 recommendations of the SSAT.
- 22 (3) A person cannot make an application under subsection (1) in the
23 person’s capacity as an employer.
- 24 (4) Subsection (1) has effect subject to section 29 of the AAT Act.

25 **262 Variation of decision under section 261 before AAT review**
26 **completed**

- 27 (1) If an officer varies a decision after an application has been made
28 under section 261 to the AAT for review of that decision but before
29 the determination of the application, the application must be treated
30 as if:
- 31 (a) the decision as varied had been affirmed by the SSAT; and

Section 263

- 1 (b) the application were an application for review of the decision
2 as varied.
- 3 (2) If an officer sets a decision aside and substitutes a new decision
4 after an application has been made under section 261 to the AAT
5 for review of the original decision but before the determination of
6 the application, the application must be treated as if:
- 7 (a) the SSAT had set aside the original decision and substituted
8 the new decision; and
9 (b) the application were an application for review of the new
10 decision.
- 11 (3) If:
- 12 (a) a person applies to the AAT for review of a decision under
13 section 261; and
14 (b) before determination of the review, an officer varies the
15 decision or sets the decision aside and substitutes a new
16 decision;
- 17 the applicant may, instead of proceeding with the application under
18 subsection (1) or (2), withdraw the application.

19 **263 Settlement of proceedings before the AAT**

- 20 (1) The Secretary may agree with other parties to proceedings before
21 the AAT that relate to the recovery of a debt that the proceedings
22 be settled. The agreement must be in writing.
- 23 (2) If proceedings are settled and the Secretary gives the AAT a copy
24 of the agreement to settle the proceedings, the application for
25 review of the decision the subject of the proceedings is taken to
26 have been dismissed.

Section 264

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**Division 3—Modification of AAT Act in relation to
section 261 review applications**

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264 Notice of application for review

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The AAT Act applies to an application under section 261 for review of a decision as if the reference in subsection 29(11) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the party who made the application under section 261).

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265 Parties to a review by the AAT

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The AAT Act applies to an application under section 261 for review as if the reference in paragraph 30(1)(b) of the AAT Act to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

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266 Lodgment of documents with the AAT

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(1) The AAT Act applies to an application under section 261 for review as if references in section 37 of the AAT Act to the person who made the decision the subject of the application were references to the following person (the *deemed decision-maker*):

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(a) if the decision that was reviewed by the SSAT was made by the CEO or an employee of the Commonwealth Services Delivery Agency—the CEO of the Agency;

(b) if the decision that was reviewed by the SSAT was made by the CEO or an employee of Medicare Australia—the CEO of Medicare Australia;

(c) otherwise—the Secretary.

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(2) If a person applies to the AAT under section 261 for review of a decision, the deemed decision-maker is taken to have complied with his or her obligations under paragraph 37(1)(a) of the AAT Act in relation to the decision if he or she gives the AAT the required number of copies of:

- 1 (a) if the decision was affirmed by the SSAT—a statement
2 referred to in subparagraph 257(1)(c)(ii); or
3 (b) otherwise—the statement prepared by the SSAT under
4 paragraph 257(5)(a).
- 5 (3) Subsection (2) does not limit the powers of the AAT under
6 section 38 of the AAT Act.

7 **267 Power of AAT to obtain additional information**

8 The AAT Act applies to an application under section 261 for
9 review as if references in section 38 of the AAT Act to the person
10 who lodges a statement referred to in paragraph 37(1)(a) of that
11 Act with the AAT were references to the Principal Member.

12 **268 Operation and implementation of the decision under review**

- 13 (1) The AAT Act applies to an application under section 261 for
14 review of a decision as if references in subsection 41(4) of the
15 AAT Act to the person who made the decision were references to
16 each party to the review by the SSAT.
- 17 (2) The AAT Act applies to an application under section 261 for
18 review of a decision as if references in section 41 of the AAT Act
19 to the decision to which the relevant proceedings relate were
20 references to:
- 21 (a) if the SSAT affirmed the original decision—the original
22 decision; or
23 (b) if the SSAT varied the original decision:
24 (i) the original decision as varied by the SSAT; and
25 (ii) the original decision; or
26 (c) if the SSAT set aside the original decision and substituted a
27 new decision:
28 (i) the new decision; and
29 (ii) the original decision; or
30 (d) if the SSAT set aside the original decision and sent the matter
31 back to the Secretary for reconsideration in accordance with
32 any directions or recommendations of the SSAT:
33 (i) any decision made because of that reconsideration; and

Chapter 5 Review of decisions

Part 5-4 Review of claimant decisions by the Administrative Appeals Tribunal

Division 3 Modification of AAT Act in relation to section 261 review applications

Section 269

1 (ii) the original decision.

2 (3) For the purposes of subsection (2), the original decision is the
3 decision that was reviewed by the SSAT.

4 **269 Failure of party to appear**

5 The AAT Act applies to the review of a decision on an application
6 under section 261 as if the reference in subsection 42A(2) of the
7 AAT Act to the person who made the decision were a reference to
8 the Secretary.

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2 **Part 5-5—Other matters relating to review**

3 **Division 1—Guide to this Part**

4 **270 Guide to this Part**

5

This Part contains miscellaneous provisions relating to reviews.

Section 271

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2 **Division 2—Other matters relating to review**

3 **271 Authorised review officers**

4 The Secretary may, in writing, authorise an officer to be an
5 authorised review officer for the purposes of this Act.

6 **272 Review body may determine events to have happened, or not to**
7 **have happened**

- 8 (1) This section applies if the Secretary, the SSAT or the AAT (the
9 *review body*) is reviewing a decision under this Chapter.
- 10 (2) If the review body is satisfied that an event did not happen that
11 would have happened if the decision had not been made, the
12 review body may, if satisfied that it is reasonable to do so,
13 determine that this Act is to apply as if the event had happened.
- 14 (3) If the review body is satisfied that an event happened that would
15 not have happened if the decision had not been made, the review
16 body may, if satisfied that it is reasonable to do so, determine that
17 this Act is to apply as if the event had not happened.

18 **273 Certain income test determinations not to be changed on review**

- 19 (1) This section applies to a review being done for the purposes of this
20 Chapter by an officer, the SSAT or the AAT (the *review body*) if:
- 21 (a) the review involves (wholly or partly) a review of a decision
22 (the *decision being reviewed*) that:
- 23 (i) a person is or is not eligible for parental leave pay; or
24 (ii) parental leave pay is or is not payable to a person; and
- 25 (b) the review has involved (wholly or partly) the consideration
26 of a determination (the *income determination*) that the
27 person satisfies the income test; and
- 28 (c) the income determination was taken into account in the
29 making of a decision that parental leave pay is payable to the
30 person; and

Section 273

- 1 (d) the person did not knowingly make a false or misleading
2 representation or provide false or misleading information or
3 documents to the Secretary, the SSAT or the AAT in relation
4 to the income determination.

5 Note: For the income test, see section 37.

- 6 (2) Despite any provision of this Chapter or of the AAT Act, the
7 review body must not vary the decision being reviewed, or set
8 aside the decision being reviewed and substitute a new decision, in
9 a way that has the effect of:
10 (a) varying the income determination so that the person is taken
11 not to have satisfied the income test; or
12 (b) substituting a new determination that the person did not
13 satisfy the income test.

Chapter 6 Miscellaneous

Part 6-1 How this Act applies in particular circumstances

Division 1 Guide to this Part

Section 274

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Chapter 6—Miscellaneous

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**Part 6-1—How this Act applies in particular
circumstances**

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Division 1—Guide to this Part

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274 Guide to this Part

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

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Division 2 modifies this Act so that it applies correctly for adopted children under 16. For example, where a provision of this Act refers to the day a child was born, Division 2 modifies that provision so that, when applying that provision to the adopted child, the provision has the effect of referring to the day of placement of the adopted child (instead of the day the adopted child was born).

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Division 3 modifies this Act so that it applies correctly for claims that are made in exceptional circumstances and other special cases. For example, where a provision of this Act refers to the day a child was born, Division 3 modifies that provision so that, when applying that provision in relation to a claim that is made in exceptional circumstance, the provision has the effect of referring to the day the claimant became the child's primary carer (instead of the day the child was born).

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Division 4 modifies this Act so that it applies correctly to Commonwealth employment.

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2 **Division 2—How this Act applies to an adopted child**

3 **275 How this Act applies to an adopted child**

- 4 (1) This Act applies in relation to an adopted child that satisfies the
5 requirements of subsection (2) as if:
6 (a) a reference to the birth of a child were a reference to the
7 placement of the child; and
8 (b) a reference to the day the child was born were a reference to
9 the day of placement of the child; and
10 (c) a reference to the expected date of birth of the child were a
11 reference to the expected day of placement of the child; and
12 (d) a reference to a child's first birthday were a reference to the
13 first anniversary of the day of placement of the child; and
14 (e) a reference to a completed birth verification form for a child
15 were a reference to information required by the Secretary
16 about the adoption of the child; and
17 (f) a reference to a child being born during the same multiple
18 birth were a reference to the child being adopted during the
19 same multiple adoption.

20 *When a child satisfies this subsection*

- 21 (2) A child satisfies the requirements of this subsection if:
22 (a) as part of the process for the adoption of the child by a
23 person, the child is, or is to be, entrusted to the care of the
24 person by an authorised party; and
25 (b) the child is, or will be, under 16 on the day of placement of
26 the child.

27 *Meaning of day of placement*

- 28 (3) The *day of placement* of a child with a person is the day on which,
29 as part of the process for the adoption of a child by a person, the
30 child is entrusted to the care of the person by an authorised party.

Section 276

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Division 3—How this Act applies to claims made in exceptional circumstances and other cases

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276 How this Act applies to claims made in exceptional circumstances

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This Act (other than subsection 18(3), which deals with birth registration) applies in relation to a claim that is made in exceptional circumstances as if:

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(a) a reference to the birth of a child were a reference to the claimant becoming the child's primary carer; and

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(b) a reference to the day the child was born were a reference to the day the claimant became the child's primary carer; and

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(c) a reference to the expected date of birth of the child were a reference to the day the claimant expects to become the child's primary carer; and

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(d) a reference to a child's first birthday were a reference to the first anniversary of the day the claimant became the child's primary carer; and

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(e) a reference to a completed birth verification form for a child were a reference to information required by the Secretary about the claimant becoming the child's primary carer; and

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(f) a reference to a child being born during the same multiple birth were a reference to the claimant becoming the primary carer of the child at the same time as becoming the primary carer of another child.

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277 Primary carers when a child is stillborn or dies

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(1) If:

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(a) a claim is made for parental leave pay for a child; and

29

(b) before or after the claim is made, the child is stillborn or dies;

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then this Act (other than sections 31 and 47) applies as if a reference to the claimant becoming or being the child's primary carer were a reference to the claimant having become or been the child's primary carer had the child not been stillborn or died.

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Miscellaneous **Chapter 6**
How this Act applies in particular circumstances **Part 6-1**
How this Act applies to claims made in exceptional circumstances and other cases
Division 3

Section 277

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Note: Section 31 deals with eligibility for parental leave pay and section 47 defines who is a primary carer.

(2) The PPL rules may modify the operation of subsection (1).

Chapter 6 Miscellaneous

Part 6-1 How this Act applies in particular circumstances

Division 4 How this Act applies to Commonwealth employment

Section 278

1

2 **Division 4—How this Act applies to Commonwealth**
3 **employment**

4 **278 How this Act applies to Commonwealth employment**

5 This Act applies in relation to a person who is engaged by or on
6 behalf of the Commonwealth as an employee, to perform functions
7 in a Commonwealth agency as if:

- 8 (a) the employee were employed by the agency (rather than the
9 Commonwealth) for whom the person is to perform
10 functions; and
11 (b) the agency were a body corporate; and
12 (c) the head of the agency (however described) has all the rights,
13 duties and powers of an employer in relation to the employee.

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2 **Part 6-2—Nominees**

3 **Division 1—Guide to this Part**

4 **279 Guide to this Part**

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This Part is about payment nominees (who are people who can receive payments of instalments of parental leave pay on behalf of other people for the purposes of this Act) and correspondence nominees (who are people who can receive notices on behalf of other people for the purposes of this Act).

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Division 2 allows the Secretary to appoint a person to be a payment nominee, or a correspondence nominee, for another person for the purposes of this Act.

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Divisions 3, 4 and 5 deal with the consequences of such an appointment.

Section 280

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2 **Division 2—Appointment of nominees**

3 **280 Appointment of payment nominee**

- 4 (1) The Secretary may, in writing:
- 5 (a) appoint a person (including a body corporate) to be the
- 6 payment nominee of another person for the purposes of this
- 7 Act; and
- 8 (b) direct that the whole or a specified part of an instalment
- 9 payable to the nominee's principal be paid to the nominee.

10 Note: The Secretary must make the appointment in accordance with

11 section 282.

- 12 (2) An appointment or a direction made under subsection (1) is not a
- 13 legislative instrument.

14 **281 Appointment of correspondence nominee**

- 15 (1) The Secretary may, in writing, appoint a person (including a body
- 16 corporate) to be the correspondence nominee of another person for
- 17 the purposes of this Act.

18 Note: The Secretary must make the appointment in accordance with

19 section 282.

- 20 (2) An appointment made under subsection (1) is not a legislative
- 21 instrument.

22 **282 Provisions relating to appointments**

- 23 (1) A person may be appointed as the payment nominee and the
- 24 correspondence nominee of the same person.
- 25 (2) The Secretary must not appoint a nominee for a person (the
- 26 *proposed principal*) under section 280 or 281 except:
- 27 (a) with the written consent of the person to be appointed; and
- 28 (b) after taking into consideration the wishes (if any) of the
- 29 proposed principal regarding the making of such an
- 30 appointment.

- 1 (3) The Secretary must cause a copy of an appointment under
2 section 280 or 281 to be given to:
3 (a) the nominee; and
4 (b) the principal.

5 **283 Suspension and cancellation of nominee appointments**

- 6 (1) If a person who is appointed as a nominee under section 280 or 281
7 informs the Secretary in writing that the person no longer wishes to
8 be a nominee under that appointment, the Secretary must, as soon
9 as practicable, cancel the appointment.
- 10 (2) If:
11 (a) the Secretary gives a nominee a notice under section 288; and
12 (b) the nominee informs the Department that:
13 (i) an event or change of circumstances has happened or is
14 likely to happen; and
15 (ii) the event or change of circumstances is likely to have an
16 effect referred to in paragraph 288(1)(b);
17 the Secretary may suspend or cancel the nominee's appointment.
- 18 (3) If:
19 (a) the Secretary gives a nominee a notice under section 288 or
20 289; and
21 (b) the nominee does not comply with the requirement of the
22 notice;
23 the Secretary may suspend or cancel the nominee's appointment, or
24 each of the nominee's appointments.
- 25 (4) While an appointment is suspended, the appointment has no effect
26 for the purposes of this Act.
- 27 (5) The Secretary may, at any time, cancel the suspension of an
28 appointment under subsection (2) or (3).
- 29 (6) The suspension or cancellation of an appointment, and the
30 cancellation of such a suspension, must be in writing.

Section 283

- 1 (7) The cancellation of an appointment has effect on and from such
2 day, being later than the day of the cancellation, as is specified in
3 the cancellation.
- 4 (8) The Secretary must give the principal and the nominee a copy of:
5 (a) a suspension of the nominee's appointment; or
6 (b) a cancellation of the nominee's appointment; or
7 (c) a cancellation of a suspension of the nominee's appointment.
- 8 (9) A suspension or cancellation of an appointment, or a cancellation
9 of such a suspension, under this section is not a legislative
10 instrument.

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2 **Division 3—Payment of instalments to payment nominee**

3 **284 Payment of instalments to payment nominee**

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(1) If:

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(a) a person has a payment nominee; and

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(b) the whole or a part of an instalment is payable to the person;

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and

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(c) the Secretary has given a direction in relation to the

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instalment under section 280;

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the instalment must be paid in accordance with the direction.

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(2) An instalment paid to the payment nominee of a person:

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(a) is paid to the payment nominee on behalf of the person; and

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(b) is taken, for the purposes of this Act (other than this Part), to

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have been paid to the person and to have been so paid when it

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was paid to the nominee.

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(3) An instalment that is to be paid to the payment nominee of a

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person must be paid to the credit of a bank account nominated and

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maintained by the nominee.

19

(4) The Secretary may direct that the whole or a part of an instalment

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that is to be paid to a payment nominee be paid to the payment

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nominee in a different way from that provided for by

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subsection (3). If the Secretary gives such a direction, an

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instalment to which the direction relates must be paid in

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accordance with the direction.

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(5) A direction given under subsection (4) is not a legislative

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instrument.

Section 285

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2 **Division 4—Functions and responsibilities of nominees**

3 **285 Actions of correspondence nominee on behalf of principal**

4 (1) Any act that may be done by a person under, or for the purposes of,
5 this Act (other than Division 2 or 3) may be done by the person’s
6 correspondence nominee.

7 Note: This section is subject to section 296 (which deals with the right of the
8 nominee to attend with a principal) and subsection (4) of this section.

9 (2) Without limiting subsection (1), an application or claim that may
10 be made under this Act by a person may be made by the person’s
11 correspondence nominee on behalf of the person, and an
12 application or claim so made is taken to be made by the person.

13 (3) An act done by a person’s correspondence nominee under this
14 section has effect, for the purposes of this Act (other than this
15 Part), as if it had been done by the person.

16 (4) If, under a provision of this Act, the Secretary gives a notice to a
17 person who has a correspondence nominee, subsection (1) does not
18 extend to an act that is required by the notice to be done by the
19 person.

20 **286 Giving of notices to correspondence nominee**

21 (1) Any notice that the Secretary is authorised or required by this Act
22 to give to a person may be given by the Secretary to the person’s
23 correspondence nominee.

24 (2) The notice:
25 (a) must, in every respect, be in the same form, and in the same
26 terms, as if it were being given to the person; and
27 (b) may be given to the correspondence nominee personally or
28 by post or by any other means approved by the Secretary.

29 (3) If:
30 (a) under subsection (1), the Secretary gives a notice (the
31 ***nominee notice***) to a person’s correspondence nominee; and

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- 1 (b) the Secretary afterwards gives the person a notice that:
2 (i) is expressed to be given under the same provision of this
3 Act as the nominee notice; and
4 (ii) makes the same requirement of the person as the
5 nominee notice;
6 section 287 ceases to have effect in relation to the nominee notice.
- 7 (4) If:
8 (a) under subsection (1), the Secretary gives a notice (the
9 *nominee notice*) to a person's correspondence nominee; and
10 (b) the Secretary has already given to the person a notice that:
11 (i) is expressed to be given under the same provision of this
12 Act as the nominee notice; and
13 (ii) makes the same requirement of the person as the
14 nominee notice;
15 section 287 does not have effect in relation to the nominee notice.

16 **287 Compliance by correspondence nominee**

- 17 (1) If, under section 286, a notice making a PPL requirement of a
18 person is given to the person's correspondence nominee, the
19 following paragraphs have effect:
20 (a) for the purposes of this Act, other than this Part, the notice is
21 taken:
22 (i) to have been given to the person; and
23 (ii) to have been so given on the day on which the notice
24 was given to the correspondence nominee;
25 (b) any PPL requirement made of the person may be satisfied by
26 the correspondence nominee;
27 (c) any act done by the correspondence nominee for the purposes
28 of satisfying a PPL requirement of the notice has effect, for
29 the purposes of this Act, as if it had been done by the person;
30 (d) if the correspondence nominee fails to satisfy a PPL
31 requirement of the notice, the person is taken, for the
32 purposes of this Act, to have failed to comply with the PPL
33 requirement.

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- 1 (2) To avoid doubt, for the purposes of this Act, the person is taken to
2 have complied with a PPL requirement if:
- 3 (a) the PPL requirement imposes an obligation on the person to
4 inform the Secretary of a matter, or give the Secretary a
5 statement, within a specified period; and
- 6 (b) the correspondence nominee informs the Secretary of the
7 matter, or gives the Secretary the statement (as the case may
8 be) within that period.
- 9 (3) To avoid doubt, for the purposes of this Act, the person is taken to
10 have complied with a PPL requirement if:
- 11 (a) the PPL requirement imposes an obligation on the person to
12 give information, or produce a document, to an officer within
13 a specified period; and
- 14 (b) the correspondence nominee gives the information, or
15 produces the document (as the case may be) to the officer
16 within that period.
- 17 (4) To avoid doubt, for the purposes of this Act, the person is taken not
18 to have complied with a PPL requirement if:
- 19 (a) the PPL requirement imposes an obligation on the person to
20 inform the Secretary of a matter, or give the Secretary a
21 statement, within a specified period; and
- 22 (b) the correspondence nominee does not inform the Secretary of
23 the matter, or give the Secretary the statement (as the case
24 may be) within that period.
- 25 (5) To avoid doubt, for the purposes of this Act, the person is taken not
26 to have complied with a PPL requirement if:
- 27 (a) the PPL requirement imposes an obligation on the person to
28 give information, or produce a document, to an officer within
29 a specified period; and
- 30 (b) the correspondence nominee does not give the information,
31 or produce the document (as the case may be) to the officer
32 within that period.
- 33 (6) A **PPL requirement** is a requirement, made by the Secretary under
34 this Act, to:
- 35 (a) inform the Secretary of a matter; or

- 1 (b) give information, or produce a document, to an officer; or
2 (c) give a statement to the Secretary.

3 **288 Nominee to inform Department of matters affecting ability to**
4 **act as nominee**

- 5 (1) The Secretary may give a nominee of a person a notice that
6 requires the nominee to inform the Department if:
7 (a) either:
8 (i) an event or change of circumstances happens; or
9 (ii) the nominee becomes aware that an event or change of
10 circumstances is likely to happen; and
11 (b) the event or change of circumstances is likely to affect:
12 (i) the ability of the nominee to act as the payment nominee
13 or correspondence nominee of the person (as the case
14 may be); or
15 (ii) the ability of the Secretary to give notices to the
16 nominee under this Act; or
17 (iii) the ability of the nominee to comply with notices given
18 to the nominee by the Secretary under this Act.
- 19 (2) A notice under subsection (1):
20 (a) must be in writing; and
21 (b) may be given personally or by post or by any other means
22 approved by the Secretary; and
23 (c) must specify how the nominee is to give the information to
24 the Department; and
25 (d) must specify the period within which the nominee is to give
26 the information to the Department.
- 27 (3) A notice under subsection (1) is not ineffective just because it does
28 not comply with paragraph (2)(c).
- 29 (4) The period specified under paragraph (2)(d) must not end earlier
30 than 14 days after:
31 (a) the day on which the event or change of circumstances
32 happens; or

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- 1 (b) the day on which the nominee becomes aware that the event
2 or change of circumstances is likely to happen.
- 3 (5) Subsection (4) does not apply to a requirement in a notice for a
4 nominee to inform the Department of any proposal by the nominee
5 to leave Australia.
- 6 (6) This section extends to:
7 (a) acts, omissions, matters and things outside Australia, whether
8 or not in a foreign country; and
9 (b) all persons, irrespective of their nationality or citizenship.

10 **289 Statement by payment nominee regarding disposal of money**

- 11 (1) The Secretary may give the payment nominee of a person a notice
12 that requires the nominee to give the Department a statement about
13 a matter relating to the disposal by the nominee of an instalment
14 paid to the nominee on behalf of the person.
- 15 (2) A notice under subsection (1):
16 (a) must be in writing; and
17 (b) may be given personally or by post or by any other means
18 approved by the Secretary; and
19 (c) must specify how the nominee is to give the statement to the
20 Department; and
21 (d) must specify the period within which the nominee is to give
22 the statement to the Department.
- 23 (3) A notice under subsection (1) is not ineffective just because it does
24 not comply with paragraph (2)(c).
- 25 (4) The period specified under paragraph (2)(d) must not end earlier
26 than 14 days after the day the notice is given.
- 27 (5) A statement given in response to a notice under subsection (1)
28 must be in writing and in accordance with a form approved by the
29 Secretary.
- 30 (6) A person commits an offence if:
31 (a) the person is a nominee; and

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1 (b) the person refuses or fails to comply with a notice under
2 subsection (1).

3 Penalty: 30 penalty units.

4 (7) Subsection (6) does not apply if the person has a reasonable
5 excuse.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

8 (8) An offence against subsection (6) is an offence of strict liability.

9 (9) This section extends to:

10 (a) acts, omissions, matters and things outside Australia, whether
11 or not in a foreign country; and

12 (b) all persons, irrespective of their nationality or citizenship.

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2 **Division 5—Other matters relating to nominees**

3 **290 Protection of principal against liability for actions of nominee**

4 Nothing in this Part has the effect of rendering a principal guilty of
5 an offence against this Act in relation to any act or omission of the
6 principal's correspondence nominee.

7 **291 Protection of nominee against criminal liability**

- 8 (1) A nominee of a principal is not subject to any criminal liability
9 under this Act in relation to:
10 (a) any act or omission of the principal; or
11 (b) anything done, in good faith, by the nominee in his or her
12 capacity as nominee.
- 13 (2) This section has effect subject to section 289 (which deals with a
14 statement by a payment nominee regarding the disposal of money).

15 **292 Duty of nominee to principal**

- 16 (1) It is the duty of a person who is the payment or correspondence
17 nominee of a principal at all times to act in the best interests of the
18 principal.
- 19 (2) A nominee does not commit a breach of the duty imposed by
20 subsection (1) by doing an act if, when the act is done, the nominee
21 reasonably believes that it is in the best interests of the principal
22 that the act be done.
- 23 (3) A nominee does not commit a breach of the duty imposed by
24 subsection (1) by refraining from doing an act if, at the relevant
25 time, the nominee reasonably believes that it is in the best interests
26 of the principal that the act be not done.

1 **293 Saving of Secretary's powers of revocation**

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

5 **294 Saving of Secretary's powers to give notices to principal**

6 Nothing in this Part is intended in any way to limit or affect the
7 Secretary's powers under other provisions of this Act to give
8 notices to, or make requirements of, a person who has a nominee.

9 **295 Notification of nominee where notice given to principal**

10 If, under a provision of this Act (other than a provision of this
11 Part), the Secretary gives a notice to a person who has a
12 correspondence nominee, the Secretary may inform the
13 correspondence nominee of the giving of the notice and of the
14 terms of the notice.

15 **296 Right of nominee to attend with principal**

16 (1) If:

- 17 (a) under a provision of this Act (other than a provision of this
18 Part), the Secretary gives a notice to a person who has a
19 correspondence nominee; and
20 (b) the notice requires the person:
21 (i) to attend the Department; or
22 (ii) to attend a particular place; and
23 (c) the Secretary informs the person's correspondence nominee
24 of the giving of the notice;

25 the correspondence nominee may attend the Department or place
26 (as the case may be) with the person if the person so wishes.

27 (2) If a person's correspondence nominee is a body corporate, the last
28 reference in subsection (1) to the correspondence nominee is to be
29 read as a reference to an officer or employee of the correspondence
30 nominee.

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2 **Part 6-3—Other matters**

3 **Division 1—Guide to this Part**

4 **297 Guide to this Part**

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This Part deals with miscellaneous matters.

6

Division 2 provides for the Paid Parental Leave Rules. The PPL rules are made by the Minister by legislative instrument. They are subordinate legislation and provide rules that operate in addition to those in this Act.

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Division 3 confers jurisdiction on the Federal Court and the Federal Magistrates Court.

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Division 4 deals with other miscellaneous matters (such as delegations and regulations).

13

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2 **Division 2—The Paid Parental Leave Rules**

3 **298 The PPL rules**

4 The Minister may, by legislative instrument, make rules providing
5 for matters:

- 6 (a) required or permitted by this Act to be provided; or
7 (b) necessary or convenient to be provided in order to carry out
8 or give effect to this Act.

9 **299 Extension of Act to persons who are not employees and**
10 **employers**

- 11 (1) The PPL rules or the regulations may provide that the Secretary
12 may make an employer determination under Part 3-5 for persons
13 who are in a relationship that is similar to the relationship between
14 an employer and an employee.
- 15 (2) For the purposes of subsection (1), the PPL rules or the regulations
16 may modify (including by adding, omitting or substituting) any
17 provision of this Act in relation to persons provided for in
18 accordance with subsection (1) by the PPL rules or the regulations.

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2 **Division 3—Jurisdiction of courts**

3 **300 Jurisdiction of Federal Court**

4 Jurisdiction is conferred on the Federal Court in relation to civil
5 matters arising under this Act.

6 **301 Jurisdiction of Federal Magistrates Court**

7 Jurisdiction is conferred on the Federal Magistrates Court in
8 relation to civil matters arising under this Act.

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2 Division 4—Other matters**3 302 General administration**

4 The Secretary has, subject to any direction of the Minister, the
5 general administration of this Act.

6 303 Delegation

- 7 (1) The Secretary may, in writing, delegate all or any of his or her
8 powers under this Act (other than Divisions 3 and 5 of Part 4-2 and
9 paragraph 128(1)(b) (which deal with civil penalty orders,
10 infringement notices and disclosing information to Agency Heads))
11 to:
- 12 (a) an officer; or
 - 13 (b) without limiting paragraph (a), a person engaged (whether as
14 an employee or otherwise) by:
 - 15 (i) an Agency (within the meaning of the *Public Service*
16 *Act 1999*); or
 - 17 (ii) another authority of the Commonwealth; or
 - 18 (iii) an organisation that performs services for the
19 Commonwealth;
- 20 but does not include the CEO or an employee of the
21 Commonwealth Services Delivery Agency.
- 22 (2) The Secretary may, in writing and in accordance with service
23 arrangements, delegate all or any of his or her powers under this
24 Act (other than Divisions 3 and 5 of Part 4-2 and paragraph
25 128(1)(b) (which deal with civil penalty orders, infringement
26 notices and disclosing information to Agency Heads)) to the CEO
27 of, or an employee of, the Commonwealth Services Delivery
28 Agency or Medicare Australia.
- 29 (3) The Secretary may, in writing, delegate the Secretary's powers
30 under Division 3 or 5 of Part 4-2 (which deal with civil penalty
31 orders and infringement notices) to:

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- 1 (a) the CEO of the Commonwealth Services Delivery Agency or
2 Medicare Australia; or
3 (b) an SES employee or an acting SES employee.
- 4 (4) The Secretary cannot delegate to anyone except the CEO of the
5 Commonwealth Services Delivery Agency or Medicare Australia
6 the Secretary's power under paragraph 128(1)(b) to disclose
7 information to an Agency Head (within the meaning of the *Public*
8 *Service Act 1999*).
- 9 (5) If the Secretary delegates that power to a CEO, the CEO cannot,
10 despite any other provision in the *Commonwealth Services*
11 *Delivery Agency Act 1997* or the *Medicare Australia Act 1973*,
12 delegate the power to an employee of the Commonwealth Services
13 Delivery Agency or Medicare Australia.

14 **304 Decisions to be in writing**

15 A decision of an officer under this Act must be in writing.

16 **305 Secretary may arrange for use of computer programs to make**
17 **decisions**

- 18 (1) The Secretary may arrange for the use, under the Secretary's
19 control, of computer programs for any purposes for which the
20 Secretary may make decisions under this Act.
- 21 (2) A decision made by the operation of a computer program under an
22 arrangement made under subsection (1) is taken to be a decision
23 made by the Secretary.

24 **306 Notice of decisions**

- 25 (1) Notice of a decision under this Act is taken, for the purposes of this
26 Act, to have been given to a person if written notice of the decision
27 is:
28 (a) delivered to the person personally; or
29 (b) left at the address of the place of residence or business of the
30 person last known to the Secretary; or

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1 (c) sent by prepaid post to the postal address of the person last
2 known to the Secretary.

3 Note: Notice of decisions can also be given electronically in accordance
4 with the *Electronic Transactions Act 1999*.

5 (2) Notice of a decision under this Act may be given to a person by
6 properly addressing, prepaying and posting the document as a
7 letter.

8 (3) Notice of a decision that is given in accordance with subsection (2)
9 is taken to have been given to the person when the notice would be
10 delivered in the ordinary course of the post unless the contrary is
11 proved.

12 (4) If a provision of this Act requires a notice of a decision to be given
13 to a person, the decision is not ineffective just because the notice:

- 14 (a) was not given or was given late; or
15 (b) did not comply with the requirements of the provision.

16 (5) This section only applies to notices of decisions. Nothing in this
17 section affects the operation of sections 28A and 29 of the *Acts*
18 *Interpretation Act 1901* in relation to other notices under this Act
19 (for example, a notice that requires a person to inform the
20 Secretary about some matter).

21 **307 Appropriation**

22 Payments under this Act (other than payments of instalments by
23 employers under Division 2 of Part 3-2) are to be made out of the
24 Consolidated Revenue Fund, which is appropriated accordingly.

25 **308 Regulations**

26 The Governor-General may make regulations prescribing matters:

- 27 (a) required or permitted by this Act to be prescribed; or
28 (b) necessary or convenient to be prescribed for carrying out or
29 giving effect to this Act.