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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Entitlements Guarantee Bill 2012

No. , 2012

(Education, Employment and Workplace Relations)

**A Bill for an Act to provide for financial assistance
for workers who have not been fully paid for work
done for insolvents or bankrupts, and for related
purposes**

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1 **A Bill for an Act to provide for financial assistance**
2 **for workers who have not been fully paid for work**
3 **done for insolvents or bankrupts, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *Fair Entitlements Guarantee Act*
10 2012.

Section 2

1 **2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 55	The seventh day after this Act receives the Royal Assent.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects of this Act**

14 The main objects of this Act are:

- 15 (a) to provide for the Commonwealth to pay advances on
16 account of unpaid employment entitlements of former
17 employees of employers in cases where:
18 (i) the employers are insolvent or bankrupt; and
19 (ii) the end of the employment of the former employees was
20 connected with that insolvency or bankruptcy; and
21 (iii) the former employees cannot get payment of the
22 entitlements from other sources; and
23 (b) to allow the Commonwealth to recover the advances through
24 the winding up or bankruptcy of the employers and from

1 other payments the former employees receive for the
2 entitlements.

3 **4 Simplified outline of this Act**

- 4 (1) This section is a simplified outline of this Act.
- 5 (2) Under Part 2, a person is eligible for financial assistance under this
6 Act (called an advance) if:
- 7 (a) the person's employment by an employer has ended; and
 - 8 (b) the employer is being wound up or bankrupt; and
 - 9 (c) the end of the employment is connected with the insolvency
10 or bankruptcy of the employer; and
 - 11 (d) the person has not been fully paid his or her entitlements
12 relating to that employment; and
 - 13 (e) the person has made a claim for the advance.
- 14 (3) A person's claim for an advance is decided by the Secretary, who
15 also decides the amount of the advance if the person is eligible for
16 it (see section 15).
- 17 (4) Part 3 explains how to work out the amount of an advance for a
18 person, taking account of the person's unpaid entitlements relating
19 to unused annual leave, unused long service leave, payment in lieu
20 of notice, redundancy pay and wages for a 13-week period. The
21 amount may be reduced because:
- 22 (a) the person owes debts to his or her employer; or
 - 23 (b) the liquidator or bankruptcy trustee expects to be able to pay
24 those entitlements in full soon.
- 25 (5) Part 4 deals with payment of an advance by the Commonwealth,
26 either:
- 27 (a) directly to the person eligible for the advance; or
 - 28 (b) to the liquidator, the bankruptcy trustee or another
29 intermediary who will pass it on to the person.
- 30 (6) Part 5 lets the Commonwealth recover some or all of the advance,
31 by:

Section 5

- 1 (a) substituting the Commonwealth for the person eligible for the
2 advance as a creditor in the winding up or bankruptcy of the
3 employer; and
4 (b) requiring the person to pay the Commonwealth if he or she is
5 later paid amounts for the entitlements the advance related to.
- 6 (7) Part 6 deals with administrative matters, including:
7 (a) review of decisions made by the Secretary on eligibility for
8 advances and amounts of advances (see Division 2 of Part 6);
9 and
10 (b) use and disclosure of personal information in connection with
11 the administration of the Act (see Division 3 of Part 6).
- 12 (8) Part 7 deals with various matters, including:
13 (a) letting the Secretary extend the scheme for advances to
14 persons whose employment has ended and whose employer
15 is in administration under the *Corporations Act 2001*; and
16 (b) allowing regulations to provide for other schemes of financial
17 assistance for persons who worked as contractors (rather than
18 employees) but have not been paid because of the insolvency
19 or bankruptcy of the persons they worked for.

20 **5 Definitions**

- 21 In this Act:
- 22 **advance** means financial assistance under this Act on account of
23 employment entitlements.
- 24 **annual leave entitlement** has the meaning given by subsection
25 6(2).
- 26 **appointment** of an insolvency practitioner includes a person
27 becoming an insolvency practitioner:
28 (a) by taking possession or control of property; or
29 (b) by operation of law.
- 30 **Bankruptcy Act 1966**: a reference to the *Bankruptcy Act 1966* or a
31 provision of that Act is a reference to that Act or provision:
32 (a) applying of its own force; or

Section 5

- 1 (b) applying, with or without modifications, because of a law of
2 the Commonwealth, a State or a Territory.

3 **bankruptcy trustee** of a person means the trustee under the
4 *Bankruptcy Act 1966* of the person's estate in bankruptcy.

5 **Corporations Act 2001**: a reference to the *Corporations Act 2001*
6 or a provision of that Act is a reference to that Act or provision:

- 7 (a) applying of its own force; or
8 (b) applying, with or without modifications, because of a law of
9 the Commonwealth, a State or a Territory.

10 **cost**:

- 11 (a) of the winding up of an employer—means:
12 (i) an expense that relates to the winding up and is
13 described in paragraph 556(1)(a) of the *Corporations*
14 *Act 2001*; or
15 (ii) an amount described in section 558 of that Act as a cost
16 of the winding up; or
17 (b) of the bankruptcy of an employer—means:
18 (i) an expense that relates to the bankruptcy and is
19 described in paragraph 109(1)(a) of the *Bankruptcy Act*
20 *1966*; or
21 (ii) an amount described in section 109A of that Act as a
22 cost of the bankruptcy.

23 Note: Paragraph 556(1)(a) of the *Corporations Act 2001* describes expenses
24 incurred by a liquidator or administrator in carrying on a company's
25 business, among other things. Paragraph 109(1)(a) of the *Bankruptcy*
26 *Act 1966* describes expenses of the administration of the bankruptcy,
27 among other things.

28 **employer** includes former employer.

29 **employment entitlement** means:

- 30 (a) annual leave entitlement; or
31 (b) long service leave entitlement; or
32 (c) payment in lieu of notice entitlement; or
33 (d) redundancy pay entitlement; or
34 (e) wages entitlement.

Section 5

- 1 **Finance Minister** means the Minister administering the *Financial*
2 *Management and Accountability Act 1997*.
- 3 **governing instrument** for employment means any of the following
4 that governs the employment:
- 5 (a) a written law of the Commonwealth, a State or a Territory;
6 (b) an award, determination or order that is made or recorded in
7 writing;
8 (c) a written instrument;
9 (d) an agreement (whether a contract or not).
- 10 **insolvency event: an insolvency event** happens to an employer of a
11 person:
- 12 (a) when a liquidator of the employer is appointed (provisionally
13 or otherwise) under the *Corporations Act 2001*; or
14 (b) when the employer becomes a bankrupt under the
15 *Bankruptcy Act 1966*; or
16 (c) if the person is or was employed for a partnership by 2 or
17 more of the partners—at the first time an event described in
18 paragraph (a) or (b) happens, or has happened, to all of the
19 partners by whom the person is or was employed.
- 20 Example: If a person is employed for a partnership by 2 partners, one of whom
21 becomes bankrupt on 15 October 2013 and the other of whom
22 becomes bankrupt on 1 November 2013, the insolvency event happens
23 on 1 November 2013 (because that is the first time when both the
24 partners have become bankrupt).
- 25 **insolvency practitioner** for an employer means:
- 26 (a) a liquidator of the employer; or
27 (b) an administrator of the employer appointed under the
28 *Corporations Act 2001*; or
29 (c) a person appointed as a receiver of property of the employer;
30 or
31 (d) a person who has possession or control of property of the
32 employer for the purpose of enforcing:
33 (i) a charge; or
34 (ii) a mortgage; or
35 (iii) a lien; or
36 (iv) a pledge; or

- 1 (v) a security interest, within the meaning of the *Personal*
2 *Property Securities Act 2009*, to which that Act applies,
3 other than a transitional security interest within the
4 meaning of that Act; or
5 (e) a bankruptcy trustee of the employer.

6 **liquidator** means a liquidator appointed (provisionally or
7 otherwise) under the *Corporations Act 2001*.

8 **long service leave entitlement** has the meaning given by
9 subsection 6(3).

10 **maximum weekly wage**: the *maximum weekly wage* is:

- 11 (a) \$2,364.00; or
12 (b) the result of indexation of the amount in paragraph (a), or of
13 the result of the last application of this paragraph, in
14 accordance with the regulations, by reference to estimates of
15 full-time adult average weekly ordinary time earnings
16 published by the Australian Statistician.

17 **maximum weekly wage rate** means the rate of the maximum
18 weekly wage a week.

19 **payment in lieu of notice entitlement** has the meaning given by
20 subsection 6(4).

21 **redundancy pay entitlement** has the meaning given by subsection
22 6(5).

23 **Secretary** means the Secretary of the Department.

24 **wages** has a meaning affected by section 7.

25 **wages entitlement** has the meaning given by subsection 6(6).

26 **wages entitlement period** for a person whose employment by an
27 employer has ended means the 13 weeks ending at the earlier of the
28 following times (or either of those times if they are the same):

- 29 (a) the time the person's employment ended;
30 (b) the first time an insolvency practitioner has power (however
31 expressed) to control or manage employment by:
32 (i) the employer; or
-

Section 6

- 1 (ii) if the person was employed for a partnership by 2 or
2 more partners—any of the partners who employed the
3 person.

4 **6 Kinds of employment entitlements**

- 5 (1) This section defines the various kinds of employment entitlements
6 of a person whose employment by an employer has ended, by
7 reference to the person's entitlements under the governing
8 instrument for the employment.

9 Note: Part 3 may affect the calculation of the person's employment
10 entitlements for the purposes of working out the amount of an advance
11 the person is eligible for.

12 *Annual leave entitlement*

- 13 (2) The person's *annual leave entitlement* is the amount the person is
14 entitled to under the governing instrument from the employer for
15 paid annual leave that the person:
16 (a) had accrued at the end of the employment; and
17 (b) had not taken by then.

18 *Long service leave entitlement*

- 19 (3) The person's *long service leave entitlement* is the amount the
20 person is entitled to under the governing instrument from the
21 employer:
22 (a) for long service leave that the person had accrued at the end
23 of the person's employment and had not taken by then; or
24 (b) on account of long service leave that, had the person's
25 employment continued until the person qualified for long
26 service leave, would have been attributable to the period
27 before the actual end of the person's employment.

28 *Payment in lieu of notice entitlement*

- 29 (4) The person's *payment in lieu of notice entitlement* is the amount
30 the person is entitled to under the governing instrument from the
31 employer for a shortfall in the period of notice of termination of the
32 employment.

Redundancy pay entitlement

- 1
- 2 (5) The person's **redundancy pay entitlement** is the amount of
- 3 redundancy pay the person is entitled to under the governing
- 4 instrument from the employer for termination of the employment.

Wages entitlement

- 5
- 6 (6) The person's **wages entitlement** is the amount of wages the person
- 7 is entitled to under the governing instrument from the employer for
- 8 work done, or paid leave taken, in the wages entitlement period.

Entitlement unaffected by payment

- 9
- 10 (7) The person's receipt of some or all of an amount he or she was
- 11 entitled to under the governing instrument does not affect what is
- 12 the person's annual leave entitlement, long service leave
- 13 entitlement, payment in lieu of notice entitlement, redundancy pay
- 14 entitlement or wages entitlement under this section.

15 Example: If:

- 16 (a) under the governing instrument, the person accrued 8 weeks of
- 17 annual leave that had not been taken by the end of the person's
- 18 employment; and
- 19 (b) the employer paid the person for 3 of those weeks;

20 the person's **annual leave entitlement** is the entitlement to be paid for

21 8 weeks annual leave.

7 Wages

- 22
- 23 (1) **Wages** includes the following:
- 24 (a) allowances;
- 25 (b) loadings;
- 26 (c) amounts payable for overtime;
- 27 (d) amounts payable at penalty rates;
- 28 (e) other amounts that the governing instrument for the relevant
- 29 employment identifies separately and makes payable
- 30 regularly.
- 31 (2) However, the following are not **wages**:
- 32 (a) discretionary payments (such as bonuses);
-

Part 1 Preliminary

Section 8

- 1 (b) reimbursements;
2 (c) payments of expenses relating to travel or relocation.
3 (3) Amounts that are not payable on an ongoing basis are not *wages*,
4 unless they are amounts described in subsection (1).

5 **8 This Act binds the Crown**

6 This Act binds the Crown in each of its capacities.

7 **9 Extraterritorial operation**

8 This Act extends to the making of payments to, and the recovery of
9 amounts from, persons outside Australia.
10

1 **Part 2—Eligibility for advance**

2 **Division 1—Conditions of eligibility for advance**

3 **Subdivision A—Basic conditions of eligibility**

4 **10 Conditions of eligibility for advance**

5 *General conditions*

- 6 (1) A person is eligible for an advance if the Secretary is satisfied of
7 all of the following:
- 8 (a) the person's employment by a particular employer has ended;
 - 9 (b) after the commencement of this section, an insolvency event
10 happened to the employer;
 - 11 (c) the end of the employment:
 - 12 (i) was due to the insolvency of the employer; or
 - 13 (ii) occurred less than 6 months before the appointment of
14 an insolvency practitioner for the employer; or
 - 15 (iii) occurred on or after the appointment of an insolvency
16 practitioner for the employer;
 - 17 (d) the person is (or would, apart from the discharge of the
18 bankruptcy of the employer, be) owed one or more debts
19 wholly or partly attributable to all or part of one or more
20 employment entitlements;
 - 21 (e) the person has taken steps, so far as reasonable, to prove
22 those debts in the winding up or bankruptcy of the employer;
 - 23 (f) if the person was owed any of those debts before the
24 insolvency event happened, the person took reasonable steps
25 before that event to be paid those debts;
 - 26 (g) when the employment ended, the person was an Australian
27 citizen or, under the *Migration Act 1958*, the holder of a
28 permanent visa or a special category visa;
 - 29 (h) an effective claim (see section 14) that the person is eligible
30 for the advance has been made to the Secretary by or on
31 behalf of the person.

32 Note: Subdivision B excludes certain persons from eligibility.

Part 2 Eligibility for advance

Division 1 Conditions of eligibility for advance

Section 11

1 *If person was employed for a partnership by partners*

- 2 (2) If the person was employed for a partnership by 2 or more of the
3 partners, paragraphs (1)(c), (d) and (e) apply as if each reference in
4 those paragraphs to the employer were a reference to each of the
5 partners who employed the person.

6 **Subdivision B—Exclusions from eligibility**

7 **11 Exclusion for personal connection with employer**

- 8 (1) A person is not eligible for an advance for the person's
9 employment by an employer if:
10 (a) section 556 of the *Corporations Act 2001* applies to the
11 winding up of the employer; and
12 (b) the person is an excluded employee under that section in
13 relation to the employer.
- 14 (2) A person is not eligible for an advance for the person's
15 employment by an employer who is or was a bankrupt under the
16 *Bankruptcy Act 1966* if:
17 (a) the person is a relative (as defined in the *Corporations Act*
18 *2001*) of the employer; or
19 (b) the person was a spouse or de facto partner (within the
20 meaning of the *Acts Interpretation Act 1901*) of the employer
21 at any time within the 12 months ending on the date of the
22 bankruptcy (as defined in the *Bankruptcy Act 1966*) of the
23 employer.
- 24 (3) A person who was employed for a partnership by 2 or more of the
25 partners is not eligible for an advance for that employment if the
26 conditions in subsection (1), or any of the conditions in
27 subsection (2), exist in relation to any of the partners who
28 employed the person.
- 29 (4) This section has effect despite section 10.

1 **12 Exclusion for being newly employed after working as contractor**

- 2 (1) A person is not eligible for an advance for the person's
3 employment by an employer that has ended if the Secretary is
4 satisfied that all the following apply:
5 (a) the person started to be employed by the employer in the 6
6 months ending at the earlier of the following events:
7 (i) the end of the employment;
8 (ii) the appointment of an insolvency practitioner for the
9 employer;
10 (b) the person was engaged by the employer, but not as an
11 employee of the employer, before the start of the
12 employment;
13 (c) it was reasonable to expect at the start of that employment
14 that the employer would not be able to employ the person on
15 the terms and conditions of that employment beyond the time
16 that employment actually ended.
- 17 (2) If the person was employed for a partnership by 2 or more of the
18 partners, subsection (1) applies as if each reference in
19 paragraphs (1)(a), (b) and (c) to the employer were a reference to
20 each of the partners who employed the person.
- 21 (3) This section has effect despite section 10.

22 **13 Exclusion for employment by certain employers**

- 23 (1) A person is not eligible for an advance for the person's
24 employment by an employer if the employer was within the scope
25 of the scheme known as the Special Employee Entitlements
26 Scheme for Ansett Group Employees.
- 27 (2) This section has effect despite section 10.
28

Section 14

1 **Division 2—Claim for eligibility for advance**

2 **14 Making an effective claim**

- 3 (1) To be effective for the purposes of this Act, a claim that a person is
4 eligible for an advance for the person's employment by an
5 employer must:
6 (a) be in a form approved by the Secretary; and
7 (b) be accompanied by any documents required by the Secretary;
8 and
9 (c) be made in accordance with subsection (2), and with
10 subsection (3) if it applies.
- 11 (2) The claim must be made before the end of 12 months after the later
12 of the following events:
13 (a) an insolvency event happens to the employer;
14 (b) the person's employment by the employer ends.
- 15 (3) However, if the employer is or was a bankrupt, the claim must be
16 or have been made before the discharge of the employer's
17 bankruptcy.
- 18 (4) Despite subsection (1), the claim is not effective for the purposes
19 of this Act if it is made after a claim (the *earlier claim*) was made
20 for a payment, under the scheme known as the General Employee
21 Entitlements and Redundancy Scheme, connected with the
22 person's employment by the employer.
- 23 (5) Subsection (4) does not apply if the earlier claim was rejected
24 because an insolvency event had not happened to the employer
25 before the commencement of this section.

26 *Statutory declaration*

- 27 (6) A claim form approved by the Secretary may provide for
28 verification by statutory declaration of statements in the claim.

1 **15 Secretary must decide effective claim**

2 (1) If an effective claim that a person is eligible for an advance is
3 made to the Secretary, the Secretary must decide whether the
4 person is eligible for the advance.

5 (2) If it is decided that a person is eligible for an advance, the
6 Secretary must decide the amount of the advance in accordance
7 with Part 3.

8 Note 1: Subsection (2) applies whether the decision that a person is eligible for
9 an advance is made under subsection (1) or on review under Part 6.

10 Note 2: Division 1 of Part 6 contains provisions relevant to making and
11 notifying decisions on eligibility for an advance and the amount of an
12 advance.
13

1 **Part 3—Amount of advance**

2 **Division 1—Working out the amount of an advance**

3 **16 General rule for working out the amount of an advance**

- 4 (1) If a person is eligible for an advance for the person's employment
5 by an employer, the amount of the advance is the total of the
6 amount worked out under Division 2 for each of the person's
7 employment entitlements for the employment.

8 *Excluding some basic amounts if person is offered similar work*

- 9 (2) However, do not include in the total the amount worked out under
10 Division 2 for the person's payment in lieu of notice entitlement or
11 redundancy pay entitlement if:

- 12 (a) the business in which the employer employed the person is
13 transferred to someone else (the *transferee*) other than the
14 bankruptcy trustee of the employer; and
15 (b) within 14 days of the end of the person's employment by the
16 employer, the transferee offers to employ the person:
17 (i) to do work that is the same, or substantially the same, as
18 the work the person did for the employer; and
19 (ii) on terms and conditions substantially similar to, and,
20 considered on an overall basis, no less favourable than,
21 the person's terms and conditions of employment with
22 the employer immediately before the end of that
23 employment.

- 24 (3) Subsection (2) is taken never to have applied if the transferee
25 employs the person (whether as a result of the offer described in
26 paragraph (2)(b) or not) and either:

- 27 (a) the transferee terminates that employment because the
28 transferee no longer requires the job done by the person to be
29 done by anyone, except where this is due to the ordinary and
30 customary turnover of labour; or
31 (b) an insolvency event happens to the transferee, the person's
32 employment by the transferee ends and one or more of the
33 following applies:

- 1 (i) the end was due to the insolvency of the transferee;
2 (ii) the end occurred less than 6 months before the
3 appointment of an insolvency practitioner for the
4 transferee;
5 (iii) the end occurred on or after the appointment of an
6 insolvency practitioner for the transferee.

7 Note: If the amount of an advance is decided, relying on subsection (2), and
8 the events described in subsection (3) happen later (so that
9 subsection (2) is taken never to have applied), the decision can be
10 reviewed under Division 2 of Part 6.

- 11 (4) Subsection (2) does not apply for the purposes of working out the
12 amount of an advance the person is eligible for because of an
13 insolvency event that happened to the employer on or after 1 July
14 2014.

15 **17 Reduction for the person's debts to the employer**

16 The Secretary may reduce the amount of an advance worked out
17 under section 16 for a person's employment by an employer by an
18 amount not exceeding the sum of the person's debts to the
19 employer.

20 **18 Nil amount if liquidator or bankruptcy trustee can fully pay 21 entitlements soon**

22 The Secretary may reduce to nil the amount of an advance worked
23 out under this Division for a person's employment by an employer
24 if the Secretary is satisfied that the liquidator or bankruptcy trustee
25 of the employer expects to have in the next 112 days enough
26 money (apart from this Act) to pay the person what the amount of
27 the advance would be apart from this section.
28

1 **Division 2—Amounts for employment entitlements**

2 **Subdivision A—Working out amounts for employment**
3 **entitlements**

4 **19 Working out amounts for employment entitlements**

- 5 (1) Work out the amount for each of a person's employment
6 entitlements to be taken into account under section 16 by:
- 7 (a) working out the basic amount for the entitlement under
8 Subdivisions B and C; and
 - 9 (b) reducing the basic amount (but not below nil) by the sum of
10 the amounts described in subsections (2) and (3) for the
11 entitlement.
- 12 (2) One amount of the reduction of the basic amount for a particular
13 employment entitlement of a person for his or her employment by
14 an employer is the total of amounts that:
- 15 (a) are attributable to the entitlement; and
 - 16 (b) have been paid by anyone:
 - 17 (i) to the person; or
 - 18 (ii) to someone else for the person's benefit or in
19 accordance with the person's direction; and
 - 20 (c) are not costs of the winding up or bankruptcy of the
21 employer.
- 22 (3) The other amount of the reduction of the basic amount for a
23 particular employment entitlement of a person for his or her
24 employment by an employer is the total of amounts that:
- 25 (a) are attributable to the entitlement; and
 - 26 (b) are payable (and have not been paid) by anyone:
 - 27 (i) to the person; or
 - 28 (ii) to someone else for the person's benefit or in
29 accordance with the person's direction; and
 - 30 (c) are not payable:
 - 31 (i) under the *Corporations Act 2001* in the winding up of
32 the person's employer; or

- 1 (ii) under the *Bankruptcy Act 1966* from the proceeds of the
2 property of the bankrupt employer of the person; or
3 (iii) under this Act.

4 **Subdivision B—General rules for basic amounts for**
5 **employment entitlements**

6 **20 Basic amount for annual leave entitlement**

7 The basic amount for a person’s annual leave entitlement for his or
8 her employment by an employer is so much of the entitlement as is
9 not a cost of the winding up or bankruptcy of the employer.

10 Note: Sections 25 and 26 may affect the basic amount.

11 **21 Basic amount for long service leave entitlement**

12 The basic amount for a person’s long service leave entitlement for
13 his or her employment by an employer is so much of the
14 entitlement as is not a cost of the winding up or bankruptcy of the
15 employer.

16 Note: Sections 25 and 26 may affect the basic amount.

17 **22 Basic amount for payment in lieu of notice entitlement**

18 The basic amount for a person’s payment in lieu of notice
19 entitlement for his or her employment by an employer is so much
20 of the entitlement as:

- 21 (a) is not a cost of the winding up or bankruptcy of the
22 employer; and
23 (b) does not exceed 5 weeks’ pay at the rate relevant to working
24 out that entitlement.

25 Note: Sections 25 and 26 may affect the basic amount.

26 **23 Basic amount for redundancy pay entitlement**

27 The basic amount for a person’s redundancy pay entitlement for his
28 or her employment by an employer is so much of the entitlement
29 as:

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- 1 (a) is not a cost of the winding up or bankruptcy of the
2 employer; and
3 (b) does not exceed the total of:
4 (i) 4 weeks' pay (at the rate relevant to working out that
5 entitlement) for each full year of the person's service
6 with the employer for which the employer was required
7 to pay redundancy pay by the governing instrument for
8 that employment; and
9 (ii) if that instrument requires payment of redundancy pay
10 for a proportion of a year (less than a full year) of the
11 person's service with the employer—that proportion of
12 4 weeks' pay (at the rate relevant to working out that
13 entitlement).

14 Note: Sections 25 and 26 may affect the basic amount.

15 **24 Basic amount for wages entitlement**

16 The basic amount for a person's wages entitlement is the wages
17 entitlement less any amount required to be withheld under Part 2-5
18 (Pay as you go (PAYG) withholding) in Schedule 1 to the *Taxation*
19 *Administration Act 1953* from the wages covered by the
20 entitlement.

21 Note: Sections 25 and 27 may affect the basic amount.

22 **Subdivision C—Special rules for basic amounts for**
23 **employment entitlements**

24 **25 Disregarding recently agreed changes in terms and conditions**

- 25 (1) This section affects a basic amount for a person's employment
26 entitlement for his or her employment by an employer if:
27 (a) less than 6 months before the end of the employment or the
28 appointment of an insolvency practitioner for the employer,
29 the employer agreed to a change in the terms and conditions
30 of the person's employment in favour of the person (whether
31 or not the change also affected anyone else's terms and
32 conditions of employment); and

- 1 (b) the Secretary is satisfied that, at the time of the change, it was
2 not reasonable to expect that the employer would be able to
3 continue to employ the person on those more favourable
4 terms and conditions beyond the time of the actual end of the
5 person's employment; and
6 (c) the Secretary is satisfied that it is appropriate that this section
7 apply.

- 8 (2) Work out the basic amount as if the governing instrument for the
9 employment had not been changed.

10 Note: This affects the basic amount by affecting the amount of the
11 employment entitlement. It may also affect the basic amount by
12 affecting limits on the basic amount such as those in paragraphs 22(b)
13 and 23(b).

- 14 (3) If the person was employed for a partnership by 2 or more of the
15 partners, subsection (1) applies as if:
16 (a) the first reference in paragraph (1)(a) to the employer were a
17 reference to any of the partners who employed the person;
18 and
19 (b) the second reference in paragraph (1)(a), and the reference in
20 paragraph (1)(b), to the employer were a reference to all the
21 partners who employed the person.

22 **26 Applying maximum weekly wage rate—entitlements except**
23 **wages entitlement**

- 24 (1) This section affects a basic amount for a person's employment
25 entitlement for his or her employment if the governing instrument
26 for the employment provided for a rate of pay relevant to working
27 out the basic amount that, when expressed as a weekly rate,
28 exceeded the maximum weekly wage rate at the end of the
29 employment.

- 30 (2) Work out the basic amount as if the governing instrument had
31 provided for the relevant wage rate to be the maximum weekly
32 wage rate at the end of the employment.

33 Note: This affects the basic amount by affecting the amount of the
34 employment entitlement. It may also affect the basic amount by
35 affecting limits on the basic amount such as those in paragraphs 22(b)
36 and 23(b).

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Section 27

- 1 (3) This section does not affect the basic amount for the person's
2 wages entitlement.

3 **27 Applying maximum weekly wage rate—wages entitlement**

- 4 (1) This section affects the basic amount for a person's wages
5 entitlement for his or her employment by an employer if
6 subsection (2), (3) or (4) applies.

7 *When this section affects the basic amount*

- 8 (2) This subsection applies if:

- 9 (a) the governing instrument for the employment provided for a
10 rate of pay at the end of the wages entitlement period for
11 work that the instrument envisaged that the person would do
12 regularly; and
13 (b) that rate, when expressed as a weekly rate, exceeded the
14 maximum weekly wage rate at the end of that period.

- 15 (3) This subsection applies if:

- 16 (a) the governing instrument for the employment did not provide
17 for a rate of pay at the end of the wages entitlement period
18 for work that the instrument envisaged that the person would
19 do regularly; and
20 (b) the person's average weekly wage for that period (see
21 subsection (5)) is greater than the maximum weekly wage at
22 the end of that period.

23 Note: The condition in paragraph (3)(a) may be met because the governing
24 instrument:

- 25 (a) did not provide for a rate described in that paragraph; or
26 (b) did not envisage that the person would do any particular work
27 regularly.

- 28 (4) This subsection applies if:

- 29 (a) the Secretary is satisfied that, over the weeks for which the
30 person was employed in the wages entitlement period, there
31 is not a regular pattern of one or both of the following:
32 (i) hours worked by the person;
33 (ii) wages to which the person was entitled for work done or
34 leave taken within those weeks; and

1 (b) the person's average weekly wage for that period (see
2 subsection (5)) is greater than the maximum weekly wage at
3 the end of that period.

4 (5) For the purposes of paragraphs (3)(b) and (4)(b), the person's
5 average weekly wage for the wages entitlement period is the result
6 of dividing the person's wages entitlement by the number of weeks
7 for which he or she was employed by the employer in that period.
8 That number need not be a whole number.

9 *Effect on basic amount*

10 (6) Work out the basic amount as if the governing instrument for the
11 employment had entitled the person, for each of the weeks for
12 which the employer employed the person in the wages entitlement
13 period, to wages at the maximum weekly wage rate at the end of
14 that period.
15

1 **Part 4—Payment of advance**
2

3 **28 Payment to eligible person or intermediary**

- 4 (1) On behalf of the Commonwealth, the Secretary must pay an
5 advance a person is eligible for in relation to his or her
6 employment by an employer:
7 (a) to the person; or
8 (b) to the liquidator or bankruptcy trustee of the employer, for
9 the liquidator or trustee to pass on to the person, subject to
10 the liquidator or trustee withholding or deducting an amount
11 as required by law; or
12 (c) to another person (the *payee*) for the payee to pass on to the
13 person in accordance with a contract between the payee and
14 the Commonwealth, subject to the payee withholding or
15 deducting an amount as required by law.

16 *Payment in instalments*

- 17 (2) The Secretary may pay the advance in instalments if the Secretary
18 is satisfied that doing so will result in the person receiving an
19 instalment of the advance sooner than the person would have
20 received the advance in full if the advance were not paid in
21 instalments.
- 22 (3) The Minister may direct the Secretary:
23 (a) to pay the advance that a specified person is eligible for in
24 instalments of amounts, and at times, determined by the
25 Secretary; or
26 (b) to pay the advances that persons who were employed by a
27 specified employer are eligible for in instalments of amounts,
28 and at times, determined by the Secretary.
- 29 (4) The Secretary must comply with the direction.
- 30 (5) If the direction is made in writing, the direction is not a legislative
31 instrument.
32

1 **Part 5—Recovery of advance**

2 **Division 1—Recovery through winding up or bankruptcy**

3 **29 Recovery of advance paid to liquidator**

4 For the purposes of section 560 of the *Corporations Act 2001*, a
5 payment of an advance for a person’s employment by an employer
6 that is made to the liquidator of the employer under section 28 of
7 this Act is to be treated as follows:

- 8 (a) so much of the advance as is for the person’s wages
9 entitlement is taken to be an advance (within the meaning of
10 section 560 of the *Corporations Act 2001*) of money by the
11 Commonwealth for the purpose of making a payment on
12 account of wages;
- 13 (b) so much of the advance as is for the person’s annual leave
14 entitlement or long service leave entitlement is taken to be an
15 advance (within the meaning of that section) of money by the
16 Commonwealth for the purpose of making a payment in
17 respect of leave of absence;
- 18 (c) so much of the advance as is for the person’s payment in lieu
19 of notice entitlement or redundancy pay entitlement is taken
20 to be an advance (within the meaning of that section) of
21 money by the Commonwealth for the purpose of making a
22 payment in respect of termination of employment.

23 Note 1: If, because of the advance, the person receives an amount on account
24 of wages, in respect of leave of absence or in respect of termination,
25 section 560 of the *Corporations Act 2001* effectively gives the
26 Commonwealth the same rights in the winding up as the person would
27 have had for that amount if he or she had not received it.

28 Note 2: Section 32 explains how to work out what amounts of the advance are
29 for particular entitlements if the amount of the advance has been
30 reduced under section 17 because of the person’s debts to the
31 employer.

32 **30 Recovery of some amounts of advance paid to bankruptcy trustee**

33 For the purposes of subsections 109(2) and (3) of the *Bankruptcy*
34 *Act 1966*, a payment of an advance for a person’s employment by

Part 5 Recovery of advance

Division 1 Recovery through winding up or bankruptcy

Section 31

1 an employer that is made to the bankruptcy trustee of the employer
2 under section 28 of this Act is to be treated as follows:

3 (a) so much of the advance as is for the person's wages
4 entitlement is taken to be moneys advanced by the
5 Commonwealth for the purpose of enabling a payment
6 described in paragraph 109(1)(e) of the *Bankruptcy Act 1966*;

7 (b) so much of the advance as is for the person's annual leave
8 entitlement or long service leave entitlement is taken to be
9 moneys advanced by the Commonwealth for the purpose of
10 enabling a payment described in paragraph 109(1)(g) of the
11 *Bankruptcy Act 1966*.

12 Note 1: If, because of the advance, the person receives an amount on account
13 of services rendered to the employer before the date of the bankruptcy
14 or in respect of leave, subsections 109(2) and (3) of the *Bankruptcy*
15 *Act 1966* effectively give the Commonwealth the same rights in the
16 bankruptcy as the person would have had for that amount if he or she
17 had not received it.

18 Note 2: Section 32 explains how to work out what amounts of the advance are
19 for particular entitlements if the amount of the advance has been
20 reduced under section 17 because of the person's debts to the
21 employer.

22 Note 3: Section 31 applies to so much of the advance as is for the person's
23 payment in lieu of notice entitlement or redundancy pay entitlement.

24 **31 Recovery in other circumstances**

25 (1) When an advance is paid under section 28 for a person's
26 employment by an employer, then, to the extent of the amount of
27 the advance paid:

28 (a) the employer's liability to the person is discharged; and

29 (b) the rights the person had immediately before that discharge in
30 relation to that liability in the winding up or bankruptcy of
31 the employer become rights of the Commonwealth.

32 (2) So far as the advance is for a particular employment entitlement,
33 the Commonwealth has the same priority as the person had for that
34 entitlement.

35 (3) Subsections (1) and (2) do not apply to an amount of the advance
36 that:

- 1 (a) was paid to the liquidator or bankruptcy trustee of the
2 employer; and
3 (b) is, because of section 29 or 30 of this Act, taken for the
4 purposes of section 560 of the *Corporations Act 2001* or
5 subsections 109(2) and (3) of the *Bankruptcy Act 1966* to
6 have been advanced.

7 **32 Amounts of advance attributable to particular employment**
8 **entitlements if advance reduced for debts to employer**

- 9 (1) This section applies for the purposes of working out for the
10 purposes of this Part how much of an advance for a person's
11 employment by an employer is for a particular employment
12 entitlement if the amount of the advance is reduced under
13 section 17 for the person's debts to the employer.
- 14 (2) So far as the amount of the debt applied in the reduction relates to a
15 thing described in column 1 of an item of the following table, the
16 reduction is taken to be of the amount of the advance for the
17 person's employment entitlement described in column 2 of the
18 item.
- 19

Effect of applying debts relating to particular things

Item	Thing to which debt relates	Relevant employment entitlement
1	Annual leave	Annual leave entitlement
2	Long service leave	Long service leave entitlement
3	Payment in lieu of notice	Payment in lieu of notice entitlement
4	Redundancy pay	Redundancy pay entitlement
5	Wages (except for annual leave or long service leave)	Wages entitlement

- 20 (3) So far as the amount of the debt applied in the reduction does not
21 relate to a thing described in column 1 of the table in
22 subsection (2), the reduction is taken to have applied proportionally
23 to what would (apart from the reduction for that amount) have been
24 the amounts of the advance that would have been for particular
25 employment entitlements.

Part 5 Recovery of advance

Division 1 Recovery through winding up or bankruptcy

Section 33

1 **33 Recovery of advance for employment for partnership**

2 If an advance is for a person's employment for a partnership by 2
3 or more of the partners:

4 (a) sections 29, 30 and 31 apply in relation to each of the
5 partners who employed the person; and

6 (b) the Commonwealth cannot recover through the winding up or
7 bankruptcy of all of those partners one or more amounts
8 totalling more than the amount of the advance.
9

1 **Division 2—Recovery from person eligible for advance**

2 **34 Recovery from person eligible for advance**

3 (1) This section applies if:

4 (a) the Commonwealth pays someone (the *payee*) an advance for
5 a person's employment by an employer; and

6 (b) an amount (the *later amount*) for an employment entitlement
7 of the person for which an amount was included in the
8 advance is later paid by someone (the *later payer*) to the
9 person or for the benefit of the person or in accordance with
10 the person's directions; and

11 (c) the later payer is not:

12 (i) the Commonwealth; or

13 (ii) the liquidator or bankruptcy trustee of the employer; or

14 (iii) the payee.

15 (2) There is a debt due by the person to the Commonwealth of the
16 lesser of the following (or either of them if they are equal):

17 (a) the later amount;

18 (b) the difference between the advance and the sum of:

19 (i) the amounts paid to the Commonwealth in the winding
20 up or bankruptcy of the employer because of Division 1;
21 and

22 (ii) the debts (if any) created by previous operations of this
23 section in relation to the person.

24 (3) A debt under this section may be recovered by the Secretary, on
25 behalf of the Commonwealth, in a court of competent jurisdiction.
26

1 **Part 6—Administration**

2 **Division 1—Decision-making about advances**

3 **35 Presuming accuracy of certain information**

4 For the purposes of deciding:

5 (a) whether a person is eligible for an advance for the
6 employment of the person by an employer; and

7 (b) the amount of such an advance;

8 the Secretary may presume that information relating to the person
9 that is given to the Secretary by an insolvency practitioner for the
10 employer is accurate.

11 **36 Giving notice of decisions made under section 15**

12 (1) The Secretary must give a person written notice of each of the
13 following decisions:

14 (a) a decision under subsection 15(1) whether the person is
15 eligible for an advance;

16 (b) a decision under subsection 15(2) on the amount of an
17 advance the person is eligible for.

18 (2) The notice must set out:

19 (a) the terms of the decision; and

20 (b) written reasons for the decision; and

21 (c) the person's rights to have the decision reviewed.
22

1 **Division 2—Review of decisions about advances**

2 **Subdivision A—Internal review on the Secretary’s own**
3 **initiative**

4 **37 Review on the Secretary’s own initiative**

- 5 (1) If the Secretary is satisfied that there is sufficient reason, the
6 Secretary may review:
7 (a) a decision whether a person is eligible for an advance; or
8 (b) a decision on the amount of an advance a person is eligible
9 for.
- 10 (2) The Secretary may review a decision under subsection (1) even if
11 an application has been made to the Administrative Appeals
12 Tribunal for a review of the decision (as affirmed or varied under
13 Subdivision B or substituted under that Subdivision for an earlier
14 decision).
- 15 (3) The Secretary must not review a decision under subsection (1)
16 while a review of the decision is taking place under Subdivision B.
- 17 (4) After reviewing the decision under subsection (1), the Secretary
18 may make a decision (the *review decision*):
19 (a) affirming the decision that was reviewed; or
20 (b) varying the decision that was reviewed; or
21 (c) setting aside the decision that was reviewed and substituting
22 a new decision.

23 *Notifying the person of the review decision*

- 24 (5) The Secretary must give the person written notice of the review
25 decision, setting out:
26 (a) the terms of the review decision; and
27 (b) written reasons for the review decision.
- 28 (6) Failure to comply with subsection (5) does not affect the validity of
29 the review decision.

Section 38

1 *Notifying the Administrative Appeals Tribunal of the review*
2 *decision*

- 3 (7) The Secretary must give the Registrar of the Administrative
4 Appeals Tribunal written notice of the review decision if:
- 5 (a) the review decision varied, or substituted a new decision for,
6 the decision that was reviewed under subsection (1); and
 - 7 (b) before the review decision was made, the person had applied
8 to the Tribunal for review of the decision (as affirmed or
9 varied under Subdivision B, or substituted for an earlier
10 decision under that Subdivision) that was reviewed under
11 subsection (1).

12 **Subdivision B—Internal review on application**

13 **38 Application for review by Secretary**

14 *Making an application*

- 15 (1) A person may apply to the Secretary for review of:
- 16 (a) a decision whether the person is eligible for an advance; or
 - 17 (b) a decision on the amount of an advance the person is eligible
18 for.
- 19 (2) The application must be made within 28 days after the date of the
20 notice of the decision, or such longer time as the Secretary allows.
- 21 (3) The application must:
- 22 (a) state the reasons why the application is being made; and
 - 23 (b) set out, or be accompanied by, any information or documents
24 relating to those reasons, other than information or
25 documents referred to in the notice of the decision.

26 *Withdrawing an application*

- 27 (4) The person may withdraw the application at any time before the
28 review is completed.
- 29 (5) The application may be withdrawn orally, in writing or in another
30 manner approved by the Secretary.

- 1 (6) If the application is withdrawn, it is taken never to have been
2 made.

3 **39 Action on application for review**

- 4 (1) If a person applies under section 38 for review of a decision, the
5 Secretary must review the decision and:
6 (a) affirm the decision; or
7 (b) vary the decision; or
8 (c) set the decision aside and substitute a new decision.
- 9 (2) The Secretary must give the person written notice of the decision
10 made as a result of the review.
- 11 (3) The notice must set out:
12 (a) the terms of the decision made as a result of the review; and
13 (b) written reasons for that decision; and
14 (c) the person's rights to have that decision reviewed.

15 **Subdivision C—Review by the Administrative Appeals
16 Tribunal**

17 **40 Application to the Administrative Appeals Tribunal for review**

- 18 (1) An application may be made to the Administrative Appeals
19 Tribunal by a person for review of:
20 (a) a decision by the Secretary whether the person is eligible for
21 an advance that has been affirmed under Subdivision B or
22 has been substituted under that Subdivision for an earlier
23 decision; or
24 (b) a decision by the Secretary on the amount of an advance the
25 person is eligible for that has been affirmed or varied under
26 Subdivision B or substituted under that Subdivision for an
27 earlier decision.
- 28 (2) Subsection (1) has effect despite subsection 27(1) of the
29 *Administrative Appeals Tribunal Act 1975*.

Part 6 Administration

Division 2 Review of decisions about advances

Section 41

1 *If Secretary has reviewed decision after application is made*

- 2 (3) If, after the person has applied to the Administrative Appeals
3 Tribunal for review of the decision, the Secretary varies the
4 decision, or substitutes a new decision for it, under Subdivision A,
5 the application is taken to be for review of the decision as varied or
6 the new decision.

7 **41 Limit on review of decision on amount of advance**

- 8 (1) This section applies to a review by the Administrative Appeals
9 Tribunal of a decision on the amount of an advance a person is
10 eligible for if the decision involved the exercise of the power under
11 section 17 to reduce that amount (because of a debt the person
12 owed an employer).
- 13 (2) The Tribunal cannot review the exercise of that power to reduce
14 that amount.
- 15 (3) The Tribunal cannot exercise that power.
- 16 (4) This section has effect despite subsection 43(1) of the
17 *Administrative Appeals Tribunal Act 1975*.
18

1 **Division 3—Information management**

2 **42 Use and disclosure of personal information by the Department**
3 **for administering this Act**

4 For the purposes of administering this Act, the Department may:

- 5 (a) use personal information about an employer or a current or
6 former employee of an employer; and
7 (b) disclose to any of the following persons personal information
8 about an employer or a current or former employee of an
9 employer:
10 (i) an insolvency practitioner for the employer;
11 (ii) a person with whom the Commonwealth has a contract
12 to pass on to a former employee of the employer
13 payments made under this Act;
14 (iii) a person who is making, proposes to make or has made
15 a payment to a former employee of the employer
16 associated with an amount owing or owed to the former
17 employee in connection with his or her employment.

18 **43 Use and disclosure of personal information by insolvency**
19 **practitioners and payment intermediaries**

- 20 (1) For the purposes of facilitating the administration of this Act, an
21 insolvency practitioner for an employer may:
22 (a) use personal information about the employer or a current or
23 former employee of the employer; and
24 (b) disclose to the Department personal information about the
25 employer or a current or former employee of the employer.
- 26 (2) For the purposes of facilitating the administration of this Act, a
27 person with whom the Commonwealth has a contract to pass on to
28 a former employee of an employer payments made under this Act
29 may:
30 (a) use personal information about the former employee or the
31 employer; and
32 (b) disclose to the Department personal information about the
33 former employee or employer.

Section 44

1 **44 Use and disclosure of personal information by persons making**
2 **payments to former employees**

3 For the purposes of facilitating the administration of this Act, a
4 person, who is making, proposes to make or has made a payment to
5 a former employee of an employer associated with an amount
6 owing or owed to the former employee in connection with his or
7 her employment, may:

- 8 (a) use personal information about the former employee or the
9 employer; and
10 (b) disclose to the Department personal information about the
11 former employee or employer.

12 **45 Disclosure of personal information to certain agencies**

13 For the purposes of facilitating the exercise of powers, or
14 performance of functions, that an agency (as defined in the *Privacy*
15 *Act 1988*) has in relation to the *Corporations Act 2001*, the
16 *Bankruptcy Act 1966* or entitlements of current or former
17 employees, the Department may disclose to the agency personal
18 information that:

- 19 (a) the Department has in connection with the administration of
20 this Act; and
21 (b) is about:
22 (i) an employer; or
23 (ii) an officer (as defined in the *Corporations Act 2001*) of
24 an employer; or
25 (iii) an insolvency practitioner for an employer; or
26 (iv) a current or former employee of an employer.
27

1 **Division 4—Arrangements for information and dealing**
2 **with payments**

3 **46 Arrangements for information and dealing with payments**

4 (1) On behalf of the Commonwealth, the Secretary may make, vary,
5 administer and otherwise give effect to an arrangement, agreement
6 or contract for:

7 (a) the provision to or by the Department of information about a
8 person that is relevant to determining either or both of the
9 following:

10 (i) deciding whether a person is eligible for an advance;

11 (ii) deciding the amount of an advance a person is eligible
12 for; or

13 (b) dealing with amounts of an advance that it has been decided a
14 person is eligible for.

15 (2) This section does not limit the executive powers of the
16 Commonwealth.
17

1 **Division 5—Delegation**

2 **47 Delegation of Secretary’s powers and functions**

3 *To APS employees in the Department*

4 (1) The Secretary may delegate in writing to an APS employee in the
5 Department any or all of the Secretary’s functions or powers under
6 this Act, except the following provisions:

- 7 (a) section 25 (about disregarding recently agreed changes in
8 terms and conditions);
9 (b) subsection 28(2) (about paying advances in instalments);
10 (c) subsection 38(5) (about approving the manner of
11 withdrawing an application for internal review).

12 *To SES employees and acting SES employees in the Department*

13 (2) The Secretary may delegate in writing to an SES employee, or
14 acting SES employee, in the Department any or all of the
15 Secretary’s functions or powers under the following provisions:

- 16 (a) section 25;
17 (b) subsection 38(5).

18 Note: *SES employee* and *acting SES employee* are defined in section 2B of
19 the *Acts Interpretation Act 1901*.

20 *To SES and Executive Level 2 APS employees in the Department*

21 (3) The Secretary may delegate in writing the Secretary’s power under
22 subsection 28(2) to:

- 23 (a) an SES employee, or an acting SES employee, in the
24 Department; or
25 (b) an APS employee who holds, or is acting in, an Executive
26 Level 2 position, or an equivalent position, in the
27 Department.

28 *Delegates to comply with directions*

29 (4) In exercising powers or performing functions under a delegation
30 under this section, the delegate must comply with any directions of
31 the Secretary.

1 **48 Delegation of Minister's powers**

- 2 (1) The Minister may delegate in writing the Minister's powers under
3 section 49 to the Secretary or an SES employee in the Department
4 who is at or acting at Band 3 level.
- 5 (2) In exercising powers under a delegation under this section, the
6 delegate must comply with any directions of the Minister.
7

1 **Part 7—Miscellaneous**
2

3 **49 Extended operation of this Act in relation to employers in**
4 **administration under the *Corporations Act 2001***

5 *Making a declaration*

- 6 (1) The Minister may by legislative instrument declare that this Act
7 applies in relation to persons who were employed, but are no
8 longer employed, by a specified employer that is under
9 administration under Part 5.3A of the *Corporations Act 2001*
10 (whether or not the employer was under administration while any
11 of the persons were employed).
- 12 (2) The Minister may make the declaration only if he or she is satisfied
13 that:
- 14 (a) the employer's creditors are expected to resolve at a meeting
15 convened under section 439A of the *Corporations Act 2001*
16 that the employer be wound up; and
17 (b) if the declaration is made, it will be practicable to administer
18 this Act as it will apply because of the declaration in relation
19 to the employer.

20 *Effect of declaration*

- 21 (3) While the declaration is in force, this Act applies in relation to the
22 persons and the employer as if:
- 23 (a) the administrator of the employer under Part 5.3A of the
24 *Corporations Act 2001* were a liquidator appointed when the
25 administrator was appointed; and
26 (b) paragraph 14(2)(a) of this Act referred to the declaration
27 being made (instead of an insolvency event happening to the
28 employer).

29 *Revoking a declaration*

- 30 (4) The Minister may by legislative instrument revoke a declaration
31 made under subsection (1).

50 Schemes for assistance of workers who were not employees

- 1
- 2 (1) A regulation may provide for a scheme for:
- 3 (a) providing, directly or indirectly to individuals who are owed
- 4 amounts for work they did for a specified person (except as
- 5 employees of the person) who is insolvent or is reasonably
- 6 expected to be insolvent, financial assistance relating to those
- 7 amounts; and
- 8 (b) recovering amounts of that financial assistance.
- 9 (2) A regulation providing for such a scheme may also provide for the
- 10 following:
- 11 (a) the determination of which individuals are eligible for
- 12 financial assistance under the scheme (which determination
- 13 may be made by, or depend on the opinion of, a person
- 14 specified by the regulation);
- 15 (b) the determination of how much financial assistance
- 16 individuals are eligible for under the scheme, which
- 17 determination may:
- 18 (i) be made by, or depend on the opinion of, a person
- 19 specified by the regulation; and
- 20 (ii) be of different amounts for different individuals;
- 21 (c) matters relating to the administration of the scheme,
- 22 including:
- 23 (i) the making of claims and giving of notices; and
- 24 (ii) use and disclosure of personal information; and
- 25 (iii) review of decisions relating to the administration of the
- 26 scheme (including applications to the Administrative
- 27 Appeals Tribunal for review); and
- 28 (iv) the making, varying, administering and giving effect to
- 29 of arrangements, contracts, agreements and deeds; and
- 30 (v) delegation of powers and functions relating to the
- 31 administration of the scheme.
- 32 (3) A regulation made for the purposes of this section does not take
- 33 effect before the end of the period in which it could be disallowed
- 34 in either House of the Parliament.

Section 51

1 **51 Appropriation**

2 The Consolidated Revenue Fund is appropriated for the purposes
3 of payments under this Act or a regulation made for the purposes
4 of section 50.

5 **52 Recoverable payments**

6 (1) If, apart from this subsection, the Commonwealth does not have
7 power under this Act or a regulation made for the purposes of
8 section 50 to pay an amount (the *relevant amount*) to a person (the
9 *recipient*) purportedly as an advance or as financial assistance
10 under such a regulation, then the Commonwealth may pay the
11 relevant amount to the recipient.

12 (2) If a payment is made under subsection (1) to the recipient, the
13 relevant amount:

- 14 (a) is a debt due to the Commonwealth by the recipient; and
15 (b) may be recovered by the Secretary, on behalf of the
16 Commonwealth, in a court of competent jurisdiction.

17 Note: See also section 47 of the *Financial Management and Accountability*
18 Act 1997 (duty to pursue recovery of a debt).

19 **53 Reports about recoverable payments**

20 (1) During the applicable publication period for a reporting period, the
21 Secretary must cause to be published, in such manner as the
22 Secretary thinks fit, a report that sets out both:

- 23 (a) the number of payments made under subsection 52(1) during
24 the reporting period; and
25 (b) the total amount of those payments.

26 (2) However, a report is not required if the number of payments is
27 zero.

28 *Deferred reporting*

29 (3) Subsection (1) does not require a report to deal with a payment
30 unless, before the preparation of the report, an APS employee in

- 1 the Department was aware that the payment was made under
2 subsection 52(1).
- 3 (4) For the purposes of this section, if:
- 4 (a) a payment was made under subsection 52(1) in a reporting
5 period; and
- 6 (b) because of subsection (3) of this section, subsection (1) of
7 this section did not require a report to deal with the payment;
8 and
- 9 (c) during a later reporting period an APS employee in the
10 Department becomes aware that the payment was made
11 under subsection 52(1);
- 12 the payment is subject to a *deferred reporting obligation* in
13 relation to the later reporting period.
- 14 (5) If one or more payments made under subsection 52(1) during a
15 reporting period are subject to a deferred reporting obligation in
16 relation to a later reporting period, the Secretary must, during the
17 applicable publication period for the later reporting period:
- 18 (a) prepare a report that sets out:
- 19 (i) the number of those payments; and
- 20 (ii) the total amount of those payments; and
- 21 (iii) the reporting period during which the payments were
22 made; and
- 23 (b) if a report is required under subsection (1) in relation to the
24 later reporting period—include the report under paragraph (a)
25 in the report under subsection (1); and
- 26 (c) if paragraph (b) does not apply—publish, in such manner as
27 the Secretary thinks fit, the report under paragraph (a).
- 28 *Reporting period*
- 29 (6) For the purposes of this section, a *reporting period* is:
- 30 (a) a financial year; or
- 31 (b) if a shorter recurring period is specified in a legislative
32 instrument made by the Finance Minister—that period.

Section 54

1 *Applicable publication period*

- 2 (7) For the purposes of this section, the *applicable publication period*
3 for a reporting period is the period of:
4 (a) 4 months; or
5 (b) if a lesser number of months is specified, in relation to the
6 reporting period, in a legislative instrument made by the
7 Finance Minister—that number of months;
8 beginning immediately after the end of the reporting period.

9 **54 Right to financial assistance may be reduced, cancelled etc.**
10 **without compensation**

11 A right to payment of financial assistance under this Act is granted
12 on the basis that:

- 13 (a) the amount of the assistance may be reduced under Part 3;
14 and
15 (b) the right may be cancelled, revoked, terminated or varied by
16 or under later legislation; and
17 (c) no compensation is payable if:
18 (i) the amount of financial assistance is reduced under
19 Part 3; or
20 (ii) the right is cancelled, revoked, terminated or varied as
21 mentioned in paragraph (b).

22 **55 Regulations**

23 The Governor-General may make regulations prescribing matters:

- 24 (a) required or permitted by this Act to be prescribed; or
25 (b) necessary or convenient to be prescribed for carrying out or
26 giving effect to this Act.