



# **A New Tax System (Family Assistance) (Administration) (Penalty Interest) Determination 2001**

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made under subsections 79 (2) and 79A (1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

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This compilation was prepared on 10 December 2003.

Prepared by the Legal Services Branch, Department of Family and Community Services, Canberra.

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I, AMANDA ELOISE VANSTONE, Minister for Family and Community Services, make this Determination under subsections 79 (2) and 79A (1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 2001

Minister for Family and Community Services

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## **Contents**

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Determination 3
2	Commencement 3
3	Definitions 3
<b>Part 2</b>	<b>Penalty interest rate</b>
4	Penalty interest rate 4
<b>Part 3</b>	<b>Penalty interest guidelines</b>
5	Purpose of Part 3 5
6	Arrangement entered into after final payment day 5
7	Payments resumed in accordance with existing arrangement or new arrangement entered into after failure day 5
8	Garnishee notice issued in respect of debt 6
9	No capacity to pay debt 7

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## **Part 1                      Preliminary**

### **1                      Name of Determination**

This Determination is the *A New Tax System (Family Assistance) (Administration) (Penalty Interest) Determination 2001*.

### **2                      Commencement**

This Determination commences on gazettal.

### **3                      Definitions**

In this Determination, unless the contrary intention appears:

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

*determination* means a determination under section 78A of the Act.

## **Part 2**

## **Penalty interest rate**

### **4 Penalty interest rate**

For subsection 79 (2) of the Act, the penalty interest rate is 3% per year.

## Part 3 Penalty interest guidelines

### 5 Purpose of Part 3

- (1) For subsection 79A (1) of the Act, this Part sets out guidelines for the operation of the provisions of the Act dealing with penalty interest.
- (2) In deciding whether to make a determination under section 78A of the Act that interest is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt, the Secretary must comply with the guidelines set out in this Part.

### 6 Arrangement entered into after final payment day

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 78 (2) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person if, after the final payment day, the person:
  - (a) has entered into an arrangement under section 91 of the Act to pay the outstanding amount of the debt; and
  - (b) is making payments in accordance with the arrangement.
- (3) If the Secretary makes a determination in the circumstance mentioned in subsection (2), the Secretary should:
  - (a) determine that interest is not payable on and after the day when the first payment made in accordance with the arrangement is received by, or on behalf of, the Commonwealth Services Delivery Agency (Centrelink); and
  - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the arrangement.
- (4) In this section:  
*final payment day* has the meaning given by subsection 78 (4) of the Act.

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

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 78 (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person if, after the failure day:
  - (a) the person has resumed making payments in accordance with the arrangement mentioned in subsection 78 (3) (the *existing arrangement*); or
  - (b) the person:
    - (i) has entered into a new arrangement under section 91 of the Act (the *new arrangement*) to pay the outstanding amount of the debt; and

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

- (5) In this section:

***failure day***, in relation to a person to whom subsection 78 (3) of the Act applies, means the day when the person failed to make the payment mentioned in paragraph 78 (3) (b) of the Act.

***liability day***, in relation to a person's liability to pay interest on the outstanding amount of a debt under subsection 78 (3) of the Act, means the day mentioned in paragraph 78 (3) (d) or (e) of the Act from and including which the person is liable to pay interest on the outstanding amount.

## **8 Garnishee notice issued in respect of debt**

- (1) This section applies in relation to a person (the ***debtor***) who is liable to pay interest on the outstanding amount of a debt under subsection 78 (2) or (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person in respect of a particular period if a notice (***garnishee notice***) has been given to another person under subsection 89 (1) of the Act requiring the other person to pay to the Commonwealth an amount under paragraph 89 (1) (f) or (g) of the Act in respect of the debt.
- (3) If the Secretary makes a determination in the circumstance mentioned in subsection (2), the Secretary should determine that interest is not payable only in respect of the period:
  - (a) beginning on the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the first payment to which the garnishee notice applies; and

- (b) ending at the end of the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the last payment to which the garnishee notice applies.

**9 No capacity to pay debt**

- (1) This section applies in relation to a person who is liable to pay interest on the outstanding amount of a debt under subsection 78 (2) or (3) of the Act.
- (2) The Secretary should make a determination that interest is not payable by the person in respect of a particular period if, during that period, the person had or has no capacity to repay the debt.

# Notes to the *A New Tax System (Family Assistance) (Administration) (Penalty Interest) Determination 2001*

## Notes

The *A New Tax System (Family Assistance) (Administration) (Penalty Interest) Determination 2001* (in force under subsections 79 (2) and 79A (1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

For application, saving or transitional provisions see **Table A**.

Title	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Family Assistance) (Administration) (Penalty Interest) Determination 2001</i>	1 August 2001 (see Gazette 2001, No. S 316)	1 August 2001	—

## Table of Amendments

ad. = added or inserted

am. = amended

rep. = repealed

rs. = repealed and substituted

Provision affected	How affected



**Table A**

There is no application, saving or transitional provisions.