



AUSTRALIAN SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION

STANDING COMMITTEE

**Supplementary Budget Estimates 2006-2007
1 – 2 November 2006**

Employment and Workplace Relations portfolio

Tabled documents

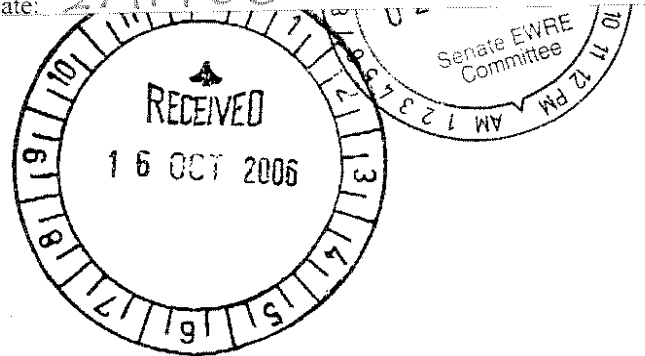
Documents presented to the committee — 2 November 2006

Senator Lundy	Correspondence regarding Serco Sodexho Australian Workplace Agreements (Dated 9 Oct 2006)
OEA	Workplace Agreements lodged to September 2006 (27 March – 30 September 2006)
OWS	Table of the current 26 OWS office locations listed by state.
DEWR	Employment Entry Payment for job seekers with a partial capacity to work
DEWR	Overview of Pensioner Education Supplement, Education Entry Payment and Employment Entry Payment.
DEWR	Guide to Social Security Law summary of qualifications needed for the Employment Entry Payment (partnered)
DEWR	Guide to Social Security Law summary of qualifications needed for the Employment Entry Payment

Tabled document no: 1

By: Senator Kate Lundy

Date: 2/11/06



 Australian Government
Employment Advocate

9 October 2006

Ms Lyndal Ryan
Assistant Branch Secretary
Liquor, Hospitality & Miscellaneous Union
Australian Capital Territory Branch
Unit 5, Level 2
40 Brisbane Avenue
BARTON ACT 2614

Dear Ms Ryan

SERCO SODEXHO - AUSTRALIAN WORKPLACE AGREEMENTS

Thank you for your letter of 22 September 2006 concerning the offer of Australian workplace agreements (AWAs) by Serco Sodexho Pty Ltd (Serco) to a number of employees represented by you. You ask me to refuse to accept the lodgement of these AWAs because you believe they contain clauses which contravene parts of the personal leave component of the Australian Fair Pay and Conditions Standard (the Standard), and other minimum entitlements in respect of public holidays.

2. Responsibility for enforcing compliance with the *Workplace Relations Act 1996* (the Act) resides with the Office of Workplace Services (OWS), not the Office of the Employment Advocate (OEA). In these circumstances, the views of the OEA on the issues you raise cannot be determinative and I cannot speculate on how they might be handled by OWS. However, I can provide the following general information, under the OEA's advice and assistance functions, as set out in section 151 of the Act.

Lodgement of workplace agreements

3. With respect to the lodgement of workplace agreements (which includes collective agreements and AWAs made after 27 March 2006), pursuant to section 344(5) of the Act, the OEA is not required to consider or determine whether any of the requirements of Part 8 of the Act, which deals with the making and content workplace agreements, have been satisfied.

4. The OEA is not empowered to refuse to accept the lodgement of a workplace agreement. An AWA operates from the date of lodgement, even if the requirements in Divisions 3 and 4 and section 342 of the Act have not been met in relation to an agreement (section 347(2)). The OEA performs the functions of accepting lodgement and issuing a declaration receipt (section 345(1)).

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Duress in connection with an Australian Workplace Agreement

5. You have raised the issue of the alleged application of duress in connection with the Serco AWAs. As I understand it, this allegation is in the context of Serco's offer of employment to existing employees of Spotless, in consequence of Serco taking over a contract from Spotless to provide cleaning services.

6. Duress in the making of workplace agreements is strictly prohibited by section 400 of the Act and I would encourage you to contact the Office of Workplace Services with your concerns. ↗

7. However, as a general comment, I note that the decided cases in this area of law, under similar provisions of the pre-reform Act, have stressed that, in order to constitute duress, the conduct complained of must involve the illegitimate application of pressure to induce a party to enter into an AWA, or to discourage a party from taking such a course (*Schanka v Employment National (Administration) Pty Limited* [2001] FCA 579 at [89]; *Canturi v Sita Coaches* [2002] FCA 349 at [43]; *Bishop v Ropolo Services Pty Ltd* [2006] FCA 592 at paragraph [26]).

8. Ultimately, the resolution of these matters is dependant upon the facts in relation to each individual employee and also the nature of the work that is to be covered by the AWA and the work that the employee was previously engaged to perform. A party found to have applied duress may be liable for a penalty of up to \$33,000 for a corporation or \$6,600 for an individual. Further, a Court may void an AWA that is entered into in these circumstances, whilst a party subjected to duress could seek payment for damages for loss incurred as a result of the breach.

Minimum entitlements in respect of public holidays

9. In your letter, you extract clauses 9.1, 13.1 and 21.3 from a Serco AWA, each of which, amongst other things, deals with the performance of work by employees on public holidays. Clauses 9.1 and 13.1 of the AWA relevantly state as follows:

The Company may also require you to work any hours that are reasonably required of you to satisfactorily perform your duties, this may require work to be performed outside of normal working hours and/or normal working days and on public holidays. [your emphasis]

Clause 21.3 relevantly provides:

Given the operational requirements of the business, you may, from time to time, be required to work on a public holiday. [your emphasis]

10. Section 612(3) of the Act provides that an employee requested to work on a public holiday is entitled to refuse such a request if the employee has reasonable grounds for doing so – reasonableness in this context being determined by reference to the factors listed at section 613 of the Act.

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11. You consider that the effect of the above clauses is to imply that the employer has an absolute right to direct an employee to work on a public holiday. As discussed in the following paragraph, I take the view that the proper interpretation of these clauses does not affect the entitlement of employees under 612(3) of the Act. In any event, it seems to me entirely reasonable that the expression "may", which precedes the requirement of an employee to work on a public holiday, operates to qualify the right of the employer in this regard, such that it may be argued that those clauses would not, in fact, lead to conduct in breach of section 612(3).

13. In terms of the relationship between clauses dealing with work on a public holiday and section 612(3) of the Act, I note that, by virtue of section 612(4), a term to the contrary in a workplace agreement has no effect. As a result, I take the view that, regardless of the interpretation of the above clauses, they will operate subject to the employee's entitlement under section 612(3) of the Act. I note that penalties and other remedies may be sought in respect of conduct that contravenes section 612 of the Act under Part 14. Again, OWS has the power to enforce compliance in this regard.

Minimum entitlements in respect of paid personal leave

14. You raise the issue of whether certain clauses of a Serco AWA are inconsistent with entitlements under the Standard. You advise that clause 16.2 of the AWA reads:

Before granting paid personal leave, the Company may:

- (a) *require you to provide the Company with a medical certificate from a registered health practitioner, or if not reasonably practicable for you to provide a medical certificate, a statutory declaration made by you confirming the illness or injury; and or;*
- (b) *require you to be examined by a medical practitioner nominated by the Company who will provide a report to the Company in respect of the illness or injury. [your emphasis]*

Clause 16.3 of the AWA relevantly states:

Where you provide notice of your resignation to the Company, personal leave will not be payable during the actual period of notice. An exemption to this provision will only be granted at the discretion of the Manager where there are extenuating circumstances. [your emphasis]

15. As a general matter, section 172(2) of the Act deals with the relationship between the Standard and workplace agreements, such as AWAs, which are entered into after 27 March 2006. It provides that the Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, it provides a more favourable outcome for the employee.

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16. Accordingly, a workplace agreement or contract of employment will operate subject to the Standard, unless a workplace agreement or contract of employment provides a more favourable outcome for the employee within the meaning of the Act and *Workplace Relations Regulations 2006* (Regulations). Nevertheless, civil remedies are available in respect of conduct that contravenes the Standard. In this respect, I draw your attention to Division 7 of Part 7 of the Act, noting again that the OWS has standing to enforce compliance with the Standard.

17. As to clause 16.2(b) of the AWA, Regulation 7.1(15) provides that the giving of notice and documentary evidence in relation to a period of sick leave is a particular respect for the purposes of section 172(2) of the Act. According to Regulation 7.1(16), the Standard provides a more favourable outcome than a workplace agreement, if the latter imposes obligations that are "more onerous" than the requirements of the Standard.

18. It is arguable that clause 16.2(b) - if it were relied upon by the employer - would provide a less favourable outcome than the Standard. In my opinion, such an argument may be supported by the apparently exhaustive nature of the evidentiary requirements set out at section 254 of the Act. Therefore, I consider that it is arguable that the failure of an employer to pay an employee, who has satisfied the evidentiary requirements of the Act in respect of sick leave, contravenes the Standard.

19. As to clause 16.3(b), I take the view that the fetter on the entitlement to paid personal leave contained therein, arguably, would contravene the Standard in respect of paid personal leave, if it were relied upon by the employer.

Conclusion

20. For the reasons explained in paragraphs 3 and 4 above, I do not propose to refuse to accept the lodgement of AWAs, including those which might be lodged by Serco.

21. Please note that the information in this letter is provided pursuant to subsections 151(1)(b), (c) and (f) of the Act. The views of the OEA are not determinative and OWS, or a court, may take a different view. Lastly, I would encourage you to refer your concerns to OWS, the agency empowered to enforce compliance with the Act.

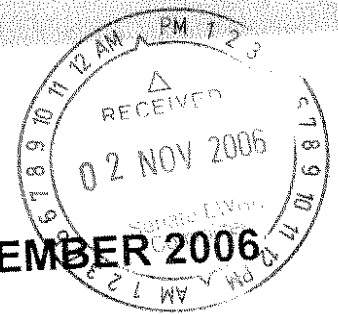
22. Please do not hesitate to contact Philip Clarke of this Office on (02) 9297 9369 if you wish to discuss this matter further.

Yours sincerely



Peter McIlwain

cc Mr Nicholas Wilson, Director, OWS



WORKPLACE AGREEMENTS LODGED TO SEPTEMBER 2006 (27 March – 30 September 2006)

Senate Employment, Workplace relations and Education
Committee
Supplementary Budget estimates 2006–2007
DEWR

AGREEMENT STATISTICS

- Agreement lodgements by type

Table 1

Agreement Type	Total
Australian workplace agreement	117487
Employee collective agreement	1034
Union collective agreement	872
Employer greenfields agreement	196
Union greenfields agreement	103
Multiple Business Agreements	0
Total	119692

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By: *OEA - Employment Advocate.*

Date: *2/11/06*

- Top five industries by agreement lodgements

Table 2

Industry	Total	% Australian workplace agreements	% collective agreements
Retail Trade	17766	99%	1%
Accommodation, Cafes And Restaurants	16811	99%	1%
Manufacturing	10808	96%	4%
Mining	9901	99%	0%
Property and Business Services	9370	99%	1%

- Agreement lodgements by type and business size

Table 3

Agreement Type	Less than 20 employees	20 - 99	100 - 499	More than 500	Not disclosed	Total
Australian workplace agreement	13123	32534	32798	38897	135	117487
Employee collective agreement	405	363	170	93	3	1034
Union collective agreement	170	240	213	247	2	872
Employer greenfields agreement	101	31	27	20	17	196
Union greenfields agreement	14	23	19	18	29	103
Total	13813	33191	33227	39275	186	119692
Percentage of Total	12%	27%	28%	33%	-	100%



EMPLOYEE STATISTICS

- Number and proportion of employees covered by agreement type

Table 4

Agreement Type	Total	Proportion
Australian workplace agreement	117487	28%
Employee collective agreement	48433	12%
Union collective agreement	247843	60%
Employer greenfields agreement	20	0%
Union greenfields agreement	0	0%
Multiple Business Agreements	0	0%
Total	413783	100%

- Employee coverage by agreement type and business size

Table 5

Agreement Type	Less than 20 employees	20 - 99	100 - 499	More than 500	Not disclosed	Total
Australian workplace agreement	13123	32534	32798	38897	135	117487
Employee collective agreement	3699	11159	16288	17208	79	48433
Union collective agreement	1380	8651	22142	215642	28	247843
Employer greenfields agreement	20	0	0	0	0	20
Union greenfields agreement	0	0	0	0	0	0
Multiple Business Agreements	0	0	0	0	0	0
Total	18222	52344	71228	271747	242	413783
Percentage of Total	4%	13%	17%	66%	0%	100%

- Top five industries for Australian workplace agreement lodgements

Table 6

Industry	Total Number of Employees
Retail Trade	17619
Accommodation, Cafes And Restaurants	16623
Manufacturing	10406
Mining	9840
Property and Business Services	9294



- Top five industries by employee coverage for Collective agreement

Table 7

Industry	Total Number of Employees	% employee collective	% union collective
Retail Trade	70397	10%	90%
Education	66330	4%	96%
Government Administration and Defence	59854	11%	89%
Manufacturing	27249	28%	72%
Construction	14220	28%	72%

- Number of employees on Australian workplace agreements and Collective agreements by State

Table 8

Employee State	Employee collective agreement	Australian workplace agreement	Union collective agreement	Total
ACT	2616	4965	2554	10135
NSW	7344	23017	30936	61297
NT	208	1684	1857	3749
QLD	9152	20020	36407	65579
SA	3512	9096	15316	27924
TAS	900	3163	3458	7521
VIC	5644	22582	15802	44028
WA	2300	32960	16134	51394
Multiple States	14669	-	118495	133164
Undisclosed	2088	-	6884	8972
Total	48433	117487	247843	413763



EMPLOYER STATISTICS

- Number of distinct employers lodged since the commencement of WorkChoices is 7795.
- Estimated proportion of employers by business size, lodged since the commencement of WorkChoices.

Table 9

Employer Size	Proportion
Less than 20	43%
Between 20 and 99	35%
Between 100 and 499	14%
More than 500	7%
Undisclosed	1%
Total	100%



GREENFIELDS AGREEMENTS

- There are a total of 299 greenfields agreement lodgements - 42 per cent of these are in the construction industry.
- The highest proportions of greenfields agreements are operational in QLD (28 per cent), NSW (24 per cent), and WA (23 per cent).

Employer Greenfields Agreements

- The 196 employer greenfields agreements were lodged by a total 172 employers.
- Nearly 50 per cent of all employer greenfields agreements were lodged by employers in the construction, and accommodation, cafes and restaurants industries (25 per cent and 24 per cent respectively).
- The proportional distribution of these employer greenfields agreements by operational state/territory is as follows: NSW (30 per cent), QLD (19 per cent), WA (18 per cent), and VIC (16 per cent).

Union Greenfields Agreements

- The 103 union greenfields agreements were lodged by a total 78 employers.
- 74 per cent of union greenfields agreements were made by parties engaged in the construction industry.
- The proportional distribution of these union greenfields agreements by operational state/territory is as follows: QLD (45 per cent), WA (31 per cent), NSW (13 per cent), and VIC (7 per cent).

26 Locations



LOCATION	Permanent/Temporary
ACT:	
National Office, Canberra	Temporary
NSW:	
Sydney	Temporary
Newcastle	Temporary
Wagga Wagga	Temporary
Canberra District Office	Temporary
Coffs Harbour	Temporary
Orange	Temporary
VIC:	
Melbourne	Permanent
Bendigo	Temporary
Warrnambool	Temporary
Traralgon	Temporary
QLD:	
Brisbane	Permanent
Townsville	Temporary
Gold Coast	Temporary
Toowoomba	Temporary
Rockhampton	Temporary
Cairns	Permanent
SA:	
Adelaide	Permanent
Port Augusta	Temporary
Mount Gambier	Temporary
WA:	
Perth	Temporary
Bunbury	Temporary
Broome	Temporary
Kalgoorlie	Temporary
NT:	
Darwin	Temporary
Alice Springs	TBA
TAS:	
Hobart	Temporary
Launceston	Temporary

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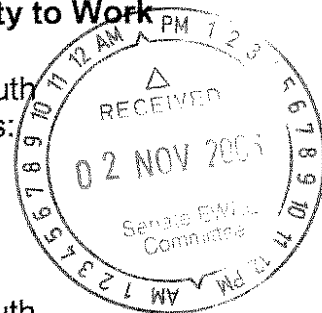
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By: OWS

Date: 2/11/06

Employment Entry Payment for Job Seekers with a Partial Capacity to Work

- Employment Entry Payment of \$312 is payable to Newstart and Youth Allowance recipients with partial capacity to work if the recipient has:
 - income from work that exceeds the threshold amount; and
 - work that is likely to continue for at least four weeks; and
 - not received Employment Entry Payment in the last 12 months.
- Employment Entry Payment of \$312 is payable to Newstart and Youth Allowance recipients with partial capacity to work if the recipient:
 - gains or increases hours of work to at least 15 hours per week; and
 - has worked these hours for at least 4 consecutive weeks; and
 - has not received an Employment Entry Payment in the last 12 months; and
 - has continuously received income support for the last 12 months.



Background

DSP customers can receive an Employment Entry Payment of \$312 if they have:

- work of at least 30 hours per week; or
- income from work that exceeds the threshold amount; and
- work that is likely to continue for at least 4 weeks; and
- has not received an Employment Entry Payment in the last 12 months.

Employment Entry Payment for DSP customers has not changed. Recipients must have work of at least 30 hours (not 15) or income that exceeds the threshold amount.

Employment Entry Payment for Newstart Allowance recipients with full-time capacity has not changed. For these recipients an Employment Entry Payment of \$104 is payable when the recipient has:

- started work that is likely continue for at least four weeks and the income from which will disqualify them from the payment they are currently receiving; and
- not received an Employment Entry Payment in the last 12 months and
- continuously received income support for the last 12 months.

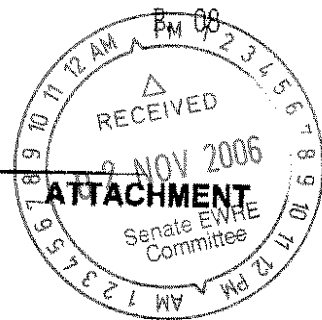
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Committee
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DEWR

Tabled document no: 4

By: DEWR - OUTCOME 3

Date: 2/11/06

BUDGET ESTIMATES HEARINGS – September 2006



SUPPLEMENTS – OVERVIEW

NOTE: PES, EdEP and EEP have been updated with 2005-2006 DATA

Pensioner Education Supplement (PES)

- Provides help with some of the ongoing costs of education, to assist recipients gain qualifications that make them competitive in the labour market;
- Is paid fortnightly to people who receive a payment attracting PES and who are enrolled in an approved course of education or study.

History - PES

- Was originally administered by the Department of Education, Training and Youth Affairs as part of the AUSTUDY scheme,
- From 1 July 1998 became a payment under the Social Security Act, administered by FaCS,
- Since 26 October 2004 has been administered by DEWR.
- ABSTUDY PES is a separate payment under the ABSTUDY scheme which continues to be administered by DEST

PES outlays for 2005-06 were \$78.5m. Major payments attracting PES are PPS and DSP. In June 2006 there were 53, 646 people receiving PES.

Current rate: \$31.20 per fortnight for students studying less than 50% of the normal full-time study load (EXCEPT for Disability Support Pension, and some DVA payments) OR \$62.40 per fortnight for all other students.

Education Entry Payment (EdEP)

- EdEP was introduced in 1993 for sole parents and has been expanded over time to include other social security payments.
- EdEP is designed to assist with the cost of beginning approved study and is available to people who qualify for the Pensioner Education Supplement; people who have received income support for at least 12 months might also be eligible.
- EdEP is paid as a lump sum to someone starting a course. Recipients can only receive an EdEP once every 12 months.

In 2005-06 83 898 people received an EdEP payment.

Current rate: \$208 once annually.

Employment Entry Payment (EEP)

- EEP was introduced in February 1989 to coincide with the introduction of Newstart Allowance. The EEP was one of many incentives introduced at the time to help recipients meet the costs associated with starting employment eg the purchase of new clothes, work boots etc.
- Changes to EEP provisions were announced in the 2005-06 Budget so that the supplement is payable, as of 1 July 2006, to Newstart allowees, DSP and PP recipients who gain part-time employment.
- EEP is payable once annually, as a lump sum for commencing employment or when their ongoing earnings increase above the threshold amount.

- EEP is available to certain working age payment recipients who have received income support for at least 12 months and meet other criteria. Parenting Payment (Single) and Disability Support (DSP) recipients who start work are not subject to the 12-month waiting period.

In 2005-2006 116 231 people received an EEP payment.

Current rate: \$104 once annually (DSP \$312 once annually)

NOTE: The following supplements have not been updated with 2005-2006 DATA

Community Development Employment Project Participation Supplement (CPS)

- The CPS came into effect after an independent review conducted in 1997 found that some CDEP participants were receiving less from CDEP payments than the social security system was able to provide
- CPS is available to all eligible low income CDEP participants.
- CDEP scheme participants are not unemployed and do not have to satisfy the activity test criteria to be qualified for NSA or YA.

In 2004-2005 31 537 people received the CPS payment.

Current rate: \$20.80 per fortnight.

Language, Literacy and Numeracy Supplement (LLNS)

- LLNS was introduced as part of the Australians Working Together package and took effect from 20 September 2003.
- The LLNS is intended to assist people on eligible income support payments with the additional costs associated with participation in the Language, Literacy and Numeracy Programme (LLNP).
- LLNS is paid upon a person's commencement in LLNP. If participation is for one day of a period, the person is eligible for the full rate of LLNS.
- LLNS is not income and assets tested.

In 2004-2005 22 721 people received an LLNS supplement.

Current rate: \$20.80 per fortnight

Work for the Dole (WFD) supplement

- WFD projects are administered through DEWR.
- Participants in a WFD project are paid a supplement to cover the additional costs associated with attending the project.
- WFD supplement is paid in full every fortnight regardless of the actual number of days worked in the fortnight.
- WFD supplement is not income or assets tested.

In 2004-2005 91 174 people received a WFD supplement.

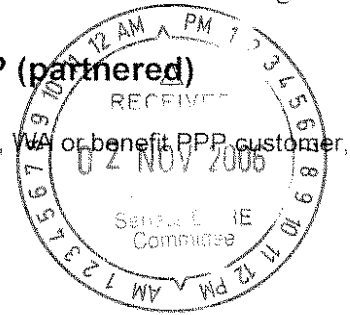
Current rate: \$20.80 per fortnight

3.8.6.10 Qualification for EdEP - NSA, PA, MAA, WP, WA & benefit PP (partnered)

Summary

This topic explains qualification criteria for EdEP for a NSA, PA, MAA (pre and post 1/7/96), WP, WA or benefit PPP customer, as well as the following related issues:

- full-time and part-time study,
- separate claim form is not required,
- incorrect EdEP payment, and
- legislative references.



EdEP qualification for - WidB, pension PPS, DSP, CP and SpB customers is discussed in the next topic (3.8.6.20).

Qualification (1.1.Q.10) criteria

To qualify for EdEP, a NSA, PA, MAA (pre and post 1/7/96), WP, WA or benefit PPP customer must meet the criteria listed in the following table. If more detail about a criterion is required, the second column indicates where you will find this.

Criterion	More Detail
ALL of the following	
Have started or intend starting an approved education course, <i>Explanation: This means ANY approved course in the Ministerial Determination of Education Institutions and Courses as well as any additional courses approved under ABSTUDY, AND</i>	This topic.
If a NSA recipient, must no longer qualify for NSA because of starting the course (exceptions apply see special rules for NSA later in this section), AND	This topic.
If NSA, PA, WA or benefit PPP, must be a long term social security recipient (section 23(1)-'long-term social security recipient'), AND	-
If NSA, PA, MAA, WA, or benefit PPP, have NOT received an EdEP in the previous 12 months, <i>Explanation: There must be a minimum of 12 months between EdEP payments for these payment types,</i> OR if a WP recipient, must NOT have received an EdEP in the same calendar year as the claim was made, AND	-
Immediately before commencing the course of education, have been in receipt of ONE of the following EdEP qualified payments: - newstart allowance, OR - partner allowance, OR - mature age allowance, OR - wife pension, OR - widow allowance, OR - benefit PPP.	The Guide 3.2.1 NSA - Qualification & Payability 3.3.1 PA - Qualification & Payability 3.3.2 MAA - Qualification & Payability 3.4.2 WP - Qualification & Payability 3.4.3 WA - Qualification & Payability 3.5.1 PP - Qualification & Payability

Policy reference: SS Guide 5.1.7.50 EdEP - Current Rates

Course qualification

A NSA, PA, MAA, WP, WA or benefit PPP customer CANNOT qualify for EdEP unless a delegate verifies that the COURSE is an approved course.

The legislation specifies that the course be an ABSTUDY approved course that covers all Austudy, YA and PES approved courses (1.1.A.210) as well as any additional ABSTUDY approved courses.

Explanation: The reference to an ABSTUDY approved course in the legislation is a technical requirement. A

customer does NOT need to qualify for ABSTUDY to qualify for EdEP. However, ABSTUDY approved courses include all courses determined under section 5D of the Student Assistance Act 1973, (known as the Ministerial Determination of Education Institutions and Courses) as well as some additional ABSTUDY approved courses.

Policy reference: SS Guide 1.1.A.210 Approved Courses of Education or Study, 2.2.13.10 Supplementary Benefits - Verification Required

Procedure reference: *ABSTUDY Policy Manual* - refer to 4.1 Approved courses of study

Special rules for NSA customers & EdEP

A NSA customer qualifies for EdEP if, by undertaking the course, they become NOT qualified for NSA.

Exception: The only exception to this is where the customer undertakes the course to satisfy the activity test or a NSA activity agreement and the customer would otherwise have qualified for a student payment (that is YA, Austudy or ABSTUDY) if the course were undertaken for other reasons.

Explanation: *This provision ensures that customers who would otherwise qualify for an EdEP when transferring to a student payment, (because they have lost qualification for NSA), are not disadvantaged by remaining on NSA while taking up full-time study.*

This provision applies even if a customer subsequently qualifies for ABSTUDY, Austudy or YA.

Full-time & part-time study

The following table explains when an NSA, PA, MAA, WP, WA or benefit PPP customer is qualified for EdEP based on full-time or part-time study requirements.

Explanation: *To qualify for EdEP some customers MUST start or intend starting a FULL-TIME course.*

If a customer receives...	Then to qualify for EdEP they must start or intend to start...
- newstart allowance, OR - partner allowance,	a full-time course.

Separate claim form is not required

While the SS(Admin) Act requires a proper claim for an EdEP, under current administrative arrangements a separate claim form is not required. For NSA, PA, MAA, WP, WA or benefit PPP, a claim for an EdEP is regarded as written notification of the commencement of, or enrolment in, an approved course. Although WA and some WP (partner DSP) can also get PES, the EdEP legislation for these payments does not require receipt of PES before an EdEP can be paid.

If an early claim for an EdEP is lodged, the claim must be lodged no earlier than 13 weeks prior to date of qualification or the Secretary is deemed to have refused the claim. There is no legislative time limit on the period within which a claim can be backdated, as long as not more than one EdEP is paid in any one calendar year, or 12 months depending on the relevant qualification.

Explanation: *EdEP CAN be paid retrospectively.*

Example: *A customer's record has an incorrect unemployment start date. It shows that the customer has received an EdEP qualified payment for 9 months. Therefore the customer did not qualify for EdEP. Six months later the unemployment start date error is corrected and shows that the customer has received an EdEP approved payment for 19 months. The customer can reapply for EdEP and be paid retrospectively.*

Act reference: SS(Admin)Act section 38 Deemed refusal of claim

Policy reference: SS Guide 8.1.1 Claim Lodgement Provisions

Incorrect EdEP payment

If a NSA, PA, MAA, WP, WA or benefit PPP customer receives an EdEP payment when they are NOT qualified, the payment is considered a recoverable debt.

Example 1: *A customer receives EdEP BUT the course is NOT an approved course.*

Example 2: *A customer receives EdEP for an approved course BUT does NOT pay a course fee. The educational institution cancels the customer's enrolment. The customer is NOT qualified for EdEP because they are NOT enrolled in an approved course.*

Act reference: SSAct section 1224B Education entry payment debt

Policy reference: SS Guide 6.3.8.30 EEP, EdEP & TAL Overpayments

Legislation

The following table lists the references for qualification and need for a claim for EdEP.

Payment Type	Act reference	
	Qualification	Need for a claim
Newstart allowance	SSAct section 665U	SS(Admin)Act section

	Payment to recipient	11 Need for a claim
Partner allowance	SSAct section 665ZQ Payment to a partner allowance recipient	SS(Admin)Act section 11 Need for a claim
Mature age allowance	SSAct section 665Y Payment to a mature age allowance recipient	SS(Admin)Act section 11 Need for a claim
Wife pension	SSAct section 665ZL Payment to a wife pensioner	SS(Admin)Act section 11 Need for a claim
Widow allowance	SSAct section 665ZC Payment to a widow allowance recipient	SS(Admin)Act Part 3 Division 1 Subdivision A Need for a claim
Benefit PPP	SSAct section 665ZU Payment to a parenting allowance recipient	SS(Admin)Act section 11 Need for a claim

Act reference: SSAct Part 2.13A Education Entry Payment

Date this topic last updated: **20 September 2005**

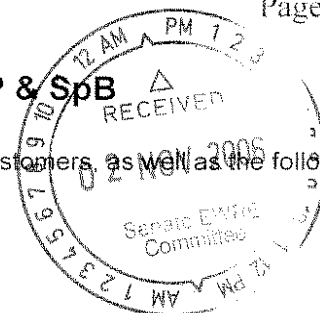
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3.8.6.20 Qualification for EdEP - WidB, pension PP (single), DSP, CP & SpB



Summary

This topic explains qualification criteria for EdEP for WidB, pension PPS, DSP, CP and SpB customers, as well as the following related issues:

- separate claim form is not required,
- early claim,
- late claim,
- qualification when customer is overseas,
- incorrect EdEP payment, and
- legislative references.

Qualification criteria for NSA, PA, MAA, WP, WA and benefit PPP customers are discussed in the previous topic (3.8.6.10).

Policy reference: SS Guide 3.8.6.10 Qualification for EdEP - NSA, PA, MAA, WP, WA & benefit PP (partnered)

Qualification (1.1.Q.10) criteria

To qualify for EdEP, a WidB, pension PPS, DSP, CP or SpB customer must meet the criteria listed in the following table. Where more detail about a criterion is required, the second column indicates where you will find this.

Criterion	More Detail
ALL of the following	
PES is payable to the person, AND <i>Explanation: ABSTUDY PES is NOT a qualification for EdEP.</i>	This topic. SS Guide 1.2.7.30 Pensioner Education Supplement (PES) - Description
Have NOT received an EdEP that was claimed in the current calendar year. <i>Explanation: EdEP is paid only once in any calendar year.</i>	-
Receiving ONE of the following EdEP qualified payments	
- widow B pension, OR - pension PPS, OR - disability support pension, OR - carer payment, OR	3.4.4 WidB - Qualification & Payability 3.5.1 PP - Qualification & Payability 3.6.1 DSP- Qualification & Payability 3.6.4 CP - Qualification & Payability
Receives SpB BUT be ineligible for pension PPS because of residency requirements.	3.7.1 SpB - Qualification & Payability

Act reference: SSAct Part 2.13A Education Entry Payment

Policy reference: SS Guide 5.1.7.50 EdEP - Current Rates

PES verifications

Receipt of PES should be verified before payment of an EdEP.

Separate claim form is not required

A separate claim form is not required because verification of receipt of PES is taken to be a claim for EdEP. For WidB, pension PPS, DSP, CP or SpB, once PES is payable, an EdEP should be paid automatically by the system. Other PES recipients, WA and WP with a DSP partner, are subject to different EdEP rules (3.8.6.10) but they can also be paid an EdEP automatically once PES is payable, as long as they meet the EdEP eligibility criteria applying to those payments.

Early claim

Although a formal claim for an EdEP is not required, if a WidB, pension PPS, DSP, CP or SpB customer lodges an early claim for EdEP, they can only be paid EdEP during the calendar year in which they qualify for PES.

Example: A customer intends to start studying in January 2001 and lodges an EdEP claim in December 2000. If the customer qualifies, then their EdEP payment is delayed until January 2001.

Late claim

A customer can claim EdEP AFTER they have started the course if they:

- are receiving PES, AND

- are receiving one of the following qualifying payments:
 - widow B pension, OR
 - pension PPS, OR
 - disability support pension, OR
 - carer payment, OR
 - special benefit, AND
- have not already been paid an EdEP in the same calendar year.

Policy reference: SS Guide 8.1.1 Claim Lodgement Provisions

Qualification when overseas

A WidB, pension PPS, DSP, CP or SpB customer who is overseas qualifies for EdEP IF they:

- were overseas when they qualified for PES, OR
- are a tertiary student AND the overseas course forms part of a degree.

Example: A customer is required to complete one semester of an Asian Studies degree overseas. The customer qualifies for EdEP because the study is part of the course.

Incorrect EdEP payment

If a WidB, pension PPS, DSP, CP or SpB customer receives an EdEP when they are NOT qualified, the payment is considered a recoverable debt.

Example: A customer receives EdEP BUT they are not eligible for PES.

Act reference: SSAct section 1224B Education entry payment debt

Policy reference: SS Guide 6.3.8.30 EEP, EdEP & TAL Overpayments

Legislation

The following table lists the references for qualification and need for a claim for EdEP.

Payment Type	Act reference	
	Qualification	Need for a claim
Widow B pension.	SSAct section 665I Payment to a widow B pension	SS(Admin)Act section 11 Need for claim
Pension PP (single).	SSAct section 665A Payment to a sole parent pensioner	SS(Admin)Act section 11 Need for claim
Disability support pension.	SSAct section 665E Payment to a disability support pensioner	SS(Admin)Act section 11 Need for claim
Carer payment.	SSAct section 665ZFA Payment to a carer payment recipient	SS(Admin)Act section 11 Need for claim
Special benefit	SSAct section 665M Payment to a special benefit recipient	SS(Admin)Act section 11 Need for claim

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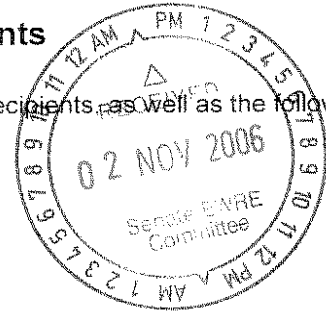
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3.8.5.10 Qualification for EEP - NSA, MAA, PA & WA Recipients

Summary

This topic explains the qualification criteria for NSA, MAA, PA, WA and certain YA recipients, as well as the following related issues:

- income and assets testing,
- need for a proper claim,
- effect of a recipient resigning or being dismissed,
- interaction with working credit, and
- legislative references.



EEP qualification for:

- WidB, CP and DSP recipients is explained in 3.8.5.20, and
- PP recipients is explained in 3.8.5.30.

Qualification (1.1.Q.10) criteria

To qualify for EEP, a recipient must meet the criteria listed in the following tables. If more detail about a criterion is required, the second column indicates where you will find this. An EEP is payable where a person is serving an 8-week non-payment period.

Table 1: NSA, PA, MAA and WA recipients - EEP is \$104

Criterion	More Detail
ALL of the following:	
Be a long term income support recipient (that is, have been receiving income support payments for a continuous period of at least 12 months, regardless of payment type), AND	SSAct section 23(1)
Have NOT received EEP within the previous 12 months. <i>Explanation: There must be a minimum of 12 months BETWEEN EEP payments.</i>	This topic
Have an increase in employment income (including the case where a person commences employment): -that is likely to continue for at least 4 weeks, AND -the income form which will disqualify them from the payment they are currently receiving, AND	This topic
Have been receiving:	
NSA, MAA, PA or WA -immediately before they commenced the employment.	3.2.1 NSA Qualification & Payability 3.3.2 MAA Qualification & Payability 3.3.1 PA Qualification & Payability 3.4.3 WA Qualification & Payability

Table 2: Person has a partial capacity to work - EEP is \$312

Criterion	More Detail
All of the following:	
Have a partial capacity to work, AND	1.1.P.56 Partial capacity to work (NSA, YA (jobseeker), PP & SpB (NVH))
Have NOT received EEP within the previous 12 months. <i>Explanation: There must be a minimum of 12 months BETWEEN EEP payments.</i>	This topic
Immediately before the person commenced or increased hours of employment, have been receiving: - NSA, OR - YA (jobseeker),	3.2.1 NSA Qualification & Payability 3.2.3 YA Qualification & Payability
AND EITHER:	
Be in paid employment (other than sheltered employment), the earnings from which exceed	

However, a person who leaves a CDEP scheme for other employment, or a person who takes up employment of a CDEP that is paid for from the recurrent or other funding from the CDEP grantee organisation, can be paid an EEP under normal eligibility rules for the payment that they are receiving/qualified for.

The policy intent is that CDEP participants, receiving CDEP wages only, are to be treated as income support recipients, eligible for the range of supplementary assistance available to other income support recipients. They are not considered to be taking up 'employment' as such for the purposes of EEP payment. CDEP participants who are receiving top-up wages (in addition to CDEP wages) can be considered to be employed for EEP payment purposes.

New enterprise incentive scheme

An income support recipient who enters a NEIS scheme is eligible for an EEP. NEIS assists a person to start their own business. Participation in NEIS is accepted as employment.

An income support recipient who starts an employment based training program is NOT qualified for EEP.

Example: A new work opportunities program or a special employer support program.

Policy reference: SS Guide 2.2.13.10 Supplementary Benefits - Verification Required, 5.4.4 EEP Advance Payment

Non- ongoing employment less than 12 weeks

An NSA, MAA, PA or WA recipient who becomes employed is NOT required to CANCEL their current payment for 12 weeks where the employment is not expected to be ongoing in the long term. The following table summarises a person's options and the effect of these on their current payment and EEP qualification.

If the recipient...	Their current payment...	And they...
remains qualified because their employment is not expected to ongoing, AND they continue to lodge their application for payment each fortnight, AND declare their earnings,	remains current, until the employment income nil rate expires,	do NOT qualify for EEP, until their payment is no longer current.
cancels their current payment,	is cancelled, AND the person must reapply for payment if the employment ceases,	qualify for EEP.
does not expect employment to be ongoing but is actually employed for more than 12 weeks,	is cancelled, AND the person must reapply for payment IF the employment ceases,	qualify for EEP.

Exception: A person does NOT qualify for EEP if they had received an EEP payment in the previous 12 months.

Impact of working credit on timing of EEP where a person's income support payment remains current

The timing of a person's EEP will not be affected by having a working credit balance. A recipient on NSA, YA (jobseeker), MAA, PA or WA who remains current at zero rate will receive their EEP at the same point as if they did not have a working credit balance. That is, they will qualify for an EEP as per the table above.

The person will however, run down their working credit balance before becoming current at zero rate for 12 weeks.

Example: An NSA recipient who starts casual work and has employment income high enough to make NSA no longer payable will first run down their working credit balance (against their employment income), and then enter into a 12 week employment income nil rate period, commencing from the end of the entitlement period in which their working credit balance is reduced to zero. If the work at the same or a higher level of income continues, NSA would be cancelled after the 12 week employment income nil rate period ends, and the person would then qualify for an EEP.

Act reference: SSAct section 665AA Existence of working credit does not prevent payments under this part

Policy reference: SS Guide 3.1.11.30 Working Credit Depletion

Previous EEP payments

A NSA, YA (jobseeker), MAA, PA or WA recipient cannot qualify for EEP unless a delegate verifies that the customer did NOT receive EEP in the previous 12 months.

Policy reference: SS Guide 2.2.13.10 Supplementary Benefits - Verification Required, 5.4.4 EEP Advance Payment

More than one EEP payment in respect of the same employment

A NSA or YA (jobseeker) cannot qualify for a second EEP payment in respect of the same employment.

Income threshold amount

A NSA or YA (jobseeker) recipient, in certain circumstances, (see tables 2 and 4), qualifies for EEP when their income increases from below the threshold amount to above the threshold amount. The threshold amount is the maximum amount of ordinary income a NSA recipient can receive without reducing their payment to nil if they:

- are single, AND
- are over 21 years but under 60 years of age, AND
- do not receive RA or RAA, AND
- do not have a dependent child (1.1.D.70).

Policy reference: 5.1.1.10 NSA - Current Rates

Notional continuous period of receipt of income support payment

For the definition of notional continuous period of receipt of income support payment see 1.1.N.130.

Act reference: SSAct section 38B Notional continuous period of receipt of income support payments

Income & assets tests

EEP is NOT income or assets tested.

Proper claims must be lodged

Income support recipients must lodge a proper claim before EEP can be granted.

Act reference: SSAct section 665 Need for a claim

Policy reference: SS Guide 8.1.1.20 Claim Lodgement - General Provisions

Person resigns or is dismissed

If a NSA, YA (jobseeker), MAA, PA or WA recipient has payment cancelled and receives EEP but is employed for a few days then resigns or is dismissed, EEP is NOT automatically recovered. EEP is ONLY recovered if a person:

- misrepresents their employment circumstances, OR
- makes a fraudulent claim.

Policy reference: SS Guide 6.3.8.30 EEP, EdEP & TAL Overpayments

Legislation

The following table lists the references for qualification for EEP in the *Social Security Act 1991*.

Payment type	SSAct reference
Newstart allowance -recipients with a partial capacity to work -single principal carer recipients	section 661 , section 663, section 663B section 663D, section 663F
Youth allowance -recipients with a partial capacity to work -single principal carer recipients	section 663, section 663B section 663D, section 663F
Mature age allowance	section 664AA Mature age allowance recipients
Partner allowance	section 664I Partner allowance recipients
Widow allowance	section 664AAA Widow allowance recipients

Policy reference: SS Guide 5.1.7.40 EEP - Current Rates

Date this topic last updated: **4 September 2006**

- on a random sampling basis, OR
- when EEP is claimed in advance, OR
- where the claimant is a CDEP participant, with the CDEP grantee organisation in relation to the source of funding top-up wages.

Explanation: Earnings under a CDEP scheme paid from the CDEP wages funded component grant is not taken to be income for the purposes of calculating entitlement to an EEP. This funding is paid to CDEP as an offset against income support payments.

However, a person who leaves a CDEP scheme for other employment, or a person who takes up employment on a CDEP that is paid for from the recurrent or other funding from the CDEP grantee organisation, can be paid an EEP under normal eligibility rules for the payment that they are on.

This policy intent is that CDEP participants, in receipt of CDEP wages only, are to be treated as income support recipients, eligible for the range of supplementary assistance available to other income support recipients. They are not considered to be taking up employment as such for the purposes of EEP payment. CDEP participants who are in receipt of top-up wages (in addition to CDEP wages) can be considered to be employed for EEP payment purposes.

New enterprise incentive scheme

A DSP recipient who enters a NEIS scheme is eligible for an EEP. NEIS is a DEWR programme that assists a person to start their own business. Participation in NEIS is accepted as employment.

A DSP recipient is NOT qualified for EEP if they start:

- an employment based training program, or
- sheltered employment (section 19 sheltered employment).
- **Explanation:** The Social Security Act 1991 (section 664C(1)) specifically excludes sheltered employment as employment.

Act reference: SSAct section 32 Approval of sheltered employment - non-profit organisation, section 33 Approval of sheltered employment - supported employment, section 664C(1) Disability support pension recipients

Policy reference: SS Guide 2.2.13.10 Supplementary Benefits - Verification Required, 5.4.4 EEP Advance Payment

Claim time limit

A WidB, SpB, CP or DSP recipient MUST claim EEP within 28 days of an increase in earnings in respect of which the claim was made. This increase may be the result of:

- a recipient entering employment, or
- the level of earnings in continuing employment increasing, so that the income is taken over the current threshold amount.

Previous EEP payments

A WidB, SpB, CP or DSP recipient cannot qualify for EEP unless a delegate verifies that the recipient did NOT receive EEP in the previous 12 months.

Policy reference: SS Guide 2.2.13.10 Supplementary Benefits - Verification Required, 5.4.4 EEP Advance Payment

Income threshold amount

A WidB, SpB, CP or DSP recipient qualifies for EEP when their income increases from below the threshold amount to above the threshold amount. The threshold amount is the amount of ordinary income an NSA recipient can earn without reducing their payment to nil if they:

- are single, AND
- are OVER 21 years BUT UNDER 60 years, AND
- do not receive RA OR RAA, AND
- do NOT have a dependent child (1.1.D.70).

Policy reference: SS Guide 5.1.1.10 NSA - Current Rates

Impact of working credit on timing on EEP

Working credit will not impact on the timing of an EEP, and eligible recipients will receive their EEP as if they did not have a working credit balance.

A recipient of WidB, CP or DSP who qualifies for an EEP and has a working credit balance will receive their EEP at the point at which their income goes over the threshold amount. They will then be able to run down any remaining working credit.

Similarly, an EEP recipient who starts work for more than 30 hours per week will receive EEP at the point at which payability is lost, and then run down any remaining working credit.

Act reference: SSAct section 665AA Existence of working credit does not prevent payments under this part.

3.8.5.30 Qualification for EEP - PP Recipients

Summary

This topic explains the qualification criteria for PP recipients and the following related issues:

- income and assets testing,
- need for a proper claim, and
- the effect of a recipient resigning or being dismissed.

EEP qualification for:

- YA, NSA, MAA, PA and WA recipients is explained in 3.8.5.10, and
- EEP qualification for CP, WidB, SpB and DSP is explained in 3.8.5.20.

Qualification (1.1.Q.10) criteria

To qualify for EEP, a PP recipient must meet the criteria listed in the following table. If more detail about a criterion is required, the second column indicates where you will find this. An EEP is payable to a person serving an 8 week non-payment period.

Criteria	More detail
All of the following:	
Have NOT received EEP within the previous 12 months <i>Explanation: There must be a minimum of 12 months BETWEEN payments, AND</i>	This topic
Have claimed EEP within a time limit	This topic
Have been receiving:	
- PP immediately before the person commenced the employment, AND - have been receiving income support for a continuous period of at least 12 months, regardless of payment type, AND EITHER - commenced employment for at least 15 hours per week and /or at least 30 hours per fortnight at award wages or above, OR - hours of employment at award wages or above increased to at least 15 hours per week and/or at least 30 hours per fortnight from less than 15 hours of work and/or at least 30 hours per fortnight, AND	SS Guide 3.5.1 PP - Qualification & Payability
The work has continued for 4 weeks, AND	this topic
The person has not received an EEP previously in respect of the particular employment.	this topic
PPS recipients are also eligible if they meet the following:	3.5.1 PP Qualification & Payability
The person's income from employment rises (including the case where a person commences employment), AND	
The person was receiving PPS on the day BEFORE the income rose or they began employment, AND	3.5.1 PP Qualification & Payability
The person's income from employment exceeds the threshold amount, AND	This topic
The person's income from employment is likely to exceed the threshold amount for more than 4 weeks, AND	This topic
The person has claimed EEP within a time limit, AND	This topic
The person has NOT received EEP within the previous 12 months. <i>Explanation: There must be a minimum of 12 months BETWEEN EEP payments.</i>	This topic

Example 1: Joanna has been receiving PPP for over 12 months and gains employment of 15 hours per week at award wages. Joanna has not received an EEP in the past 12 months. She is eligible for a \$104 EEP when the work has continued for 4 consecutive weeks.

Example 2: Sally claims PPS when her partner is killed in a car accident. She had been working part-time but 2 months after being granted PPS she commences working extra hours and increases her income so that it exceeds the

threshold amount. It is likely that her income will exceed the threshold amount for more than 4 weeks. Sally has not claimed EEP within the past 12 months. She qualifies for an EEP of \$104 even though she has not been receiving income support for a continuous period of 12 months.

Example 3: Bruce has been receiving PPS for 12 months when his 2 year old child gains a suitable creche place and he commences part-time work of 30 hours a fortnight at award wages as a gardener. He is paid EEP 4 weeks after commencing work. 12 months later, the creche is able to offer Bruce's child a full-time place which he accepts so that he can work as a gardener full-time. His income from gardening then commences to exceed the threshold amount and is expected to continue at this rate for more than 4 weeks, so he is again entitled to receive an EEP.

Example 4: Roger is a PPS recipient who works part-time for 16 hours a week each November and December as a Santa Clause at David Jones. He can be paid an EEP every year in respect of this job as the relationship under which he is employed is for a fixed term and he enters a new employment relationship each time he commences the work.

Employment qualification

A PP recipient's employment is verified:

- on a random sampling basis, OR
- when EEP is claimed in advance, OR
- where the claimant is a CDEP participant, with the CDEP grantee organisation in relation to the source of funding of top-up wages.

Explanation: A person who enters a CDEP scheme as a CDEP scheme participant, does not become eligible for an EEP by taking up CDEP work. This is because work under a CDEP scheme paid from the CDEP wages funded component grant cannot be taken to be employment. This funding is paid to CDEP as an offset against income support payments.

However, a recipient who leaves a CDEP scheme for other employment, or a recipient who takes up employment on a CDEP that is paid for from the recurrent or other funding from the CDEP grantee organisation, can be paid an EEP under normal eligibility rules for the payment that they are on.

This policy intent is that CDEP participants, in receipt of CDEP wages only, are to be treated as income support recipients, eligible for the range of supplementary assistance available to other income support recipients. They are not considered to be taking up employment as such for the purposes of EEP payment. CDEP participants who are in receipt of top-up wages (in addition to CDEP wages) can be considered to be employed for EEP purposes.

A PP recipient who is self-employed is eligible for EEP if they make a declarations of earnings that meet the criteria.

Claim time limit

A PP recipients MUST claim EEP within 28 days of sustaining employment or increasing hours for 4 consecutive weeks.

Previous EEP payments

A PP recipient cannot qualify for EEP unless a delegate verifies that the person did NOT receive EEP in the previous 12 months.

Policy reference: SS Guide 2.2.13.10 Supplementary Benefits - Verification Required, 5.4.4 EEP Advance payment

More than one EEP payment in respect of the same employment relationship

A PP recipient cannot qualify for a second EEP payment in respect of the same employment relationship of at least 15 hours a week and/or 30 hours a fortnight, 12 months after initially receiving EEP for that employment, merely by increasing the hours of employment. However, a second EEP would be payable in respect of the same employment relationship, after a 12 month interval, where the claimant's income from the employment increases and exceeds the threshold amount (see Examples 3 & 4 above). Note that when the employment relationship (that is, the relationship under which a person is employed) ends depends on a number of factors such as the type of employment relationship that the person was employed under (i.e. fixed term, casual, permanent) and the regularity of the person's employment.

Impact of working credit on timing of EEP

Working credit will not impact on the timing of an EEP, and eligible recipients will receive their EEP as if they did not have a working credit balance.

A PPS recipient who qualifies for EEP because of income exceeding the threshold amount, and who has a working credit balance, will receive their EEP at the point their income goes over the threshold. They will then be able to run down any remaining working credit.

Act reference: SSA Act section 665AA Existence of working credit does not prevent payments under this part

Policy reference: The Guide 3.1.11.30 Working Credit depletion

Income & assets test

EEP is NOT income or assets tested.

Proper claims must be lodged

A PP recipient must lodge a proper claim before EEP can be granted.

Act reference: SS (Admin) Act section 11 A need for a claim

Policy reference: SS Guide 8.1.1.20 Claim lodgement - General Provisions

Recipient resigns or is dismissed

If a PPS recipient, who qualifies for an EEP because of income exceeding the threshold amount, is employed for a few days and resigns or is dismissed, EEP is not automatically recovered. EEP is only recovered if a recipient:

- misrepresents their employment circumstances, OR
- makes a fraudulent claim.

Legislation

The following table lists the references for qualification for EEP on the *Social Security Act 1991*.

Payment Type	SSAct reference
PPS and PPP	section 664BA Parenting payment recipients
PPS	section 664A Pension PP single recipients, section 664B Amount of section 664A payment

Policy reference: SS Guide 5.1.7.40 EEP - Current Rates

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