32 When a person satisfies the *work test*

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

Method statement

Step 1. Work out the person's work test period.

> Note: **Work test period** is defined in section 33 for primary claimants and secondary claimants and in section 115CD for DAPP claimants.

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

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

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

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

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

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

> (b) that fall within a permissible break.

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

> Note 1: A person may also satisfy the work test despite not satisfying the test in step 5, if:
> (a) the child was born prematurely; or
> (b) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work.
> See sections 36A (for claimants for parental leave pay) and 115CE (for DAPP claimants).

> Note 2: Section 36B is an alternative way of satisfying the work test for a person claiming parental leave pay who is already eligible for dad and partner pay. An equivalent provision is in section 115CF for a DAPP claimant who is already eligible for parental leave pay.

> Note 3: If the person performs qualifying work on a day because of paragraph (c) or (d) of the definition of **qualifying work** in subsection 34(1), see section 35A to work out the hours of qualifying work the person is taken to have performed on the day.

33 The *work test period*

Primary claimant's work test period

(1) The **work test period** for a primary claimant is the 392 days immediately before:

(a) if the child is born on or before the expected date of birth of the child—the day the child is born; or

(b) if the child is born after the expected date of birth of the child—either:

    (i) the day the child is born; or

    (ii) if the person does not satisfy the work test in the work test period that applies under subparagraph (i), the expected date of birth of the child.

(2) However, for the purposes of making an initial eligibility determination on a primary claim that is made before the child is born, the *work test period* for the primary claimant is the 392 days immediately before the expected date of birth of the child.

Secondary claimant's work test period

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

Note: For the *work test period* for a DAPP claimant, see section 115CD.

34 When a person performs *qualifying work*

(1) A person performs *qualifying work* on a day if at least one of the following applies on the day:

(a) the person performs at least one hour of paid work;

(b) the person takes a period of paid leave of at least one hour;

(c) the day is in the person's PPL period for a previous child;

(d) the day is in the person's DAPP period for a previous child.

(2) For the purposes of paragraph (1)(b), the PPL rules may prescribe what is, or is not, taken to be paid leave.

35 When a person performs *paid work*

People other than self-employed

(1) A person performs *paid work* on a day if, on that day, the person performs work (whether as an employee, a contractor or otherwise and whether or not in Australia) for another entity for remuneration or other financial benefit.

(2) However, a person is taken not to perform *paid work* for the purposes of subsection (1) if the other entity is controlled by the person (whether alone or with others).

Self-employed

(3) A person performs *paid work* on a day if, on that day, the person performs work for the purposes of a business that is carried on for profit (whether in or outside of Australia) by:

(a) the person (whether alone or with others); or

(b) an entity that is controlled by the person (whether alone or with others).

*When a person **controls** an entity*

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

PPL rules about what paid work is

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

35A Hours of qualifying work on a day in a PPL or DAPP period

If person does not perform paid work or take paid leave in previous PPL or DAPP period

(1) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day only because the day is in the person's PPL period or DAPP period for a previous child, the person is taken to have performed on that day:

    (a) 7.6 hours of work, if the day is a week day; and

    (b) no hours of work, if the day is a Saturday or Sunday.

If person performs paid work in previous PPL or DAPP period

(2) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day because both:

    (a) the person performs at least one hour of paid work on the day; and

    (b) the day is in the person's PPL period or DAPP period for a previous child;

the person is taken to have performed on that day the greater of:

    (c) the hours of work the person would be taken to have performed if subsection (1) applied; and

    (d) the number of hours of paid work performed by the person on that day.

Note: Paid work for a permissible purpose could be performed during a person's PPL period or DAPP period for a previous child (see Division 7 of this Part and Division 7 of Part 3A-3).

If person takes paid leave in previous PPL or DAPP period

(3) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day because both:

    (a) the person takes a period of paid leave of at least one hour on the day; and

    (b) the day is in the person's PPL period or DAPP period for a previous child;

the person is taken to have performed on that day the greater of:

    (c) the hours of work the person would be taken to have performed if subsection (1) applied; and

    (d) the number of hours of paid leave taken by the person on that day.

(Paid Parental Leave Rules 2010)

Subdivision 2.3.2.2   Paid work

2.25   Purpose

This Subdivision is made for subsection 35 (5) of the Act and prescribes what is, or is not, taken to be paid work.

2.26   What is not taken to be paid work

(1) A person is not taken to perform paid work only because the person:

   (a) performs an activity which is required to be performed as a condition for receiving a social security payment; or

   (b) both:

     (i) is a prisoner; and

     (ii) performs work otherwise than under a formal prisoner employment program; or

   (c) engages in an activity as a volunteer, whether or not the person directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity; or

   (d) receives:

     (i) interest, unless subrule (2) applies; or

     (ii) rents, dividends or non-share dividends; or

     (iii) any other passive income.

(2) Subparagraph (1) (d) (i) does not apply if:

   (a) the person's principal business consists of lending money; or

   (b) the interest is received in relation to a debt due to the person for goods supplied or services rendered by the person in the course of the person's business.

(3) In this rule:

passive income, for a person, means income that is not obtained as a result of, or derived from, the personal exertion of the person.

social security payment has the same meaning as in section 23 of the *Social Security Act 1991*.