

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**STUDENT ASSISTANCE (YOUTH TRAINING ALLOWANCE -
TRANSITIONAL AND CONSEQUENTIAL AMENDMENTS) BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

(Circulated by authority of the Minister for Schools, Vocational Education and
Training, the Honourable Ross Free, MP)



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**STUDENT ASSISTANCE (YOUTH TRAINING ALLOWANCE -
TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
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OUTLINE

These amendments to the *Student Assistance (Youth Training Allowance) (Transitional Provisions and Consequential Amendments) Bill 1994* would provide for amendments to the *Social Security Act 1991*. These amendments are in relation to the application of the provisions relating to the Social Security Appeals Tribunal (SSAT) to the proposed Student and Youth Assistance Act.

These amendments would also provide for all appointments to the SSAT to be made by the Governor-General with acting appointments of three months or less to be made by the Minister for Social Security.

The amendments also make technical drafting changes to the Bill.

PURPOSE

The purpose of the amendments would be to extend the relevant provisions governing the operation of the SSAT contained in the *Social Security Act 1991* to cover the review by the SSAT of decisions relating to youth training allowance and student assistance which will be covered by the proposed Student and Youth Assistance Act.

The proposed amendments which would provide for the appointment of members by the Governor-General would ensure the input of the Minister for Social Security and the Minister for Employment, Education and Training into appointments to the SSAT. These Ministers would have responsibility for the decisions that would be reviewed by the SSAT.

FINANCIAL IMPACT

There would be no financial impact on the Commonwealth arising from these amendments.

NOTES ON CLAUSES

Amendment Number 1

This amendment would add a new clause 10A. This clause would insert a definition of 'review' into section 22 of the *Social Security Act 1991*. This definition would provide that for the purposes of the operation of the Social Security Appeals Tribunal (SSAT) under Divisions 2 and 3 of Part 7.3 of that Act, 'review' would mean a review under Part 6 of that Act or a review by the SSAT under Part 9 of the *Student and Youth Assistance Act 1973*. This amendment would recognise that the SSAT is to be the review body for youth training allowance and student assistance matters under the *Student and Youth Assistance Act 1973*.

Amendment Number 2

This amendment would add a new clause 15A. This clause would omit the definition of 'Secretary' contained in subsection 23(1) of the *Social Security Act 1991* and substitute a new definition of 'Secretary'. The new definition would provide that in all provisions of the *Social Security Act 1991* but for the provisions contained in Part 6.3 dealing with review by the Social Security Appeals Tribunal, 'Secretary' would mean the Secretary of the Department of Social Security. In relation to Part 6.3, 'Secretary' would mean the following:

- (a) in the review of a decision other than a decision under the *Student and Youth Assistance Act 1973* - the Secretary of the Department of Social Security; or
- (b) in the review of a decision under the *Student and Youth Assistance Act 1973* - the Secretary to the Employment Department.

Amendment Number 3

This would amend clause 19 to insert a definition of 'student assistance benefit decision' in subsection 23(1) of the *Social Security Act 1991*. This definition would provide that a student assistance benefit decision means a decision of an officer under *Student and Youth Assistance Act 1973* relating to:

- (a) the AUSTUDY scheme; or
- (b) the Student Financial Supplement Scheme; or
- (c) recovery of amounts under a current or former special education scheme.

A definition of 'youth training allowance' and 'youth training allowance automatic deferment provision' would also be included.

Amendment Number 4

This amendment would add new clauses 260A and 260B. Clause 260A would amend subsection 1260(1) of the *Social Security Act 1991* to provide that this subsection, which identifies the parties to a review by the Social Security Appeals Tribunal, is to apply to decisions other than those under the *Student and Youth Assistance Act 1973*.

New clause 260B would insert a new subsection 1260(1A) into the *Social Security Act 1991* which would provide that the reference to 'Secretary' in subsection 1260(1) is to be read as a reference to the Secretary of the Employment Department in the case of application for review of a decision that was made solely by an officer of the Employment Department. This would provide that in the case of decisions made solely by an officer of his or her Department, the Employment Secretary would be a party to a review by the Social Security Appeals Tribunal.

Amendment Number 5

This would amend clause 261 by omitting 'Subdivision B of Division 16 of Part 8' and substituting 'Division 2 of Part 9'. This would provide for the amendment of subsection 1261(1) of the *Social Security Act 1991*. Subsection 1261(1) makes provision for procedure on receipt of an application for review by the SSAT. This amendment would extend the operation of the subsection to student assistance decisions as well as youth training allowance decisions.

Amendment Number 6

This amendment would insert a new clause 261A and 261B. Clause 261A would insert a new subsection 1261(1A) in the *Social Security Act 1991*. This new subsection would provide that where the Employment Secretary received an application for a review by the SSAT of a decision in accordance with Division 2 of Part 9 of the *Student and Youth Assistance Act 1973* that he or she must refer that application to the National Convener of the Social Security Appeals Tribunal not later than 7 days after receipt.

A Note to this section would refer the reader to the definition of 'Secretary' contained in subsection 23(1) of the *Social Security Act 1991* as amended by Amendment Number 2.

Clause 261B would amend section 1262 of the *Social Security Act 1991* to provide a Note which would refer the reader to the definition of 'Secretary' contained in subsection 23(1) of the *Social Security Act 1991*.

Amendment Number 7

This amendment would amend clause 262 by omitting 'Subdivision B of Division 16 of Part 8' and substituting 'Division 2 of Part 9'. This would amend subsection 1263(1) of the *Social Security Act 1991* and provide that this subsection applies to decisions made under the renamed Division 2 of Part 9 of the *Student and Youth Assistance Act 1973* which makes provision for review by the Social Security Appeals Tribunal of decisions under that Act. Subsection 1263(1) makes provision for arrangements for hearing of applications by the SSAT.

Amendment Number 8

This amendment would omit clauses 265, 266 and 267 and substitute clauses 265, 266, 267 and 267A. Clauses 265 and 266 would amend sections 1265 and 1268 of the *Social Security Act 1991* by inserting a Note to both sections that would refer the reader to the definition of 'Secretary' in subsection 23(1) of the *Social Security Act 1991* as amended by Amendment Number 2. This would mean that the Secretary referred to in the provisions relating to submission to the Social Security Appeals Tribunal would be either the Secretary to the Department of Social Security or the Employment Secretary as the case requires.

Clause 267 would amend subsection 1269(1) to provide that the National Convener of the Social Security Appeals Tribunal may ask the Secretary to the Department of Social Security or the Employment Secretary, as the case requires, to exercise his or her powers under section 1304 or section 332 of the *Student and Youth Assistance Act 1973*.

Clause 267A would amend subsection 1269(1) of the *Social Security Act 1991* by inserting a Note to the section that would refer the reader to the definition of 'Secretary' in subsection 23(1) of the *Social Security Act 1991*.

Amendment Number 9

This amendment would insert a new clause 269A. This clause would amend section 1274 of the *Social Security Act 1991* by replacing paragraph 1274(2)(a). This would mean that a notice of withdrawal of an application for review by the Social Security Appeals Tribunal could be sent to an office of the Social Security Appeals Tribunal or, in the case of an application for review of a decision other than a student assistance benefit decision - an office of the Department of Social Security, and in the case of an application for review of a student assistance benefit decision - an office of the Employment Department.

Amendment Number 10

This amendment would omit clause 270 and substitute clause 270 and new clause 270A. Clause 270 would amend section 1274 of the *Social Security Act 1991* by substituting paragraph 1274(2A)(a). Section 1274(2A) as amended would allow a notice of withdrawal of an application for review to be delivered to the CES if it relates to a decision about a student assistance benefit, youth training allowance, job search benefit or new start allowance and the decision was made by an officer of the Employment Department.

Clause 270A would amend section 1247 of the *Social Security Act 1991* by inserting a Note to the section that would refer the reader to the definition of 'Secretary' in section 23(1) of the *Social Security Act 1991* as amended by Amendment Number 2. This would mean that the Secretary referred to in the provisions relating to submission to the Social Security Appeals Tribunal would be either the Secretary to the Department of Social Security or the Employment Secretary as the case requires.

Amendment Number 11

This amendment would insert new clauses 272A to 272ZG. These clauses would amend sections 1281, 1324, 1325A, 1326, 1334, 1336, and 1337.

Clause 272A would amend section 1281 of the *Social Security Act 1991* by inserting a Note to the section that would refer the reader to the definition of 'Secretary' in section 23(1) of the *Social Security Act 1991* as amended by Amendment Number 2. This would mean that the Secretary referred to in the provisions relating to submissions to the Social Security Appeals Tribunal would be either the Secretary to the Department of Social Security or the Employment Secretary

Clauses 272B to 272Z relate to the terms and conditions of appointment of members to the Social Security Appeals Tribunal and would mean that all appointments would be made by the Governor-General, on the terms and conditions determined by the Governor-General, with the exception of acting appointments for full-time and part-time senior members, which would be made by the Minister for Social Security for up to 3 months, not 6 months as the *Social Security Act 1991* presently allows.

Clause 272B would amend subsection 1324(1) of the *Social Security Act 1991* by omitting 'and the senior members' and substituting 'the senior members and the other members'.

Clause 272C would omit subsection 1324(2) of the *Social Security Act 1991*.

Clause 272D would amend subsection 1325A(1) of the *Social Security Act 1991* by omitting 'and the senior members' and substituting 'the senior members and the other members'.

Clause 272E would omit subsection 1325A(2) of the *Social Security Act 1991*.

Clause 272F would omit subsection 1326(1) of the *Social Security Act 1991* and substitute a new subsection. This would allow the Governor-General to appoint a person to Act as National Convener of the Social Security Appeals Tribunal for a period of not more than 12 months.

Clause 272G would omit subsection 1326(2) of the *Social Security Act 1991* and substitute a new subsection. This would allow the Minister for Social Security to appoint a person to Act as National Convener of the Social Security Appeals Tribunal for a period of not more than 3 months.

Clause 272H would amend subsection 1326(3) of the *Social Security Act 1991* by omitting references to 'Minister' and substituting 'Governor-General'.

Clause 272I would add a new subsection 1326(3A) to the *Social Security Act 1991*. This would allow the Minister for Social Security to appoint a person to act as a full-time senior member of the Social Security Appeals Tribunal for a period of not more than 3 months.

Clause 272J would amend subsection 1326(4) of the *Social Security Act 1991* by omitting references to 'Minister' and substituting 'Governor-General'.

Clause 272K would add a new subsection 1326(4A) to the *Social Security Act 1991*. This would allow the Minister for Social Security to appoint a person to act as a part-time senior member of the Social Security Appeals Tribunal for a period of not more than 3 months.

Clause 272L would amend subsection 1326(5) of the *Social Security Act 1991* by omitting references to 'Minister' and substituting 'Governor-General'.

Clause 272M would add a new subsection 1236(5) to the *Social Security Act 1991*. This would allow the Minister for Social Security to direct that a person continue to act in an appointment after the normal terminating event.

Clauses 272N, 272O and 272P would amend subsections 1326(6), 1326(8), and 1326(9) of the *Social Security Act 1991*, respectively. These clauses would insert a reference to subsection 1326(5A) after each reference to subsection 1326(5).

Clause 272Q would omit subsection 1326(12) of the *Social Security Act 1991* and substitute a new subsection. This would provide a definition of 'the normal terminating' event for appointments under subsections (1),(2),(3) and (4) which is in line with the proposed amendments to those subsections.

Clause 272R would amend subsection 1334(1) of the *Social Security Act 1991* by omitting 'and the National Convener or a senior member' and substituting 'a member'.

Clause 272S would omit subsection 1334(2) of the *Social Security Act 1991*.

Clause 272T would omit 'the National Convener or a senior member' from subsection 1334(4) of the *Social Security Act 1991* and substitute 'a member'.

Clause 272U would amend paragraph 1334(4)(a) of the *Social Security Act 1991* by omitting 'National Convener or the senior'.

Clause 272V would omit subsection 1334(6) of the *Social Security Act 1991* and substitute a new subsection. This would allow the Governor-General to remove a member from office if disqualifying circumstances exist.

Clause 272W would omit subsection 1334 (7) of the *Social Security Act 1991*.

Clause 272X would omit subsection 1334(9) of the *Social Security Act 1991* and substitute a new subsection. This subsection would allow the Governor-General to retire a member from office on the grounds of physical or mental incapacity with the consent of the member, in certain circumstances.

Clause 272Y and 272Z would omit subsection 1334(10) of the *Social Security Act 1991* and the reference to that subsection in subsection 1334(11).

Clauses 272ZA to 272ZF extend the disclosure of confidential information provisions contained in Section 1336 of the *Social Security Act 1991* to also cover the Social Security Appeals Tribunal when performing functions or duties or exercising powers under the *Student and Youth Assistance Act 1973*.

Clause 272ZA would omit the reference to Chapter 6 of the *Social Security Act 1991* from paragraph 1336(1)(d).

Clauses 272ZB, 272ZC, 272ZD, 272ZE, would insert a reference to the *Student and Youth Assistance Act 1973* after references to 'Act' in subsection 1336(2), paragraphs 1336(3)(c) and 1336(3)(d) and subsection 1336(5) of the *Social Security Act 1991*.

Clause 272ZF would omit the reference to Chapter 6 and insert a reference to the *Student and Youth Assistance Act 1973* after the reference to the Act in subsection 1336(7).

Clause 272ZG would insert a reference to the *Student and Youth Assistance Act 1973* after the reference to 'Act' in section 1337 of the *Social Security Act 1991*. This would allow the National Convener of the Social Security Appeals Tribunal to delegate powers granted to that office under the *Student and Youth Assistance Act 1973*.

Amendment Number 12

The amendment would insert two new definitions into new section 1067A inserted by clause 9 of the Bill.

A definition of "accounting period", would be inserted to clarify that this is a period of 12 months. The expression "accounting period" is used in Module F of the Sickness Allowance Rate Calculator as the period of parental income taken into account for the parental income test. See Module F, particularly 1067E - F4 to F7 which set out what accounting period is to be used.

A definition of "employer" would be inserted so that for the purposes of the parental income test provisions (in Module F) this term has the same meaning as it has in Schedule 3 (which relates to parental fringe benefits).

Amendment Numbers 13 to 17 (inclusive)

These amendments would make technical drafting changes. The words "natural or adoptive" would be omitted, as they will be rendered unnecessary by the definition of "parent" to be inserted in new section 1067A.

Amendment Numbers 18 and 19

These amendments would insert notes after new sections 1067B and 1067C to be inserted by subclause 9(2) of the Bill referring to the definition of "parent" in section 5 of the Act.

Amendment Number 20

The amendment would correct a minor drafting error in point 1067E-E6 in Module E of the Sickness Rate Calculator in new Part 3.5A, to be inserted by subclause 9(2) of the Bill.

Amendment Numbers 21 and 22

At present, Part 2 of Module K, in point 1067E-K3, contains a definition of "associate". These amendments would move the definition to point 1067E-K1, Part 1 of Module K so that it will apply to all of Module K, rather than to Part 2 only.

Amendment Numbers 23 to 26 (inclusive)

Module K of the Sickness Rate Calculator in new Part 3.5A, to be inserted by subclause 9(2) of the Bill, sets out the kinds of fringe benefits that are to be included in applying the parental income test in Module F of the Rate Calculator. The amendments would amend Module K to specify that the Module applies to benefits provided by a person's employer, either directly or through an associate of the employer.













