

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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

EXPLANATORY MEMORANDUM

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



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

OUTLINE

This Bill complements the *Student Assistance (Youth Training Allowance) Amendment Bill 1994* (YTA legislation) and enacts saving provisions and transitional provisions. The Bill also makes consequential amendments as a result of the enactment of the YTA legislation to the following Acts:

- . *Bankruptcy Act 1966;*
- . *Childcare Rebate Act 1993;*
- . *Data Matching (Assistance and Tax) Act 1986;*
- . *Disability Services Act 1986;*
- . *Employment Services Act 1994;*
- . *Farm Household Support Act 1992;*
- . *Health Insurance Act 1982;*
- . *Income Tax Assessment Act 1936;*
- . *National Health Act 1953;*
- . *Registration of Deaths Abroad Act 1984;*
- . *Veterans' Entitlements Act 1986.*

PURPOSE OF THE BILL

The transitional provisions of the Bill provide for the treatment of claims for job search allowance made by people under the age of 18 years and which would have a date of commencement before the commencement of the YTA legislation.

Accordingly, the most important transitional provision provides for the situation where a person has lodged a claim for job search allowance before 1 January 1995. In this case the Bill will operate to deem such an application for job search allowance to be a claim for youth training allowance if the commencement day for payment of the person's allowance would be on or after 1 January 1995. Otherwise, if the commencement day for payment of the person's allowance would be pre 1 January 1995 the person's claim will be dealt with under the *Social Security Act 1991*.

Other transitional provisions provide that a person who is in receipt of job search allowance as at 1 January 1995 will remain on job search allowance. A person who makes an application for job search allowance after 1 January 1995 will be paid, if eligible, youth training allowance except where the date of commencement of payment of that person's claim is before 1 January 1995. In such a case, the person's claim will be dealt with under the *Social Security Act 1991* and will remain a claim for job search allowance.

The Bill also provides for the continuing in force of some instruments made under the *Social Security Act 1991* which may have continuing relevance in relation to youth training allowance.

The consequential amendments to the Acts listed above mirror provisions in those Acts relating to job search allowance or the *Social Security Act 1991* where it is sensible for similar provision to be made in relation to youth training allowance.

A number of amendments are made to ensure youth training allowance recipients are treated in the same way as social security recipients under various pieces of beneficial legislation, eg, the *Childcare Rebate Act 1993*, *Disability Services Act 1986*, *Farm Household Support Act 1992*, *Health Insurance Act 1973*, *National Health Act 1953*, *Registration of Deaths Abroad Act 1984*, *Social Security Act 1991*, and the *Veterans' Entitlements Act 1986*.

Other amendments are made to ensure that information which is obtained from youth training allowance recipients and from other sources is handled in the same way as that gathered in relation to social security benefit recipients, eg, the *Data- matching (Assistance and Tax) Act 1986*.

The amendments to the *Income Tax Assessment Act 1936* ensure that youth training allowance recipients are treated in the same manner as other social security benefit recipients in relation to tax concessions and exemptions, as well as to ensure they are under the same obligations.

FINANCIAL IMPACT

There would be negligible financial impact on the Commonwealth arising from these amendments.

In relation to the sickness allowance the financial impact would be minimal because few people would be affected.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause would provide for this Act to be cited as the "*Student Assistance (Youth Training Allowance - Transitional Provisions and Consequential Amendments) Act 1994*".

Clause 2 - Commencement

This clause would provide for the commencement of the provisions of the Act to be on 1 January 1995, immediately following the commencement of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.

PART 2 - SAVING AND TRANSITIONAL PROVISIONS

Clause 3 - Definition of "YTA introduction day"

This clause would define the term 'YTA introduction day' to mean the day the *Student Assistance (Youth Training Allowance) Amendment Act 1994* commences.

Clause 4 - Certain job search allowances to continue even though allowee is under 18 years of age

This clause would provide that if a determination granting a claim for job search allowance under the *Social Security Act 1991* was in force immediately before the YTA introduction day and the person was under 18 years of age on that day then the person will remain on job search allowance.

Clause 5 - Outstanding claims for job search allowance

This clause would set out rules for determining whether claims under the *Social Security Act 1991* for job search allowance which have been lodged by persons under the age of 18 years and which have not been determined before the YTA introduction day should be determined in accordance with the *Social Security Act 1991* or the *Student and Youth Assistance Act 1994*.

New subclause 5(2) would require the claim to be considered in the first instance under the *Social Security Act 1991* as if the *Student Assistance (Youth Training Allowance) Amendment Act 1994* had not been enacted.

New subclause 5(3) would provide that, if consideration of the claim in accordance with new subclause 5(2) resulted in the person's commencement date for payment of job search allowance being a day earlier than the YTA introduction date, the claim is to be treated under the *Social Security Act 1991*.

New subclause 5(4) would provide, that if consideration of the claim resulted in the person's commencement date for payment of job search allowance having effect on the YTA introduction day or a later day, then the claim is taken to be a claim for youth training allowance and from then on to be treated under Part 8 of the *Student and Youth Assistance Act 1973*.

Clause 6 - New claims for job search allowance or youth training allowance

This clause would provide for the situations where, after the YTA introduction day, a person who is under the age of 18 years lodges a claim under either the *Social Security Act 1991* for job search allowance or Part 8 of the *Student and Youth Assistance Act 1973* for youth training allowance. New subclause 6(2) would deem a claim for a job search allowance to be a claim for youth training allowance under the *Student and Youth Assistance Act 1973* and provide that the claim be considered under the *Student and Youth Assistance Act 1973*.

New subclause 6(3) would provide that, if consideration of the claim resulted in the person's commencement date for payment of job search allowance having effect a day earlier than the YTA introduction date, the claim is to be treated under the *Social Security Act 1991*.

New subclause 6(4) would provide, that if consideration of the claim resulted in the person's commencement date for payment of job search allowance having effect on the YTA introduction day or a later day, then the claim is taken to be a claim for youth training allowance and from then on be treated under Part 8 of the *Student and Youth Assistance Act 1973*.

Clause 7 - Saving of certain instruments in force under Social Security Act

This clause would preserve the effect of an instrument made in respect of a provision in Part 2.11 of the *Social Security Act 1991* in force immediately before the YTA introduction day which relates to a person under the age of 18 years.

Such an instrument would have effect after the YTA introduction day as if it were an instrument made for the purposes of the corresponding provision in Part 8 of the *Student and Youth Assistance Act 1973*.

Subclause 7(2) would provide examples of the nature of 'instrument' as referred to in subclause (1).

Subclause 7(3) would provide that subclause 7(1) would not apply to a delegation or determination under Clause 4.

Subclause 7(4) would provide for instruments, to which subclause (1) applies and which have effect for limited periods, to be effective after the YTA introduction day only for the period which had not expired before the YTA commencement day.

Clause 8 - This Part overrides Social Security Act and Part 8 of Student and Youth Assistance Act

Clause 8 would provide for the saving and transitional provisions to have effect despite anything in the *Social Security Act 1991* or Part 8 of the *Student and Youth Assistance Act 1973*.

PART 3 - AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

Clause 9 - Amendments

Clause 9 would provide for the *Social Security Act 1991* to be amended as set out in Schedule 1 and Schedule 2.

PART 4 - AMENDMENTS OF OTHER ACTS

Clause 10 - Amendments

This clause would amend other Commonwealth Acts as set out in Schedule 3 as a consequence of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.

SCHEDULE 1

AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

Background

The introduction of YTA necessitates a number of consequential amendments to other Commonwealth legislation including the *Social Security Act 1991* (the Social Security Act). These amendments are contained in the Student Assistance (Youth Training Allowance Transitional Provisions and Consequential Amendments) Bill 1994 (the amending Bill).

The most notable amendments to the *Social Security Act 1991* arising as a result of the introduction of YTA are as follows -

- a new rate calculator applicable to certain under 18 year old sickness allowees will be inserted into the Act;
- the qualification conditions for job search allowance will be modified so that only certain 'saved' clients who are under 18 years of age can receive JSA; and
- loss of AUSTUDY/ABSTUDY payments will be accepted as loss of income for the purposes of qualification for sickness allowance (SA).

Explanation of major changes

New benefit rate calculator

From 1 January 1995, the rate of YTA payable to under 18 year olds who are unemployed will be worked out in accordance with the Rate Calculator in Schedule 1 of Part 8 of the *Student and Youth Assistance Act 1973*. The new YTA Rate Calculator differs from Benefit Rate Calculator A in section 1067 of the *Social Security Act 1991* (applicable to under 18 year old JSA/SA clients) in two major respects.

First, in order to be paid a higher rate of YTA, a person will be required to satisfy independence criteria that are modelled on current AUSTUDY concepts rather than definitions in the *Social Security Act 1991*. These definitions are also relevant for the purposes of the new assets test applicable to YTA clients.

The second major difference relates to the assets test applicable to under 18 year old clients. The YTA Rate Calculator incorporates an assets test based on the AUSTUDY rather than social security model.

The features of the new rate calculator applicable to YTA clients are explained in the explanatory memorandum to the Student Assistance (Youth Training Allowance) Amendment Bill 1994.

The differences described above can lead to inconsistent treatment of under 18 year old clients in similar circumstances. Where, for example, a person is receiving YTA, becomes sick for a period that is expected to last longer than 13 weeks and transfers to SA, the person may receive a different rate of payment under the current SA rules than under the new YTA rules if that person meets the social security definitions of homelessness and independence. A similar inconsistency is present when one compares the situation of an under 18 year old unemployed person who claims and is granted YTA at the single rate (because the person does not meet the YTA independence criteria) and an under 18 year old in substantially the same domestic situation who qualifies for SA at the higher rate by virtue of meeting the social security definitions of homelessness and independence.

This inconsistency in the treatment of SA/YTA clients is undesirable. Consequential amendments will therefore be made to the *Social Security Act 1991* to align the two regimes by incorporating the YTA Rate Calculator into the *Social Security Act 1991*. The new rate calculator would apply unless the person was a transferee from JSA to SA or the person is under 18, was receiving SA immediately before 1 January 1995 and continues to do so after that date. This would have the effect of allowing current under 18 year old JSA/SA clients to retain their current social security rate of payment provided the client was receiving JSA/SA prior to the introduction of YTA and continues to do so after that date.

This is consistent with the treatment that will be accorded to clients who transfer to JSA from SA after 1 January 1995 and 'current' JSA clients (see below).

The relevant provisions in the amending Bill are item 174 (that reworks section 709 of the *Social Security Act 1991*) and Schedule 2 (that inserts a new Sickness Allowance Rate Calculator into the *Social Security Act 1991*).

In addition, amendments will be made to the indexation provision in the *Social Security Act 1991* to ensure that certain rates in the new Sickness Allowance Rate Calculator are indexed. Indexation will occur at the times and in the manner applicable to comparable rates in the new YTA benefit rate calculator (that, in turn, are consistent with the indexation of comparable rates in Benefit Rate Calculator A in the *Social Security Act 1991*). The relevant provisions in the amending Bill are items 254, 255, 256 and 257.

Modified qualification conditions for job search allowance

The qualification conditions for JSA will also need to be modified as a result of the introduction of YTA. As a general rule, qualification for JSA for under 18 year olds will be limited to clients who were receiving JSA immediately before the introduction of YTA on 1 January 1995 and who continue to do so after that date. There are, however, two exceptions. First, breaks in payment of less than 6 weeks would not interrupt continuity of payment for the purposes of the new qualification rule. This exception allows clients to undertake short term work without disadvantage and is consistent with other provisions in the *Social Security Act 1991* allowing breaks in registration with the CES of less than 6 weeks to count as registration (duration of registration with the CES is relevant in determining when a person qualifies for

newstart allowance). The second exception allows a person who is receiving JSA on or after 1 January 1995, becomes sick for more than 13 weeks, transfers to sickness allowance and then recovers to transfer back to JSA provided the current qualification and payability conditions are satisfied (rather than YTA).

The relevant provision in the amending Bill is item 84.

Loss of AUSTUDY/ABSTUDY payments counts as loss of income for SA purposes

In order to establish qualification for SA in respect of a period, a person is required to show -

- . a loss of 'salary, wages or other income of a similar nature because of the incapacity';
- . that, if the person were able to work, the person would have or would be likely to be qualified for job search allowance or newstart allowance (or, after 1 January 1995, youth training allowance); or
- . the person was, or is likely to be receiving, a pension before the beginning of the period.

The rate of SA payable to a person if the person qualifies for SA due to a loss of income is not to exceed the amount of that loss.

Although these qualification conditions will allow YTA clients who become sick to qualify for SA, the provisions do not cover people who lose AUSTUDY or ABSTUDY as a result of sickness and 'suspend' studies. In order to qualify for SA, a person in these circumstances would need to show that he or she would qualify for JSA, YTA or NSA if the person were able to work. This would not be possible where studies are suspended only until such time as the person recovers from the sickness and the person has no intention of entering the workforce.

Items 158, 176 and 177 have the combined effect of allowing loss of AUSTUDY/ABSTUDY to count as loss of income for the purposes of qualification for SA and for the purposes of the cap on rate of payment of SA.

Other consequential amendments

The remaining consequential amendments to the *Social Security Act 1991* are minor and technical in nature. In broad terms, they achieve the following results -

- . ensure that new YTA clients are treated in the same manner and under similar rules as currently apply under the JSA system;
- . ensure that the relationship between YTA and other payment types in the Act is the same as the relationship between JSA and those other payment types; and

establish links between JSA and YTA to take account of the situation where a person who has been registered with the CES as unemployed for less than 12 months turns 18 and transfers to JSA. The links established by the consequential amendments will be similar to those that currently apply when a person transfers from JSA to newstart allowance.

SCHEDULE 2**NEW PART 3.5A TO BE INSERTED IN THE
SOCIAL SECURITY ACT 1991****PART 3.5A - SICKNESS ALLOWANCE RATE CALCULATOR**

As indicated above, in the commentary on Schedule 1, a new Sickness Allowance Rate Calculator will be inserted into the *Social Security Act 1991*.

The new Rate Calculator will apply to all sickness allowance clients unless the client was a transferee from JSA to SA or is under 18, was receiving SA immediately before 1 January 1995 and continues to do so after that date.

The new Sickness Allowance Rate Calculator is the same as the new Rate Calculator, inserted by Schedule 1 in clause 15 of the Student Assistance (Youth Training Allowance) Amendment Bill 1994

The features of the new Rate Calculator are explained in the explanatory memorandum to that Bill.

SCHEDULE 3

AMENDMENTS OF ACT OTHER THAN THE SOCIAL SECURITY ACT 1991

Bankruptcy Act 1966

An amendment to section 139L would exclude from the definition of "income" in that section, an amount that is not income for the purposes of subsection 8(8) of the *Social Security Act 1991* as it is applied for the purposes of section 44A of the *Student and Youth Assistance Act 1973*.

Childcare Rebate Act 1993

The amendment would insert a new subsection 29(3) to include a reference to a person registered in a category approved under section 44A(2) of the *Student and Youth Assistance Act 1973* as being unemployed.

Data Matching (Assistance and Tax) Act 1986

The amendment would make changes to the definition of "personal assistance" in section 3 so that the payment of youth training allowance to a person would be included in the definition.

Disability Services Act 1986

A new paragraph 22(4)(ca) would provide for the definition of "pensioner or beneficiary" to also mean a person who is receiving youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*.

Employment Services Act 1994

Amendments would be made to this Act to ensure that persons receiving youth training allowance have the same rights and are under the same obligations under the *Employment Services Act 1994* as are job search allowees.

Farm Household Support Act 1992

The Act would be amended to make provision for the payment of youth training allowance when assessing claims for farm household support.

Health Insurance Act 1973

The amendments would ensure that youth training allowance recipients and their dependants are treated in the same manner as job search allowance recipients and their dependants.

Income Tax Assessment Act 1936

An amendment would be made to permit the Commissioner to communicate information to the Secretary to the Department of Employment, Education and Training for the purpose of the administration of any law of the Commonwealth relating to the payment of benefits or allowances.

Various amendments would be made to ensure that payment of the youth training allowance and any additional payments under the *Student and Youth Assistance Act 1973* are treated in the same way as corresponding payments of job search allowance as well as to ensure that recipients of youth training allowance are under the same rights and designation under the Act as Job Search allowees.

National Health Act 1953

Amendments are made to this Act to include a reference to youth training allowance where there is a reference to job search allowance.

Registration of Deaths Abroad Act 1984

An amendment would extend the definition of "prescribed person" in section 3 of the Act to include a person who is in receipt of youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*.

Veterans' Entitlements Act 1986

Various amendments would be made to provide for the payment of youth training allowance to the partner of a person claiming entitlements under this Act.

