

1995

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**STUDENT AND YOUTH ASSISTANCE AMENDMENT  
(BUDGET MEASURES) BILL 1995**

**EXPLANATORY MEMORANDUM**

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE  
HOUSE OF REPRESENTATIVES AS INTRODUCED**

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

# STUDENT AND YOUTH ASSISTANCE AMENDMENT (BUDGET MEASURES) BILL 1995

## OUTLINE

This legislation amends the *Student and Youth Assistance Act 1973* ("the Act").

This legislation establishes a new income support payment, to be known as the basic student payment, to permit students to complete their secondary education. The payment is established by provisions contained in **Schedule 5**.

Families with students receiving the basic student payment will no longer be eligible to receive the family payment for these children. Consequential amendments to the *Social Security Act 1991* are contained in **Schedule 6**.

This legislation also modifies the eligibility provisions of the AUSTUDY scheme for certain categories of permanent residents.

Permanent residents who:

- have been present in Australia as a permanent resident of Australia for a period of, or for periods amounting in aggregate to, not less than one year during the period of two years immediately preceding the time when they first satisfy these provisions; and

have been present in Australia as a permanent resident of Australia for a period of, or for periods amounting in the aggregate to, not less than two years during the period of five years immediately preceding the time when they first satisfy these provisions

after their 16th birthday will have twelve months from the time when they first satisfy these provisions to gain approval for citizenship. Otherwise they will be ineligible to receive AUSTUDY.

Permanent residents who first satisfy these requirements on or before their 16th birthday will be eligible to receive AUSTUDY until they are 17 and will then be ineligible to receive the benefit unless they gain approval for citizenship.

These amendments are made in **Schedule 3**.

Finally, this legislation makes a number of minor amendments to the Act, being:

the removal of the "cut off dates" by which AUSTUDY/ABSTUDY benefits are to be repaid, so as to be eligible to receive a financial supplement (**Schedule 1**);

the removal of the ability for people ineligible to receive AUSTUDY or ABSTUDY to receive financial supplement. (**Schedule 2**);

the removal of a reference to the AUSTUDY/ABSTUDY Dependent Spouse Allowance. (**Schedule 4**);

a change to the sanctions imposed on people who are in receipt of benefits and who fail to tell the Department of Employment, Education and Training of a change in their circumstances (**Schedule 7**);

a clarification to the youth training allowance provisions of the Act to make it clear that the income of those caring for youths in State or foster care is not to be subject to the scheme's parental income test (**Schedule 8**); and

the establishment of rules when the part payment of a student assistance debt can be accepted as full satisfaction of the full debt owed (**Schedule 9**).

## **FINANCIAL IMPACT**

The modification of the eligibility requirements placed on permanent residents applying to receive AUSTUDY is expected reduce expenditure by \$10.34 million in 1995-6, \$19.93 million in 1996-7, \$20.65 million in 1997-8 and \$21.43 million in 1998-9.

The termination of a family's eligibility for the family payment as a result of the introduction of the basic student payment will result in the level of family payment paid reduced by \$68.64 million in 1996-7, \$70.74 million in 1997-8 and \$73.07 million in 1998-9. \$48.95 million will be outlaid on the basic student payment during 1996-7, \$51.53 million in 1997-8 and \$54.04 million in 1998-9. This will result in net savings of \$19.69 million in 1996-7, \$19.21 million in 1997-8 and \$19.03 million in 1998-9.

The decision to remove the ability of people ineligible to receive AUSTUDY or ABSTUDY from receiving the financial supplement will reduce expenditure by \$0.76 million in 1995-6, \$2.27 million in 1996-7, \$3.13 million in 1997-8 and \$3.95 million in 1998-9.

The decision to remove the "cut off" dates by which AUSTUDY/ABSTUDY benefits must be repaid so as to allow access to the Financial Supplement is anticipated to reduce outlays on AUSTUDY and ABSTUDY by \$6 million a year.

In relation to the amendments governing when the part payment of a student assistance debt can be accepted as full satisfaction of the full debt owed, prompt settlement at a discount will save on administrative costs and improve the overall recovery rate. Therefore, the financial impact of accepting part of an unpaid debt in full settlement of that debt is cost neutral or negligible.

The change to the sanctions imposed on people who are in receipt of benefits and who fail to tell the Department of a change in their circumstances imposed by section 48 of the Act is expected to result in \$3 million of revenue in 1996-7. As it is anticipated that the provision will also lead to the identification of overpayments, a further savings of \$2.5 million in a financial year will be achieved.

The other amendments have no or negligible financial impact.

**STUDENT AND YOUTH ASSISTANCE AMENDMENT  
(BUDGET MEASURES) BILL 1995**

**NOTES ON CLAUSES**

**Clause 1 - Short Title**

**Clause 1** provides for this Bill to be cited as the *Student and Youth Assistance Amendment (Budget Measures) Act 1995*.

**Clause 2 - Commencement**

**Clause 2** sets the dates when each item in each Schedule will commence operation. In this Explanatory Memorandum, the date when each item in each Schedule commences is indicated in the notes explaining the Schedule concerned.

**Clause 3 - Schedules**

**Clause 3** provides for the Act to be amended in the manner set out in the Schedules. The provisions are explained in the following pages.

## SCHEDULE 1

Part 4A of the Bill establishes a Financial Supplement Scheme which is available to recipients of AUSTUDY and ABSTUDY. Under the scheme tertiary students who meet academic eligibility requirements may forgo part or all of their entitlement to AUSTUDY or ABSTUDY benefits up to a maximum of \$3,500 and receive instead a repayable financial supplement of twice the amount of benefits forgone.

**Example 1:** if a student eligible to get ABSTUDY benefits of \$5,000 in a year decides to forgo the maximum amount of \$3,500 to obtain a financial supplement, the student will receive a supplement of \$7,000. If he or she remains eligible, the student would also get the remaining \$1,500 of benefits.

If a student has received an amount of AUSTUDY or ABSTUDY benefits before deciding to apply for a financial supplement, the student may choose to repay all or part of the benefits already received to maximise the amount of supplement.

**Example 2:** if the student in example 1 has already received \$4,000 of benefits before deciding to apply for a financial supplement, the student can repay all or part of that \$4,000. The student in this example will be able to obtain the maximum financial supplement by repaying \$3,500. If he or she remains eligible, the student will also receive the remaining \$1,000 of benefits.

The effect of the current subsection 7(8) of the Act is that, should a person wish to apply for a financial supplement, and repay any AUSTUDY or ABSTUDY benefits received during the period 1 January - 31 May or 1 July - 30 September, they must repay the benefits before 31 May or 30 September (as applicable).

**Example 3:** if a student receives benefits in the period 1 January 1995 to 15 October 1995, to be eligible to receive the maximum available Financial Supplement the student must decide to repay some or all of the benefit received before 31 May 1995. Otherwise the only repayment that can be taken into account for the purposes of calculating the amount of Supplement the student is eligible to receive is the amount, if any, repaid for the period 1 July - 30 September 1995.

### Amendments proposed by this legislation

**Item 2** of the Schedule proposes to remove the "cut off" dates with effect from 1 January 1996 so that it will be possible for students to repay all or part of AUSTUDY or ABSTUDY benefits at any time before the end of the period, or periods, in respect of which the benefits were paid (**proposed new subsection 7(9)**). If an amount of benefit is repaid before the end of the period to which it relates, the benefit is taken never to have been paid (**proposed new subsection 7(10)**).

The amendments will enable students to leave the decision about whether they will apply for the financial supplement until their financial position later in the year is known. The proposed amendments will also enable students to maximise the amount of financial supplement they are eligible to get.

**Example 4:** a student is eligible for AUSTUDY for the 1996 calendar year. If the student decides late in the year to apply for, and wishes to maximise, financial supplement, the student will have to repay AUSTUDY already received on or before 31 December 1996.

However, where a student has broken periods of eligibility for benefits throughout the year, the student will not be able to repay benefits received in respect of earlier periods in a later period for the purpose of obtaining a financial supplement (**proposed new subsection 7(9)**). This links Financial Supplement eligibility to study which is consistent with AUSTUDY and ABSTUDY.

**Example 5:** a student is eligible for AUSTUDY for two separate periods from 1 January 1996 to 17 May 1996, and again from 4 July 1996 until 31 December 1996. To be eligible to repay AUSTUDY already received, and thus maximise financial supplement, the student would have to repay benefits received in the period 1 January to 17 May on or before 17 May, and repay benefits received in the period 4 July to 31 December on or before 31 December.

An amendment to **subsection 7(8)** made by **item 1** makes clear that these provisions will not apply to payments made in 1995 and earlier years.

### **Commencement**

These provisions are to commence on **1 January 1996**.

## **SCHEDULE 2**

Part 4A of the Act provides for the financial supplement scheme for tertiary students. Section 12C establishes two categories of eligible student for the purposes of Part 4A. Paragraph 12C(1)(b)(i) establishes a class of student known as a "category 1" student. Paragraph 12C(1)(b)(ii) currently establishes a class of student known as a "category 2" student.

A "category 1" student is one who is eligible to receive either AUSTUDY or ABSTUDY. A "category 2" student is one who does not qualify for AUSTUDY or ABSTUDY because of the application of the parental income test under the respective schemes, but whose adjusted parental income is below the amount specified in the AUSTUDY/ABSTUDY Supplement Regulations.

Because they are ineligible to get AUSTUDY or ABSTUDY, "category 2" students cannot obtain a category 1 financial supplement. They can, however, obtain a "category 2" financial supplement of a maximum of \$2,000 subject to adjusted parental income being lower than \$50,850 in 1995.

"Category 2" loans have not been as popular as the Government anticipated when it introduced them in 1993. In each of the years 1993/94 and 1994/95 the Government anticipated that 11,000 and 15,000 "category 2" loan offers would be accepted by students. In fact approximately 4,900 in 1993/94 and 3,000 in 1994/95 "category 2" loan offers were accepted. On the basis of this dwindling interest in "category 2" loans, a decision to remove the eligibility of "category 2" students to receive financial supplement was announced in the 1995 Budget.

### **Amendments proposed by this legislation**

**Items 1 and 2** amend **subsection 12A(1)** and **paragraph 12C(1)(b)** to remove the eligibility of "category 2" students to receive a financial supplement from 1996 and beyond.

**Item 3** makes clear that these amendments will apply to applications for the financial supplement made for the 1996 academic year, and beyond.

### **Commencement**

Applications for student assistance may be made before the beginning of the academic year to which they relate. Processing of applications made before the commencement of an academic year often commences before 1 January in the academic year. Processing of applications for student assistance in 1996 is expected to commence in November 1995. For this reason, the items contained in this Schedule will be taken to have commenced on **1 November 1995**.

### SCHEDULE 3

The amendments included in this Schedule give effect to the Government's intention to target student assistance to Australian citizens and non-citizens who choose to become Australian citizens.

Part 2 of the Act establishes the AUSTUDY Scheme. Section 7 establishes who may receive the benefit.

Paragraph 7(1)(a) provides that a benefit may be granted to a person who is an Australian citizen or a permanent resident of Australia. "Permanent resident of Australia" is defined in subsection 3(1) of the Act as a person who, under the regulations, is to be treated, for the purposes of the Act, as permanently resident in Australia.

The AUSTUDY Regulations provide that the following persons are permanent residents for the purposes of the Act:

New Zealand citizens who have permanently settled in Australia and who:

have lived in Australia for the last six months; or

have lived in Australia for the last twelve months, with no more than two months absence in that period; or

permanent residents within the meaning of subsection 58(2) of the *Migration Act 1958*.

In 1994 there were approximately 47,000 permanent residents receiving AUSTUDY benefits. The number of non-Australian citizens receiving the advantage of income support has created some public concern. Accordingly, the Government has decided to modify the AUSTUDY eligibility provisions as they relate to permanent residents. This decision was announced in the Budget.

#### Amendments proposed by this legislation

**Item 1** is a technical amendment to **subsection 7(1)** to recognise the fact that AUSTUDY eligibility is now determined in more than just subsection 7(1). This is because of the additions to Part 2 made in this Schedule.

**Item 2** adds a note after **subsection 7(1)(a)**, which provides that "permanent residents" of Australia (among others) are eligible to receive AUSTUDY, to advise that the new sections 7A and 7B will limit the circumstances in which permanent residents may be granted a benefit under this Part.

**Item 3** introduces new sections 7A, 7B, 7C and 7D into Part 2 of the Act, to limit the classes of permanent resident eligible to receive AUSTUDY.



**No Benefit (permanent resident who satisfies the residency requirements for at least 12 months).**

#### **New Section 7A**

Provides that a permanent resident over the age of 17 who has satisfied the residency requirements contained in **Section 7C** on each day of the 12 months prior to a particular day will be ineligible to receive AUSTUDY after that day.

**Subsection 7A(4)** allows people who have been granted a certificate of Australian citizenship pursuant to section 13 of the *Australian Citizenship Act 1948* but have yet to make the pledge of commitment pursuant to section 15 of the Act to retain their eligibility to receive AUSTUDY.

**Subsection 7A(1)** excludes the effect of this rule from people falling within the circumstances described in Section 7B.

**No Benefit (certain permanent residents who reach 19)**

#### **New Section 7B**

permits the payment of AUSTUDY to people up to the age of 19 who are orphans, whose parents cannot exercise normal parenting responsibilities (eg; because they are in gaol), are homeless, refugees or are in State approved care arrangements.

Once such a person reaches the age of 19, he or she is subject to the conditions set out in **subsection 7A(1), 7B(3) and (4)**.

#### **Residency requirements for permanent residents of Australia**

#### **New section 7C**

establishes the residency requirements referred to in **Section 7A** and **Section 7B**. These requirements are that, in relation to a particular day, a person must:

- have been present in Australia as a permanent resident of Australia for a period of, or for periods amounting in aggregate to, not less than one year during the period of two years immediately preceding that day; and
- have been present in Australia as a permanent resident of Australia for a period of, or for periods amounting in the aggregate to, not less than two years during the period of five years immediately preceding that day.

These requirements are consistent with the periods for which a person must permanently reside in Australia before being eligible to become a citizen: see section 13 of the *Australian Citizenship Act 1948*.

**Subsections 7A(4) and 7B(4)** provide that people who have been granted a certificate of Australian citizenship pursuant to section 13 of the *Australian Citizenship Act 1948*, but have yet to make the pledge of commitment pursuant to section 15 of the Act, will continue to be eligible to receive AUSTUDY.

This is because in the usual case the pledge is taken at citizenship ceremonies. This is the last step that must be taken before a person becomes an Australian citizen. These ceremonies occur from time to time. The effect of **subsections 7A(4) and 7B(4)** is that a student who has had a citizenship application approved by the Minister for Immigration and Ethnic Affairs, but who may have to wait some months to attend a citizenship ceremony, can continue to receive AUSTUDY.

**Sections 7A and 7B do not apply in respect of a year before 1996.**

**New section 7D** makes clear that these rules will apply as from the 1996 AUSTUDY year.

### **Commencement**

Applications for financial assistance may be made before the beginning of the academic year to which they relate. Processing of applications made before the commencement of an academic year often commences before 1 January in the academic year. Processing of applications for assistance in 1996 is expected to commence in November 1995. For this reason, the items contained in this Schedule will be taken to have commenced on **1 November 1995**.

## **SCHEDULE 4**

The Government has restructured income support allowances to remove the notion of dependency between spouses. As part of this restructuring, it has decided to abolish the AUSTUDY and ABSTUDY Dependent Spouse Allowances which are currently paid to students who have a dependent spouse and at least one dependent child. These allowances are established in the Regulations. It is expected that the spouses in respect of whom the allowances were paid will seek income support in their own right and many of them will be eligible to receive the Parenting Allowance.

### **Amendment proposed by this legislation**

**Item 1** proposes to remove the one reference to the AUSTUDY and ABSTUDY Dependent Spouse Allowances from the Act. This will be achieved by omitting paragraph F3(e)(i) from Module F in Schedule 1 to the Act and substituting a new paragraph which does not refer to the Allowances.

### **Commencement**

This provision will commence on **1 January 1996**.

## SCHEDULE 5

In accordance with the Government's announced intention to streamline the way in which Commonwealth assistance to families is provided, it has decided to abolish family payment for secondary students aged 16 and 17 (currently paid by the Department of Social Security) and replace it with a new payment to be administered by the Department of Employment, Education and Training. This new payment will be known as the basic student payment.

This will remove the confusion experienced by families when dealing with two agencies for income support in respect of their 16 and 17 year old secondary school children. The new basic student payment will also reinforce the Government's intention that income support to students in these age groups should be linked to the students' participation in education or training.

The basic student payment scheme is, in some important ways, similar to AUSTUDY. It will be subject to means testing arrangements that are similar to the AUSTUDY means testing arrangements spelled out in the AUSTUDY Regulations. There is to be an approved application process which will be similar to the existing AUSTUDY application process. Decisions relating to the basic student payment are also to be reviewable in the same way that decisions relating to AUSTUDY are reviewable.

While there will be some similarities in the way in which the AUSTUDY and the basic student payment will be administered, there will be differences in certain important respects. Whereas AUSTUDY is a fortnightly income support payment, the basic student payment will be an annual lump sum to be paid in two instalments in a year. The basic student payment income tests will not be tapered, that is, a person will be ineligible to get basic student payment once the student's income, or that of the student's parents, exceed specified thresholds.

The regulations necessary to implement the basic student payment scheme are being developed and will be published as soon as possible, and certainly well before the 1 July 1996 commencement date of the new scheme. However, by including the framework of the basic student payment in this Act the Government has acted to ensure that families in receipt of income support have advance notice of the change to the way in which that support will be provided, and will be able to continue to plan their lives accordingly.

The Government has committed itself to providing, from 1 July 1996, for over 100,000 families a smooth transfer to basic student payment for former family payment clients. The establishment of the basic student payment will enable the Government to meet that commitment.

### **Amendments proposed by this legislation**

**Items 1, 2 and 3** add the basic student payment to the definitions of "student assistance", "student assistance benefit" and "student assistance overpayment" respectively, contained in **subsection 3(1)** of the Act.

**Item 4** adds new Part 3 to the Act to establish the basic student payment scheme.

## Basic Student Payment Scheme

New section 8 creates the basic student payment.

### Applying for basic student payment

New section 8A provides that a person seeking the basic student payment may apply for it in the manner required by the Regulations, but no later than the end of the year to which the application relates. Therefore, for example, a person will not be eligible to apply for a basic student payment in respect of 1997 after 31 December 1997.

### Granting application

New subsection 8B(1) provides that the Secretary of the Department of Employment, Education and Training must grant the basic student payment to an applicant if the Secretary is satisfied that the applicant is, was, or will be during the period of study for which the benefit is sought:

- \* at least 16 but under 18 years old; and
- \* an Australian citizen; or
- \* a permanent resident, that is, a person who is:
  - a New Zealand citizen who has permanently settled in Australia and who:
    - has lived in Australia for the last six months; or
    - has lived in Australia for the last twelve months, with no more than two months absence in that period; or
  - a permanent resident within the meaning of subsection 58(2) of the *Migration Act 1958*; and
- \* a secondary student (as defined in the Regulations: subsection 8B(5)).

Regulations may specify some circumstances in which benefits may not be payable (subsection 8B(2)).

The Secretary must, in writing, notify a person who has been granted basic student payment that the payment has been granted, the year, or part of a year to which the payment relates and how much the payment will be (subsection 8B(3)). A person refused a payment must also be told in writing (subsection 8B(4)).

Decisions made by the Secretary pursuant to this section, as well as decisions made for the purposes of the basic student payment generally, may be reviewed on their merit by, at first instance, internal review by the Secretary of the Department of Employment, Education and Training, (by force of an amendment to section 302 of the Act by item 14), the Social Security

Appeals Tribunal (amendment to **section 309** by **item 15**) and the Administrative Appeals Tribunal (amendment to **section 323** by **item 19**).

### **Minister may determine that a course of study or instruction is a secondary course**

**New section 8C** provides that the Minister may determine in writing that a particular course is a "secondary course". Such a course is one that a secondary student will have to study before being eligible to receive the basic student payment.

This determination must be in writing, and must be tabled in the Parliament. It is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

Taken together, **sections 8B and 8C** will mean that the Secretary may grant basic student payment to a person who is a 16 or 17 year old secondary student and who is an Australian citizen or a permanent resident of Australia doing a course determined by the Minister to be a secondary course and is not precluded from eligibility because of **section 8D**, discussed below.

### **Basic student payment not to be granted**

**New section 8D** provides circumstances in which the Secretary must not grant the basic student payment.

**Subsection 8D(1)** provides that if:

- \* the applicant's income;
- \* the total value of the assets of the person and his or her family; or
- \* the income of the applicant's parents

exceeds the amounts set in the basic student payment income and assets tests to be established in the Regulations, the basic student payment must not be granted.

To prevent a person claiming more than one Commonwealth payment, the Secretary must not grant basic student payment to a person while:

a benefit under the AUSTUDY scheme or the ABSTUDY scheme, youth training allowance, special benefit or family payment is paid to, or in respect of the person (**subparagraphs 8D(2)(a)(i), (ii), (iii) and (iv)**); or

a benefit is being paid in respect of the person under a Veteran's Children Education Scheme prepared under Part VII of the *Veterans' Entitlement Act 1986* (**paragraph 8D(2)(b)**).

## Amount of basic student payment

**New subsection 8E(1)** provides for the method of calculation of how much an applicant will be paid to be determined pursuant to the regulations.

The maximum amount that will be payable to a person for the first full year of operation (1997) of the Act will be \$500. Because payments under the scheme will commence from 1 July 1996, **subsection 8E(2)** provides that the maximum amount payable for the last six months of 1996 will be \$250. **Subsection 8E(3)** provides that for the year 1997 and later years the maximum amount payable will be \$500.

This amount will be indexed on 1 January each year to have regard to changes in the consumer price index for the June quarter each year. **Item 7** gives effect to this by adding the basic student payment to the definition of "indexable amount" in **subsection 12ZZA** of the Act, which allows for the indexation of payments made under the Act.

## Consequential amendments

The remaining items in the Schedule are consequential on the commencement of the basic student payment.

**Items 5 and 6** amend Part 4 of the Act. **Item 5** amends **section 11** so that the basic student payment cannot be paid by way of advance, as other student assistance may be. **Item 6** amends **section 12** of the Act to preclude the ability to make regulations suspending or terminating a person's right to the basic student payment. Such regulations may be made for other student assistance. While these provisions are desirable for payments made frequently (e.g. AUSTUDY, which is paid fortnightly) they are unnecessary for a payment to be made only twice a year.

**Item 8** amends **subsection 44A(1)** of the Act. The effect of the provision is that a basic student payment cannot be made unless the tax file number of the applicant, or of another person whose income and assets are to be taken into account when calculating the payment, is given to the Secretary.

**Item 9** adds the phrase "or amount" to **subparagraph 49(1)(a)(iii)** of the Act. This has the effect that a person who has knowingly or recklessly made a false or misleading statement so as to effect the amount of basic student payment payable is guilty of an offence. The maximum penalty for contravening section 49 is one year's gaol.

**Item 10** amends **section 55A** of the Act to allow the payment of the basic student payment from Consolidated Revenue.

**Items 11 and 12** amend **section 56** of the Act, which is its general regulation-making provision, and allows for regulations to be made for the purposes of the basic student payment in relation to the furnishing of information by applicants for the basic student payment, as well as by people who are to provide information for the income and assets test to be established for the payment.

**Item 13** adds **subparagraph 274(2)(d)(ia)** to allow for basic student payment overpayments, and other debts to the Commonwealth, to be recovered under the recovery provisions contained in Part

8 of the Act. Similarly, **item 22** adds **subparagraph 1228(2)(c)(ia)** to the *Social Security Act 1991* so that basic student payment debts can be offset against any subsequent payments made to the debtor under schemes established under that Act.

**Item 16** amends **paragraph 313(a)** of the Act to preclude the Social Security Appeals Tribunal from reviewing a decision relating to requesting information or evidence about a student's eligibility for the basic student payment.

**Item 17** adds **subsection 316(2A)** to the Act and obliges the Social Security Appeals Tribunal to determine the level of the basic student payment a person should receive after it has set aside a decision made by the Secretary.

**Item 18** amends **paragraph 316(5)(b)** of the Act. This will preclude the Social Security Appeals Tribunal from reviewing a decision of the Secretary as to the manner in which basic student payment is generally paid to applicants.

**Item 20** amends **paragraph 343(1)(d)** of the Act, which establishes the general information gathering provision for all student assistance schemes, to enable the Secretary to require a person to provide documents or information to him or her if it is relevant to determining the rate of the basic student payment that is paid or payable to the person.

**Item 21** amends the *Data-Matching Program (Assistance and Tax) Act 1990* to include basic student payment in existing data matching arrangements. This will ensure adequate checks and balances in the basic student payment scheme.

## **Commencement**

**Subsections 2(7) and 2(8)** of this Act provide that this schedule will commence operation on a day to be proclaimed, or no later than **1 June 1996**.



## SCHEDULE 6

The provisions of this Schedule amend the *Social Security Act 1991* ("the Act" for the purposes of the explanatory notes to this Schedule), to preclude the payment of family payment for any person aged 16 or over, to give effect to the transfer of responsibility for assistance to 16 and 17 year old students from the Department of Social Security to the Department of Employment, Education and Training.

16 and 17 year old students who presently attract additional family payment would generally also qualify for AUSTUDY under the AUSTUDY means test (and ABSTUDY in a smaller number of cases) from their 16th birthday. Where the rate of additional family payment they attract would be greater than the rate of AUSTUDY, or where the course the person is undertaking is not an approved course for AUSTUDY purposes, the person may elect to attract the additional family payment rather than AUSTUDY.

16 and 17 year old students who presently attract basic family payment generally have no entitlement to AUSTUDY or ABSTUDY under the means testing arrangements.

The amendments in this Schedule will preclude payment of family payment for any person aged 16 years and over. Complementary amendments in this Bill make provision for a new payment to 16 and 17 year old secondary students. Details of the payment, to be known as basic student payment, are contained in the explanatory notes to schedule 5.

Taken together, these measures consolidate responsibility for assistance for 16 and 17 year old secondary students in the Department of Employment, Education and Training. This will simplify payment and will ensure a uniform rate of assistance for 16 and 17 year old secondary students.

### Amendments proposed by this legislation

**Item 1** removes a reference to **section 832** in **subsection 831(1)**.

**Item 2** removes a reference to **section 832** in current **subsection 831A(1)**.

**Item 3** repeals **section 832** (which relates to prescribed student children).

**Item 4** repeals **current section 833** and replaces it with a **new section 833** which provides that family payment cannot be paid in respect of a child aged over 16 years.

**Item 5** omits **current subsections 859(5), (6) and (7)**.

**Item 6** makes minor amendments to **paragraph 887(2)(d)**.

**Item 7** omits **paragraph 887(2)(e)**.

**Item 8** makes minor amendments to **paragraph 887(3)(d)**.

**Item 9** omits **paragraph 887(3)(e)**.

**Item 10** makes minor amendments to **paragraph 887(4)(d)**.

**Item 11** omits **paragraph 887(4)(e)**.

**Item 12** omits **current subsections 887(6), (7) and (8)**.

**Item 13** omits **subparagraph 953(b)(i)**.

**Item 14** omits **subparagraph 999(1)(a)(i)**.

**Item 15** amends **paragraph 999(2)(a)** as a consequence of the repeal of **section 832**.

**Item 16** removes **item 3** from **Table B** in **point 1069-B2**.

### **Summary of changes**

Current section 833 of the *Social Security Act 1991* (the Act) provides the general rule that family payment may only be paid in respect of an FP child who is aged 16 years and over until the child ceases secondary studies, or until the end of the calendar year in which the child turns 18. As a result of this initiative, family payment will no longer be paid in respect of any child aged 16 years and over. Accordingly, section 833 has been repealed and replaced with a new provision specifying this.

It has also been necessary to make a number of consequential amendments to the Act as a result of this initiative, as follows:

In order to qualify for family payment, a person must have at least one FP child (section 838 refers). Current Division 1 of Part 2.17 of the *Social Security Act 1991* (sections 831 to 836 inclusive) specifies when a child is taken to be an FP child. In particular, current section 832 provides that a child who has turned 16 and receives payments under a prescribed education scheme cannot be a FP child. A prescribed education scheme is defined in subsection 5(1) as including:

- the AUSTUDY Scheme; or
- the ABSTUDY Schooling Scheme; or
- the ABSTUDY Tertiary Scheme; or
- the Student Financial Supplement Scheme; or
- the Assistance for Isolated Children Scheme; or
- the Veterans' Children Education Scheme; or
- the Post-Graduate Awards Scheme.

As family payment will no longer be paid in respect of children aged 16 years and over, section 832 is no longer necessary. Consequential amendments to sections 831, 831A and 999 are necessary as a result of the repeal of section 832.

Current section 833 is repealed, and is replaced with a new section 833 which provides the rule that a person who has reached the age of 16 years cannot be a FP child.

Current subsections 859(5), (6) and (7) are also omitted. These sections relate to the date of effect of determination about family payment, in situations where the child is refused payment under a prescribed education scheme, no longer receives such a payment, or has not made a claim for the payment. These provisions were necessary because it was possible for a person to make a choice about whether a prescribed education scheme payment or family payment should be paid in respect of the child. However, as a result of this initiative, this option has been removed.

In order to qualify for child disability allowance, a person must provide a substantial amount of care and attention on a daily basis for a young person (a CDA child) (section 952 refers). As a general rule, family payment must also be payable in respect of the CDA child. However, current section 953 provides a number of qualifications to this general rule, including that family payment would be payable to the person for the disabled child but for the application of section 832. As section 832 is repealed, the exception in current subparagraph 953(b)(i) is no longer necessary and is omitted.

Similar amendments are made to subparagraph 999(1)(a)(i), which is an equivalent provision for double orphan pension.

Finally, item 3 from Table B at the end of point 1069-B2 of the family payment Rate Calculator is removed. Item 3 provides the rate of payment of family payment in respect of a child who is 16 years or over. This item will not be necessary as a result of this initiative.

### **Commencement**

These amendments will commence on **30 June 1996**.

## SCHEDULE 7

Section 48 of the Act requires a person receiving benefits under the Act to tell the Department of Employment, Education and Training of certain things that happen that are relevant to the level of benefits that is paid, within 7 days of the event happening. The matters that must be reported are contained in the Regulations. Failure to do so without reasonable excuse could lead a person to be gaoled for a maximum of twelve months, under paragraph 49(1)(e) of the Act.

The Government has decided to remove the criminal offence of failing to tell the Department of the relevant event. It has also decided to allow such people 14 days rather than 7 days to tell the Department of the event.

However, whilst the consequences of a failure to advise of a relevant event no longer carries the stigma of a criminal conviction, it is still necessary to know when there is a change in the circumstances of a person that is relevant to the amount of benefits that is payable, because it could mean that a person is receiving more benefit than they are legally entitled to receive.

Therefore, the Government has decided that it is appropriate that, in substitution for the criminal offence, a person who fails to tell the Department of a relevant event should pay a penalty of \$10 for each week (or part of a week) that the person fails to tell the Department of a relevant event. The maximum penalty a person can accrue is \$1,000.

### Amendments proposed by this legislation

**Items 1 and 2** amend **subsection 12S(1)** and **subparagraph 12S(2)(d)(ii)** of the Act respectively, and have the effect of increasing from 7 to 14 days the amount of time for a person in receipt of a financial supplement who has ceased being eligible to receive the supplement (because, in the usual case, the person has ceased studying) to tell the Department that eligibility to receive the supplement has ceased, without having to repay the amount of wrongly paid supplement, plus an amount in lieu of interest to the Commonwealth.

**Item 4 and 5** amend **subsection 38(2) and (6)** of the Act respectively. This will allow any amounts payable under section 48 to be offset against any student assistance payments that may be subsequently payable to the person.

**Item 6** amends **subsection 42(1)** of the Act by adding the penalties imposed on a person under **section 48** (discussed in **item 9**) to the amounts payable to the Commonwealth that can be recovered from third parties.

**Item 7** amends **section 43** by adding any unpaid penalty that may be owing pursuant to section 48 (discussed in **item 9**) to the amounts payable to the Commonwealth under this Act that may be waived or written off.

**Item 8** amends **section 48**. Section 48 requires a person receiving student assistance to advise that certain events have occurred. The events that must be notified are contained in regulation 109 of the AUSTUDY regulations. **Item 8(a)** increases from 7 to 14 days the period of time within which the person must advise the Department that such an event has occurred.

**Item 8(b)** adds **new subsections 48(2), (3) and (4)**, which provide that although a person who fails to notify of such an event is not guilty of an offence, he or she is liable to pay the Commonwealth a penalty of \$10 a week (or part of a week) up to a maximum of \$1,000 until the person notifies the Department of the event.

**Item 9** adds **new section 48A** of the Act, which provides that the Secretary may determine that a penalty that has, or may be incurred pursuant to the new provisions contained in section 48 above is not payable (**subsection 48A(1)**). The determination should be in writing and served on the person as soon as practicable after the determination is made, although a contravention of this requirement does not invalidate the determination (**subsections 48(1), (3) and (4)**).

The determination may require the person to comply with conditions. Should the person fail to do so, the penalty again becomes payable (**subsections 48A(3) and (6)**).

**Items 10 and 11** remove the criminal offence of failing to advise of a relevant event from **section 49** of the Act.

### **Commencement**

The items in this Schedule commence **on Royal Assent**, or **immediately after 1 January 1996**, whichever is the later.

## **SCHEDULE 8**

The items of the Schedule amend the way in which the parental income test is applied when calculating the amount of youth training allowance (YTA) payable to a person in State or foster care.

It was always intended for recipients of YTA who are in state or foster care to receive the full living at home allowance.

On one construction of the law, because a person caring for a youth may fall within the definition of a "parent" contained in Clause 1 of Schedule 1 of the Act, the amount of YTA payable to the youth may be reduced because the parental income test, contained in Module F of Schedule 1 to the Act, would be applicable.

### **Amendments proposed by this legislation**

**The items to the Schedule** provide that the parental income test does not apply to a person who receives a payment for the upkeep of a person who is in placed in their guardianship care or custody by order of a court, or a relevant Minister or Department.

### **Commencement**

As these amendments are designed to clarify something that was always the intention of the Government, the items in this Schedule are taken to have commenced on **1 January 1995**, which is when the provisions establishing the YTA commenced operation.

## SCHEDULE 9

This Schedule amends the way in which the recovery of part of a debt in full satisfaction of the debt will be recovered for assistance schemes (other than youth training allowance) created by the Act.

The ability of the Secretary to waive part only of a debt for the purposes of this Act is currently contained in section 290 of the Act. This is found in Part 8 of the Act.

Part 8 of the Act establishes the youth training allowance. Many of the provisions are modelled on the Job Search provisions contained in the *Social Security Act 1991*. As the youth training allowance and the job search allowance are closely aligned, it is important that any change to the job search allowance provisions are mirrored in the youth training allowance provisions and commence operation at or about the same time.

So as to follow social security legislation, the way in which the recovery of part only of a debt can be recovered is to be amended by the Student and Youth Assistance Bill (No. 2) 1995.

That Bill repeals section 290, and substitutes (amongst other provisions) a new section 290B that governs when the part recovery of debts can and should be entertained.

Section 43 of the *Student and Youth Assistance Act 1973* adopts the provisions of Part 8 of the Act (which establishes the framework for youth training allowance) dealing with part recovery of debts for student assistance schemes created by the Act, such as AUSTUDY.

While this formula is appropriate for some income support schemes, in most student assistance schemes the level of debt owing is quite small. The amendments to this Schedule proposes to retain the essence of the existing statutory regime.

### **Amendment proposed by this legislation**

**The Item** amends **section 43** by changing the manner by which the Secretary for the Department of Employment, Education and Training may accept part of a debt as full satisfaction of the debt.

As from the commencement date of the amendments, where the Secretary is satisfied that:

it would take more than 12 months to recover the amount owing by means of offsetting the amount from other assistance payment, or that can be recovered from third parties who may be owed money, holds money, or has authority from another to pay money to a debtor;

- the amount that is to be repaid is at least 80% or more of the amount owed; and
- the debtor cannot pay any more than the agreed amount

the Secretary may accept the agreed amount in full satisfaction of the debt.

## **Commencement**

The amendments contained in this Schedule will commence immediately after Schedule 5 to the *Student and Youth Assistance Amendment (Youth Training Allowance) Act (No. 2) 1995* commences operation.



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