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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STUDENT AND YOUTH ASSISTANCE AMENDMENT (YOUTH TRAINING
ALLOWANCE) BILL 1995**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments and new clauses 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)

**GOVERNMENT AMENDMENTS TO THE STUDENT AND YOUTH
ASSISTANCE AMENDMENT (YOUTH TRAINING ALLOWANCE) BILL
1995**

(Amendments and clauses to be moved on behalf of the Government)

OUTLINE

The Amendments would make changes to Schedule 4 of the Bill, which would amend the compensation recovery provisions in Division 12 of Part 8 of the Principal Act in relation to the following:

ensuring that payments to a person's partner of superseded payment types under the *Social Security Act 1991* are covered by the compensation recovery provisions;

- remove the requirement that a person be qualified for a "compensation affected payment" before the compensation recovery provisions can operate.

The Amendments would also make provision in relation to payments of youth training allowance made before the commencement of the amendments proposed in Schedule 11 of the Bill, where the payments were made at a rate calculated using the loan fringe benefit provisions of the parental income test.

FINANCIAL IMPACT

The Amendments will not have a significant financial impact.

NOTES ON AMENDMENTS

Amendment Number 1

This Amendment would amend Clause 2 of the Bill so that the Schedules 2, 3 and 4 to the Bill, which would amend the compensation recovery provisions contained in Division 12 of Part 8 of the Principal Act (including provisions relating to periodic and lump sum compensation), would commence together on 1 July 1995.

Amendment Number 2

This Amendment would omit Schedule 4 to the Bill and substitute a new Schedule 4.

New Items 1, 2, 4, 7, 8, 19 and 20 omits the words "is qualified for" and substitutes "claims or receives" in various provisions of Division 12 of Part 8.

The compensation recovery provisions in Division 12 of Part 8 of the Act seek to avoid dual payments of income support and compensation in certain circumstances. Currently the provisions require a person to be qualified for a youth training allowance before they can operate.

Therefore, a decision must first be made as to whether or not a person is qualified for the payment. This is the case even though it may be obvious from the person's circumstances that he or she will be precluded from payment because of the compensation recovery provisions. Thus a claimant for the allowance and the Department are each put to the inconvenience and cost of qualification assessment for no practical purpose.

The preferred approach would be that the compensation recovery provisions apply applied to a person who has claimed a payment, as well as to a person who is receiving a payment. In this way, the person's claim could be rejected if payments would be precluded under the compensation recovery provisions, without having to reach a conclusion on the person's qualification for payment.

Accordingly, replacing the term "qualified for" as it is used in the compensation recovery provisions with the term "receives or claims" addresses the main issue by enabling the provisions to be applied to a person who has claimed a payment without having to assess his or her qualification. Using the term "receives" has the added advantage that it more correctly targets the people who should be covered. A person who is qualified for payment may not actually receive it because it may not be payable to him or her. A person in these circumstances should not be covered by the compensation recovery provisions. **New Items 3, 5 and 6** make consequential changes to section 227 as a consequence of the changes made by new Items 2 and 4.

New items 9 and 10 make changes to sections 229 and 233. These provisions contain specific compensation recovery rules, often in the form of extensive Tables listing compensation affected payments which may be received by the partner of a person receiving youth training allowance.

The provisions in those Tables are now being replaced with text descriptions of how the rules operate and the payment references in the respect of a person's partner are generally being replaced with the term "compensation affected payment" to make sure all superseded and current payment types under the *Social Security Act 1991* are covered. In other respects, the current effect of those provisions is preserved (although they are sometimes also amended to include elements of other initiatives covered by this new Schedule 4 and existing Schedules 2 and 3 to the Bill).

New Items 13 and 17 replace references to "person, benefit or allowance" with "compensation affected payment" to similarly ensure all superseded and current payments under the *Social Security Act 1991* are covered.

New item 11 inserts a Note at the end of section 234 directing the reader to section 8 of the Social Security Act for the definition of "ordinary income" which applies to the youth training allowance provisions by virtue of section 57 of the Principal Act.

New items 12 and 14, 16 and 18 amend sections 237 and 243 respectively. Section 237 states how to work out recoverable amounts that are specified in a notice to a compensation payer while section 243 does the same in relation to notices to insurers. The Amendments reflect the rule that a person's compensation does not affect the basic component of parenting allowance payable to a person's partner under the *Social Security Act 1991*.

New item 15 is a technical amendment consequent on the changes already proposed to be made by Schedule 3 of the Bill.

Amendment Number 3

This Amendment would amend Schedule 11 to the Bill to add a new item 2 relating to payments of youth training allowance made before the commencement of the Schedule where the payments were made at a rate calculated using the loan fringe benefit provisions of the parental income test.

Part 8 of the Act deals with Youth Training Allowance ('Allowance'). Section 135(1) provides that the rate of a person's Allowance is to be worked out in accordance with Schedule 1. Schedule 1 contains, at Module A of Part 2, an overall statement of the method of calculating the rate of Allowance. That method, briefly, involves the calculation of the person's 'maximum payment rate', the application of an assets test and the subtraction from the maximum payment rate of certain deductions. If the 'parental income test' applies to the person (i.e. if the person is not 'independent', one of the deductions is a 'reduction for parental income' (Step 8 of the method statement).

The parental income test is set out at Module F of Part 2 of Schedule 1 and involves the addition of the person's 'combined parental income' and 'combined parental fringe benefits value' for the 'relevant accounting period' (cl.F1). The latter value is based on the 'fringe benefits' received by the person's parents during the relevant period (cl.F11). Those 'fringe benefits' include, *inter alia*, a 'loan benefit' within the meaning of Part 5 of Schedule 3 (cl.F12): the value of a loan benefit is the value worked out in

accordance with 'the relevant provisions' of Schedule 3. The 'relevant accounting period' is generally the twelve month period ending on the last 30 June before the calendar year in which the calculation takes place (see cl. F4 and the definition of 'accounting period' in cl. 1), so that, if a rate determination is made during 1995, the parental income test is applied on the basis of parental income and fringe benefits for the year ending 30 June 1994.

The value of the loan benefit (if Step 6 of the method statement for calculating a loan benefit applies) is a function of the rate of interest obtained in Step 6, the amount of the loan and the 'number of allowable weeks' (see Steps 7-11). The result is that, if a parent of the person receiving allowance has been granted a loan at less than the 'notional rate of interest', the benefit derived from the interest rate discount is brought into the calculation of the person's rate allowance in the same way as parental income. The 'notional rate of interest' is 'the rate prescribed' for the purposes of para. 16(2)(a)(for a housing loan) or (b)(for a loan of any other kind.)

No rates have been prescribed for the purposes of Clause 16(2) of Schedule 3. Schedule 11 would replace cl. 16(2) with provisions setting out notional rates of interest for the 'fringe benefits years' ending 31 March 1994 (new cl. 16(2)) and 31 March 1995 (new cl. 16 (2A)). (The specification of notional rates for periods prior to 1 January 1995 (when Part 8 of the Act commenced) is necessary because those periods cover the 'relevant accounting period' for the parental income test in rate determinations during 1995.) New cl. 16(2C) and (2D) would provide for the notional rate in future years to be a 'market rate of interest', which would be the lowest variable rate for determination by the Minister. If a regulation had been prescribed, the rates prescribed would have been the same as the rates now inserted by Schedule 11. Advice from the Attorney-General's Department is to the effect that a Court would seek to give effect to the parental income test provisions by giving an interpretation which is consistent with the beneficial character of the legislation and in favour of those persons intended to benefit from the legislation. That Department's advice is that Parliament would be taken to have intended that a person receiving youth training allowance would be entitled to have the rate of that allowance calculated on the basis of parental income that does not include any loan benefit, unless the Executive activates clause 16(1) by prescribing notional rates of interest. However, rates of Allowance have been calculated on the basis of parental income that includes a value other than zero for the loan benefit.

The Amendment would cover the situation where youth training allowance has been paid to a person prior to the commencement of Schedule 11 at a rate calculated on the basis of parental income which included a loan benefit. The Amendment compares the rate at which a person actually received youth training allowance prior to the commencement of Schedule 11 with the rate at which the person would have received allowance had the amendments made by Schedule 11 been in force at the time the person began to receive the allowance. The Amendment takes a beneficial approach by ensuring that no person would be subject to an overpayment where the result of such a comparison is that the person was paid allowance at a higher rate than they would have been entitled had the Schedule 11 amendments been in force. If a person would have been entitled to a higher rate of youth training allowance had the Schedule

11 amendments been in force, then the Amendments make provision for the difference be paid to the person.

The number of persons to which this provision would apply are not significant.



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