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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STUDENT AND YOUTH ASSISTANCE AMENDMENT (YOUTH TRAINING
ALLOWANCE) BILL (No. 3) 1995**

EXPLANATORY MEMORANDUM

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



STUDENT AND YOUTH ASSISTANCE AMENDMENT (YOUTH TRAINING ALLOWANCE) BILL (No. 3) 1995

OUTLINE

This Bill will make changes to the youth training allowance provisions of the *Student and Youth Assistance Act 1973* that are found in Part 8 of the Act. The provisions on youth training allowance were incorporated into the Act in 1994 and modelled on the job search allowance provisions contained in the *Social Security Act 1991*. As youth training allowance and job search allowance are closely aligned it is important that any changes to one are mirrored by the other, and commence operation at or about the same time.

These amendments mirror certain amendments proposed to the *Social Security Act 1991* by the *Social Security and Veterans' Affairs Legislation Amendment (Budget Measures) Bill 1995*. The *Student and Youth Assistance Act 1973* is being amended in order to ensure the consistency of Commonwealth income support measures.

Schedule 1—Amendments relating to extended deeming

This Schedule contains amendments to the way in which deeming rules apply to investments held by recipients of youth training allowance. These rules are similar to other income support schemes.

Schedule 2—Amendments to the *Student and Youth Assistance Act 1973* to end transfers from youth training allowance to sickness allowance

The amendments made to the Act by this Schedule eliminate the need for recipients of youth training allowance to transfer to sickness allowance if their period of sickness is more than 13 weeks. This is achieved by limiting the availability of sickness allowance to recipients who have a job or study to return to once they have recovered and by expanding the qualification/payability conditions for youth training allowance to include recipients who are temporarily incapacitated for work but who do not qualify for the new limited form of sickness allowance.

Schedule 3—Amendments to the *Student and Youth Assistance Act 1973* relating to earnings credits

The earnings credit scheme operates to provide an incentive for a person to undertake part-time or casual employment. When the ordinary income test is applied for the purposes of calculating a person's fortnightly rate of a benefit, short periods of remunerative work could have the effect of reducing the person's rate of benefit.

Currently, recipients of youth training allowance can accrue an earnings credit from which they can offset earnings for remunerative work before the income test is applied. A person may offset an amount of earnings up to the person's earnings credit balance, which is a maximum of \$500. Earnings credits are not accessible if the person's fortnightly rate of ordinary income exceeds an amount that reduces the rate of the person's assistance to nil. The proposed amendments will allow a person to access earnings credit notwithstanding that the person's ordinary income amount would, if the income test were applied, reduce the rate of the assistance to nil.

Schedule 4—Consequential amendments to the *Student and Youth Assistance Act 1973* arising from the amalgamation of job search allowance and newstart allowance into a new payment called newstart allowance

The Government has decided to amalgamate the job search and newstart allowances into one, to be called the newstart allowance. Schedule 4 removes redundant references to "job search allowance" contained in the Act..

Financial Impact

The provisions in Schedule 1 and 4 will have negligible financial impact. Schedule 2 is estimated to carry a recurrent cost of \$4.19 million to youth training allowance with a matching saving to the amount outlaid on sickness allowance. Schedule 3 is expected to yield savings to youth training allowance of \$0.23 million in 1995/96, \$1.06 million in 1996/7 and \$1.16 million in 1997-98.

SCHEDULE 1

AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE ACT 1973 RELATING TO EXTENDED DEEMING

This Schedule amends the ordinary income test provisions in Division 11 of Part 8 of the Act to provide for a general deeming approach in the assessment of financial assets.

In 1994, the Government engaged an independent consultant, Mr John Barber from Ageing Agendas, to conduct the Strategic Review of the Pensions' Income and Assets Tests. Mr Barber held widespread consultations with pensioners and veterans, groups representing older people and the investment industry. He presented the final report, *Targeting for Equity*, on 5 December 1994.

The consultations with pensioners, veterans and pensioner organisations revealed their concerns about the complexity of the rules for assessing income from financial investments, the frequent changes they caused to pension payments, and their effect on incentives to earn more from investments. People with investments, such as shares and managed investments, found the rules particularly complex and said their pension payments changed far too often. Pensioners wanted a simpler and fairer system.

Ageing Agendas provided firm directions for policy change, in particular for the adoption of a broader system of deeming income on assets, arguing that a significant expansion of deeming would maintain and improve means testing and meet pensioner desires for a more simple and predictable system.

The Government responded to the Report in the 1995 Budget, broadly accepting the Ageing Agendas' recommendations but not adopting them in their entirety. The Government decided that from July 1996 deeming will be extended to the full range of financial investments.

At present there are many different and complex rules for calculating the income from financial investments. In some cases the rules depend on when the investment was made. From July 1996, these rules will no longer apply and financial investments will be assessed under one set of simple rules, which build on the bank deeming measure.

Under extended deeming, the total value of a person's financial assets will be added together. On 9 May 1995, the Government announced that a deeming rate of 5% will apply to the first \$30,000 of the total for a single person (or \$50,000 for pensioner couples combined or \$25,000 for a member of a non-pensioner couple). A deeming rate of 7% will apply to the value of financial assets over these thresholds.

The deeming rates of 5% and 7% announced by the Government were set so that the rates are easily achievable in safe investments. These rates will be reviewed periodically to take into account movements in the financial markets.

Financial assets will include bank, building society and credit union accounts; cash; term deposits; cheque accounts; friendly society bonds; managed investments; investments in superannuation

funds, approved deposit funds and deferred annuities after age pension age; listed shares and securities; loans, debentures and bonds; shares in unlisted public companies; gifted assets above the allowable gifting value of \$10,000 a year; and gold and other bullion.

Financial assets will not include the home or its contents; cars, boats and caravans; antiques, stamp or coin collections; investments in superannuation funds, approved deposit funds and deferred annuities before age pension age; standard life insurance policies; and holiday homes, farms or other real estate. They also do not include income stream products such as superannuation pensions, allocated pensions, immediate annuities or allocated annuities.

The concession under the bank deeming rules, which allows the first \$2,000 (\$4,000 for pensioner couples combined) of bank deposits and cash to be assessed at the actual interest rate if it is less than 5%, will be continued.

The objectives of extended deeming are that it will introduce a mechanism that:

is **simpler**, since it replaces numerous rules applying to different financial assets with one set of rules;

is **fairer**, because it ensures that people with the same levels of financial assets receive a similar assessment no matter how those assets are invested;

- is **more predictable**, because it reduces the extent to which payments change due to investment performance;

increases **incentives for self-provision**, because returns in excess of the deeming rate are not counted as income and cannot reduce payments;

simplifies **choice of investments** because, by treating all financial assets in the same way, it encourages people to choose investments on their merits instead of their likely effects on entitlements; and

- puts the means test system on a **sounder, long term footing** as the population ages.

This extended deeming measure is to be introduced in two stages. First, from the date of Royal Assent of this Bill, income will not be assessed when a "saved" managed investment is cashed in. "Saved" managed investments are managed investments purchased before certain dates, and the current rule is that capital growth on these investments is assessed as income, only when the investment is cashed in. Removing this rule from the date of Royal Assent is a concession that will allow people who decide that they wish to change their investments before July 1996 to do so, without their youth training allowance payment being adversely affected by past capital growth.

Second, the new deeming rules do not come into effect until 1 July 1996. This gives people affected by the measure plenty of time to consider their situation and to make changes to their investments if they wish.

PART 1 - AMENDMENTS COMMENCING ON ROYAL ASSENT

Item 1 omits paragraph 179(1)(a) and substitutes a new paragraph 179(1)(a). This is a consequential amendment relating to the omission of section 186 and is discussed in greater detail in **item 2** below.

Item 2 omits sections 186, 187, 188, and 190.

Sections 186, 187, 188, and 190 provide that certain managed investments have capital growth assessed as income only when the investments are "realised" (cashed in). Upon realisation of a "saved" investment, the return on the investment is assessed for a period of 12 months from the date of realisation.

Broadly speaking, the "saved" investments covered by repealed sections 186, 187, 188, and 190 are:

- capital guaranteed friendly society investments purchased before 1 January 1988; and
- market-linked managed investments purchased before 9 September 1988.

As it is proposed that the new deeming rules will apply to all investments whenever they were made, these sections will be omitted. The sections will be omitted from the date of Royal Assent rather than from 1 July 1996 (when the new deeming rules commence). This will allow people who decide to change their investments as a result of the new deeming rules to do so without having the capital growth on the investment treated as income under the income test provisions.

In effect, these amendments provide that any capital growth on "saved" investments will be "forgiven" if the investment is realised after Royal Assent.

If a person chooses not to realise a "saved" investment between Royal Assent and 1 July 1996, however, the capital growth on the investment will continue to be exempt from the income test. From 1 July 1996, "saved" investments will be subject to the new extended deeming test.

Item 3 is a transitional provision protecting rights that have accrued prior to 30 June 1996.

The repealed sections 186, 187, 188 and 190 provided for assessment of returns for 12 months after part or total realisation. If realisation occurred in the 12 month period prior to 1 July 1996, the assessment of those returns will not continue beyond 30 June 1996.

The effect of this transitional provision is that a person who is taken to receive weekly income under repealed sections 186, 187, 188 and 190 will continue to have that income assessed until the end of the period of 12 months after the investment was realised or the end of 30 June 1996, whichever is the earlier.

PART 2 - AMENDMENTS COMMENCING ON 1 JULY 1996

Part 2 repeals subdivisions A to E of Division 11 of Part 8 of the Act, and substitutes a:

new **subdivision A** dealing with the general meaning of ordinary income ;

new **subdivision B** dealing with business income ;

new **subdivision C** dealing with deemed income from financial assets ; and

new **subdivision D** dealing with income from retirement funds and annuities .

New Division 1B provides for the new deeming rules. New Divisions 1, 1A and 1C are a consequence of inserting the new rules.

NEW SUBDIVISIONS A AND B - ORDINARY INCOME CONCEPT AND BUSINESS INCOME

Item 3 repeals Subdivision A (ordinary income concept) and substitutes a new Subdivision A (ordinary income concept). New Subdivision A contains the same ordinary income concept as repealed Subdivision A with some minor amendments consequential on the introduction of the new extended deeming rules.

New section 174 (general meaning of ordinary income) mirrors the policy in repealed section 174 and provides that "ordinary income" means gross ordinary income without any reduction except for some business income costs that can be reduced under new Subdivision A.

Notes 1 and 2 refer the reader to provisions relevant to the calculation of ordinary income.

New section 175 mirrors the policy in repealed section 178 and provides that a person who receives income that is not:

income under new Subdivision C (deemed income from financial assets) or new Subdivision D (income from retirement funds and annuities); or

income in the form of periodic payments or ordinary income from remunerative work undertaken by the person;

is taken to receive one fifty-second of that amount as ordinary income for each week in the 12 months commencing on the day on which the person became entitled to receive that amount.

New Subdivision B inserts new sections 176 and 177 that mirror the policy in repealed sections 175 and 176 and relate to the treatment of business income.

New section 176 provides that, if a person carries on a business, the person's ordinary income is to be increased or reduced by the difference in the value of all the business' trading stock on hand at the beginning of the tax year and the value of all the business' trading stock at the end of that tax year.

New subsection 177(1) provides that ordinary income derived under section 174 is to be reduced by the deductions that are allowable under the specified provisions of the *Income Tax Assessment Act 1936*.

New subsection 177(2) provides that no reduction may be made for expenses incurred by the person or the business in relation to ordinary income from a financial investment.

NEW SUBDIVISION C - EXTENDED DEEMING RULES

Item 3 also inserts a new Subdivision C to provide new rules for assessing income from financial assets.

New section 178 shows how to assess ordinary income from financial assets of a person who is not a member of a couple (new subsections 178(1) and (2)).

New subsection 178(3) provides a Method Statement for calculating the ordinary income of the person.

Step 1: provides that the reader should total the interest payable on "deposit concession money" (as determined by the provisions in section 180).

Step 2: provides that the person's deeming threshold (of \$30,000), or the total value of the person's financial assets, whichever is lower, is to be reduced by the total of the person's deposit concession money calculated under section 180.

Step 3: provides that, if a positive amount is obtained under Step 2, that amount is to be multiplied by the below threshold rate (the rate determined by the Minister under subsection 183(1)).

Step 4: applies only if the person has financial assets in excess of the deeming threshold. If Step 4 applies, the deeming threshold is to be subtracted from the total of the person's financial assets.

Step 5: provides that, if a positive amount is obtained under Step 4, that amount is to be multiplied by the above threshold rate (the rate determined by the Minister under subsection 183(2)).

Step 6: provides that the total of the amounts worked out at Steps 1, 3 and 5 represents the ordinary income that the person is taken to receive per year on the financial assets.

An example shows the operation of the Method Statement.

New subsection 178(4) provides that the person is taken to receive weekly ordinary income equal to one fifty-second of the amount calculated under Step 6.

Deemed income from financial assets - people who are members of a couple

New section 179 shows how to assess the ordinary income from financial assets of a person who is a member of a couple (new subsections 179(1) and (2)).

New subsection 179(3) provides a Method Statement for calculating the ordinary income of these couples.

Step 1: provides that the reader should total the interest payable on the couple's deposit concession money (as defined in section 180). A Note refers the reader to section 180.

Step 2: provides that the couple's deeming threshold or the total value of the couple's financial assets, whichever is lower, is to be reduced by the total of the deposit concession money calculated under section 180.

Step 3: provides that, if a positive amount is obtained under Step 2, that amount is to be multiplied by the below threshold rate (the rate determined by the Minister under subsection 183(1)).

Step 4: applies only if the person has financial assets in excess of the deeming threshold. If Step 4 applies, the deeming threshold is to be subtracted from the total of the person's financial assets.

Step 5: provides that, if a positive amount is obtained under Step 4, that amount is to be multiplied by the above threshold rate (the rate determined by the Minister under subsection 183(2)).

Step 6: provides that the total of the amounts worked out at Steps 1, 3 and 5 represents the ordinary income that the person is taken to receive per year on the financial assets.

An example shows the operation of the Method Statement.

New subsection 179(4) provides that each member of the couple is taken to receive weekly ordinary income equal to one fifty-second of half the amount calculated under Step 6.

Deposit Concession Money

Prior to these amendments, the law provided special treatment for certain money that was not invested or was invested at a low rate of interest. This treatment recognises that social security recipients need to have some money "at call" for unexpected expenses. Section 180 continues the beneficial treatment of this money.

Accordingly, the concession under the bank deeming rules, which allows the first \$2,000 of bank deposits and cash to be assessed at the actual interest rate if it is less than 5%, will be continued under the new extended deeming test.

The money that is subject to this beneficial treatment is called "deposit concession money" and is defined as "available money" plus "deposit money". These are both defined terms borrowed from the *Social Security Act 1991* ("the Social Security Act").

"Available money" is defined in subsection 8(1) of the Social Security Act as money that is held by or on behalf of the person, is not deposit money, and is not loan money owed to the person. Generally, this is cash money that is not held in a financial institution.

"Deposit money" is defined in subsection 8(1) of the Social Security Act as money that is deposited in an account with a financial institution.

Where a person has deposit concession money that earns less than the "below threshold rate", only the actual interest earned on that money is assessed under this section.

New section 180 provides for different treatment of persons who are a member of a couple other than a pensioner couple (new subsections 180(2) and (3)). These couples will not have their incomes totalled (as applies to pensioner couples) but each member of the couple will have his or her income assessed individually. This conforms with the treatment given to the ordinary income of beneficiary couples in the Benefit Rate Calculators.

New subsection 180(1) provides a Method Statement for determining the deposit concession money of a person who is not a member of a couple.

Step 1: indicates (together with Step 5) that the person may have a maximum of \$2,000 that can be assessed at less than the "below threshold rate" if the money attracts less interest than that rate.

Step 2: provides that any available money of the person (which by definition does not earn interest) should be set off against the \$2,000.

Step 3: provides that any deposit money that does not attract interest should be set off against the remainder (if any) left of the \$2,000 after Step 2.

Step 4: provides that, if the person has deposit money that earns interest at less than the "below threshold rate" (a rate determined pursuant to subsection 183(1)) and if there is any remainder left of the \$2,000, the deposit money is set off against that remainder in ascending order of interest.

Step 5: provides that the person's "deposit concession money" is defined as the amount that can be set off under Steps 2 to 4.

A Note advises the reader of subsection 180(3) that provides that the total of the person's deposit concession money cannot exceed \$2,000.

Under Step 1 of the Method Statement in subsection 178(3), only those amounts of the deposit concession money that attract interest at less than the below threshold rate are taken into account for the purposes of the ordinary income test. For this money, the actual rate of interest (as distinct from the deemed rate of interest) is taken into account.

New subsection 180(2) provides a Method Statement for calculating the deposit concession money of a pensioner couple.

Step 1: indicates (together with Step 5) that the couple may have a maximum of \$4,000 that can be assessed at less than the "below threshold rate", if the couple have money that attracts less interest than that rate.

Step 2: provides that any available money of the couple (which by definition does not earn interest) should be set off against the \$4,000.

Step 3: provides that any deposit money of the couple that does not attract interest should be set off against the remainder (if any) left of the \$4,000 after Step 2.

(Subsection 180(4) provides that the available money and deposit money of the couple is the total available money and deposit money of the couple.)

Step 4: provides that, if the couple have deposit money that earns interest at less than the "below threshold rate" and, if there is any remainder left of the \$4,000, the deposit money is set off against that remainder in ascending order of interest.

A Note refers the reader to section 183(1).

Step 5: provides that the couple's "deposit concession money" is defined as the amount that can be set off under Steps 2 to 4.

A Note advises the reader of subsection 180(3) that provides that the total of the person's deposit concession money cannot exceed \$4,000.

Under Step 1 of the Method Statement in subsection 179(3), only those amounts of the deposit concession money that attract interest at less than the below threshold rate are taken into account for the purposes of the ordinary income test. For this money, the actual rate of interest, as distinct from the deemed rate of interest is taken into account.

New subsection 180(3) provides a Method Statement for calculating the deposit concession money of a person who is a member of a couple other than a pensioner couple.

Step 1: indicates (together with Step 5) that the person may have a maximum of \$2,000 that can be assessed at less than the "below threshold rate", if the person earns less than that rate on the money.

Step 2: provides that any available money (which by definition does not earn interest) should be set off against the \$2,000.

Step 3: provides that any deposit money that does not attract interest should be set off against the remainder (if any) left of the \$2,000 after Step 2.

Step 4: provides that, if the person has deposit money that earns interest at less than the "below threshold rate" and, if there is any remainder left of the \$2,000, the deposit money is set off against that remainder in ascending order of interest.

A Note refers the reader to section 183.

Step 5: provides that the person's "deposit concession money" is defined as the amount that can be set off under Steps 2 to 4.

A Note advises the reader of subsection 180(5) that provides that the total of the person's deposit concession money cannot exceed \$2000.

Under Step 1 of the Method Statement in subsection 180(3), only those amounts of the deposit concession money that attract interest at less than the below threshold rate are taken into account for the purposes of the ordinary income test. For this money, the actual rate of interest (as distinct from the deemed rate of interest) is taken into account.

New subsection 180(4) clarifies the meaning of the references in subsection 180(2) to "available money of the couple" and "deposit money of the couple".

The available money of the couple is taken to be the total available money of the couple (new paragraph 180(4)(a)). The deposit money of the couple is taken to be the total deposit money of the couple (new paragraphs 180(4)(b) and (c)) and therefore includes deposit money of the couple whether or not it is in the joint names of the couple.

New section 181 clarifies that, for the purposes of deposit money, interest is assessed at the interest rate that applies at the time when the money is assessed under section 180 regardless of when the interest is actually paid.

Deeming Thresholds and Rates

New section 182 provides for the deeming thresholds that are used in assessing income from financial assets under sections 178 and 179.

New subsection 182(1) provides that the deeming threshold of a person who is not a member of a couple is \$30,000.

New subsection 182(2) provides that the deeming threshold of a couple is \$25,000.

New subsection 182(3) provides that the deeming threshold for a member of a couple, other than a pensioner couple, is an amount equal to one-half of the amount fixed under new subsection 182(2). This subsection reflects the individual income test that is applied to each member of these couples.

A Note advises the reader that these amounts are indexed under section 252.

New section 183 provides for the "below threshold rate" and the "above threshold rate" that is used in sections 178 to 180.

New subsection 183(1) provides that the "below threshold rate" is the rate determined to be the "below threshold rate" by the Minister.

New subsection 183(2) provides that the "above threshold rate" is the rate determined to be the "above threshold rate" by the Minister.

New subsection 183(3) clarifies that the rate specified by the Minister under subsections (1) and (2) must be in the form of a specified percentage.

(The Government has announced that the below threshold rate will initially be set at 5% and the above threshold rate will be set at 7%).

Examples in new sections 178 and 179 (see above) demonstrate the operation of the rates specified by the Minister under this section.

New subsection 183(4) provides that the Minister's determination under section 182 must be in writing and is a decision that may be disallowed by either House of Parliament.

Actual Return from Financial Assets

New section 184 provides for the treatment of actual return from financial assets.

New subsection 184(1) provides that the actual return on a financial asset is to be disregarded if income is deemed to be received on that asset under sections 178 and 179. This ensures income is not "double-counted" by having both a deemed rate and an actual return taken into account.

Subsection 184(1) also allows a person who earns in excess of the applicable deeming rate to have that excess exempted from the income test.

New subsection 184(2) provides that, if the Minister has determined that the financial asset is to be disregarded for the purposes of the deeming test, the actual return received on that financial asset is to be assessed under the ordinary income test.

Certain Financial Assets Disregarded

New section 185 provides that the Minister may determine that certain financial investments are to be disregarded for the purposes of the deeming test in sections 178 and 179.

New subsection 185(2) provides that, if the Minister makes a determination under subsection 185(1), that financial investment is also to be disregarded for the purposes of assessing deposit concession money under section 180.

New subsections 185(3) and (4) provide that the Minister's determination must be in writing and takes effect on the day specified by the Minister in the determination.

New sections 186, 187 and 188 mirror the policy in repealed sections 191, 192 and 193 of the Act. Accordingly, the new Subdivision D will not change existing policy in relation to income from retirement funds and annuities.

The new sections provide that income received from a superannuation fund, an approved deposit fund, or a deferred annuity is exempt from the ordinary income test unless the person has reached pension age, has commenced receiving a pension or annuity from the investment or has realised the investment.

New section 187 provides that, if the person realises such an investment and the amount is not rolled over into a superannuation fund, an approved deposit fund, a deferred annuity or an immediate annuity, the person is taken to receive the "assessable growth component" of that investment as income over the following 12 months.

A Note refers the reader to the definition of "assessable growth component", a term defined in subsection 9(1) of the Social Security Act.

New section 188 provides that, if the person realises an investment under section 187 at a loss, the person's ordinary income is to be reduced by the "assessable loss" over the following 12 months.

New subsection 188(2) provides that the reduction under section 188 cannot exceed the increase in income assessed under section 187.

MISCELLANEOUS

Item 2 omits Subdivisions G, H and I of Division 11 of Part 8 that provided for available money and deposit money, interest attributed to loans and income attributed to deprived assets. These topics are now covered by new Subdivision C (deemed income from financial assets). Subdivisions G, H and I are therefore obsolete.

Item 3 amends the table at section 251 to provide that the deeming thresholds in 182 are to be indexed.

Item 4 amends the table in section 252(1) to provide that the deeming thresholds are to be indexed in line with CPI (consumer price index) increases.

The amendment made by item 4 will ensure that the thresholds are indexed annually on 1 July based on the CPI increase in the highest March quarter before that date (but not earlier than the March 1994 quarter). Column 6 of new items 35 and 36 of the table provide that the CPI increase is to be rounded up or down to the nearest multiple of \$200.

Item 5 provides that the first CPI indexation of the threshold amounts is to take place on 1 July 1997.

Item 6 amends the advisory notes to Module G of the Act, which is where the ordinary income test to be applied for the purposes of the youth training allowance scheme is located. The item adds a note directing the reader to various sections of the Act where some of the phrases used in the test are given their definition.

Item 7 is a transitional provision preserving any determinations made under the now repealed section 202 (Minister may disregard certain available money and deposit money) and section 210 (Minister may disregard certain loans) made prior to 1 July 1996.

Item 8 is a transitional provision that provides that, if the fortnightly period in which the person is paid is a period that is either side of 1 July 1996, the day on which the amendments made by this Schedule take effect, the rate the person is to be paid will be the rate determined by the old law, in force prior to 1 July 1996.

The amendments to the Act made in Part 1 of this Schedule will commence on **Royal Assent**. Those made in Part 2 will commence on **1 July 1996**.

SCHEDULE 2

AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE ACT 1973 TO END TRANSFERS FROM YOUTH TRAINING ALLOWANCE TO SICKNESS ALLOWANCE

The amendments made to the Act by this Schedule eliminate the need for recipients of youth training allowance to transfer to sickness allowance if their period of sickness is more than 13 weeks. This is achieved by limiting the availability of sickness allowance to recipients who have a job or study to return to once they have recovered and by expanding the qualification / payability conditions for youth training allowance to include recipients who are temporarily incapacitated for work but who do not qualify for the new limited form of sickness allowance.

As the Act exists prior to the amendments made by the Schedule, recipients of youth training allowance who fall ill can remain on youth training allowance if their period of sickness is less than 13 weeks but are transferred to sickness allowance if the period of sickness extends beyond 13 weeks. Unemployed recipients are then transferred back to youth training allowance on recovery. The amendments made by the Schedule seek to improve client service by reducing these seemingly unnecessary transfers between different payment types.

Allowing unemployed recipients of sickness allowance who are temporarily unable to work due to illness or injury to remain in receipt of youth training allowance encourages and assists them to pursue employment-based activities (such as part-time or casual work) as they recover. By remaining on youth training allowance, these people will continue to access eligibility for the full range of assistance available to the unemployed, including education entry payment, employment entry payment and Labour Market assistance including the Job Compact.

- Item 1:** inserts a new note after paragraph 65(1)(d).
- Item 2:** amends subsection 65(1) (qualifications for youth training allowance) by inserting "subject to subsection (3A)" into subparagraph (g)(iii).
- Item 3:** omits subsection 65(2).
- Item 4:** inserts a new subsection 65(3B).
- Item 5:** omits Note 10 to section 65.
- Item 6:** repeals section 66.
- Item 7:** amends subsection 72(8) by omitting "subsection (6)", and substituting "subsections (6), (8A), and (8B)".
- Item 8:** inserts new subsections 65(8A) and (8B).
- Item 9:** inserts a new subsection 74(2).

- Item 10:** inserts a new Subdivision BAA of Part 8.
- Item 11:** amends subsection 79(1) (requirement to enter into Agreement) by inserting "subject to subsection (1A), if".
- Item 12:** inserts a new subsection 79(1A).
- Item 13:** inserts a new paragraph 85(1)(i)(ia).
- Item 14:** inserts new paragraphs 89(2)(ba) and (bb).
- Item 16:** inserts a new subsection 91(1A).
- Item 17:** amends subsection 91(5) (person's transfer day) by omitting "if" and inserting "subject to subsections (5A) and (5B), if".
- Item 18:** inserts new subsections 91(5A) and (5B).
- Item 19:** inserts a new subsection 92(2) and a Note.
- Item 20:** inserts new sections 92A and 92B.
- Item 22:** amends subsection 114(1) (allowance not payable if requirement not complied with) by inserting "(other than a person who is not required to satisfy the activity test)" into paragraph (a) after "person".
- Item 23:** amends Module G (ordinary income test) by omitting point G5 and substituting a new point.
- Item 24:** amends Module C (Pharmaceutical Allowance) by omitting point C2 and substituting a new point.
- Item 25:** provides that the amendments made to the Act by this Schedule will take effect in respect to youth training allowance payments made on any fortnight starting on or after 20 March 1996.

THE AMENDMENTS IN GREATER DETAIL

The general intent of the amendments is to allow persons who are temporarily incapacitated for work and who do not qualify for sickness allowance according to that benefit's new eligibility rules proposed in the Social Security and Veterans' Affairs Legislation Amendment (Budget Measures) Bill 1995 to qualify for youth training allowance. This is achieved, in broad terms, by incorporating a number of the rules particular to sickness allowance into the youth training allowance provisions (primarily in the form of an exemption from the activity test) and by modifying other provisions to take account of rules peculiar to sickness allowance.

Qualification for youth training allowance

Section 65 of the Act sets out the qualification criteria for youth training allowance. They include the requirement in paragraph 65(1)(d) that a person enters into a Youth Training Allowance

Activity Agreement, when required to do so by the Secretary. **Item 1** inserts a new **Note after paragraph 65(1)(d)**, which states that a person who, under the new Subdivision BAA, is not required to satisfy the activity test is also not required to enter into a Youth Training Allowance Activity Agreement. The Note also directs the reader to new subsection 79(1A).

Subparagraph 65(1)(g)(iii) requires that, in order to qualify for youth training allowance, a person be in Australia throughout the relevant period. This requirement is modified by the insertion of a new subsection 65(3A) (see discussion of **Item 4** below). Consequently, **Item 2** makes an amendment to **subparagraph 65(1)(g)(iii)** to make it clear that the requirement is subject to the new subsection (3A).

Note 10 to Subsection 65(6) refers the reader to section 66. As a result of the amendments made by the Schedule section 66 is repealed by **Item 6**. Consequently, **Item 5** omits the Note.

Item 4 inserts a new **subsection 65(3B)**, which states that, for the purposes of subparagraph 65(1)(g)(iii), if:

- a person is not required to satisfy the activity test as a result of the amendments made by the insertion of the new Subdivision BAA (discussed further below); and
- the person is temporarily absent from Australia; and
- the person is absent in order to seek medical treatment of a kind that is not available in Australia;

the person is taken to be in Australia either for the period of the absence (if the period of the absence is less than three months) or for the first three months of a period of absence of more than three months.

Section 66 deals with the effects of incapacity on qualification for youth training allowance. As a result of the amendments contained in the Schedule, this provision is redundant and is repealed by **Item 6**.

Item 8 inserts new **subsection 65(8)** which states that, subject to subsection 65(9), if a person who is a member of a couple is not required to satisfy the activity test as a result of new Subdivision BAA (see further below), the liquid assets test period starts on the later of:

- the day on which the person became incapacitated for work; or
- if, when the claim was made, the person's partner is incapacitated for work, the day on which the person's partner became incapacitated for work.

Prospective determinations

Section 74 of the Act allows the Secretary to make prospective determinations in relation to certain persons' qualification for youth training allowance. **Item 9** inserts a new **subsection 74(2)** that gives the Secretary similar power in relation to persons receiving youth training allowance who are incapacitated for work and who are exempted from the activity test under new Subdivision BAA (discussed below).

Exemption from the activity test - New Subdivision BAA

Section 75 of the Act outlines the requirements of the activity test applicable to recipients of youth training allowance. Sections 76 to 78 detail the situations in which a person is taken to satisfy or is not required to satisfy the activity test. **Item 10** inserts, after section 78, a **new Subdivision BAA**. That new Subdivision provides for the exemption from the activity test of persons who are temporarily incapacitated for work.

New section 78A is an interpretation provision. It states that a reference in Subdivision BAA to a person being exempt (or ceasing to be exempt) from the activity test under the Subdivision refers to the person not being required (or becoming required) to satisfy the activity test because of the operation of the Subdivision (or a provision thereof).

New subsection 78B(1) provides that a person is not required to satisfy the activity test in relation to a particular period if:

- the person is incapacitated for work throughout the period because of sickness or an accident; and
 - the incapacity is caused wholly or virtually wholly by a medical condition arising from the sickness or accident; and
 - the incapacity is, or is likely to be, of a temporary nature; and
- the person would qualify for youth training allowance if Subdivision BAA had not been enacted and if the person was not subject either to the activity test or the Activity Agreement qualification criteria contained in section 65; and
- the person provides the Secretary with a medical certificate, in a form approved by the Secretary, that states:
 - (i) the medical practitioner's diagnosis; and
 - (ii) the medical practitioner's prognosis; and
 - (iii) that the person is incapacitated for work; and
 - (iv) the period for which the person is incapacitated for work; and
- the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining the activity test exemption.

New subsection 78B(2) defines "work" for the purposes of section 78B(1) as meaning full-time, part-time, permanent or casual work that is of a kind that, in the Secretary's opinion, the person can reasonably be expected to do and is for at least eight hours per week.

New subsection 78C(1) provides that if a person receives an exemption from the activity test under new section 78B(1) and then ceases to be exempt under new section 78F (which imposes a 52 week time limit on the exemption - discussed further below) or new section 78C (which allows a 104 week exemption period in some circumstances - see further below), the person cannot

obtain an exemption from the activity test in respect of the same medical condition within two years.

New subsection 78C(1) is expressly subject to **new subsection 78C(2)**, which provides exceptions to the prohibition set out in the previous subsection. They are where:

- the person's incapacity for work is caused by a medical condition that is different from or significantly more serious than the medical condition in respect of which the person had originally been granted an activity test exemption; or
- the medical condition is a chronically relapsing condition and the person's incapacity for work is caused by a relapse of that condition; or
- the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse, the person's participation in that program is not likely to extend beyond 78 weeks and the program is approved by the Secretary in writing for the purposes of this provision; or
- the person's incapacity for work is caused by a medical condition (whether or not it is the same medical condition) and arrangements have been made for the person to undergo surgery in relation to the condition and the surgery is expected to result in the person's incapacity for work ceasing within 104 weeks of the date of the person first becoming exempt from the activity test in relation to the incapacity.

New subsection 78D(1) provides that the Secretary may require the person to contact a particular office of the Department, attend an interview at a particular place, complete a questionnaire or attend a medical, psychiatric or psychological examination. It also provides that the person's exemption from the activity test will cease if the person does not take reasonable steps to comply with the requirement. **New subsection 78D(2)** provides that the notice informing the person of the relevant requirement must inform the person of the effect of a failure to take reasonable steps to comply with the requirement set out in the notice.

New section 78E provides for a time limit on a person's exemption from the requirement to satisfy the activity test. **New subsection 78E(1)** provides that a person's exemption from the activity test under new Subdivision BAA ceases if the person's "maximum exemption period" ends.

New subsection 78E(2) provides a definition of a person's "maximum exemption period". It states that, if a person has provided the Secretary with a medical certificate for the purposes of enabling the Secretary to decide whether or not the person should be required to satisfy the activity test, the maximum exemption period is the lesser of either period specified in the medical certificate as the period for which the person is incapacitated for work or 13 weeks. It provides that, in any other case, the maximum exemption period is the period of 4 weeks that starts on the day on which the Secretary determines to be the day on which the person's incapacity for work began.

New subsection 78E(3) provides that, if a person is exempt from the activity test under Subdivision BAA and the person has provided the Secretary with a medical certificate stating the matters listed in new paragraph 78B(1)(e) and the Secretary is satisfied that the person's incapacity for work will extend beyond the person's maximum exemption period the Secretary may extend the maximum exemption period. The Secretary can extend the exemption only for the lesser of

either the period nominated in the certificate as the period in which the person will be incapacitated for work or 13 weeks.

New subsection 78E(4) provides that, if a person is exempt from the activity test under Subdivision BAA and the person has provided the Secretary with written evidence (*other than* a medical certificate stating the matters listed in new paragraph 78B) that the person's incapacity for work will continue beyond the maximum exemption period and the Secretary is satisfied that the person's circumstances make it unreasonable to expect the person to obtain a medical certificate of the kind specified and is also satisfied that the person's incapacity for work will extend beyond the person's maximum exemption period the Secretary may extend the maximum exemption period. The Secretary can extend the exemption only for 4 weeks.

New subsection 78E(5) provides that, if a person is exempt from the activity test under Subdivision BAA and, before the end of the maximum exemption period, the person has provided the Secretary with a medical certificate stating the matters listed in new paragraph 78E(1)(e) and the Secretary does not, before the end of the maximum exemption period, satisfy himself or herself that the person's incapacity for work will extend beyond the person's maximum exemption period and the sole or dominant cause of the Secretary's failure to satisfy himself or herself about the likely duration of the incapacity is an act or omission of an officer of the Department the Secretary may extend the maximum exemption period. The Secretary can extend the exemption period only for four weeks.

As mentioned above, **new section 78F** provides that, subject to section 78G, a person ceases to be exempt from the activity test once he or she has been exempt for a continuous period of 52 weeks.

New subsection 78G(1) provides that the Secretary may determine (in writing) that new section 78F does not apply to a person if he or she is satisfied that:

the person's incapacity will end during the next 52 weeks; or

the person's incapacity for work at the end of the 52 week period specified in new section 78F is wholly (or virtually wholly) caused by a medical condition that is different from, or significantly more serious than, that which caused the exemption from the activity test initially to be granted; or

the person's incapacity is caused by a chronically relapsing medical condition; or

the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse that is not likely to extend beyond 78 weeks and has been approved in writing by the Secretary.

New subsection 78G(2) provides that, if the Secretary makes a determination under new subsection 78G(1), that exemption from the activity test ceases once the person has been exempt in relation to a continuous period of 104 weeks. This places a further cap on the period during which a person can be exempt from the activity test.

New subsection 78G(3) deals with circumstances where, within a longer period of exemption from the activity test, a person has not been exempt for a short period or for short periods. It provides that, if the period or periods of non-exemption were less than six weeks, the person is taken to have been exempt from the activity test continuously over the 104 week period. This

means that only breaks in exemption of more than six weeks will operate to break the period of 104 weeks.

Exemption from the requirement to enter into a Youth Training Allowance Activity Agreement

Subsection 79(1) of the Act sets out the requirement that persons receiving youth training allowance enter into a Youth Training Allowance Activity Agreement, as provided for in Subdivision C of Division 2 of Part 8 of the Act. As indicated above, persons who are exempted from the activity test under new Subdivision BAA are also to be exempt from the requirement to enter into an Activity Agreement. **Item 11** inserts a **new subsection 79(1A)** that makes this clear. **Item 12** makes a consequential amendment to **subsection 79(1)**, making the requirement to enter into an Activity Agreement to be read subject to the new subsection (1A).

Section 85 of the Act provides for certain situations where youth training allowance is not payable. **Item 13** adds to the situations specified in subsection 85(1) a **new paragraph (ia)**, which refers to a failure to comply with a requirement under new section 78D to attend an interview (discussed further below).

Multiple entitlement exclusions

Section 89 sets out various multiple entitlement exclusions that are applicable in relation to youth training allowance. Subsection 89(4) provides that youth training allowance is not payable to a person if a payment has been or may be made to the person under certain prescribed programs and schemes. In order to reconcile the provision with the relevant sickness allowance requirements **Item 14** adds **new paragraphs 89(2)(ba) and (bb)**, referring to the Adult Migrant Education Program Living Allowance and the English as a Second Language Allowance, respectively.

Provisional commencement day

Section 91 sets out the provisional commencement day provisions in relation to youth training allowance. These provisions differ in a number of respects from those applicable to sickness allowance recipients. So as not to disadvantage the persons affected by the amendments contained in the Schedule, modifications are made to the application of the provisional commencement day provisions to persons who, under new Subdivision BAA, are not required to satisfy the activity test.

Item 16 inserts a **new subsection 91(1A)**, which provides that, subject to the following provisions in section 91, if (under Subdivision BAA) a person is not required to satisfy the activity test, the person's provisional commencement day is the day on which the person became incapacitated for work.

Subsection 91(5) deals with transferees to youth training allowance. **Item 17** makes an amendment to subsection (5) to make its operation subject to **new subsections 91 (5A) and (5B)**, which are inserted by **Item 18**.

New subsection 91(5A) provides that, subject to subsection (5B), if a person is a transferee to youth training allowance and the person is (under Subdivision BAA) not required to satisfy the activity test and the person claims youth training allowance within 4 weeks of his or her transfer day the person's provisional commencement day is the person's transfer day. This amendment (which gives the sickness allowance transferee 4 weeks to claim rather than the 14 days that is

applicable to other transferees) takes account of the 5 week backdating rule that is peculiar to sickness allowance.

New subsection 91(5B) provides that, if (under Subdivision BAA) a person is not required to satisfy the activity test and the person is subject to an education leaver's waiting period (see subsection 98(1)) and the person became incapacitated for work while undertaking a course of education, the person's provisional commencement day is the last day on which the person was undertaking the course. This ensures that the person's education leavers waiting period cannot start while the person is still undertaking a course of education.

Section 92 of the Act sets out when youth training allowance can first be paid to a person. It provides that youth training allowance is not payable to a person before the person's provisional commencement day or, if the person is subject to a waiting period (or periods), the end of the waiting period(s).

Item 19 inserts a new **subsection 92(2)**, which states that section 92 does not apply to a person who (under new Subdivision BAA) is not required to satisfy the activity test. A new Note alerts the reader to the fact that the heading to section 92 is changed. **Item 20** inserts new **sections 92A and 92B**, which sets out specific commencement provisions in relation to persons who are not subject to the activity test.

New subsection 92A(1) provides that if a person who, under new Subdivision BAA, is not required to satisfy the activity test is qualified for youth training allowance, the allowance is not payable to the person before the day worked out in accordance with the provisions contained in the section.

New subsection 92A(2) provides that, if a person claims youth training allowance within five weeks after the day on which he or she became incapacitated for work and he or she is not subject to a waiting period youth training allowance is not payable before the person's provisional commencement day. Note 2 directs the reader to section 91 (as amended), which provides for the person's provisional commencement day. Note 1 directs the reader to the various provisions relevant to the question of the waiting period.

New subsection 92A(3) provides that, if a person claims youth training allowance within five weeks after the day on which he or she became incapacitated for work and he or she is subject to a waiting period youth training allowance is not payable before the first day after the end of the waiting period. Notes 1, 2 and 3 direct the reader to the various provisions relevant to the question of the waiting period.

New subsection 92A(4) provides that, if a person claims youth training allowance more than five weeks after he or she became incapacitated for work and the Secretary is satisfied that the person's incapacity is the sole or the dominant cause for the failure to claim youth training allowance within the five week period, youth training allowance is not payable to the person before the day determined by the Secretary. This gives the Secretary a discretion as to the commencement day if he or she is satisfied that the person's incapacity was the cause of the failure to claim within the five week period. New subsection 92A(5) limits the Secretary's discretion by providing that the day determined under new subsection (4) must not be more than four weeks before the day on which the person lodged the claim for youth training allowance and, if the person is subject to a waiting period, must not be before the end of the waiting period. Notes 1, 2 and 3 direct the reader to the various provisions relevant to the question of the waiting period.

New subsection 92A(6) provides that, if a person claims youth training allowance more than five weeks after he or she became incapacitated for work and the Secretary is not satisfied that the person's incapacity is the sole or the dominant cause for the failure to claim youth training allowance within the five week period, youth training allowance is not payable to the person before the day on which the claim is lodged.

Item 20 also inserts a **new section 92B**, which deals with the payability of youth training allowance in relation to a person who is not required to satisfy the activity test but who is required to attend an interview, etc. It provides that youth training allowance is not payable if a person is receiving youth training allowance and the Secretary is of the opinion that the person should contact a particular officer of the Department, attend an interview at a particular place, complete a questionnaire or attend a medical, psychiatric or psychological examination and the Secretary provides the person with a written notice to that effect and the person fails to take reasonable steps to comply with the requirement set out in the notice. **New subsection 92B(2)** provides that the notice informing the person of the relevant requirement must inform the person of the effect of a failure to take reasonable steps to comply with the requirement set out in the notice.

Subsection 99(10) of the Act deals with circumstances where the "education leavers waiting period", the time a person leaving education (other than secondary education) must wait before being eligible to receive youth training allowance, may be reduced. **Item 22** removes a now redundant reference to "sickness allowance" contained in the subsection.

Section 114 provides that the Secretary may require that a person who is receiving or who has lodged a claim for youth training allowance attend an office of the Department or of the Commonwealth Employment Service. It is not intended that this provision operate in relation to the persons affected by this Schedule. Consequently, **Item 22 amends paragraph 114(1)(a)** to exempt persons who are not required to satisfy the activity test from the requirements of section 114.

Point G5 of Module G to the Act governs the effect amounts received from friendly societies by a person have on the "ordinary income test". Point G5 refers to a person "to whom youth training allowance is payable because of section 66". As noted above, section 66 is repealed by **Item 6** of this Schedule. Consequently, **Item 24** omits point G5 and substitutes a **new point G5** that is re-drafted in the light of the amendments made by the Schedule.

Item 25 provides that the amendments made by this Schedule are to take effect in respect of any youth training allowance paid after 20 March 1996.

This means that "current" incapacitated persons receiving youth training allowance as well as recipients who become temporarily incapacitated for work after 20 March 1996 have to be assessed against the new rules in respect of a fortnight that commences after 20 March 1996.

The amendments made by this Schedule commence on **20 March 1996**.

SCHEDULE 3

AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE ACT 1973 RELATING TO EARNINGS CREDITS

This Schedule contains a number of amendments to the earnings credit provisions that apply to recipients of youth training allowance.

These amendments affect provisions concerning the rate of accrual of earnings credit, the application of earnings credit balance to the calculation of ordinary income and the deductions from the earnings credit account balance.

The amendments will:

- limit the fortnightly rate of accrual of a person's earnings credit (from the current rate that is equal to the whole amount of a person's ordinary income free area to a rate that represents the difference between a person's fortnightly rate of ordinary income and the amount of the person's ordinary income free area);
- remove a current provision that precludes a person whose ordinary income would reduce his or her benefit rate to nil from accessing their earnings credit balance;
- limit the maximum amount of earnings that may be disregarded as income through the use of earnings credit balance (from the current maximum \$500 in a fortnight to \$100 in a fortnight); and
- limit the amount that is to be deducted from a person's earnings credit account.

The earnings credit scheme operates to provide an incentive for a person to undertake part-time or casual employment. When the ordinary income test is applied for the purposes of calculating a person's fortnightly rate of allowance, short periods of remunerative work could have the effect of reducing the person's rate of allowance. The earnings credit scheme currently allows a recipient of youth training allowance whose earnings credit balance is greater than nil to earn an amount from remunerative work and have the earnings (up to the value of their earnings credit balance in that fortnight) disregarded for the income test purposes.

The proposed amendments modify certain elements of the earnings credit scheme.

- Item 1:** omits paragraph 221(1)(e).
- Item 2:** omits paragraphs 221(1)((f) and (g) and substitutes new paragraphs 221(1)((f) and (g).
- Item 3:** omits Module C (Earnings credit) of Schedule 4 and substitutes a new Module C (Earnings credit) in Schedule 4 and omits Module D (Drawing account) of Schedule 4 and substitutes a new Module D (Drawing account) in Schedule 4.

Item 4: The amendments made by Schedule 2 apply for any fortnight starting on or after 20 March 1996

THE AMENDMENTS IN GREATER DETAIL

The earnings credit scheme under Subdivision K of Division 9 of the Act applies to recipients of youth training allowance.

Subsection 221(1) applies only to a person who is "receiving" a youth training allowance (paragraph 221(1)(a) refers). If a person's allowance ceases to be payable (eg, when a recipient of newstart allowance begins to engage in full-time employment), the person is no longer "receiving" the benefit from the day on which the benefit ceased to be payable. Therefore, only the amount of money from remunerative work received by a person in respect of a period ending on the day before the day on which the benefit ceased to be payable can be offset against the person's earnings credit balance.

Under the current paragraph 221(1)(e), if a person has an earnings credit balance account (an "EC balance") and the person has earnings in a particular fortnight and the person's ordinary income for that fortnight exceeds the person's ordinary income free area, the person's earnings may be disregarded for the purposes of an ordinary income test but only if the amount of the person's ordinary income is such that it does not reduce the rate of social security benefit for that period to nil (for example, an income of \$526 for a fortnight reduces to nil the rate of newstart allowance payable to a single person for that fortnight).

Item 1 removes paragraph 221(1)(e). As a result, a person will be able to access the person's EC balance in order to reduce the person's ordinary income notwithstanding the fact that the person's ordinary income amount would, if the income test was applied to this amount, reduce the rate of the benefit to nil.

Currently, the amount of a person's earnings that can be disregarded under the earnings credit scheme for the purposes of application of an ordinary income test is limited to the amount of EC balance, currently a maximum of \$500 (paragraphs 221(1)(f) and (g) refer).

Item 2 omits paragraphs 221(1)(f) and (g) and substitutes new paragraphs 221(1)(f) and (g). The new provisions disregard from a person's income, for the purpose of applying an ordinary income test, an amount that is the lesser of the following amounts:

- a person's earnings credit balance;
- the amount of money for remunerative work done by the person during an earnings credit accounting period;
- \$100.

New paragraphs 221(1)(f) and (g) lower the limit of the amount that may be disregarded under earnings credit scheme for the purposes of an ordinary income test from the current maximum \$500 to \$100 per fortnight.

As a consequence of the amendments made by **items 1 and 2**, a single recipient of youth training allowance who has accumulated a credit of at least \$100 will be able to earn up to \$626 in a

fortnight before payment of the person's benefit stops. Under current provisions, the payment of the person's benefit would stop when the person earns \$526 in a fortnight regardless of the amount of the earnings credit balance accumulated.

Item 6 omits current Module C (Earnings credit) in Schedule 4 and substitutes a new Module C

New point C1(1) retains the current rule that a person's earnings credit for an earnings credit accounting period arises if the person's fortnightly rate of ordinary income for that period is less than the person's ordinary income free area.

New point C1(2) specifies that the amount of earnings credit for an earnings credit accounting period equals the difference between a person's "fortnightly rate of ordinary income" in that period and the person's ordinary income free area (currently, \$60 per fortnight). New point C1(2) modifies the current rule that a person accrues an earnings credit equal to the whole amount of the ordinary income free area so that the credit for an earnings credit accounting period accrues at a rate equal to the amount of the "unused" ordinary income free area in that period. For example, currently, if a person receives income of \$40 in a particular fortnight, a credit of \$60 (the full amount of the free area) accrues for that fortnight. Under new point C1(2), if a person receives income of \$40 in a particular fortnight, only \$20 credit will accrue in that fortnight.

If, during an earnings credit accounting period, a person has earnings from remunerative work, the person's "fortnightly rate of ordinary income" referred to in Modules C1(1) and (2) may have been calculated under subsection 221(1). This allows the amount of earnings to be deducted from the rate of ordinary income. Therefore, a person's earnings credit may accrue for an earnings credit accounting period in two situations:

- when a person's fortnightly rate of ordinary income is less than an income free area (and therefore no income reduction under subsection 221(1) applies); or
- when a person's fortnightly rate of ordinary income is less than the person's income free area as a result of the subsection 221(1) reduction.

To make this point clear, **new point C1(3)(b)** specifies that the reference to the person's "fortnightly rate of ordinary income" in point C1(1) and (2) is a reference to the person's reduced income rate. The person's reduced income rate is further defined as the person's fortnightly rate of ordinary income for the period after taking into account any application of subsection 221(1) in relation to amounts of money that the person has earned from remunerative work. Therefore, under point C1(1), when determining whether the earnings credit arises in respect of a period in which a person's fortnightly rate of ordinary income was reduced under subsection 221(1), a person's reduced rate of ordinary income is to be taken into account.

A person's reduced income rate would constitute the person's "fortnightly rate of ordinary income" referred to in point C1(1) and (2) only if the person is not a member of a couple or if the person's partner receives a social security benefit.

If a person receives a social security benefit and the person's partner receives a social security pension, an ordinary income of the person equals half of the amount of the combined income of both members of the couple.

To provide for the above, new point C1(3)(a) specifies that if a partner of a person is receiving a social security pension, the reference to the person's "fortnightly rate of ordinary income" in point C1(1) and (2) is a reference to the amount that equals half of the combined amounts of the person's reduced income rate (that is, if applicable, the rate reduced under subsection 221(1)) and the person's partner's income rate. The partner's income rate is further defined as the partner's fortnightly rate of ordinary income for the period

Item 3 also omits Module D (Drawing account) in Schedule 4 and substitutes **a new Module D**.

Module D describes when a person draws on the person's earnings credit account and what the amount drawn is. Currently, point D1 provides that a person draws on the person's earnings credit account (if it is greater than nil) if during an earnings credit accounting period:

- the person has earnings from remunerative work done in that period; and
- the person's fortnightly rate of ordinary income exceeds the person's ordinary income free area; and
- the amount of the person's income in an earnings credit accounting period is such that it does not preclude the payment of the person's benefit.

A person therefore draws on the person's account in the same circumstances that allow the person to offset his or her earnings against the person's earnings credit account, that is, in the circumstances specified in subsection 221(1). The drawing on the person's account is the operation that balances the offset made under subsection 221(1).

Item 3 omits point D1 (Drawing on account - recipient account) and point D3 (Amount to be deducted) and substitutes **a new point D1** (Drawing on account - recipient account), which amends Module D to reflect the requirements of subsection 221(1) (as amended by **items 1 and 2**) and new point D2.

New point D2 provides that if an amount is disregarded under subsection 221(1) in applying ordinary income test to a person or a person's partner, the person draws on the person's account the disregarded amount.

New point D1 makes it clear that the application of subsection 221(1) is a prerequisite for the application of point D1. Therefore, deduction from a person's earnings credit account occurs only if the person met requirements of subsection 221(1) and an amount of the person's earnings was disregarded from the person's ordinary income under that subsection.

The amount deducted from a person's earnings credit account equals the amount disregarded under subsection 221(1), that is, maximum of \$100 in a fortnight.

New point D2 provides an exception from the rule expressed in new point D1. Under new point D2, the amount drawn from a person's earnings credit account will be taken not to be drawn if the person's rate of a benefit for a period is nil. In other words, if subsection 221(1) was applied to the person in respect of a period and, as a result, the amount that was disregarded under subsection 221(1) was deducted from the person's earnings credit account but the person's rate of a benefit for the period turned out to be nil, the amount deducted from the person's account is to be re-credited to that account.

The following example illustrates how the earnings credit provisions will work:

Example A (a single beneficiary or a beneficiary with a beneficiary partner)

In a particular fortnight, John has earnings of \$110 and has an earnings credit balance (ECB) of \$180. The first step would involve the calculation of the lesser of the earnings, the ECB or \$100 (see new paragraph 221(1)(f)). In this case it is \$100. Under subsection 221(1), the \$100 is subtracted from the earnings of \$110 leaving a residual income of \$10. As this amount is below the ordinary income free area, his rate of payment has not been affected even though John has earned \$110.

The \$10 (John's fortnightly rate of ordinary income) is then examined under Module C-C1, and, as this is less than the ordinary income free area, the amount of John's earnings credit is determined by subtracting the \$10 from the free area (\$60). The resulting \$50 is John's new credit for the fortnight that is to be added to John's ECB. John's ECB is now: \$180 (the opening ECB) less \$100 (see new Module D-D1) plus the \$50 new credit = \$130. In a subsequent fortnight, John will be able to use up to \$100 from his ECB.

The amendments contained in this Schedule commence on **20 March 1996**.

SCHEDULE 4

AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE ACT 1973 CONSEQUENTIAL ON THE AMALGAMATION OF JOB SEARCH ALLOWANCE AND NEWSTART ALLOWANCE UNDER THE SOCIAL SECURITY ACT 1991

The Government has decided to amalgamate the job search and newstart allowances into one, to be called the newstart allowance. It is therefore necessary to remove references to job search allowance contained in the Act. It follows that the term job search allowance appearing in the Act in the provisions listed below should be deleted, with the term newstart allowance substituted. This Schedule removes redundant references to job search allowance.

The references are found in the following provisions:

Subsection 58(1) under the definition of **Commonwealth funded employment program**

Module D, point D5, Subparagraph (b)(1)

Module E, point E5, paragraph (b)

Module F, point F3, paragraph (a)

The amendments contained in this Schedule will commence on **20 September 1996**, the day when the two income support schemes will be amalgamated.

