

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Employment, Education and Training)

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

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AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE ACT 1973

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Employment, Education and Training)

A BILL

FOR

**An Act to amend the *Social Security Act 1991* and the
Student and Youth Assistance Act 1973, and for related
purposes**

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Student and Youth Assistance Amendment
(Budget Measures) Act 1995*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 8 is taken to have commenced on 1 January 1995.

(3) Schedules 2 and 3 are taken to have commenced on 1 November 1995. 5

(4) Schedules 1 and 4 commence, or are taken to have commenced, on 1 January 1996.

(5) Schedule 7 commences, or is taken to have commenced:

(a) on the day on which this Act receives the Royal Assent; or 10

(b) immediately after 1 January 1996;

whichever is the later.

(6) Schedule 9 commences, or is taken to have commenced, immediately after the commencement of Schedule 5 to the *Student and Youth Assistance Amendment (Youth Training Allowance) Act (No. 2) 1995*. 15

(7) Subject to subsection (8), Schedule 5 commences on a day to be fixed by Proclamation.

(8) If Schedule 5 does not commence under subsection (7) before 1 June 1996, it commences on that day.

(9) Schedule 6 commences on 30 June 1996. 20

Schedules

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules and item 3 of Schedule 2 has effect according to its terms.

SCHEDULE 1

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1. Subsection 7(8):

After "A person who" insert ", before the year 1996,".

2. Section 7:

Add at the end:

"(9) A person who, after the year 1995, received a benefit under this Part may repay to the Commonwealth all or any part of the amount of the benefit:

- (a) if the benefit was received during a period in a year—before the end of the period concerned; or
- (b) if the benefit was received during all of the year—before the end of the year concerned.

"(10) An amount of benefit repaid under subsection (9) is taken, for the purposes of this Act, never to have been paid to the person.".

SCHEDULE 2

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1 Subsection 12A(1):

Omit “, or except for the AUSTUDY parental income test or the ABSTUDY parental income test would be,”.

2. Paragraph 12C(1)(b):

Omit the paragraph, substitute:

“(b) the person qualifies, or apart from this Part would qualify, for a prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme in respect of that year or that part of that year.”.

3. Application

The amendments made by items 2 and 3 apply only to applications for financial supplement made in respect of a year, or a part of a year, after 1995.

SCHEDULE 3

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1. Subsection 7(1):

Omit "section", substitute "Part".

2. After paragraph 7(1)(a):

Insert:

"Note: Sections 7A and 7B limit the circumstances in which the Secretary may grant a benefit under this Part to a permanent resident of Australia."

3. After section 7:

Insert in Part 2:

Benefit not to be granted (permanent resident who reaches the age of 16 years on or after satisfying residency requirements)

"7A.(1) This section applies to a permanent resident of Australia who, whether before or after the commencement of this section, reaches the age of 16 years on or after the day when the person first satisfies the residency requirements referred to in section 7C.

"(2) Despite section 7, the Secretary cannot grant a benefit under this Part to the person after the end of the period of 12 months starting on the day after the day when the person reaches the age of 16 years unless, whether before or after the commencement of this section:

- (a) the person is granted a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948* before the end of that period but is yet to make the pledge referred to in section 15 of that Act; or
- (b) the person is included in a certificate of citizenship under section 13 of that Act before the end of that period but is yet to become an Australian citizen.

Benefit not to be granted (permanent resident who reaches the age of 16 years before satisfying residency requirements)

"7B.(1) This section applies to a permanent resident of Australia who, whether before or after the commencement of this section, reaches the age of 16 years before the day when the person first satisfies the residency requirements referred to in section 7C.

"(2) Despite section 7, the Secretary cannot grant a benefit under this Part to the person after the end of the period of 12 months starting on the day when the person first satisfies the residency requirements unless, whether

SCHEDULE 3—continued

before or after the commencement of this section, the person is granted a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948* before the end of that period but is yet to make the pledge referred to in section 15 of that Act.

Residency requirements for permanent residents of Australia

“7C. For the purposes of sections 7A and 7B, the residency requirements for a person on a particular day, whether before or after the commencement of this section, are that the person:

- (a) must 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 1 year during the period of 2 years immediately preceding that day; and
- (b) must 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 2 years during the period of 5 years immediately preceding that day.

Sections 7A and 7B do not apply to benefit payable in respect of a year, or a part of a year, before 1996

“7D. Sections 7A and 7B do not have any effect in relation to a benefit under this Part payable in respect of a year that is before the year 1996, or a part of such a year.”.

SCHEDULE 4

Section 3

AMENDMENT OF THE STUDENT AND YOUTH ASSISTANCE ACT
1973

1. Schedule 1 (Module F—paragraph F3(e)):

Omit the paragraph, substitute:

“(e) gets AUSTUDY or ABSTUDY and:

- (i) has a partner who gets AUSTUDY or ABSTUDY; or
 - (ii) is a single parent; or”.
-

SCHEDULE 5

Section 3

**AMENDMENTS OF THE DATA-MATCHING PROGRAM
(ASSISTANCE AND TAX) ACT 1990, THE SOCIAL SECURITY ACT
1991 AND THE STUDENT AND YOUTH ASSISTANCE ACT 1973**

**PART 1—AMENDMENTS OF THE STUDENT AND YOUTH
ASSISTANCE ACT 1973**

1. Subsection 3(1) (definition of *student assistance*):

Omit “under the AUSTUDY scheme”, substitute:

“under:

- (a) the AUSTUDY scheme; or
- (b) the basic student payment scheme.”.

2. Subsection 3(1) (definition of *student assistance benefit*):

Add at the end:

“or (d) the basic student payment scheme.”.

3. Subsection 3(1) (paragraph (a) of the definition of *student assistance overpayment*):

Omit the paragraph, substitute:

- “(a) an amount paid under:
- (i) the AUSTUDY scheme; or
 - (ii) the basic student payment scheme;
- that should not have been paid; or”.

4. After Part 2:

Insert:

“PART 3—BASIC STUDENT PAYMENT SCHEME

Basic student payment scheme

“8. The scheme for the provision of benefits under this Part is referred to as the basic student payment scheme. A benefit under this Part is referred to as a basic student payment.

Applying for basic student payment

“8A.(1) A person may apply to the Secretary in accordance with the regulations for basic student payment in respect of a year, or a part of a year.

“(2) An application may be made before or during the year, or part of the year, to which the application relates but not later than the end of the year.

SCHEDULE 5—continued

Granting application

“8B.(1) Subject to this Part and the regulations, the Secretary must, on receipt of a person’s application under section 8A, grant basic student payment to the person in respect of a year or a part of a year, if satisfied that in that year, or part of the year, the person is, was or will be:

- (a) at least 16 but under 18; and
- (b) an Australian citizen or a permanent resident of Australia; and
- (c) a secondary student.

“(2) The regulations may specify circumstances in which benefits are not payable under this Part.

“(3) If the Secretary grants basic student payment to a person, the Secretary must:

- (a) give written notice of the grant to the person; and
- (b) specify in the notice the year, or part of a year, in respect of which the grant is made; and
- (c) specify in the notice the amount of basic student payment worked out under the regulations that is payable to the person.

“(4) The Secretary must notify a person in writing if the Secretary refuses to grant basic student payment to the person.

“(5) In this section:

secondary student means a student within the meaning of the regulations who is undertaking, intends to undertake, or has undertaken, a secondary course determined by the Minister under section 8C.

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

“8C.(1) The Minister may determine that a course of study or instruction is a secondary course for the purposes of the definition of *secondary student* in subsection 8B(5).

“(2) A determination must be in writing.

“(3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Basic student payment not to be granted

“8D.(1) The Secretary must not grant basic student payment to a person if:

- (a) the person’s income determined in accordance with the regulations is more than the allowable amount; or

SCHEDULE 5—continued

- (b) the total value determined in accordance with the regulations of the person's assets, and the person's family's assets, is more than the allowable amount; or
- (c) the income determined in accordance with the regulations of the person's parents is more than the allowable amount.

“(2) The Secretary must not grant basic student payment to a person while:

- (a) any of the following is being paid to, or in respect of, the person:
 - (i) a benefit under the AUSTUDY scheme or the ABSTUDY scheme;
 - (ii) youth training allowance under Part 8;
 - (iii) special benefit under Part 2.15 of the *Social Security Act 1991*;
 - (iv) family payment under Part 2.17 of the *Social Security Act 1991*; or
- (b) a benefit is being paid in respect of the person under a Veterans' Children Education Scheme prepared under Part VII of the *Veterans' Entitlements Act 1986*.

“(3) For the purposes of each of paragraphs (1)(a), (b) and (c), the allowable amount is the amount for that paragraph determined in accordance with the regulations.

Amount of basic student payment

“8E.(1) Subject to subsections (2) and (3), if the Secretary grants basic student payment to a person an amount worked out in accordance with the regulations is payable to the person.

“(2) The maximum amount of basic student payment payable to a person in respect of the part of the year starting on 1 July 1996 is \$250.

“(3) The maximum amount of basic student payment payable to a person in respect of a year after the year 1996 is \$500.

Note: The amounts in subsections 8E(2) and (3) are indexed by reference to the Consumer Price Index (see section 12ZZA).”.

5. Section 11:

Add at the end “(except assistance by way of a benefit under the basic student payment scheme)”.

6. Section 12:

Add at the end “(except assistance by way of a benefit under the basic student payment scheme)”.

SCHEDULE 5—continued

7. Subsection 12ZZA(1) (paragraph (a) of the definition of *indexable amount*):

Omit the paragraph, substitute:

“(a) subject to paragraph (b):

(i) the amounts set out at that time in subsections 8E(2) and (3);
and

(ii) an amount set out at that time in regulation 61 of the
AUSTUDY Regulations; or”.

Note: The heading to section 12ZZA is replaced by the heading “**Indexation (basic student payment and maximum living allowances under AUSTUDY Regulations)**”.

8. Subsection 44A(1):

After “AUSTUDY scheme” insert “, the basic student payment scheme”.

9. Subparagraph 49(1)(a)(iii):

After “rate” insert “or amount”.

10. After paragraph 55A(1)(c):

Insert:

“and (d) the basic student payment scheme;”.

11. Paragraph 56(a):

After “AUSTUDY scheme” insert “, the basic student payment scheme”.

12. Paragraph 56(ab):

After “AUSTUDY scheme” insert “, under the basic student payment scheme”.

13. After subparagraph 274(2)(d)(i):

Insert:

“(ia) the basic student payment scheme; or”.

14. After paragraph 302(d):

Insert:

“; or (e) all decisions of an officer under this Act relating to the basic student payment scheme.”.

15. After paragraph 309(d):

Insert:

SCHEDULE 5—continued

“; or (e) all decisions of an officer under this Act relating to the basic student payment scheme.”.

16. Paragraph 313(a):

After “scheme” insert “or the basic student payment scheme”.

17. After subsection 316(2):

Insert:

“(2A) If the Social Security Appeals Tribunal sets a decision aside and substitutes for it a decision that a person is entitled to a benefit under the basic student payment scheme in respect of a year or a part of a year, the Tribunal must assess the amount of basic student payment that is to be paid to the person.”.

18. Paragraph 316(5)(b):

After “AUSTUDY scheme,” insert “the basic student payment scheme,”.

19. After paragraph 323(d):

Insert:

“; or (e) all decisions of an officer under this Act relating to the basic student payment scheme.”.

20. Paragraph 343(1)(d):

After “rate” insert “or amount”.

Enacted

SCHEDULE 5—continued

**PART 2—AMENDMENTS OF THE DATA-MATCHING
PROGRAM (ASSISTANCE AND TAX) ACT 1990 AND THE
SOCIAL SECURITY ACT 1991**

Data-matching Program (Assistance and Tax) Act 1990

21. Section 3 (subparagraph (3)(b)(i) of the definition of *personal assistance*):

After the subparagraph insert:

“(ia) assistance under the basic student payment scheme;”.

Social Security Act 1991

22. After subparagraph 1228(2)(c)(i):

Insert:

“(ia) the basic student payment scheme; or”.

SCHEDULE 6

Section 3

AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

1 Subsection 831(1):

Omit “832 to”, substitute “833, 835 and”.

2. Subsection 831A(1):

Omit “sections 832 and”, substitute “section”.

3. Section 832:

Repeal the section.

4. Section 833:

Repeal the section, substitute:

FP child must be under 16

“833. A person who has reached the age of 16 years cannot be an FP child.”.

5. Subsections 859(5), (6) and (7):

Omit the subsections.

6 Paragraph 887(2)(d):

Omit “and”.

7. Paragraph 887(2)(e):

Omit the paragraph.

8. Paragraph 887(3)(d):

Omit “and”.

9. Paragraph 887(3)(e):

Omit the paragraph.

10. Paragraph 887(4)(d):

Omit “and”.

11 Paragraph 887(4)(e):

Omit the paragraph.

12. Subsections 887(6), (7) and (8):

Omit the subsections.

SCHEDULE 6—continued

13 Subparagraph 953(b)(i):

Omit the subparagraph.

14. Subparagraph 999(1)(a)(i):

Omit the subparagraph.

15. Paragraph 999(2)(a):

Omit the paragraph, substitute:

“(a) family payment is payable to the organisation for the young person;
and”.

**16. Section 1069 (Family Payment Rate Calculator—Module F—
point 1069-B2, Table B):**

Omit item 3.

SCHEDULE 7

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1. Subsection 12S(1):

Omit “7”, substitute “14”.

2. Subparagraph 12S(2)(d)(ii):

Omit “7”, substitute “14”.

3. Heading to Part 6:

After “**OVERPAYMENTS**” insert “**ETC.**”.

4. Subsection 38(2):

Omit the subsection, substitute:

“(2) If:

(a) either of the following subparagraphs applies:

(i) whether before or after the commencement of this Part, an amount that is:

(A) a student assistance overpayment; or

(B) a youth training allowance overpayment; or

(C) a special educational assistance scheme overpayment;
or

(D) a prescribed educational scheme overpayment; or

(E) a Social Security or Veterans’ legislation overpayment;
has been paid to or in relation to a person, and there is an unsatisfied liability to the Commonwealth in relation to that amount;

(ii) a person incurs a liability in relation to an amount of penalty under section 48 and that liability is unsatisfied; and

(b) the person is receiving, or entitled to receive, benefit payable under student assistance (whether the benefit is being paid, or to be paid, to the person or to another person);

each payment of the benefit is to be reduced by such proportion or amount (if any) as is determined by the Secretary until the liability is satisfied.”.

5. Subsection 38(6):

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(a)(i)”.

6. Subsection 42(1) (definition of *recoverable amount*):

Add at the end:

“; (d) an amount of penalty incurred by a person under section 48.”.

SCHEDULE 7—continued

7. Subsection 43(1) (definition of *recoverable amount*):

Add at the end:

“; (d) an amount of penalty incurred by a person under section 48.”.

8. Section 48:

(a) Omit “7 days”, substitute “14 days”.

(b) Add at the end:

“(2) A person who contravenes subsection (1) is not guilty of an offence, but is, subject to subsection (4), liable to pay to the Commonwealth a penalty of \$10 in respect of each week or part of a week while the contravention continues.

“(3) For the purposes of subsection (2), the contravention of subsection (1) continues until the person notifies the Department of the happening of the event.

“(4) The maximum total liability that the person may incur in respect of the contravention is \$1,000.”.

9. After section 48:

Insert:

Determination that penalty not to be payable

“48A.(1) The Secretary may determine that an amount of penalty incurred, or that may be incurred, by a person under section 48 is not payable. A determination must be in writing.

“(2) The determination has effect accordingly.

“(3) A determination may be expressed to be subject to the person complying with specified conditions.

“(4) The Secretary must give a copy of the determination to the person as soon as practicable after making the determination.

“(5) A contravention of subsection (4) does not invalidate the determination.

“(6) If:

(a) the determination is expressed to be subject to the person complying with specified conditions; and

(b) the person contravenes a condition;
the determination ceases to have effect.”.

10. Paragraph 49(1)(d):

Omit “or” (last occurring).

SCHEDULE 7—continued

11. Paragraph 49(1)(e):

Omit the paragraph.

10

State of New York, County of Albany

ss. I, the undersigned

Notary Public for said County

do hereby certify that the within and foregoing is a true and correct copy of the

original of the same as the same appears from the records of said County

in Book of Records No. 1, Page 10

Witness my hand and seal of office this 10th day of May 1891

Notary Public for said County

My Comm. Expires the 10th day of May 1892

SCHEDULE 8

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1. Schedule 1 (Module F—point F2):

Omit “point F3”, substitute “points F3 and F3A”.

2. Schedule 1 (Module F—point F3):

Add at the end:

“; or (h) gets a payment referred to in paragraph (e) of subclause 2(9).”.

Note: The heading to point F3 of Module F in Schedule 1 is altered by adding at the end “*or other payment*”.

3. Schedule 1 (Module F—point F3):

After the point insert:

“F3A. The parental income test does not apply to the person while the person is qualified for a payment referred to in paragraph (e) of subclause 2(9).”.

SCHEDULE 9

Section 3

**AMENDMENTS OF THE STUDENT AND YOUTH ASSISTANCE
ACT 1973**

1. Subsection 43(3):

Add at the end:

“; and (c) subsections 290B(5), (6) and (7) were omitted and the following subsection substituted:

‘(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that:

- (a) the debtor cannot repay more of the debt than the agreed amount; and
- (b) the agreed amount is at least the 80% of the unpaid amount; and
- (c) it would take at least a year to recover the unpaid amount under Part 6 if subsection (4) did not apply.’ ”.



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