

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 (YOUTH
TRAINING ALLOWANCE BILL (NO. 2) 1995**

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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(Employment, Education and Training)

A BILL

FOR

**An Act to amend 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 (Youth Training Allowance) Act (No. 2) 1995*.

Student and Youth Assistance Amendment
(*Youth Training Allowance*) (No. 2) No. , 1995

Commencement

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

(2) Schedules 1, 4, 6 and 8 commence, or are taken to have commenced, on the day on which the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995* receives or received the Royal Assent. 5

(3) Schedules 2 and 5 and items 2 and 3 of Schedule 3 commence on 1 January 1996.

Note: Item 1 of Schedule 3 commences on Royal Assent. 15

(4) Schedule 7 (other than item 3) commences immediately before 20 March 1996. 10

(5) Item 3 of Schedule 7 is taken to have commenced on 1 January 1995, immediately after the commencement of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.

Schedules

3. The *Student and Youth Assistance Act 1973* is amended as set out in the Schedules to this Act.

SCHEDULE 1

Section 3

AMENDMENTS RELATING TO COMPENSATION RECOVERY

1. Paragraph 225(c):

Omit “and”.

2. Paragraph 225(d):

Omit the paragraph.

3. Paragraph 225(e):

Omit the paragraph, substitute:

“(e) the person had not received:

(i) the lump sum; or

(ii) if the lump sum is to be paid in instalments—any of the instalments; and”.

4. Section 225:

Add at the end:

“(2) This section does not apply in respect of a lump sum to which a person is entitled if section 228 applies in respect of the lump sum.”.

5. Paragraph 229(4)(b):

Omit “or youth training allowance”, substitute “, youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

6. Subsection 229(4):

Add at the end:

“Note 2: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

7. Paragraph 229(4A)(b):

Omit “or youth training allowance”, substitute “, youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

8. Paragraph 229(4A)(d):

Add at the end:

“; and (iii) the payments of compensation affected pension made to the person’s partner under the Veterans’ Entitlements Act for the lump sum preclusion period and that have not been recovered under the provision of that Act that corresponds to this section”.

9. Subsection 229(4A):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

10. Paragraph 231(4)(b):

Omit “or a compensation affected payment”, substitute “, a compensation affected pension, or a compensation affected pension under the Veterans’ Entitlements Act,”.

11. Subsection 231(4):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

12. Paragraph 231(5)(b):

Before “for the period” insert “, or a compensation affected pension under the Veterans’ Entitlements Act,”.

13. Subsection 231(5):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

14. Paragraph 233(4)(b):

Omit “or youth training allowance”, substitute “, youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

15. Subsection 233(4):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

16. Paragraph 233(5)(b):

Omit “or youth training allowance”, substitute “, youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

17. Paragraph 233(5)(d):

Add at the end:

SCHEDULE 1—continued

“; and (iii) the payments of compensation affected pension made to the person’s partner under the Veterans’ Entitlements Act for the lump sum preclusion period and that have not been recovered under the provision of that Act that corresponds to this section”.

18. Subsection 233(5):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

19. Paragraph 237(6)(c):

Add at the end:

“and (iii) so much of the compensation affected pension payable to the person’s partner under the Veterans’ Entitlements Act for the preclusion payments period as has not been recovered under the provisions of that Act that correspond to this Division;”.

20. Subsection 237(6):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension, a carer service pension or an income support supplement.”.

SCHEDULE 2

Section 3

**AMENDMENTS RELATING TO QUALIFICATION FOR YOUTH
TRAINING ALLOWANCE**

1. Subsection 65(3):

After "Subject to" insert "subsection (3A) and".

2. After subsection 65(3):

Insert:

"(3A) In determining whether a person is qualified for youth training allowance in respect of a period under subsection (3):

(a) if, disregarding subclause 2(2) of Schedule 1, the person is to be regarded as independent for the purposes of Schedule 1—subsection (3) of this section has effect as if paragraph (c) were omitted; or

(b) if, throughout the period:

(i) the person lives at a home of either of his or her parents; and

(ii) the parent with whom the person lives is receiving a social security pension, a social security benefit, a service pension or payments under a prescribed educational scheme;

subsection (3) of this section has effect as if paragraph (e) were omitted.

Note: For *prescribed educational scheme* see subsection 5(1) of the Social Security Act."

SCHEDULE 3

Section 3

AMENDMENTS RELATING TO DEBT RECOVERY

1. Subsection 3(1) (definition of *late payment charge*):

Omit paragraph (d).

2. Subsection 3(1):

Insert the following definition:

“youth training allowance overpayment means an amount purported to have been paid under Part 8 but that should not have been paid.”.

3. After subparagraph 38(2)(a)(i):

Insert:

“(ia) a youth training allowance overpayment; or”.

SCHEDULE 4

Section 3

**AMENDMENTS RELATING TO CHANGE OF BENEFIT DURING
WAITING PERIOD**

1. Section 95:

Omit “A”, substitute “Subject to subsection (2), a”.

2. Section 95:

Add at the end (after the Notes):

“(2) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance under the *Social Security Act 1991*; and
- (b) because of sections 690 to 692 of that Act (unused annual leave waiting period), sickness allowance is not payable to the person for a period starting on the person’s provisional commencement day for sickness allowance; and
- (c) during that period the person ceases to be incapacitated for work and claims youth training allowance;

the person’s unused annual leave waiting period is taken to have started on the person’s provisional commencement day for sickness allowance or the day after the day on which the person’s employment ended, whichever was the earlier.

Note: For *provisional commencement day* for sickness allowance see section 687 of the Social Security Act.”.

3. Section 97:

Add at the end:

“(4) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance under the *Social Security Act 1991*; and
- (b) because of sections 693 and 694 of that Act (ordinary waiting period), sickness allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:
 - (i) if the person is not subject to an unused annual leave waiting period for sickness allowance and is not disqualified for sickness allowance under section 676 of that Act (liquid assets test waiting period)—the person’s provisional commencement day for sickness allowance; or

- (ii) if the person is subject to an unused annual leave waiting period for sickness allowance and is not disqualified for sickness allowance under section 676 of that Act (liquid assets test waiting period)—the day after the day on which the person's unused annual leave waiting period for sickness allowance ends; or
- (iii) if the person is disqualified for sickness allowance under section 676 of that Act (liquid assets test waiting period)—the day after the day on which the person's liquid assets waiting period for sickness allowance ends; and
- (c) during that period the person ceases to be incapacitated for work and claims youth training allowance;

then, despite subsections (1), (2) and (3), the person's ordinary waiting period is a period of 7 days starting on the applicable day.

Note 1: For *liquid assets test waiting period* for sickness allowance see section 676 of the Social Security Act.

Note 2: For *provisional commencement day* for sickness allowance see section 687 of the Social Security Act.

Note 3: For *unused annual leave waiting period* for sickness allowance see sections 690, 691 and 692 of the Social Security Act.”.

4. Section 99:

After subsection (4) insert:

“(4A) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance under the *Social Security Act 1991*; and
- (b) because of sections 695 and 696 of that Act (education leavers waiting period—non-secondary school leavers), sickness allowance is not payable to the person for a period starting on the person's provisional commencement day for sickness allowance; and
- (c) during that period the person ceases to be incapacitated for work and claims youth training allowance;

then, despite subsections (2), (3) and (4), the person's education leavers waiting period is taken to have started on the person's provisional commencement day for sickness allowance.

Note: For *provisional commencement day* for sickness allowance see section 687 of the Social Security Act.”.

5. Section 100:

After subsection (4) insert:

SCHEDULE 4—continued

“(4A) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance under the *Social Security Act 1991*; and
- (b) because of sections 695 and 696A of that Act (education leavers waiting period—secondary school leavers), sickness allowance is not payable to the person for a period starting on the day after the day on which the person stops a full-time course of education at a secondary school; and
- (c) during that period the person ceases to be incapacitated for work and claims youth training allowance;

then, despite subsections (2), (3) and (4), the person’s education leavers waiting period is taken to have started on the day after the day on which the person stopped a full-time course of education at a secondary school.”.

SCHEDULE 5

Section 3

**AMENDMENTS RELATING TO WAIVER OF DEBTS AND
REVIEWABILITY OF DECISIONS**

1. Subsection 43(3):

Omit all the words after “has effect”, substitute:

“as if:

- (a) the reference in subsection 290A(1) to \$200 were a reference to \$50;
and
- (b) subsection 290A(2) were omitted.”.

2. Sections 288, 289 and 290:

Repeal the sections, substitute:

Power to waive Commonwealth’s right to recover debt

Secretary’s limited power to waive

“288.(1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth’s right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 289, 290, 290A, 290B or 290C.

When waiver takes effect

“(2) A waiver takes effect:

- (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
- (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

Note: If the Secretary waives the Commonwealth’s right to recover all or part of a debt, the waiver is a permanent bar to recovery of that debt or that part of the debt—that debt or that part of the debt effectively ceases to exist.

Waiver of debt arising from error

Administrative error

“289.(1) The Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Note: Subsection (1) does not allow waiver of part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

Underestimating value of property

“(2) If:

- (a) a debt arose because the debtor, the debtor’s partner, or the debtor’s parent or parents underestimated the value of particular property; and
- (b) the estimate was made in good faith; and
- (c) the value of the property was not able to be easily determined when the estimate was made;

the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

“(3) For the purposes of this section, a proportion of a debt may be 100% of the debt.

Waiver of debt relating to an offence

“290.(1) If:

- (a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and
- (b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;

the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.

“(2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

Waiver of small debt

“290A.(1) The Secretary must waive the right to recover a debt if:

- (a) the debt is, or is likely to be, less than \$200; and
- (b) it is not cost effective for the Commonwealth to take action to recover the debt.

“(2) Subsection (1) does not apply if the debt is at least \$50 and could be recovered by deductions under section 281 from the debtor’s youth training allowance.

SCHEDULE 5—continued

Waiver in relation to settlements

Settlement of civil action

“290B.(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the Administrative Appeals Tribunal

“(2) If the Secretary has agreed to settle proceedings before the Administrative Appeals Tribunal relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Waiver where at least 80% of debt recovered and debtor cannot pay more

“(3) If:

- (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and
- (b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and
- (c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

“(4) If the Secretary and a debtor agree that the debtor’s debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the **unpaid amount**), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

“(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 present value of the unpaid amount repaid in instalments whose amount and timing is determined by the Secretary; and
- (c) it would take at least a year to recover the unpaid amount under Subdivision C if subsection (4) did not apply.

Formula for working out present value of unpaid amount

“(6) For the purposes of subsection (5), the **present value of the unpaid amount** is the amount worked out in accordance with the following formula:

$$\frac{\text{annual repayment}}{\text{interest}} \times \left[1 - \frac{1}{(1 + \text{interest})^{\text{repayment period}}} \right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Subdivision C in a year if subsection (4) did not apply in relation to the debt.

interest is the annual rate of interest specified by the Minister in a written notice.

repayment period is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

Example:

Facts:

Bill owed a debt of \$35,000 to the Commonwealth. After repaying \$5,000 (leaving an unpaid amount of \$30,000), he offers to make an immediate payment of a further \$20,000 in full satisfaction of the debt. The Secretary is satisfied that Bill cannot repay a larger amount of the debt than this. The Secretary believes that \$1,500 of the debt would be recovered under Subdivision C in a year, at which rate it would take 20 years to repay the debt. The Minister has specified an interest rate of 5% a year for the purposes of subsection (6).

Application:

The Secretary can accept Bill's offer and make an agreement with him as described in subsection (4), because the \$20,000 is more than the present value of \$30,000 repaid over 20 years at a 5% interest rate (which is $\$18,693.33 = (\$1,500 \div 0.05) \times (1 - (1 \div (1 + 0.05)^{20}))$). If the Secretary makes the agreement, the Secretary must waive \$10,000 of the debt (the difference between the unpaid amount of \$30,000 and the agreed amount of \$20,000).

Notice is a disallowable instrument

“(7) A notice described in the definition of **interest** in subsection (6) is a disallowable instrument.

Waiver in special circumstances

“290C. The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:

SCHEDULE 5—continued

- (i) making a false statement or a false representation; or
- (ii) failing or omitting to comply with a provision of this Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

Note: Section 287 allows the Secretary to write off a debt on behalf of the Commonwealth.”.

3. Subsection 303(2):

Add at the end:

“; or (e) relating to the Secretary’s power under section 326A to settle proceedings before the Administrative Appeals Tribunal.”.

4. After section 326:

Insert in Division 3 of Part 9:

Secretary may settle proceedings before the Administrative Appeals Tribunal

“326A.(1) The Secretary may agree, with other parties to proceedings before the Administrative Appeals Tribunal that relate to recovering a debt, to settle the proceedings. The agreement must be in writing.

“(2) If the proceedings are settled and the Secretary gives the Administrative Appeals Tribunal a copy of the agreement to settle the proceedings, the application for review of the decision that was the subject of the proceedings is taken to have been dismissed.”.

5. Application

The amendments in this Schedule apply to:

- (a) debts arising on or after 1 January 1996; and
 - (b) the amounts of debts arising before 1 January 1996 that were outstanding at the start of that day.
-

SCHEDULE 6

Section 3

**AMENDMENTS RELATING TO NOMINATION OF BANK
ACCOUNTS FOR PAYMENTS OF YOUTH TRAINING
ALLOWANCE**

1. Subsections 142(4) and (5):

Omit the subsections.

2. Section 142:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the youth training allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the youth training allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
 - (b) otherwise—on and from the day on which the nomination was made.”.
-

SCHEDULE 7

Section 3

**AMENDMENTS TO INCREASE THE RENT ASSISTANCE
THRESHOLD**

1. Division 13 of Part 8 (heading):

Add at the end “*and adjustment of amounts*”.

2. Section 250:

Add at the end:

“; and (c) one-off adjustments of rent assistance threshold amounts”.

3. Section 251 (Indexed Amounts Table—item 2—column 3):

Omit “all amounts” (second occurring), substitute “all rent threshold amounts”.

4. After Subdivision B of Division 13 of Part 8:

Insert in Division 13:

“Subdivision C—One-off adjustments of rent assistance thresholds

Rent assistance threshold increased on 20 March 1996

“256A. This Part has effect as if \$5 were added to each amount that is taken to be substituted on 20 March 1996 for an amount in column 3 of Table DA or column 3 of Table DB.

Note: Table DA is in point D2 of Module D in Schedule 1 and Table DB is in point D6 of that Module.”.

SCHEDULE 8

Section 3

MINOR AMENDMENTS

1. Subsection 3(1) (definition of *protected information*):

After “that” insert “has been obtained for the purposes of this Act and”.

2. Paragraph 274(2)(e):

Omit “Force”, substitute “Market”.

3. Subsection 274(2) (Note):

Omit “Force”, substitute “Market”.

4. Subsection 278(2) (Note):

Add at the end “of the Social Security Act”.

5. Subsection 351(3):

Omit “1989” (second occurring), substitute “1988”.

6. Amendment of Notes relating to the *Crimes Act 1914*:

Omit Note 1, or (if there is only one Note) the Note, to each of the following provisions, substitute:

“Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.”:

subsection 149(8)

subsection 150(6)

section 236

subsection 240(1)

section 242

subsection 246(1)

subsection 283(3)

subsection 293(1)

subsection 294(1)

subsection 295(1)

section 296

section 297

subsection 347(10)

subsection 349(2)

section 352

Student and Youth Assistance Amendment
(Youth Training Allowance) (No. 2) No. , 1995

SCHEDULE 8—continued

section 353

section 357

section 358

subsection 359(2).

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