

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(Employment, Education and Training)*

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

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(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. 3) 1995*.

*Student and Youth Assistance Amendment*  
*(Youth Training Allowance) (No. 3) No. , 1995*

**Commencement**

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

**(2)** Schedules 2 and 3 commence, or are taken to have commenced, on 20 March 1996. 5

**(3)** Part 2 of Schedule 1 commences, or is taken to have commenced, on 1 July 1996.

**(4)** Schedule 4 commences, or is taken to have commenced, on 20 September 1996.

**Amendments** 10

**3.** The *Student and Youth Assistance Act 1973* is amended in accordance with the applicable items in the Schedules and the other items in the Schedules have effect according to their terms.

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**SCHEDULE 1**

Section 3

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

**PART 1—AMENDMENTS COMMENCING ON ROYAL ASSENT**

**1. Paragraph 179(1)(a):**

Omit, substitute:

“(a) an accruing return investment that was made or acquired before 1 January 1988; or”.

**2. Sections 186, 187, 188 and 190:**

Repeal.

**3. Transitional provisions regarding the treatment of returns from the realisation of certain investments**

(1) If:

(a) before the commencement of this Part, a person realised an investment; and

(b) section 186 of the *Student and Youth Assistance Act 1973*, as in force immediately before the commencement of this Part, applied to the person as a result of the realisation of the investment; and

(c) the period of 12 months beginning on the day on which the investment was realised had not ended when this Part commenced;

sections 186 and 187 of that Act, as in force immediately before the commencement of this Part, are taken to continue to apply to the person in relation to the realisation of the investment until:

(d) the end of the period referred to in paragraph (c); or

(e) the end of 30 June 1996;

whichever is the earlier.

(2) If:

(a) before the commencement of this Part, a person realised an investment; and

(b) section 188 of the *Student and Youth Assistance Act 1973*, as in force immediately before the commencement of this section, applied to the person as a result of the realisation of the investment; and

(c) the period of 12 months beginning on the day on which the investment was realised had not ended when this Part commenced;

sections 188 and 190 of that Act, as in force immediately before the commencement of this Part, are taken to continue to apply to the person in relation to the realisation of the investment until:

*Student and Youth Assistance Amendment  
(Youth Training Allowance) (No. 3) No. , 1995*

**SCHEDULE 1—continued**

- (d) the end of the period referred to in paragraph (c); or
  - (e) the end of 30 June 1996;
- whichever is the earlier.

**SCHEDULE 1—continued**

**PART 2—AMENDMENTS COMMENCING ON 1 JULY 1996**

**1. Subdivisions A to E of Division 11 of Part 8:**

Repeal, substitute:

***“Subdivision A—Ordinary income concept***

**General meaning of ordinary income**

“174. A reference in this Part to a person’s ordinary income for a period is a reference to the person’s gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Subdivision B.

Note 1: For *ordinary income* see subsection 8(1) of the Social Security Act.

Note 2: For other provisions affecting the amount of a person’s ordinary income see sections 176 and 177 (business income), sections 178 to 185 (deemed income from financial assets) and sections 186 to 196 (income from retirement funds and annuities).

**Certain amounts taken to be received over 12 months**

“175. If a person has, whether before or after the commencement of this section, received an amount that:

- (a) is not income within the meaning of Subdivision C or D; and
- (b) is not:
  - (i) income in the form of periodic payments; or
  - (ii) ordinary income from remunerative work undertaken by the person;

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

***“Subdivision B—Business income***

**Ordinary income from a business—treatment of trading stock**

“176.(1) If:

- (a) a person carries on a business; and
- (b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the person’s ordinary income for that tax year in the form of profits from the business is to include the amount of the difference in values.

**SCHEDULE 1—continued**

“(2) If:

- (a) a person carries on a business; and
- (b) the value of all the trading stock on hand at the end of that tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the person’s ordinary income for that tax year in the form of profits from the business is to be reduced by the amount of the difference in values.

**Permissible reductions of business income**

“177.(1) Subject to subsection (2), if a person carries on a business, the person’s ordinary income from the business is to be reduced by:

- (a) losses and outgoings that relate to the business and are allowable deductions for the purposes of section 51 of the Income Tax Assessment Act; and
- (b) depreciation that relates to the business and is an allowable deduction for the purposes of subsection 54(1) of that Act; and
- (c) amounts that relate to the business and are allowable deductions under subsection 82AAC(1) of that Act.

“(2) If, under Subdivision C, a person is taken to receive ordinary income on a financial investment, that ordinary income is not to be reduced by the amount of any expenses incurred by the person because of that investment.

“Note: For *financial investment* see subsection 9(1) of the Social Security Act.

***Subdivision C—Deemed income from financial assets***

**Deemed income from financial assets—people other than members of couples**

“178.(1) This section applies to a person who is not a member of a couple.

“(2) A person who has financial assets is taken, for the purposes of this Part, to receive ordinary income on those assets in accordance with this section.

“(3) This is how to work out the ordinary income the person is taken to receive:



**SCHEDULE 1—continued**

*Method statement*

- Step 1.** If any part of the person's deposit concession money attracts interest, multiply the amount of each such part by the rate of interest and add together the amounts so worked out.  
Note: For *deposit concession money* see section 180.
- Step 2.** Subtract the total amount of the person's deposit concession money from the person's deeming threshold or, if the total value of the person's financial assets is less than that threshold, from that total value.  
Note: For *deeming threshold* see subsection 182(1).
- Step 3.** Multiply the remainder (if any) worked out at Step 2 by the below threshold rate.  
Note: For *below threshold rate* see subsection 183(1).
- Step 4.** If the total value of the person's financial assets exceeds the person's deeming threshold, subtract the person's deeming threshold from the total value of those assets.
- Step 5.** Multiply the remainder (if any) worked out at Step 4 by the above threshold rate.  
Note: For *above threshold rate* see subsection 183(2).
- Step 6.** The total of the amounts worked out at Steps 1, 3 and 5 represents the ordinary income the person is taken to receive per year on the financial assets.

**EXAMPLE OF HOW DEEMED INCOME OF A PERSON WHO IS NOT A  
MEMBER OF A COUPLE IS WORKED OUT**  
(using rates in force on 1 July 1996)

*Facts:*

Elaine, a single person has \$36,500 worth of financial assets. \$1,500 is in a cheque account not earning any interest. \$25,000 is earning 6% in interest and \$10,000 is earning 8% in interest. The below threshold rate is 5%. The above threshold rate is 7%.

*Application:*

- Step 1.** Elaine's deposit concession money amounts to \$1,500 (see section 180), which earns no interest. Under this step, \$1,500 is multiplied by 0%, giving a nil amount.
- Step 2.** Elaine's deeming threshold is \$30,000 (see subsection 182(1)). Her deposit concession money totals \$1,500. The difference is \$28,500.
- Step 3.** The amount of \$28,500 is multiplied by the below threshold rate (5%):

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**SCHEDULE 1—continued**

$$\$28,500 \times \frac{5}{100} = \$1,425.$$

Step 4. Elaine's deeming threshold of \$30,000 is subtracted from the total value of her financial assets (\$36,500). The remainder is \$6,500.

Step 5. The amount of \$6,500 is multiplied by the above threshold rate (7%):

$$\$6,500 \times \frac{7}{100} = \$455.$$

Step 6. The amounts worked out at Steps 1, 3 and 5 are added together:

	\$
Step 1	0
Step 3	1,425
Step 5	455
	1,880

The ordinary income Elaine is deemed to receive per year from her financial assets is \$1,880.

“(4) The person is taken, for the purposes of this Part, to receive one fifty-second of the amount worked out under subsection (3) as ordinary income of the person during each week.

**Deemed income from financial assets—members of couples**

“179.(1) This section applies to a person who is a member of a couple.

“(2) A person who has financial assets is taken, for the purposes of this Part, to receive ordinary income on those assets in accordance with this section.

“(3) This is how to work out the ordinary income the person is taken to receive:

**SCHEDULE 1**—continued

*Method statement*

- Step 1.** If any part of the person's deposit concession money attracts interest, multiply the amount of each such part by the rate of interest and add together the amounts so worked out.  
Note: For *deposit concession money* see section 180.
- Step 2.** Subtract the total amount of the person's deposit concession money from the person's deeming threshold or, if the total value of the person's financial assets is less than that threshold, from that total value.  
Note: For *deeming threshold* see subsection 182(2).
- Step 3.** Multiply the remainder (if any) worked out at Step 2 by the below threshold rate.  
Note: For *below threshold rate* see subsection 183(1).
- Step 4.** If the total value of the person's financial assets exceeds the person's deeming threshold, subtract the person's deeming threshold from the total value of those assets.
- Step 5.** Multiply the remainder (if any) worked out at Step 4 by the above threshold rate.  
Note: For *above threshold rate* see subsection 183(2).
- Step 6.** The total of the amounts worked out at Steps 1, 3 and 5 represents the ordinary income the person is taken to receive per year on the financial assets.

**EXAMPLE OF HOW DEEMED INCOME OF A MEMBER OF A COUPLE IS  
WORKED OUT**

(using rates in force on 1 July 1996)

*Facts:*

Kerry, who is married and receiving youth training allowance, has \$1,200 worth of financial assets. Her spouse, Robert, is not receiving a social security pension or a youth training allowance. Kerry has a cheque account containing \$200 on which no interest is paid. The remaining \$1,000 is held in a savings account on which interest is paid at 3%. The below threshold rate is 5%.

*Application:*

Step 1: Kerry's deposit concession money amounts to \$1,200 (section 180). Of that amount, \$200 earns no interest. The remaining \$1,000 earns interest at less than the below threshold rate. Amounts are worked out as follows:

$$\$200 \times 0\% = \$0$$

$$\$1,000 \times 3\% = \$30.$$

### SCHEDULE 1—continued

- Step 2. As Kerry has no financial assets other than deposit concession money, the result of this step is a zero remainder. Kerry's deeming threshold is \$25,000.
- Step 3. Because of the outcome of Step 2, Steps 3 to 5 have no application, and no income is assessed under those steps.
- Step 4. The only amount of income worked out is the amount of \$30 under Step 1. Therefore, the ordinary income Kerry is deemed to receive per year from her financial assets is \$30.

“(4) The person is taken, for the purposes of this Part, to receive one fifty-second of the amount worked out under subsection (3) as ordinary income of the person during each week.

#### **Deposit concession money**

“180.(1) This is how to work out which money constitutes, at a particular time, the deposit concession money of a person who is not a member of a couple:

<i>Method statement</i>	
<i>Step 1.</i>	Start with the amount of \$2,000.
<i>Step 2.</i>	Set off against this amount any available money of the person.
<i>Step 3.</i>	Set off against the remainder any deposit money of the person that does not attract interest.
<i>Step 4.</i>	Set off against the remainder any deposit money of the person that attracts interest at a rate lower than the below threshold rate: this money is to be set off in ascending order of interest rate.  Note: For <i>below threshold rate</i> see subsection 183(1).
<i>Step 5.</i>	The total of the available money or deposit money that can be set off under Steps 2 to 4 is the deposit concession money of the person at that time.  Note: Because of subsection (3), the total worked out under this Step cannot exceed \$2,000.

“(2) This is how to work out which money constitutes, at a particular time, the deposit concession money of a person who is a member of a couple:

SCHEDULE 1—continued

*Method statement*

- Step 1.** Start with the amount of \$2,000.
- Step 2.** Set off against this amount any available money of the person.
- Step 3.** Set off against the remainder any deposit money of the person that does not attract interest.
- Step 4.** Set off against the remainder any deposit money of the person that attracts interest at a rate lower than the below threshold rate: this money is to be set off in ascending order of interest rate.  
Note: For *below threshold rate* see subsection 183(1).
- Step 5.** The total of the available money or deposit money that can be set off under Steps 2 to 4 is the deposit concession money of the person at that time.  
Note: Because of subsection (3), the total worked out under this Step cannot exceed \$2,000.

“(3) For the purposes of subsections (1) and (2), if available money or deposit money is to be set off against an amount, only so much of the money as does not exceed the amount can be set off against the amount.

“(4) In this section:

**available money** does not include money referred to in a determination under subsection 185(1).

Note: For **available money** see subsection 8(1) of the Social Security Act.

**deposit money** does not include money referred to in a determination under subsection 185(1).

Note: For **deposit money** see subsection 8(1) of the Social Security Act.

**Meaning of money that attracts interest**

“181. A reference in any of sections 178 to 180 to money that attracts interest is a reference to money on which interest accrues, whenever the interest is paid.

**Deeming threshold**

“182.(1) The deeming threshold for a person who is not a member of a couple is \$30,000.

“(2) The deeming threshold for a member of a couple is \$25,000.

Note: The amounts fixed by subsections (1) and (2) are indexed every 1 July. See section 252.

**SCHEDULE 1—continued**

**Below threshold rate, above threshold rate**

“183.(1) For the purposes of this Subdivision, the below threshold rate is the rate determined by the Minister to be the below threshold rate for the purposes of this Subdivision.

“(2) For the purposes of this Subdivision, the above threshold rate is the rate determined by the Minister to be the above threshold rate for the purposes of this Subdivision.

“(3) A rate determined under this section must be in the form of a stated percentage.

“(4) A determination under this section:

- (a) must be in writing; and
- (b) is a disallowable instrument.

**Actual return on financial assets not treated as ordinary income**

“184.(1) Subject to subsection (2), any return on a financial asset that a person actually receives is taken, for the purposes of this Part, not to be ordinary income of the person.

“(2) If, because of a determination under subsection 185(1), a financial investment is not to be regarded as a financial asset for the purposes of section 178 or 179, subsection (1) does not apply to any return on the investment that the person actually receives.

**Certain money and financial investments not taken into account**

“185.(1) The Minister may determine that:

- (a) particular financial investments; or
- (b) financial investments of a particular class;

are not to be regarded as financial assets for the purposes of section 178 or 179.

“(2) Money that constitutes a financial investment to which a determination under subsection (1) applies is not to be taken into account under section 180.

“(3) A determination under subsection (1) must be in writing.

“(4) A determination under subsection (1) takes effect on the day on which it is made or on any other day (whether earlier or later) that is stated in the determination.

*“Subdivision D—Investments taken into account on realisation*

**Treatment of superannuation fund investments**

“186. If:

**SCHEDULE 1**—continued

- (a) a person has an investment in:
  - (i) a superannuation fund; or
  - (ii) an approved deposit fund; or
  - (iii) a deferred annuity; and
- (b) the person has not begun to receive a pension or annuity from the investment;

the investment is treated as follows:

- (c) the return on the investment is not treated as ordinary income (see paragraph 8(8)(b) of the Social Security Act);
- (d) if the investment is realised, the return is spread across the following 12 months (see section 187).

**Early withdrawal from superannuation fund**

“187. If:

- (a) a person realises an investment in a superannuation fund, approved deposit fund or deferred annuity; and
- (b) the amount is not rolled over into:
  - (i) a superannuation fund; or
  - (ii) an approved deposit fund; or
  - (iii) a deferred annuity; or
  - (iv) an immediate annuity;

the person is taken to receive one fifty-second of the assessable growth component of that amount as ordinary income of the person during each week in the period of 12 months beginning on the day on which the person realises the investment.

Note: For *assessable growth component* see subsection 9(1) of the Social Security Act.

**Adjustment of ordinary income for investment losses**

“188.(1) If:

- (a) a person realises an investment to which section 187 applies; and
- (b) the investment is realised at a loss;

the person’s ordinary income is taken to be reduced during each week in the 12 months beginning on the day on which the person realises the investment by the amount worked out using the formula:

**assessable loss**

**SCHEDULE 1—continued**

where:

**assessable loss** is so much (if any) of the amount of the loss as is attributable to the person’s assessable period.

Note: For **assessable period** see subsection 9(1) of the Social Security Act.

“(2) The reduction under subsection (1) in a person’s rate as at a particular day is not to exceed the increase to be made under section 187 in working out the person’s rate as at that day.”.

**2. Subdivisions G, H and I of Division 11 of Part 8:**

Repeal.

**3. Section 251 (Table):**

Add at the end:

“10	Deeming threshold for a person who is not a member of a couple (abbreviated as ‘Deeming threshold individual’)	Subsection 182(1).
11	Deeming threshold for a member of a couple (abbreviated as ‘Deeming threshold member of a couple’)	Subsection 182(2)

”.

**4. Subsection 252(1) (CPI Indexation Table):**

Add at the end:

“6	Deeming threshold individual	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	\$200.00.
7	Deeming threshold member of a couple	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	\$200.00

”.

**5. Section 253:**

Add at the end:

“(4) The first indexation of amounts under items 6 and 7 of the CPI Indexation Table in subsection 252(1) is to take place on 1 July 1997.”.



**SCHEDULE 1—continued**

**6. Schedule 1 (Module G—point G1—Note 2):**

Omit “• investment income (sections 177 to 196);”, substitute:

- “ the general concept of ordinary income (sections 174 and 175);  
business income (sections 176 and 177);  
deemed income from financial assets (sections 178 to 185);  
income from retirement funds and annuities (sections 186 to 196);”.

**7. Saving: Determinations under repealed sections 202 and 210**

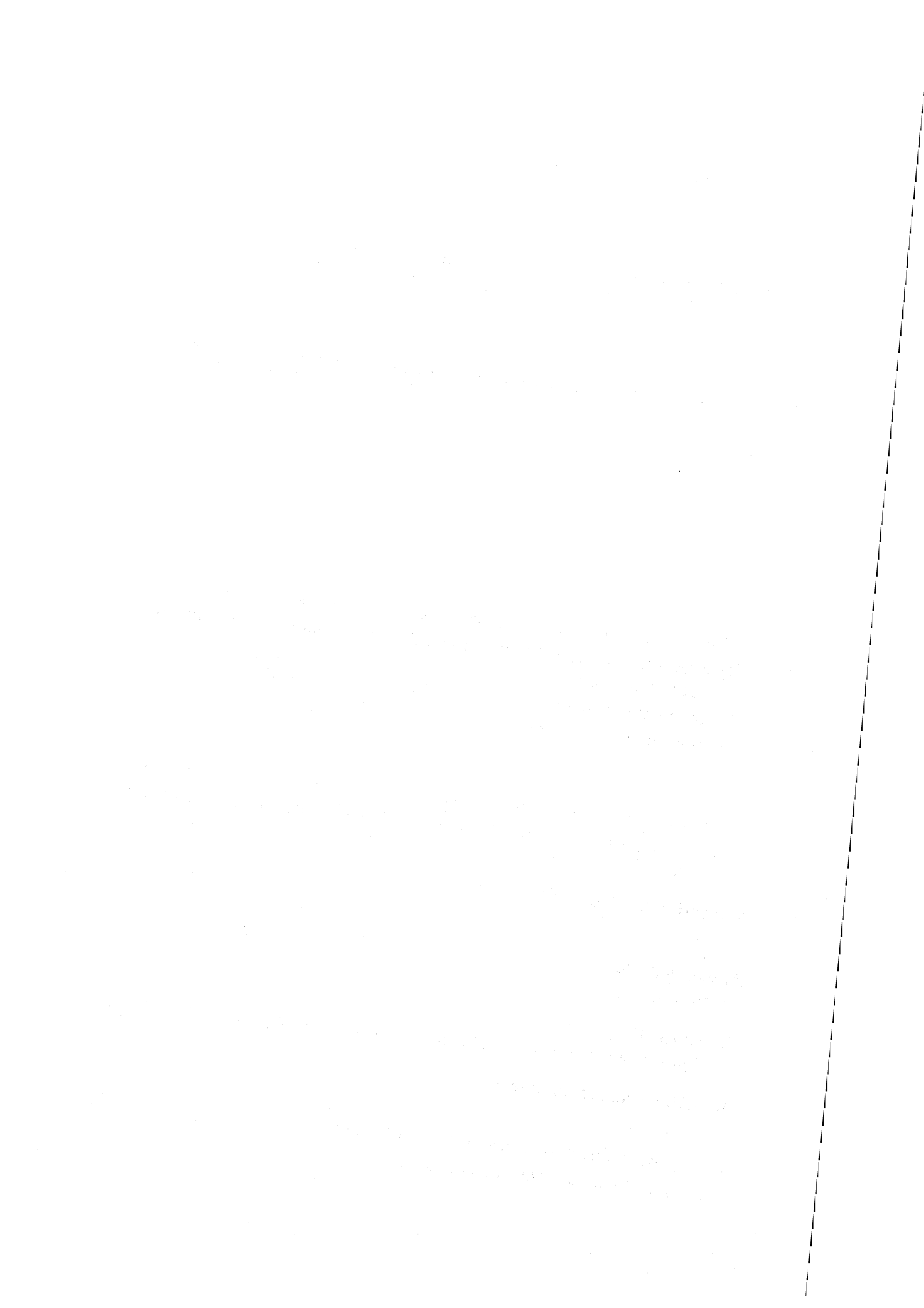
A determination in force under section 202 or 210 of the *Student and Youth Assistance Act 1973* immediately before the commencement of this Part continues to have effect after that commencement as if:

- (a) section 185 of that Act, as in force immediately after the commencement of this Part, had been in force when the determination was made; and
- (b) the determination had been made under that section as so in force; and
- (c) any reference in the determination to section 198, 207 or 208 of that Act were a reference to sections 178 and 179 of that Act as in force immediately after the commencement of this Part.

**8. Saving: Allowance rates**

If a youth training allowance is payable to a person for a fortnightly period that starts before 1 July 1996 and ends after that day, the rate of the person’s payment for that period is to be worked out in accordance with the *Student and Youth Assistance Act 1973* as in force immediately before 1 July 1996.

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**SCHEDULE 2**

Section 3

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

**1. After paragraph 65(1)(d):**

Insert:

“Note: A person who, under Subdivision BAA, is not required to satisfy the activity test is not to be required to enter into a Youth Training Activity Agreement (see subsection 79(1A)).”.

**2. Subparagraph 65(1)(g)(iii):**

Before “is” insert “subject to subsection (3A),”.

**3. Subsection 65(2):**

Omit.

**4. Before subsection 65(4):**

Insert:

“(3B) For the purposes of subparagraph (1)(g)(iii), if:

- (a) a person is, under Subdivision BAA, not required to satisfy the activity test; and
- (b) the person is temporarily absent from Australia; and
- (c) 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 during:

- (d) if the period is not more than 3 months—the whole of the period; or
- (e) if the period is more than 3 months—the first 3 months of the period.”.

**5. Section 65 (Note 10):**

Omit.

**6. Section 66:**

Repeal.

**7. Subsection 72(8):**

Omit “subsections (6)”, substitute “subsections (6), (8A), (8B)”.

**8. After subsection 65(8):**

Insert:

“(8A) Subject to subsection (9), if the person:

- (a) is not a member of a couple; and

**SCHEDULE 2—continued**

(b) is, under Subdivision BAA, not required to satisfy the activity test; the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated.”.

“(8B) Subject to subsection (9), if the person:

(a) is a member of a couple; and

(b) is, under Subdivision BAA, not required to satisfy the activity test; the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

(c) the day on which the person became incapacitated for work;

(d) if, when the claim is made, the person’s partner is unemployed—the day on which the person’s partner became unemployed;

(e) if, when the claim is made, the person’s partner is incapacitated for work—the day on which the person’s partner became incapacitated for work.”.

**9. Section 74:**

Add at the end:

“(2) A person is qualified for youth training allowance in respect of a period determined by the Secretary if:

(a) immediately before the start of the period, the person:

(i) was receiving youth training allowance; and

(ii) was incapacitated for work; and

(iii) was, under Subdivision BAA, not required to satisfy the activity test; and

(b) in the Secretary’s opinion:

(i) the person will comply with the requirements of this Act during the period; and

(ii) the person may reasonably be expected to be qualified for youth training allowance in respect of the period; and

(iii) youth training allowance may reasonably be expected to be payable to the person in respect of the period.”.

**10. After Subdivision B of Division 2 of Part 8:**

Insert:

**SCHEDULE 2—continued**

***“Subdivision BAA—Exemption from activity test—people temporarily incapacitated for work***

**Interpretation**

“78A. A reference in this Subdivision to a person being exempt from the activity test, or ceasing to be exempt from the activity test, under, or under a provision of, this Subdivision is a reference to a person not being required to satisfy the activity test, or becoming required to satisfy the activity test, as the case may be, because of the operation of, or the operation of that provision of, this Subdivision.

**Incapacitated person not required to satisfy activity test**

“78B.(1) Subject to this Subdivision, a person is not required to satisfy the activity test in respect of a period if:

- (a) throughout the period the person is incapacitated for work because of sickness or an accident; and
- (b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and
- (c) the incapacity is, or is likely to be, of a temporary nature; and
- (d) if this Subdivision had not been enacted and paragraphs 65(1)(c), (d), (e) and (f) were disregarded, the person would qualify for youth training allowance; and
- (e) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
  - (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
- (f) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test.

“(2) In this section:

**work**, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

- (a) is of a kind that the person could, in the Secretary’s opinion, be reasonably expected to do; and
- (b) is for at least 8 hours per week at award wages or above.

**SCHEDULE 2—continued**

**Person cannot obtain exemption from activity test in respect of same medical condition within 2 years**

“78C.(1) Subject to subsection (2), if a person who, because of an incapacity resulting from a medical condition, was exempt, under section 78B, from the activity test ceases to be so exempt because of the operation of section 78F or 78G, section 78B does not apply to the person again during the period of 104 weeks after the person ceased to be exempt.

“(2) Subsection (1) does not apply to a person:

- (a) if the person’s incapacity for work is caused by a medical condition that is different from, or significantly more serious than, the medical condition referred to in subsection (1); or
- (b) if:
  - (i) the medical condition referred to in subsection (1) is a chronically relapsing condition; and
  - (ii) the person’s incapacity for work is caused by a relapse of the condition; or
- (c) if:
  - (i) the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse; and
  - (ii) the person’s participation in the program is not likely to extend beyond 78 weeks; and
  - (iii) the program is approved by the Secretary in writing for the purposes of this section; or
- (d) if:
  - (i) the person’s incapacity for work is caused by a medical condition (whether the same as or different from the medical condition referred to in subsection (1)); and
  - (ii) arrangements have been made for the person to undergo surgery in respect of the condition; and
  - (iii) the surgery is expected to result in the person’s incapacity for work ceasing within 104 weeks from the date on which the person became exempt from the activity test in respect of the incapacity.

**Refusal to attend interview etc. may result in person being required to satisfy activity test**

“78D.(1) A person ceases to be exempt, under this Subdivision, from the activity test if:

**SCHEDULE 2—continued**

- (a) the Secretary is of the opinion that the person should:
  - (i) contact a particular officer of the Department; or
  - (ii) attend an interview at a particular place; or
  - (iii) complete a questionnaire; or
  - (iv) attend a medical, psychiatric or psychological examination;  
and
- (b) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, to:
  - (i) contact the officer; or
  - (ii) attend the interview; or
  - (iii) complete the questionnaire; or
  - (iv) attend the examination; or
  - (v) if the person has undergone an examination—give the Secretary a report on the examination in the approved form;  
and
- (c) the Secretary is satisfied that it is reasonable for this section to apply to the person; and
- (d) the person does not take reasonable steps to comply with the requirement.

“(2) A notice under paragraph (1)(b) must inform the person to whom it is given of the effect of failure by the person to take reasonable steps to comply with the requirement set out in the notice.

**Time limit for exemption from requirement to satisfy activity test**

“78E.(1) A person ceases to be exempt, under this Subdivision, from the activity test if the person’s maximum exemption period ends.

- “(2) Subject to this section, a person’s maximum exemption period is:
- (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was required to satisfy the activity test—the lesser of the following periods:
    - (i) the period stated in the certificate as the period for which the person would be incapacitated for work;
    - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
  - (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person’s incapacity for work began.

**SCHEDULE 2—continued**

“(3) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
  - (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 78B(1)(e) and is in accordance with the form approved under that paragraph; and
  - (c) the Secretary is satisfied that the person’s incapacity for work will continue after the end of the person’s maximum exemption period;
- the Secretary may extend the person’s maximum exemption period by a period that is not more than the lesser of the following periods:
- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
  - (e) 13 weeks.

“(4) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person’s incapacity for work will continue after the end of the person’s maximum exemption period; and
- (c) the Secretary is satisfied that:
  - (i) the person’s circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (3)(b) before the end of the maximum exemption period; and
  - (ii) the person’s incapacity for work will continue after the end of the person’s maximum exemption period;

the Secretary may extend the person’s maximum exemption period by not more than 4 weeks.

“(5) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (3)(b) before the end of the person’s maximum exemption period; and
- (c) before the end of the person’s maximum exemption period, the Secretary does not satisfy himself or herself that the person’s incapacity for work will continue after the end of that period; and
- (d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;



**SCHEDULE 2—continued**

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

**Person ceases to be exempt from activity test after one year**

“78F. Subject to section 78G, a person ceases to be exempt, under section 78B, from the activity test if the person has been so exempt in respect of the immediately preceding period of 52 weeks.

**If Secretary makes determination, person ceases to be exempt after 2 years**

“78G.(1) The Secretary may make a determination in writing that section 78F does not apply to a person if the Secretary is satisfied that:

- (a) the person's incapacity for work will end during the next 52 weeks; or
- (b) the medical condition that wholly, or virtually wholly, causes the person's incapacity for work at the end of the period of 52 weeks referred to in section 78F is different from, or significantly more serious than, the medical condition because of which the person was exempt, under section 78B, from the activity test at the beginning of that period of 52 weeks; or
- (c) the person's incapacity is caused by a chronically relapsing medical condition; or
- (d) all the following circumstances apply:
  - (i) the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse;
  - (ii) the person's participation in the program is not likely to extend beyond 78 weeks;
  - (iii) the program is approved by the Secretary in writing for the purposes of this section.

“(2) If the Secretary makes a determination under subsection (1) in relation to a person, section 78F does not apply to the person but the person ceases to be exempt, under section 78B, from the activity test if the person has been so exempt in respect of the immediately preceding period of 104 weeks.

“(3) For the purposes of subsection (2), a person who has not been exempt, under section 78B, from the activity test continuously in respect of the immediately preceding period of 104 weeks is taken to have been exempt, under that section, from the test in respect of that period if the period, or each period, during those 104 weeks in respect of which the person was not exempt was less than 6 weeks.”.

**SCHEDULE 2—continued**

**11. Subsection 79(1):**

Omit “If”, substitute “Subject to subsection (1A), if”.

**12. After subsection 79(1):**

Insert:

“(1A) A person who, under Subdivision BAA, is not required to satisfy the activity test is not to be required to enter into a Youth Training Activity Agreement.”.

**13. After paragraph 85(1)(i):**

Insert:

“(ia) section 92B applies to the person and the person fails to comply with a requirement in a notice given to the person under that section; or”.

**14. After paragraph 89(2)(b):**

Insert:

“(ba) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(bb) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students; or”.

**15. Subsection 91(1):**

Omit “subsections (2), (3), (4) and (5)”, substitute “this section”.

**16. After subsection 91(1):**

Insert:

“(1A) Subject to the following provisions of this section, if a person is, under Subdivision BAA, not required to satisfy the activity test, the person’s provisional commencement day is the day on which the person became incapacitated for work.”.

**17. Subsection 91(5):**

Omit “If”, substitute “Subject to subsections (5A) and (5B), if”.

**18. After subsection 91(5):**

Insert:

“(5A) Subject to subsection (5B), if:

(a) a person is a transferee to youth training allowance; and

(b) the person is, under Subdivision BAA, not required to satisfy the activity test; and

**SCHEDULE 2—continued**

- (c) the person claims the youth training allowance within 4 weeks after the person's transfer day;

the person's provisional commencement day is the person's transfer day.

“(5B) If:

- (a) a person is, under Subdivision BAA, not required to satisfy the activity test; and  
(b) the person is subject to an education leaver's waiting period (see subsection 98(1)); and  
(c) the person became incapacitated for work while undertaking the course of education;

the person's provisional commencement day is the last day on which the person was undertaking the course.”.

**19. Section 92:**

Add at the end (before the Notes):

“(2) This section does not apply to a person who is, under Subdivision BAA, not required to satisfy the activity test.”.

Note: The heading to section 92 is replaced by “**Start of youth training allowance—person subject to activity test**”.

**20. After section 92:**

Insert in Subdivision D of Division 2 of Part 8:

**Start of youth training allowance—person not subject to activity test**

“92A.(1) If a person who is, under Subdivision BAA, 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 following provisions of this section.

“(2) If the person:

- (a) claims the allowance within 5 weeks after the day on which the person becomes incapacitated for work; and  
(b) the person is not subject to a waiting period;

the allowance is not payable to the person before the person's provisional commencement day.

Note 1: A waiting period is:

- (a) an unused annual leave waiting period (see sections 93 to 95); or  
(b) an ordinary waiting period (see sections 96 and 97); or  
(c) an education leavers waiting period (see sections 98 to 100); or  
(d) a newly arrived resident's waiting period (see sections 101 and 102).

Note 2: For *provisional commencement day* see section 91.

**SCHEDULE 2—continued**

“(3) If the person:

- (a) claims the allowance within 5 weeks after the day on which the person becomes incapacitated for work; and
- (b) the person is subject to a waiting period;

the allowance is not payable to the person before the first day after the end of the waiting period.

Note 1: If the person:

- (a) is subject to an unused annual leave waiting period; and
- (b) is subject to an ordinary waiting period;

the ordinary waiting period will follow the unused annual leave waiting period (see subsection 97(2)).

Note 2: If the person is subject to an education leavers waiting period and another waiting period, the education leavers waiting period runs concurrently with the other waiting period and the youth training allowance will not be payable until the longest waiting period has ended.

Note 3: If the person is subject to a newly arrived resident’s waiting period and another waiting period, the newly arrived resident’s waiting period runs concurrently with the other waiting period and the youth training allowance will not be payable until the longest waiting period has ended.

“(4) If:

- (a) the person claims the allowance more than 5 weeks after the day on which the person becomes incapacitated for work; and
- (b) the Secretary is satisfied that the incapacity is the sole or dominant cause for the failure to claim the allowance within 5 weeks after that day;

the allowance is not payable to the person before the day determined by the Secretary.

“(5) The day determined under subsection (4):

- (a) must not be more than 4 weeks before the day on which the person lodges the claim for the allowance; and
- (b) if the person is subject to a waiting period—must not be earlier than the first day after the end of the waiting period.

Note 1: If the person:

- (a) is subject to an unused annual leave waiting period; and
- (b) is subject to an ordinary waiting period;

the ordinary waiting period will follow the unused annual leave waiting period (see subsection 97(2)).

Note 2: If the person is subject to an education leavers waiting period and another waiting period, the education leavers waiting period runs concurrently with the other waiting period and the youth training allowance will not be payable until the longest waiting period has ended.

Note 3: If the person is subject to a newly arrived resident’s waiting period and another waiting period, the newly arrived resident’s waiting period runs concurrently with the other waiting period and the youth training allowance will not be payable until the longest waiting period has ended.

**SCHEDULE 2—continued**

“(6) If:

- (a) the person claims the allowance more than 5 weeks after the day on which the person becomes incapacitated for work; and
- (b) the Secretary is not satisfied that the incapacity is the sole or dominant cause of the failure to claim the allowance within 5 weeks after that day;

the allowance is not payable to the person before the day on which the claim is lodged.

**Refusal to attend interview etc.**

“92B.(1) A youth training allowance is not payable to a person who is not required to satisfy the activity test if:

- (a) the person is receiving a youth training allowance; and
- (b) the Secretary is of the opinion that the person should:
  - (i) contact a particular officer of the Department; or
  - (ii) attend an interview at a particular place; or
  - (iii) complete a questionnaire; or
  - (iv) attend a medical, psychiatric or psychological examination; and
- (c) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, to:
  - (i) contact the officer; or
  - (ii) attend the interview; or
  - (iii) complete the questionnaire; or
  - (iv) attend the examination; or
  - (v) if the person has undergone an examination—give the Secretary a report on the examination in the approved form; and
- (d) the Secretary is satisfied that it is reasonable for this section to apply to the person; and
- (e) the person does not take reasonable steps to comply with the requirement.

“(2) A notice under paragraph (1)(b) must inform the person to whom it is given of the effect of failure by the person to take reasonable steps to comply with the requirement set out in the notice.”.

**21. Paragraph 99(10)(b)**

Omit “, a youth training allowance or sickness allowance”, substitute “or youth training allowance”.

**SCHEDULE 2—continued**

**22. Paragraph 114(1)(a):**

After “person” insert “(other than a person who is not required to satisfy the activity test).”.

**23. Schedule 1 (Module C—point C2) (excluding the Note):**

Omit, substitute:

*Incapacity for work*

“C2. This point applies to a person if:

- (a) the person is incapacitated for work; and
- (b) if the person is receiving youth training allowance—the person is, under Subdivision BAA of Division 2 of Part 8, exempt from the activity test.”.

**24. Schedule 1 (Module G—point G5):**

Omit, substitute:

*Friendly society amounts*

“G5. The ordinary income of a person to whom, or to whose partner, youth training allowance is payable and who, or whose partner, under Subdivision BAA of Division 2 of Part 8, is not required to satisfy the activity test is not to include any amount received by the person or partner from an approved friendly society in respect of the incapacity because of which the person or partner is qualified for the youth training allowance or is not required to satisfy the activity test, as the case may be.”.

**25. Application of legislative changes made to end transfers from youth training allowance to sickness allowance**

The amendments made by this Schedule apply in respect of youth training allowance for any fortnight starting on or after 20 March 1996.

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**SCHEDULE 3**

Section 3

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

**1. Paragraph 221(1)(e):**

Omit.

**2. Paragraphs 221(1)(f) and (g):**

Omit, substitute:

“(f) if the person’s earnings credit account balance is equal to or more than the amount earned—the part of the amount earned that is not more than \$100; or

(g) if the person’s earnings credit account balance is less than the amount earned—the part of the amount earned that is not more than the lesser of:

(i) the earnings credit account balance; or

(ii) \$100.”.

**3. Schedule 4 (Modules C and D):**

Omit, substitute:

**“MODULE C—EARNINGS CREDIT**

*When earnings credit arises*

“C1.(1) A person has an earnings credit for an earnings credit accounting period if the person’s fortnightly rate of ordinary income for that period is less than the person’s ordinary income free area.

*Amount of earnings credit*

“(2) The amount of the earnings credit is the amount by which that fortnightly rate of ordinary income is less than that ordinary income free area.

*Meaning of fortnightly rate of ordinary income*

“(3) If subsection 221(1) applies in relation to the application of an ordinary income test to a person for an earnings credit accounting period, a reference in subsection (1) or (2) to the person’s fortnightly rate of ordinary income for the period is taken to be a reference to:

(a) if the person is a member of a couple and the person’s partner is receiving a social security pension—the rate worked out using the formula:

$$\frac{\text{person's reduced income rate} + \text{partner's income rate}}{2} ; \text{ or}$$

(b) in any other case—the **person’s reduced income rate**;

**SCHEDULE 3—continued**

where:

***person's reduced income rate*** means 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 for remunerative work.

***partner's income rate*** means the partner's fortnightly rate of ordinary income for the period.

Note: For ***ordinary income free area*** see point G12 in Module G in Schedule 1.

**“MODULE D—DRAWING ACCOUNT**

***Drawing on account (recipient account)***

“D1. Subject to point D2, if, under subsection 221(1), an amount is disregarded in applying an ordinary income test to a person or a person's partner, the person is taken to draw the disregarded amount on an account established under section 222.

***If youth training allowance rate is nil—account not taken to be drawn***

“D2. If:

- (a) because a person earned an amount of money from remunerative work done by the person during an earnings credit accounting period, the person would, apart from this point, be taken under point D1 to have drawn an amount on the person's earnings credit account established under section 222; and
- (b) the rate of youth training allowance payable to the person for the period is nil;

the person is taken not to have drawn that amount on the account.”

**4. Application of legislative changes relating to earnings credits**

The amendments made by this Schedule apply for any fortnight starting on or after 20 March 1996.

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**SCHEDULE 4**

Section 3

**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**

- 1. Subsection 58(1) (definition of *Commonwealth funded employment program*):**  
Omit “, job search allowance”.
- 2. Schedule 1, Module D, point D5, subparagraph (b)(i):**  
Omit “job search allowance,”.
- 3. Schedule 1, Module E, point E3, paragraph (b):**  
Omit “job search allowance,”.
- 4. Schedule 1, Module F, point F3, paragraph (a):**  
Omit “job search allowance,”.

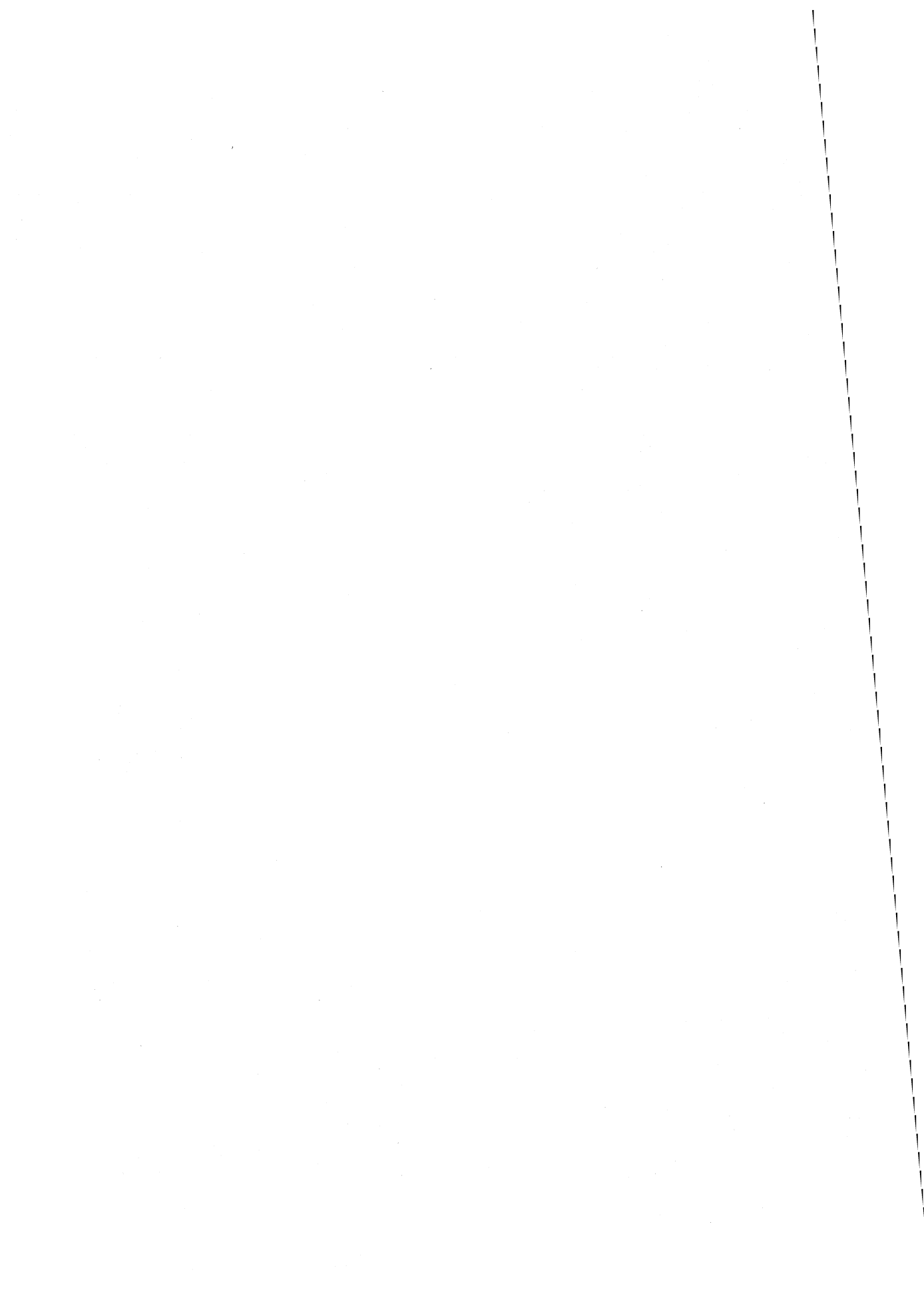














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