

**Social Security Legislation Amendment
(Youth Allowance Consequential and
Related Measures) Act 1998**

No. 45, 1998

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Related Measures) Act 1998**

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**An Act to amend the *Social Security Act 1991*, and
for related purposes**

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Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998

No. 45, 1998

An Act to amend the *Social Security Act 1991*, and for related purposes

[Assented to 17 June 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Social Security Legislation
Amendment (Youth Allowance Consequential and Related
Measures) Act 1998*.

2 Commencement

- (1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.

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- (2) Schedule 2 commences on 1 July 1998, immediately after the commencement of the *Social Security Legislation Amendment (Youth Allowance) Act 1998* (the **Youth Allowance Act**).
- (3) Part 1 of Schedule 3 commences immediately after whichever of the following events occurs later:
- (a) the commencement of the Youth Allowance Act;
 - (b) the start of the day on which the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998* (the **Budget Measures Act**) receives the Royal Assent.
- If the 2 events occur at the same time, that Part commences immediately after the commencement of the Youth Allowance Act.
- (4) Despite subsection (3), if the Budget Measures Act receives the Royal Assent after 1 July 1998, item 2 of Schedule 3 to this Act commences immediately after the commencement of the Youth Allowance Act.
- (5) Part 2 of Schedule 3 commences immediately after the commencement of items 4, 5, 6 and 11 of Schedule 4 to the Budget Measures Act.
- (6) Part 3 of Schedule 3 commences on 20 September 1998, immediately after the commencement of Schedule 3 to the Budget Measures Act.
- (7) Part 4 of Schedule 3 commences on 1 July 1999, immediately after the commencement of item 1 of Schedule 5 to the Budget Measures Act.
- (8) Items 89 to 91 of Schedule 9 commence on the day on which this Act receives the Royal Assent.
- (9) Item 1 of Schedule 10 commences on the day on which this Act receives the Royal Assent.
- (10) Item 71 of Schedule 13 commences on 20 September 1998, immediately after the commencement of Part 4 of Schedule 1 to
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the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997*.

- (11) Schedule 14 commences immediately after the commencement of subsection 543A(2A) of the *Social Security Act 1991* (inserted in that Act by the *Social Security Legislation Amendment (Youth Allowance) Act 1998*).

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendment of the Social Security Act 1991 relating to austudy payment

1 Section 3 (index)

Insert the following entries in their appropriate alphabetical position, determined on a letter-by-letter basis:

higher education institution	23(1)
TAFE institution	23(1)

2 Section 3 (entry relating to living at home)

After “1067E”, insert “and 1067J”.

3 Section 3 (entry relating to long term income support student)

After “1067F”, insert “and 1067K”.

4 Subsection 23(1)

Insert:

higher education institution means an institution that is a higher education institution for the purposes of the *Student Assistance Act 1973*.

5 Subsection 23(1)

Insert:

TAFE institution means an institution that is a technical and further education institution for the purposes of the *Student Assistance Act 1973*.

6 Before Part 2.12

Insert:

Part 2.11A—Austudy payment

Division 1—Qualification for austudy payment

Subdivision A—Basic qualifications

568 Qualification for austudy payment—general rule

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

- (a) the person satisfies the activity test (see Subdivision B); and
- (b) the person is of austudy age (see Subdivision C); and
- (c) the person satisfies the residency requirements that apply to the person under Subdivision D.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

568A Qualification for austudy payment—transferee from social security pension

If:

- (a) a person was receiving a social security pension; and
- (b) the person claims an austudy payment within 14 days after the day on which the last instalment of the person's pension was paid; and
- (c) the person becomes qualified for an austudy payment at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for an austudy payment for the whole of the 14 day period.

Subdivision B—Activity test

569 Activity test

General

- (1) Subject to subsection (2), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is undertaking qualifying study (see section 569A).

Persons who do not satisfy the activity test

- (2) A person cannot be taken to satisfy the activity test if the person:
- (a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or
 - (b) has completed a course for:
 - (i) a degree of Master or Doctor at an educational institution; or
 - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For **educational institution** see subsection 23(1).

Industrial instrument

- (3) In paragraph (2)(a):

industrial instrument means an award or agreement (however described) that:

- (a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:
 - (i) regulates the relationships between employers and employees; or
 - (ii) provides for the prevention or settlement of disputes between employers and employees; and

- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

569A Undertaking qualifying study

For the purposes of this Part, a person is *undertaking qualifying study* if:

- (a) the person:
 - (i) is enrolled in a course of education at an educational institution; or
 - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
 - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
- (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 569B); and
- (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 569C and 569D); and
- (d) the person satisfies the progress rules (see sections 569G and 569H).

569B Approved course of education or study

For the purposes of paragraph 569A(b), a course is an approved course of education or study if it is a course that the Employment Minister has determined, under section 5D of the *Student*

Assistance Act 1973, to be a secondary course or a tertiary course for the purposes of that Act.

569C Full-time students

For the purposes of this Subdivision, a person is a **full-time student** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 569E.

569D Concessional study-load students

- (1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:
 - (a) 25% concessional study-load students; and
 - (b) 66% concessional study-load students.
- (2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:
 - (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

- (3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 569E.

- (4) Subsection (2) applies to a person if:
- (a) an officer in the Commonwealth Rehabilitation Service has stated in writing that:
 - (i) the person has a substantial physical disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
 - (b) a medical practitioner specialising in psychiatry has stated in writing that:
 - (i) the person has a substantial psychiatric disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
 - (c) a psychologist who is registered with the Australian Psychological Society has stated in writing that the person:
 - (i) is intellectually disabled; and
 - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability.

- (5) Subsection (3) applies to a person if:
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- (a) the person cannot undertake the course as a full-time student because of:
 - (i) the relevant educational institution's usual requirements for the course; or
 - (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
- (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

569E Normal amount of full-time study

- (1) For the purposes of this Subdivision, the ***normal amount of full-time study*** in respect of a course is:
 - (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*—the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
 - (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
 - (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.
- (2) Without limiting subsection (1), the ***normal amount of full-time study*** in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

569F First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the **relevant period**):

- (a) starting on the first day of classes in a study period; and
- (b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

569G Progress rules—secondary students

General rule

- (1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 569A(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

- (2) A person does not satisfy the progress rules if:
 - (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
 - (b) the person has been a full-time student in respect of a course at that level (a **previous course**) in each of 2 previous years; and
 - (c) none of the following circumstances apply:
 - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
 - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
 - (iii) the person failed a previous course because English is not the person's native language;

- (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
- (v) each of the previous courses was undertaken more than 10 years before the present study.

Course at year 12 level

- (3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

- (4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

Meaning of secondary course

- (5) For the purposes of this section, a course is a secondary course if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a secondary course for the purposes of that Act.

569H Progress rules—tertiary students

Full-time students

- (1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
 - (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
 - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

- (2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
 - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

- (3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:
- (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
 - (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
 - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
 - (ii) the student's further progress in the course depends on passing a whole year's work in the course;the minimum amount of time plus 1 year; or
 - (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

- (4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student
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but the Secretary may approve, in particular cases, an allowable study time of up to four times the minimum period in which it is possible to complete the course as a full-time student.

Time spent by person studying part-time

- (5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full - time study}}$$

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

- (6) If:
- (a) a person is undertaking a course as a full-time student; and
 - (b) the person has previously undertaken:
 - (i) part of the course; or
 - (ii) one or more than one other course at the same level as that course;as a concessional study-load student; and
 - (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the **previous study**) is not to be disregarded under subsection (7);
- the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

- (7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:
- (a) if the person has completed a course (a pre-requisite course) the completion of which is the normal requirement for admission to the course in which the person is enrolled or intends to enrol—time spent undertaking the pre-requisite course;
 - (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
 - (c) time spent undertaking a course that has been permanently discontinued because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
 - (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
 - (e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;
 - (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
 - (g) time spent undertaking a course after 1973 if the course was not:
 - (i) approved for the Tertiary Education Assistance Scheme; or
 - (ii) approved for the AUSTUDY scheme; or
 - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
 - (h) time spent undertaking a course at a foreign institution;

- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
 - (i) AUSTUDY; or
 - (ii) a benefit under the Tertiary Education Assistance Scheme; or
 - (iii) youth allowance; or
 - (iv) austudy payment;because of the application of rules in respect of academic progress.

Levels of tertiary courses

- (8) There are 4 levels of tertiary courses, levels A, B, C and D.

Level A courses

- (9) The following are Level A courses:
- (a) a postgraduate bachelor degree course, with or without honours;
 - (b) a graduate or postgraduate diploma course;
 - (c) a course of practical legal training at a higher education institution;
 - (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
 - (e) a graduate certificate course.

Level B courses

- (10) The following are Level B courses:
- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
 - (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;

- (c) a diploma course other than:
 - (i) a graduate or postgraduate diploma course; or
 - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
 - (iii) a TAFE course;
- (d) a Master's qualifying course;
- (e) the Barristers or Solicitors Admission Board's course;
- (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

- (11) The following are Level C courses:
 - (a) an associate degree course;
 - (b) an associate diploma course;
 - (c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
 - (d) a 2-year undergraduate diploma course.

Level D courses

- (12) The following are Level D courses:
 - (a) a TAFE course at a higher education institution;
 - (b) a TAFE course, unless the course is in Level A, B or C.

Meaning of tertiary course

- (13) For the purposes of this section, a course is a tertiary course if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a tertiary course for the purposes of that Act.

Subdivision C—Austudy age

570 Austudy age

General

- (1) Subject to subsection (2), a person is of austudy age for the purposes of this Part if the person is at least 25 years old.

Study begun before turning 25

- (2) Even if the person is at least 25 years old, the person is taken not to be of austudy age if the person:
 - (a) was receiving youth allowance immediately before turning 25; and
 - (b) has not yet attained the maximum age for youth allowance (see subsection 543B(2)).

Subdivision D—Residency

571 Requirements relating to residency

The requirements that apply to a person relating to residency in respect of a period are that, throughout the period, the person:

- (a) is an Australian resident; and
- (b) subject to this Subdivision, is in Australia.

571A Absence overseas of persons undertaking qualifying study

General

- (1) Paragraph 571(b) does not apply to a person if the person is undertaking qualifying study and:
 - (a) is absent from Australia for the purpose of undertaking part of the studies for the course of education in respect of which the person is undertaking qualifying study; or
 - (b) is absent from Australia, for any other purpose, for not more than 26 weeks.

Temporary return to Australia

- (2) If the person:
- (a) returns to Australia after having been outside Australia (whether before or after the commencement of this section) for more than 13 weeks; and
 - (b) leaves Australia before the end of 13 weeks after he or she so returned to Australia;
- the person is taken, for the purposes of paragraph (1)(b), to have continued to be absent from Australia throughout the period from the time of the return to the time when the person so left Australia.

Division 2—Situations in which austudy payment is not payable

Subdivision A—The basic rules

572 Situations in which austudy payment is not payable

An austudy payment is not payable to a person who is qualified for austudy payment:

- (a) if the value of the person's assets exceeds the person's assets value limit (see Subdivision B); or
- (b) before the person's provisional commencement day (see Subdivision C); or
- (c) while the person is subject to a waiting period (see Subdivision D); or
- (d) while an activity test non-payment period applies to the person (see Subdivision E); or
- (e) while the person is subject to an administrative exclusion (see Subdivision F); or
- (f) while the person is subject to a multiple entitlement exclusion (see Subdivision G); or
- (g) while the person's austudy payment rate would be nil.

Note 1: An austudy payment is not payable if the person is in gaol or is undergoing psychiatric confinement because the person has been charged with committing an offence (see Division 2 of Part 3.13).

Note 2: An austudy payment is not payable to a person if the person is subject to a compensation preclusion period (see Part 3.14).

Subdivision B—Assets test

573 Austudy payment not payable if assets value limit exceeded

An austudy payment is not payable to a person if:

- (a) the person is not excluded from the application of the austudy payment assets test; and
- (b) the value of the person's assets is more than the person's assets value limit.

Note 1: For persons excluded from application of test see section 573A.

Note 2: For **assets value limit** see section 573B.

573A Who is excluded from application of assets test

A person is excluded from the application of the austudy payment assets test if the person's partner is receiving:

- (a) a payment of pension, benefit or allowance referred to in the table at the end of this section; or
- (b) a payment under Part 5 or 6 of the *Farm Household Support Act 1992*.

Table of pensions, benefits and allowances

Item	Type of pension, benefit and allowance
1	Age pension (Part 2.2)
2	Service pension (age) (Section 36 of the Veterans' Entitlements Act)
3	Defence widow's pension—if the widow has no dependent children (Section 70 of the Veterans' Entitlements Act)
4	War widow's pension—if the widow has no dependent children (Section 13 of the Veterans' Entitlements Act)
5	Mature age allowance (Part 2.12A or 2.12B)
6	Rehabilitation allowance (Clause 35 of Schedule 1A)

Table of pensions, benefits and allowances		
Item	Type of pension, benefit and allowance	
7	Commonwealth allowance	(New Enterprise Incentive Scheme (NEIS))
8	Carer payment	(Part 2.5)
9	Service pension (carer)	(Section 39 of the Veterans' Entitlements Act)
10	Defence widow's pension—if the widow has a dependent child	(Section 70 of the Veterans' Entitlements Act)
11	Disability support pension	(Part 2.3)
12	Service pension (invalidity)	(Section 37 of the Veterans' Entitlements Act)
13	War widow's pension—if the widow has a dependent child	(Section 13 of the Veterans' Entitlements Act)
14	Newstart allowance	(Part 2.12)
15	Sickness allowance	(Part 2.14)
16	Special benefit	(Part 2.15)
17	Benefit PP (partnered)	(Part 2.10)

573B Assets value limit

- (1) A person's **assets value limit** is:
- (a) \$125,750 if the person:
 - (i) is not a member of a couple (see section 4); and
 - (ii) is a homeowner; or
 - (b) \$215,750 if the person:
 - (i) is not a member of a couple; and
 - (ii) is not a homeowner; or
 - (c) \$178,500 if the person:
 - (i) is a member of a couple; and
 - (ii) is a homeowner; or
 - (d) \$268,500 if the person:
 - (i) is a member of a couple; and
 - (ii) is not a homeowner.

Note 1: For **homeowner** see subsection 11(4).

Note 2: The amounts in this section are indexed annually on 1 July (see sections 1191 to 1194).

- (2) If the Secretary determines in writing a higher amount in substitution for an amount specified in subsection (1) (the **existing amount**), the higher amount is taken, from the commencement of this section, to have been substituted for the existing amount. A determination under this subsection is a disallowable instrument.
- (3) Subsection (2) and this subsection are repealed at the end of 31 December 1998.

573C Value of person's assets to include value of assets of partner

The value of a person's assets is the sum of the following values:

- (a) the value of the person's assets (disregarding paragraph (b));
- (b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

Sections 573D and 573E apply for the purpose of working out the value of the person's assets and of his or her partner (if any).

573D Assets of trust in which person benefits

A person's assets include:

- (a) any benefit to which the person is entitled directly or indirectly out of the assets of a trust; and
- (b) any asset of a trust that the person can deal with directly or indirectly to his or her advantage; and
- (c) any interest in the assets of a trust which has been assigned to someone else but which the person can directly or indirectly control.

573E Exclusion of certain farm assets

If:

- (a) an exceptional circumstances certificate referred to in section 8A of the *Farm Household Support Act 1992* was issued in respect of a person; and
 - (b) the certificate has effect;
- the person's assets do not include any asset that is an exempt asset in respect of the person within the meaning of that Act.

Subdivision C—Provisional commencement day

574 Provisional commencement day—basic rule

Subject to this Subdivision, a person's provisional commencement day is the day on which the person claims an austudy payment.

574A Provisional commencement day—initial incorrect or inappropriate claim followed by claim for austudy payment

Subject to section 574B, if:

- (a) a person makes a claim (*initial claim*) for:
 - (i) a social security pension, a social security benefit (other than an austudy payment) or a service pension; or
 - (ii) a pension, allowance, benefit or other payment that is similar in character to an austudy payment under an Act other than this Act or under a program administered by the Commonwealth; and
 - (b) on the day on which the person makes the initial claim, the person is qualified for austudy payment; and
 - (c) the person afterwards makes a claim for austudy payment; and
 - (d) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;
- the person's provisional commencement day is the day on which the person made the initial claim.

574B Provisional commencement day—transferee to austudy payment

If a person:

- (a) is a transferee to austudy payment; and
- (b) claims austudy payment within 14 days after the transfer day; the person's provisional commencement day is the person's transfer day.

Note: For *transferee to austudy payment* and *transfer day* see subsections 23(6) and (7).

574C Provisional commencement day—application of section 577C or reduction of rate to nil

If:

- (a) a person receives an austudy payment; and
- (b) either:
 - (i) the person is subject to an administrative exclusion because of the application of section 577C; or
 - (ii) an administrative breach rate reduction period under Subdivision C of Division 5 applies to the person and the person's administrative breach reduced rate is a nil rate; and
- (c) payment of the allowance is cancelled or automatically terminated; and
- (d) the person lodges a claim for austudy payment within 14 days after the date of effect of the cancellation or automatic termination referred to in paragraph (c);

the person's provisional commencement day is the day after the date of effect of the cancellation or automatic termination.

574D Provisional commencement day—claim resulting from a major disaster

If a person:

- (a) claims a disaster relief payment; and
 - (b) is qualified for the payment; and
-

- (c) as a result of the major disaster to which the payment relates, claims austudy payment within 14 days after the day on which the person claimed the disaster relief payment; the person's provisional commencement day is the day on which he or she was affected by the disaster.

Subdivision D—Waiting periods

575 Waiting periods

For the purposes of this Part, a person may be subject to the following waiting periods:

- (a) a liquid assets test waiting period (see sections 575A, 575B and 575C);
- (b) a newly arrived resident's waiting period (see sections 575D and 575E).

575A Liquid assets test waiting period

When person subject to liquid assets test waiting period—general

- (1) Subject to this section, if:
 - (a) the value of a person's liquid assets is more than the person's maximum reserve on:
 - (i) the day on which the person becomes qualified for austudy payment; or
 - (ii) the day on which the person claims austudy payment; and
 - (b) the person is not a transferee to austudy payment;the person is subject to a liquid assets test waiting period.

Note 1: For *liquid assets* and *maximum reserve* see section 14A.

Note 2: For *transferee to austudy payment* see subsections 23(6) and (7).

Exception—person already subject to liquid assets test waiting period in previous 12 months

- (2) Subsection (1) does not apply to a person if, at any time during the 12 months before:
- (a) the day on which the person becomes qualified for austudy payment; or
 - (b) the day on which the person claims austudy payment;
- the person:
- (c) was subject to a liquid assets test waiting period under this Part and that period has ended; or
 - (d) has served a liquid assets test waiting period under another Part of this Act; or
 - (e) has served a liquid assets test waiting period under the *Student Assistance Act 1973* as previously in force.

Exception—waiver for hardship

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For ***in severe financial hardship*** see subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Exception—certain transferees to austudy payment

- (4) Subsection (1) does not apply to a person if:
- (a) the person is a transferee to austudy payment; and
 - (b) the person claims austudy payment within 14 days of the transfer day.

575B Start of liquid assets test waiting period

The liquid assets test waiting period of a person starts on the day on which the person became qualified for austudy payment.

575C Length of liquid assets test waiting period

Number of weeks

- (1) A person's liquid assets test waiting period is:
- (a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or
 - (b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

Working out number of weeks

- (2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

divisor, in relation to the person, means:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
- (b) otherwise—\$1,000.

liquid assets means the person's liquid assets on the day referred to in subparagraph 575A(1)(a)(i) or (ii) (as the case requires).

maximum reserve amount means the maximum reserve in relation to the person under subsection 14A(1).

Weeks etc. to be disregarded

- (3) For the purposes of subsection (2), disregard:

- (a) any weeks after the person claimed austudy payment during which the person was not qualified for austudy payment; and
- (b) any fractions of a week.

575D Newly arrived resident's waiting period

Basic rule

- (1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
 - (a) has entered Australia on or after 4 March 1997; and
 - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 104 weeks.

Note: For **Australian resident** see subsection 7(2).

Exception—qualifying residence exemption

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For **qualifying residence exemption** see subsection 7(6).

Exception—person already subject to waiting period etc.

- (3) Subsection (1) does not apply to a person if:
 - (a) the person has been subject to:
 - (i) a newly arrived resident's waiting period under this Act; or
 - (ii) a waiting period under Part 2 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; or
 - (iii) a newly arrived resident's waiting period under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; and
 - (b) that period has ended.
- (4) Subsection (1) does not apply to a person if:
 - (a) the person would:

- (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident's waiting period under this Act; or
 - (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a newly arrived resident's waiting period under Part 8 of that Act;
- and that period would have ended; or
- (b) the person has had:
 - (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
 - (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or
 - (c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

575E Length of newly arrived resident's waiting period

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first entered Australia; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 104 weeks after that day.

Note: For ***Australian resident*** see subsection 7(2).

575F Effect of being subject to 2 waiting periods

For the avoidance of doubt, if a person is subject to 2 waiting periods under this Subdivision, an austudy payment is not payable to the person until both of those waiting periods have ended.

Subdivision E—Activity test non-payment periods

576 Third and subsequent activity test breaches lead to activity test non-payment period

An activity test non-payment period applies to a person if:

- (a) the person commits an activity test breach (***latest breach***); and
- (b) the latest breach is the third or subsequent activity test breach in the 2 years immediately before the day after the latest breach.

Note: If the latest breach is the first or second activity test breach in the 2 years before the latest breach, an activity test rate reduction period applies to the person (see Subdivision B of Division 5).

576A Activity test breaches

A person has committed an activity test breach if:

- (a) the person fails to satisfy the activity test (see Subdivision B of Division 1); or
- (b) the person refuses or fails, without reasonable excuse, to provide information in relation to the person's income from remunerative work when required to do so under this Act; or
- (c) the person knowingly or recklessly provides false or misleading information in relation to the person's income from remunerative work when required to do so under this Act.

Note: An activity test breach may also arise under other sections of this Act and the *Student Assistance Act 1973* as in force immediately before the commencement of section 576A of this Act (see subsection 23(1)).

576B Length of activity test non-payment period

Basic rule

- (1) Subject to subsection (2), the length of an activity test non-payment period is 8 weeks.

Pre-existing non-payment period

- (2) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test non-payment period (***pre-existing non-payment period***), the pre-existing non-payment period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

576C Start of activity test non-payment period

Notice of start of period

- (1) If an activity test non-payment period applies to a person under this Part, the Secretary must give the person a written notice telling the person of the start of the period.
- (1A) A notice under subsection (1) must contain reasons why the activity test non-payment period applies to the person.

General rule

- (2) Subject to subsection (3) of this section and section 576E, the activity test non-payment period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

- (3) Subject to section 576E, if:
- (a) on or before the day on which a person's activity test non-payment period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person; and
 - (b) it has not ceased to be payable because of the application of an activity test non-payment period;
- the activity test non-payment period starts on the day on which the austudy payment ceases to be payable to the person.

576D Interaction with activity test breach rate reduction periods

Application of section

- (1) This section applies if, under this Part:
- (a) an activity test non-payment period applies to a person; and
 - (b) during the whole or a part of that period, the whole or a part of an activity test breach rate reduction period (**overlap period**) applies to the person.

Note: An administrative breach rate reduction period may also apply to the person (see section 583C).

Overlap period

- (2) Subject to subsection (4), the activity test non-payment period and the activity test breach rate reduction period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Subject to section 576E, only the non-payment restriction relating to the activity test non-payment period is to apply to the person during the overlap period.

Pre-existing activity test breach rate reduction period

- (4) If, at the time of the commencement of an activity test non-payment period under this Part, the person is already subject to an activity test breach rate reduction period (**pre-existing reduction period**), the pre-existing reduction period is taken to end immediately before the commencement of the activity test non-payment period under this Part.

576E Interaction with waiting periods

Application of section

- (1) This section applies if, under this Part:
- (a) an activity test non-payment period applies to a person; and

- (b) during the whole or a part of that period, the whole or a part of a waiting period (***overlap period***) applies to the person.

Note: An administrative breach rate reduction period may also apply to the person (see section 583C).

Overlap period

- (2) The non-payment period and the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

576F Effect of sections 576C, 576D and 576E

For the avoidance of doubt, sections 576C, 576D and 576E do not prevent an austudy payment ceasing to be payable in circumstances that do not involve the application of an activity test non-payment period under this Part.

576G Where one event may give rise to both an activity test penalty and an administrative breach rate reduction period

If, but for this section, an event would result in both an activity test penalty period and an administrative breach rate reduction period applying to a person under the provisions of this Act, only the provision imposing the activity test penalty period is to apply to the person.

Subdivision F—Administrative exclusions

577 Administrative exclusions

For the purposes of this Division, a person is subject to an administrative exclusion while one or more of sections 577A to 577D apply to the person.

Note: These sections apply because the person fails to do certain things. It is open to the person to end the administrative exclusion by doing those things.

577A Failure to comply with request to provide person's tax file number

Person must provide tax file number or employment declaration

- (1) A person is subject to an administrative exclusion if:
- (a) the Secretary has requested the person under section 579F or 586:
 - (i) to give the Secretary a written statement of the person's tax file number; or
 - (ii) to apply for a tax file number and give the Secretary a written statement of the person's tax file number once it has been issued; and
 - (b) at the end of 28 days after the request is made, the person has neither:
 - (i) given the Secretary a written statement of the person's tax file number; nor
 - (ii) given the Secretary an employment declaration and satisfied either subsection (2) or (3).

Person does not know tax file number

- (2) A person satisfies this subsection if:
- (a) the employment declaration states that the person:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform him or her of the number; and
 - (b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—the tax file number; and

- (c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.

Application for tax file number pending

- (3) A person satisfies this subsection if:
 - (a) the person's declaration states that the person has applied for a tax file number; and
 - (b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the person—the tax file number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn; and
 - (c) the Commissioner of Taxation has not told the Secretary that the person has not applied for a tax file number; and
 - (d) the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and
 - (e) the application for a tax file number has not been withdrawn.

577B Failure to comply with request to provide partner's tax file number

Person must provide partner's tax file number

- (1) Subject to subsection (4), a person is subject to an administrative exclusion if:
 - (a) the person is a member of a couple; and
 - (b) the person is requested under section 579G or 586A to give the Secretary a written statement of the tax file number of the person's partner; and
 - (c) at the end of 28 days after the request is made the person has neither:

- (i) given the Secretary a written statement of the partner's tax file number; nor
- (ii) given the Secretary a declaration by the partner in a form approved by the Secretary and satisfied either subsection (2) or (3).

Partner does not know tax file number

- (2) The person satisfies this subsection if:
 - (a) the partner's declaration states that the partner:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform the partner of the partner's tax file number; and
 - (b) the person has given the Secretary a document signed by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the partner has a tax file number; and
 - (ii) if the partner has a tax file number—the tax file number; and
 - (c) the Commissioner of Taxation has not told the Secretary that the partner has no tax file number.

Application for partner's tax file number pending

- (3) The person satisfies this subsection if:
 - (a) the partner's declaration states that the partner has applied for a tax file number; and
 - (b) the person has given the Secretary a document signed by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the partner—the tax file number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn; and

- (c) the Commissioner of Taxation has not told the Secretary that an application by the partner for a tax file number has been refused; and
- (d) the application for a tax file number has not been withdrawn.

Secretary may waive requirement

- (4) The Secretary may waive the request for a statement of the partner's tax file number if the Secretary is satisfied that:
 - (a) the person does not know the partner's tax file number; and
 - (b) the person can obtain none of the following from the partner:
 - (i) the partner's tax file number;
 - (ii) a statement of the partner's tax file number;
 - (iii) a declaration by the partner under subparagraph (1)(c)(ii).

577C Failure to attend the Department etc.—person required to satisfy activity test etc.

Requirement to attend the Department etc.

- (1) Subject to subsection (2), a person is subject to an administrative exclusion if:
 - (a) a person is receiving, or has lodged a claim for, an austudy payment; and
 - (b) the Secretary is of the opinion that the person should:
 - (i) attend an office of the Department; or
 - (ii) contact the Department; or
 - (iii) give information to the Secretary; and
 - (c) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, being a period of not less than 14 days, to:
 - (i) attend that office; or
 - (ii) contact that Department; or
 - (iii) give that information; and
 - (d) the requirement is reasonable; and

- (e) the person does not comply with the requirement.

Content of notice

- (1A) A notice under paragraph (1)(c) must inform the person to whom it is given of the effect of failure by the person to comply with the requirement set out in the notice without reasonable excuse.

Reasonable excuse for non-compliance

- (2) The Secretary may determine that a person is not subject to an administrative exclusion under this section if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement.

577D Failure to nominate account etc.

Period within which account is to be nominated

- (1) A person is subject to an administrative exclusion if, at the end of the period (***preliminary period***) of 28 days starting on the day on which an austudy payment became payable to the person:
 - (a) no account has been nominated for the purposes of subsection 584E(2); and
 - (b) the Secretary has not given a direction under subsection 584E(4) in relation to the payment of instalments of the austudy payment to the person.

Cessation of administrative exclusion

- (2) If an account is nominated for the purposes of subsection 584E(2) after the end of the preliminary period, then, subject to this Part, the person ceases to be subject to the administrative exclusion and the allowance is payable to the person:
 - (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.
-

Subdivision G—Multiple entitlement exclusions

578 Multiple entitlement exclusions

For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:

- (a) the person is receiving an austudy payment and another social security benefit, a social security pension or a service pension becomes payable to the person; or
- (b) a payment under a scheme referred to in section 578A has been or may be made to the person; or
- (c) an assurance of support applies to the person (see section 578B); or
- (d) the person has received, or may receive, income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

Note: For **Commonwealth funded employment program** see subsection 23(1).

578A Person receiving payment under certain schemes

General

- (1) Subject to subsection (2), the schemes for the purposes of paragraph 578(b) are:
 - (a) a prescribed educational scheme other than the ABSTUDY Tertiary Scheme to the extent that it applies to part-time students; and
 - (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
 - (c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and
 - (d) 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; and
 - (e) a LEAP program.

Note 1: For **prescribed educational scheme** see section 5.

Note 2: For **LEAP program** see subsection 23(1).

Application made under ABSTUDY Scheme

(2) If:

- (a) a person is undertaking qualifying study in respect of a course of education that is to last for 6 months or more; and
- (b) an application is made for a payment in respect of the person under:
 - (i) the ABSTUDY Schooling Scheme; or
 - (ii) the ABSTUDY Tertiary Scheme; and
- (c) the person was receiving an austudy payment immediately before the start of the course;

the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:

- (d) the application is determined; or
- (e) the end of the period of 3 weeks beginning on the day on which the course starts;

whichever happens first.

578B Assurance of support

An assurance of support applies to a person if:

- (a) an assurance of support is in force in respect of the person (**assuree**); and
- (b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For **assurance of support** see subsection 23(1).

Division 3—Claim for austudy payment

579 Need for a claim

Proper claim

- (1) A person who wants to be granted an austudy payment must make a proper claim for the austudy payment.

Note: For **proper claim** see section 579A (form), sections 579B and 579C (manner of lodgment) and section 579D (residence/presence in Australia).

Claim taken not to be made

- (2) For the purposes of subsection (1), if:
- (a) a claim for an austudy payment is made by or on behalf of a person; and
 - (b) at the time the claim is made, the claim cannot be granted because the person is not qualified for austudy payment;
- the claim is taken not to have been made.

579A Form of claim

To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

579B Lodgment of claim

To be a proper claim, a claim must be lodged:

- (a) at an office of the Department; or
- (b) at a place in Australia approved for the purpose by the Secretary; or
- (c) with a person in Australia approved for the purpose by the Secretary.

579C Claims by telephone, facsimile or computer

Contacting Department prior to lodging claim

- (1) A person is taken to have lodged a claim in accordance with section 579B on the day on which the Department is contacted under paragraph (a) of this section if:
- (a) the Department is contacted by or on behalf of the person by telephone, or by the transmission of a message by use of facsimile or computer equipment, in relation to making a claim for:
 - (i) an austudy payment; or
 - (ii) a disability support pension; or
 - (iii) a sickness allowance; or
 - (iv) a newstart allowance; and
 - (b) on that day, the person was qualified for an austudy payment; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to making the claim; and
 - (d) the person lodges a claim for a pension or allowance referred to in paragraph (a) within the period allowed under this section; and
 - (e) if the claim referred to in paragraph (d) is not a claim for an austudy payment—the person subsequently lodges a claim for an austudy payment; and
 - (f) either:
 - (i) the person gives the Secretary the notice referred to in paragraph (c) when lodging the claim referred to in paragraph (d); or
 - (ii) the Department has a written record that the notice referred to in paragraph (c) has been sent to the person.

Period for lodging claim

- (2) Subject to subsection (3), for the purposes of paragraph (1)(d), the period is 14 days after the day on which the Department is contacted.

Extensions of period

- (3) The Secretary may determine by written notice given to the person:
- (a) within the 14 day period referred to in subsection (2); or
 - (b) within the period of any extension under this subsection;
- that the period for the purposes of paragraph (1)(d) is extended for such further period as the Secretary considers reasonable.

Time Department taken to have been contacted

- (4) For the purposes of this section, a person who contacts the Department by transmitting a message by use of facsimile or computer equipment is taken to have done so when the message is received in the Department.

579D Claimant must be Australian resident and in Australia

A claim by a person is not a proper claim unless the person is:

- (a) an Australian resident; and
- (b) in Australia;

on the day on which the claim is lodged.

Note: For **Australian resident** see subsections 7(2) and (3).

579E Claim may be withdrawn

Withdrawal of claim

- (1) A claimant for an austudy payment or a person on behalf of the claimant may withdraw a claim that has not been determined.

Effect of withdrawal

- (2) A claim that is withdrawn is taken not to have been made.

Manner of withdrawal

- (3) A withdrawal may be made orally or in writing.

579F Secretary may request claimant to give statement of claimant's tax file number

Request for claimant's tax file number etc.

- (1) The Secretary may request but not compel a claimant for an austudy payment:
- (a) if the claimant has a tax file number—to give the Secretary a written statement of the claimant's tax file number; or
 - (b) if the claimant does not have a tax file number:
 - (i) to apply to the Commissioner of Taxation for a tax file number; and
 - (ii) to give the Secretary a written statement of the claimant's tax file number after the Commissioner of Taxation has issued it.

Failure to satisfy request

- (2) An austudy payment is not payable to a claimant if, at the end of 28 days after a request is made:
- (a) the claimant has failed to satisfy the request; and
 - (b) the Secretary has not exempted the claimant from having to satisfy the request.

579G Secretary may request claimant to give statement of partner's tax file number

Request for partner's tax file number

- (1) If:
- (a) a claimant for an austudy payment is a member of a couple; and
 - (b) the claimant's partner is in Australia;

the Secretary may request but not compel the claimant to give the Secretary a written statement of the tax file number of the claimant's partner.

Failure to satisfy request

- (2) An austudy payment is not payable to a claimant if, at the end of 28 days after a request is made:
- (a) the claimant has failed to satisfy the request; and
 - (b) the Secretary has not exempted the claimant from having to satisfy the request.

Note 1: In some cases the request can be satisfied by giving the Secretary a declaration by the partner about the partner's tax file number and an authority by the partner to the Commissioner of Taxation to give the Secretary certain information relevant to the partner's tax file number (see subsections 577B(2) and (3)).

Note 2: The Secretary may waive the requirement in some cases (see subsection 577B(4)).

Division 4—Determination of claim

580 Secretary to determine claim

The Secretary must, in accordance with this Part, determine a claim for an austudy payment.

580A Grant of claim

General rule

- (1) The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:
- (a) the person is qualified for austudy payment; and
 - (b) the allowance is payable.

Person subject to waiting period etc.

- (2) The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

- (a) the person is qualified, or is expected to be qualified, for austudy payment; and
- (b) the austudy payment would be payable, apart from the application of:
 - (i) a waiting period; or
 - (ii) an activity test non-payment period; or
 - (iii) an activity test breach rate reduction period where the person's activity test breach reduced rate is a nil rate; or
 - (iv) an administrative breach rate reduction period where the person's administrative breach reduced rate is a nil rate; or
 - (v) an income maintenance period within the meaning of point 1067G-H11.

580B Date of effect of determination

Date of effect

- (1) Subject to this section, a determination under section 580A takes effect on the day on which the determination is made or on any later day or earlier day that is stated in the determination.

Notified decision—review sought within 3 months

- (2) If:
 - (a) a decision (**previous decision**) is made rejecting a person's claim for an austudy payment; and
 - (b) a notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

(3) If:

- (a) a decision (**previous decision**) is made rejecting a person's claim for an austudy payment; and
- (b) a notice is given to the person telling the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
- (d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

Decision not notified

(4) If:

- (a) a decision (**previous decision**) is made rejecting a person's claim for an austudy payment; and
- (b) no notice is given to the person telling the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

Division 5—Rate of austudy payment

Subdivision A—Rate of austudy payment

581 How to work out a person's austudy payment rate

Austudy Payment Rate Calculator in section 1067L

- (1) Subject to this section, the rate of a person's austudy payment is to be worked out in accordance with the Austudy Payment Rate Calculator in section 1067L.

Activity test breach rate reduction period only

- (2) Subject to subsection (4), if an activity test breach rate reduction period applies to the person, the person's rate of austudy payment for that period is to be worked out in accordance with Subdivision B.

Administrative breach rate reduction period only

- (3) Subject to subsection (4), if an administrative breach rate reduction period applies to the person, the person's rate of austudy payment for that period is to be worked out in accordance with Subdivision C.

Activity test breach rate reduction period and administrative breach rate reduction period

- (4) If both an activity test breach rate reduction period and an administrative breach rate reduction period apply to the person, the person's rate of austudy payment is to be worked out in accordance with Subdivisions B and C.

Subdivision B—Activity test breach reductions in the rate of austudy payment

582 Activity test breach rate reduction period

An activity test breach rate reduction period applies to a person if:

- (a) a person commits an activity test breach referred to in section 576A (**latest breach**); and
- (b) the latest breach is the first or second activity test breach in the 2 years immediately before the day after the latest breach.

Note: If the latest breach is the third or subsequent activity test breach in the 2 years before the latest breach, an activity test non-payment period applies to the person (see Subdivision E of Division 2).

582A Length of activity test breach rate reduction period

Basic rule

- (1) Subject to subsection (2), the length of an activity test breach rate reduction period is 26 weeks.

Pre-existing rate reduction period

- (2) If, at the time of the commencement of an activity test breach rate reduction period under this Part, the person is already subject to an activity test breach rate reduction period (**pre-existing rate reduction period**), the pre-existing rate reduction period is taken to end immediately before the commencement of the activity test breach rate reduction period under this Part.

582B Start of activity test breach rate reduction period

Notice of start of period

- (1) If an activity test breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice telling the person of the start of the period.

- (1A) A notice under subsection (1) must contain reasons why the activity test breach rate reduction period applies to the person.

General rule

- (2) Subject to subsection (3), the activity test breach rate reduction period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

- (3) If, on or before the day on which the person's activity test breach rate reduction period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person, the period starts on the day on which the austudy payment ceases to be payable to the person.

582C Interaction with waiting periods

Application of section

- (1) This section applies if, under this Part:
- (a) an activity test breach rate reduction period applies to a person; and
 - (b) during the whole or a part of that period the whole or a part of a waiting period also applies to the person (**overlap period**).

Note: Other periods such as an administrative breach rate reduction period may also apply (see section 583D).

Overlap period

- (2) The activity test breach rate reduction period and the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

582D Rate of austudy payment where activity test breach rate reduction period applies

Activity test breach reduced rate

- (1) If an activity test breach rate reduction period applies to a person under this Part, the person's rate of austudy payment for the activity test breach rate reduction period is worked out as follows:

Method statement

Step 1. Work out the person's maximum basic rate of austudy payment using Module B of the Austudy Payment Rate Calculator in section 1067L: the result is the **maximum payment rate**.

Step 2. Work out the rate reduction amount as follows:

- (a) if the activity test breach is the person's first breach in the 2 year period:

$$\text{Maximum payment rate} \times 0.18$$

- (b) if the activity test breach is the person's second breach in the 2 year period:

$$\text{Maximum payment rate} \times 0.24$$

Step 3. Take the rate reduction amount away from the rate of austudy payment worked out in accordance with the Austudy Payment Rate Calculator in section 1067L: the result is the **activity test breach reduced rate**.

Note: An activity test breach reduced rate may be a nil rate.

Meaning of 2 year period

- (2) In this section:

2 year period means the 2 years immediately before the day after the activity test breach.

Subdivision C—Administrative breach reductions in the rate of austudy payment

583 Administrative breach rate reduction period

General rule

- (1) Subject to subsection (2), an administrative breach rate reduction period applies to a person if:
 - (a) the person is subject to an administrative exclusion because of the application of section 577C and an austudy payment later becomes payable to the person; or
 - (b) the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 586A, 586B, 586C or 1304.

Exception

- (2) An administrative breach rate reduction period does not apply to a person if:
 - (a) the person receives an austudy payment; and
 - (b) an administrative breach rate reduction period would, apart from this subsection, apply to the person; and
 - (c) the person's administrative breach reduced rate would be a nil rate; and
 - (d) payment of the austudy payment is cancelled or automatically terminated; and
 - (e) the person lodges a claim for an austudy payment more than 14 days after the date of effect of the cancellation or automatic termination referred to in paragraph (d).

583A Length of administrative breach rate reduction period

Basic rule

- (1) Subject to subsection (2), the length of an administrative breach rate reduction period is 13 weeks.

Pre-existing administrative breach rate reduction period

- (2) If, at the time of the commencement of an administrative breach rate reduction period under this Part, the person is already subject to an administrative breach rate reduction period (***pre-existing reduction period***), the pre-existing reduction period is taken to end immediately before the commencement of the administrative breach rate reduction period under this Part.

583B Start of administrative breach rate reduction period

Notice of start of period

- (1) If an administrative breach rate reduction period applies to a person under this Part, the Secretary must give to the person a written notice telling the person of the start of the period.
- (1A) A notice under subsection (1) must contain reasons why the administrative breach rate reduction period applies to the person.

General rule

- (2) Subject to subsection (3), the administrative breach rate reduction period starts on the day on which the notice is given to the person.

Austudy payment ceasing to be payable

- (3) If:
 - (a) on or before the day on which a person's administrative breach rate reduction period would (apart from this subsection) have started, an austudy payment ceases to be payable to the person; and

- (b) it has not ceased to be payable because of the application of an administrative breach rate reduction period;
the administrative breach rate reduction period starts on the day on which the austudy payment ceases to be payable to the person.

583C Interaction with activity test non-payment periods

Application of section

- (1) This section applies if, under this Part:
 - (a) an administrative breach rate reduction period applies to a person; and
 - (b) during the whole or a part of that period, the whole or a part of an activity test non-payment period also applies to the person (**overlap period**).

Note: Other periods such as a waiting period may also apply (see section 583E).

Overlap period

- (2) The activity test non-payment period and the administrative breach rate reduction period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Subject to section 576E, the non-payment penalty relating to the activity test non-payment period is to apply to the person during the overlap period.

583D Interaction with activity test breach rate reduction periods

Application of section

- (1) This section applies if, under this Part:
 - (a) an administrative breach rate reduction period applies to a person; and

- (b) during the whole or a part of that period, the whole or a part of an activity test breach rate reduction period also applies to the person (**overlap period**).

Note: Other periods such as a waiting period may also apply (see section 583E).

Overlap period

- (2) Subject to subsection (3), the administrative breach rate reduction period and the whole or a part of the activity test breach rate reduction period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Subject to sections 576D, 582C and 582D, the only rate reduction amount that is to apply to the person during the overlap period is the higher of the following:
 - (a) the rate reduction amount that relates to the activity test breach rate reduction period (see subsection 582D(1));
 - (b) the rate reduction amount that relates to the administrative breach rate reduction period (see section 583G).

583E Interaction with waiting periods

Application of section

- (1) This section applies if, under this Part:
 - (a) an administrative breach rate reduction period applies to a person; and
 - (b) during the whole or a part of that period the whole or a part of a waiting period also applies to the person (**overlap period**).

Note: Other periods such as an activity test breach rate reduction period may also apply (see section 583D).

Overlap period

- (2) The administrative breach rate reduction period and the whole or a part of the waiting period are to run concurrently during the overlap period.

Which restriction is to apply

- (3) Despite any other provision of this Act, only the restriction on payment relating to the waiting period is to apply to the person during the overlap period.

583F Effect of sections 583C, 583D and 583E

For the avoidance of doubt, sections 583C, 583D and 583E do not prevent an austudy payment ceasing to be payable in circumstances that do not involve the application of an administrative breach rate reduction period.

583G Rate of austudy payment where administrative breach rate reduction applies

If an administrative breach rate reduction period applies to a person under this Part, the person's rate of austudy payment for the administrative breach rate reduction period is worked out as follows:

Method statement

- Step 1.** Work out the person's maximum basic rate of austudy payment using Module B of the Austudy Payment Rate Calculator in section 1067L: the result is the **maximum payment rate**.
- Step 2.** Multiply the person's maximum payment rate by 0.16: the result is the **rate reduction amount**.
- Step 3.** Take the rate reduction amount away from the rate of austudy payment worked out in accordance with the

Austudy Payment Rate Calculator in section 1067L: the result is the ***administrative breach reduced rate***.

Note: An administrative breach reduced rate may be a nil rate.

Division 6—Payment of austudy payment

584 Start of austudy payment

An austudy payment becomes payable to a person on the first day on which:

- (a) the person is qualified for the allowance; and
- (b) no provision of this Act makes the allowance not payable to the person.

Note 1: For qualification see Subdivision A of Division 1.

Note 2: For circumstances in which an austudy payment is not payable see section 572.

584A Instalments

Austudy payment paid by instalments

- (1) Austudy payment is to be paid by instalments for periods determined by the Secretary.

Time of payment

- (2) Instalments of austudy payment are to be paid at the times determined by the Secretary.

584B Instalments for period less than a fortnight

Period less than a fortnight

- (1) If:
 - (a) an instalment of austudy payment is for a period; and
 - (b) the period is less than a fortnight;

the instalment for the period is the amount worked out by using the formula:

$$\text{Austudy payment rate} \times \frac{\text{Week days in period}}{10}$$

Period consisting of whole fortnights and period less than fortnight

(2) If:

- (a) an instalment of austudy payment is for a period; and
- (b) the period consists of:
 - (i) a number of whole fortnights; and
 - (ii) a period that is less than a fortnight;

the instalment, in so far as it relates to the period that is less than a fortnight, is the amount worked out by using the formula:

$$\text{Austudy payment rate} \times \frac{\text{Week days in period}}{10}$$

584C Rounding off instalment

Fraction of a cent

- (1) If the amount of an instalment includes a fraction of a cent, the amount is to be rounded to the nearest whole cent (0.5 cent being rounded upwards).

Amount increased to fortnightly PA rate

(2) If:

- (a) an amount of pharmaceutical allowance is added to a person's maximum basic rate in working out the amount of an instalment of austudy payment; and
 - (b) apart from this subsection, the amount of the instalment would be less than the person's fortnightly PA rate;
- the amount of the instalment is to be increased to the person's fortnightly PA rate.

Fortnightly PA rate

- (3) For the purposes of subsection (2), the person's **fortnightly PA rate** is the rate worked out by using the formula:

Pharmaceutical allowance rate $\times$ N

where:

N means whichever of the following applies:

- (a) if the instalment is for a number of whole fortnights—the number of fortnights;
- (b) if the instalment is for a period of less than a fortnight—the number worked out by using the formula:

$$\frac{\text{Week days in period}}{10}$$

- (c) if the instalment is for a period that consists of a number of whole fortnights and a period of less than a fortnight—the number worked out by using the formula:

$$\text{Number of whole fortnights} + \frac{\text{Week days in short period}}{10}$$

pharmaceutical allowance rate means the fortnightly amount of pharmaceutical allowance added to the person's maximum basic rate in working out the amount of the instalment.

Amount increased to \$1.00

- (4) If, apart from this section, the amount of an instalment would be less than \$1.00, the amount is to be increased to \$1.00.

584D Austudy payment or advance to be paid to person or nominee

- (1) Subject to subsection (3), instalments of a person's austudy payment are to be paid to that person.

- (2) The Secretary may direct that the whole or part of the instalments of a person's austudy payment is to be paid to someone else on behalf of the person.
- (3) If the Secretary makes a direction under subsection (2), the instalments are to be paid in accordance with the direction.

584E Payment into bank account etc.

Manner of payment

- (1) An amount that is to be paid to a person under section 584D is to be paid in the manner set out in this section.

Payment into account

- (2) Subject to this section, the amount is to be paid, at the intervals that the Secretary directs, to the credit of a bank account, credit union account or building society account nominated and maintained by the person.

Joint or common account

- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.

Secretary may direct payment in different way

- (4) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).

Payment in accordance with direction

- (5) If the Secretary gives a direction under subsection (4), the amount is to be paid in accordance with the direction.

584F If austudy payment payday would fall on public holiday etc.

If the Secretary is satisfied that an amount of austudy payment that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

584G Payment of austudy payment after death

Payment to person determined by Secretary

- (1) If:
- (a) an austudy payment is payable to a person; and
 - (b) the person dies; and
 - (c) at the date of the person's death the person had not received an amount of austudy payment payable to him or her; and
 - (d) another person applies to receive the amount; and
 - (e) the application is made:
 - (i) within 6 months after the death; or
 - (ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.

No further liability for Commonwealth

- (2) If the Secretary pays an amount of austudy payment under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of austudy payment.

Division 7—Protection of austudy payment

585 Austudy payment to be absolutely inalienable

Austudy payment absolutely inalienable

- (1) Subject to subsections (2) and (3) and section 1359, an austudy payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Payments to Commissioner of Taxation at recipient's request

- (2) The Secretary may make deductions from the instalments of austudy payment payable to a person if the person asks the Secretary:
 - (a) to make the deductions; and
 - (b) to pay the amount to be deducted to the Commissioner of Taxation.

Note: The Secretary must make deductions from a person's austudy payment if requested by the Commissioner of Taxation (see section 1359).

Deductions from instalments with recipient's consent

- (3) The Secretary may make deductions from the instalments of austudy payment payable to a person if the person consents under section 1234A to the Secretary making the deduction.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving an austudy payment.

585A Effect of garnishee or attachment order

Court order not to apply to saved amount

- (1) If:
 - (a) a person has an account with a financial institution; and

- (b) instalments of austudy payment payable to the person are being paid (whether on the person's own behalf or not) to the credit of that account; and
 - (c) a court order in the nature of a garnishee order comes into force in respect of the account;
- the court order does not apply to the saved amount (if any) in the account.

Method of working out saved amount

- (2) The saved amount is worked out as follows:

Method statement

- Step 1.* Work out the total amount of austudy payment payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force.
- Step 2.* Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

Single, joint or common account

- (3) This section applies to an account whether it is maintained by a person:
- (a) alone; or
 - (b) jointly with another person; or
 - (c) in common with another person.

Division 8—Obligations of recipients

586 Secretary may request recipient to give statement of recipient's tax file number

Request for tax file number

- (1) The Secretary may request but not compel a person to whom an austudy payment is being paid:
 - (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
 - (b) if the person does not have a tax file number:
 - (i) to apply to the Commissioner of Taxation for a tax file number; and
 - (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

Failure to satisfy request

- (2) An austudy payment is not payable to a person if, at the end of 28 days after a request is made:
 - (a) the person has failed to satisfy the request; and
 - (b) the Secretary has not exempted the person from having to satisfy the request.

586A Secretary may request recipient to give statement of partner's tax file number

Request for partner's tax file number

- (1) If:
 - (a) an austudy payment recipient is a member of a couple; and
 - (b) the recipient's partner is in Australia;the Secretary may request but not compel the recipient to give the Secretary a written statement of the tax file number of the recipient's partner.

Failure to satisfy request

- (2) An austudy payment is not payable to a recipient if, at the end of 28 days after a request is made:
- (a) the recipient has failed to satisfy the request; and
 - (b) the Secretary has not exempted the recipient from having to satisfy the request.

Note 1: In some cases the request can be satisfied by giving the Secretary a declaration by the partner about the partner's tax file number and an authority by the partner to the Commissioner of Taxation to give the Secretary certain information relevant to the partner's tax file number (see subsections 577B(2) and (3)).

Note 2: The Secretary may waive the requirement in some cases (see subsection 577B(4)).

586B Secretary may require notice from recipient of the happening of an event or a change in circumstances

Secretary may give notice requiring information

- (1) The Secretary may give a person to whom an austudy payment is being paid a notice that requires the person to tell the Department if:
- (a) a stated event or change of circumstances occurs; or
 - (b) the person becomes aware that a stated event or change of circumstances is likely to occur.

Event or change relevant to payment

- (2) An event or change of circumstances is not to be stated in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the austudy payment.

Formalities related to notice

- (3) Subject to subsection (4), a notice under subsection (1):
- (a) must be in writing; and
 - (b) may be given personally or by post; and

- (c) must state how the person is to give the information to the Department; and
- (d) must state the period within which the person is to give the information to the Department; and
- (e) must state that the notice is a recipient notification notice given under this Act; and
- (f) must state the effect of failure by the person to comply with the requirement set out in the notice.

Validity of notice

- (4) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (3)(c) or (e).

Period within which information to be given

- (5) Subject to subsections (6) and (7), the period stated under paragraph (3)(d) must end at least 14 days after:
 - (a) the day on which the event or change of circumstances occurs; or
 - (b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

Person leaving Australia

- (6) If a notice requires the person to tell the Department of any proposal by the person to leave Australia, subsection (5) does not apply to that requirement.

Information as to compensation payment

- (7) If the notice requires information about receipt of a compensation payment, the period stated under paragraph (3)(d) in relation to the information must end at least 14 days after the day on which the person becomes aware that he or she has received or is to receive a compensation payment.

Refusal or failure to comply with notice

- (8) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

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.

Application overseas

- (9) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

586C Secretary may require recipient to give particular information relevant to payment of austudy payment

Secretary may give notice requiring statement on matter

- (1) The Secretary may give a person to whom an austudy payment is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

Formalities related to notice

- (2) Subject to subsection (3), a notice under subsection (1):
- (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must state how the statement is to be given to the Department; and

- (d) must state the period within which the person is to give the statement to the Department; and
- (e) must state that the notice is a recipient statement notice given under this Act; and
- (f) must state the effect of failure by the person to comply with the requirement set out in the notice.

Validity of notice

- (3) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).

Period within which statement to be provided

- (4) The period stated under paragraph (2)(d) must end at least 14 days after the day on which the notice is given.

Statement must be in approved form

- (5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.

Refusal or failure to comply with notice

- (6) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

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.

Application overseas

- (7) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

Division 9—Continuation, variation and termination

Subdivision A—General

587 Continuing effect of determination

Entitlement determination

- (1) A determination that:
- (a) a person's claim for an austudy payment is to be granted; or
 - (b) an austudy payment is payable to a person;
- continues in effect until:
- (c) the austudy payment ceases to be payable under section 588, 588A, 588B, 588C or 588D; or
 - (d) a further determination in relation to the austudy payment under section 590B or 590C has taken effect.

Note 1: For paragraph (a) see section 580A.

Note 2: For paragraph (b) see section 590E—this paragraph is relevant if the determination in question reverses an earlier cancellation or suspension.

Note 3: For paragraph (d) see also section 590D.

Rate determination

- (2) A determination of the rate of an austudy payment continues in effect until:
- (a) the austudy payment becomes payable at a lower rate under section 589, 589A or 589B; or
 - (b) a further determination in relation to the austudy payment under section 590 or 590A has taken effect.

Subdivision B—Automatic termination

588 Automatic termination—transfer to social security pension or benefit etc.

If a person is receiving an austudy payment and:

- (a) one of the following becomes payable to the person:
 - (i) a social security pension;
 - (ii) another social security benefit;
 - (iii) a service pension; or
- (b) a payment under ABSTUDY (other than the ABSTUDY Tertiary Scheme to the extent that it applies to part-time students) becomes payable in respect of the person;

the austudy payment ceases to be payable to the person immediately before the day on which the pension, benefit or other payment becomes payable to, or in respect of, the person.

588A Automatic termination—compliance with section 568B notification obligations

If:

- (a) a person who is receiving an austudy payment is given a notice under section 586B; and
- (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (**notification period**); and
- (c) the event or change in circumstances occurs; and
- (d) the person tells the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances:
 - (i) the person ceases to be qualified for the austudy payment; or
 - (ii) the austudy payment would, apart from this section, cease to be payable to the person; and

- (f) the austudy payment is not cancelled before the end of the notification period;

the austudy payment continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

588B Automatic termination—non-compliance with section 586B notification obligations

If:

- (a) a person who is receiving an austudy payment is given a notice under section 586B; and
 - (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (***notification period***); and
 - (c) the event or change in circumstances occurs; and
 - (d) the person does not tell the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
 - (e) because of the occurrence of the event or the change in circumstances:
 - (i) the person ceases to be qualified for the austudy payment; or
 - (ii) the austudy payment ceases to be payable to the person;
- the austudy payment ceases to be payable to the person immediately before the day on which the event or change in circumstances occurs.

588C Automatic termination—failure to provide section 586C statement

Austudy payment ceases to be payable

(1) If:

- (a) a person who is receiving an austudy payment is given a notice under section 586C requiring the person to give the Department a statement; and

- (b) the notice relates to the payment of the austudy payment in respect of a period stated in the notice; and
 - (c) the person does not comply with the notice;
- then, subject to subsection (2), the austudy payment ceases to be payable to the person as from the first day in that period.

Secretary may determine that austudy payment continues

- (2) If the Secretary is satisfied that, in the special circumstances of the case, it is appropriate to do so, the Secretary may determine in writing that subsection (1) does not apply to the person from a day stated in the determination.

Stated day

- (3) The day stated under subsection (2) may be before or after the making of the determination.

588D Changes to payments by computer following automatic termination

If:

- (a) a person is receiving an austudy payment on the basis of data in a computer; and
- (b) the austudy payment is automatically terminated by the operation of a provision of this Act; and
- (c) the automatic termination is given effect to by the operation of a computer program approved by the Secretary stopping payment of the austudy payment;

there is taken to be a decision by the Secretary that the automatic termination provision applies to the person's austudy payment.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision C—Automatic rate reduction

589 Automatic rate reduction—partner starting to receive pension or benefit

If:

- (a) a person is receiving an austudy payment; and
- (b) the person's partner starts to receive:
 - (i) a social security pension or social security benefit; or
 - (ii) a service pension; and
- (c) the person's austudy payment rate is reduced because of the partner's receipt of that pension or benefit;

the austudy payment becomes payable to the person at the reduced rate on the day on which the partner starts to receive that pension or benefit.

589A Automatic rate reduction—compliance with section 586B obligations

If:

- (a) a person who is receiving an austudy payment is given a notice under section 586B; and
- (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (***notification period***); and
- (c) the event or change in circumstances occurs; and
- (d) the person tells the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances, the person's rate of austudy payment is to be reduced; and
- (f) the person's rate of austudy payment is not reduced before the end of the notification period;

the austudy payment becomes payable to the person at the reduced rate immediately after the end of the notification period.

589B Automatic rate reduction—non-compliance with section 586B notification obligations

If:

- (a) a person who is receiving an austudy payment is given a notice under section 586B; and
- (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (**notification period**); and
- (c) the event or change in circumstances occurs; and
- (d) the person does not tell the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances, the person's rate of austudy payment is to be reduced;

the austudy payment becomes payable to the person at the reduced rate immediately before the day on which the event or change in circumstances occurs.

589C Changes to payments by computer following automatic reduction

If:

- (a) a person is receiving an austudy payment on the basis of data in a computer; and
- (b) the austudy payment rate is automatically reduced by the operation of a provision of this Act; and
- (c) the automatic reduction is given effect to by the operation of a computer program approved by the Secretary reducing the rate of payment of the austudy payment;

there is taken to be a decision by the Secretary that the automatic rate reduction provision applies to the person's austudy payment.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision D—Determinations

590 Rate increase determination

If the Secretary is satisfied that the rate at which an austudy payment is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate stated in the determination.

Note: For the date of effect of a determination under this section see section 591.

590A Rate reduction determination

If the Secretary is satisfied that the rate at which an austudy payment is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate stated in the determination.

Note 1: A determination under this section is not necessary if an automatic rate reduction is produced by section 589B (see subsection 587(2)).

Note 2: For the date of effect of a determination under this section see section 591A.

590B Cancellation or suspension determination

If the Secretary is satisfied that an austudy payment is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the austudy payment is to be cancelled or suspended.

Note 1: A determination under this section is not necessary if an automatic termination is produced by section 588, 588A, 588B, 588C or 588D (see subsection 587(1)).

Note 2: For the date of effect of a determination under this section see section 591A.

590C Cancellation or suspension for failure to comply with section 586C, 1304 or 1305 notice

If:

- (a) a person who is receiving an austudy payment is given a notice under section 586C, 1304 or 1305; and
- (b) the person does not comply with the requirements set out in the notice;

the Secretary may determine that the austudy payment is to be cancelled or suspended.

Note 1: This section will not apply if section 588B or 590B applies.

Note 2: For the date of effect of a determination under this section see section 591A.

590D Changes to payments by computer

If:

- (a) payment of an austudy payment to a person is based upon data in a computer; and
- (b) the austudy payment rate is increased or reduced, or the austudy payment is cancelled or suspended, because of the operation of a computer program approved by the Secretary; and
- (c) the program causes the change for a reason for which the Secretary could determine the change;

the change is taken to have been made because of a determination by the Secretary for that reason.

Note: The determination that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

590E Resumption of payment after cancellation or suspension

Secretary to determine austudy payment payable

- (1) If the Secretary:
 - (a) cancels or suspends a person's austudy payment under section 590B or 590C; and
 - (b) reconsiders the decision to cancel or suspend; and

(c) becomes satisfied that because of the decision to cancel or suspend:

- (i) the person did not receive an austudy payment that was payable to the person; or
- (ii) the person is not receiving an austudy payment that is payable to the person;

the Secretary is to determine that an austudy payment was or is payable to the person.

Reconsideration on application or Secretary's initiative

- (2) The reconsideration referred to in paragraph (1)(b) may be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary's own initiative.

Note: For the date of effect of a determination under this section see section 591.

Subdivision E—Date of effect of determination

591 Date of effect of favourable determination

Method of working out date

- (1) The day on which a determination under section 590 or 590E (**favourable determination**) takes effect is worked out in accordance with this section.

Notified decision—review sought within 3 months

- (2) If:
- (a) a decision (**previous decision**) is made in relation to an austudy payment; and
 - (b) a notice is given to the person to whom the austudy payment is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

- (d) a favourable determination is made as a result of the application for review;
the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

- (3) If:
 - (a) a decision (**previous decision**) is made in relation to an austudy payment; and
 - (b) a notice is given to the person to whom the austudy payment is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 more than 3 months after the notice is given, for review of the previous decision; and
 - (d) a favourable determination is made as a result of the application for review;
the determination takes effect on the day on which the person sought the review.

Decision not notified

- (4) If:
 - (a) a decision (**previous decision**) is made in relation to an austudy payment; and
 - (b) no notice is given to the person to whom the austudy payment is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a favourable determination is made as a result of the application for review;
the determination takes effect on the day on which the previous decision took effect.

Notified change of circumstances

- (5) If the favourable determination is made following a person having told the Department of a change in circumstances, the determination takes effect on the day on which the Department was told or the day on which the change occurred, whichever is the later.

Other determinations

- (6) In any other case, the favourable determination takes effect on the day on which the determination was made or on any later day or earlier day (other than a day more than 3 months before the determination was made) that is stated in the determination.

591A Date of effect of adverse determination

General

- (1) The day on which a determination under section 590A, 590B or 590C (**adverse determination**) takes effect is worked out in accordance with this section.

Note: If the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review (see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal)).

Date determination takes effect

- (2) Subject to subsection (9), the adverse determination takes effect on:
- (a) the day on which the determination is made; or
 - (b) if another day is stated in the determination—that day.

Later date than determination

- (3) Subject to subsections (4), (5), (6), (7) and (8), the day stated under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act by person whose austudy payment is affected

(4) If:

- (a) the person whose austudy payment is affected by the adverse determination has contravened a provision of this Act (other than section 586C, 1304, 1305, 1306 or 1307); and
- (b) the contravention causes a delay in making the determination;

the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—suspension or cancellation

(5) If:

- (a) a person has made a false statement or a misrepresentation; and
- (b) because of the false statement or misrepresentation, austudy payment has been paid to a person when it should have been cancelled or suspended;

the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—rate reduction

(6) If:

- (a) a person has made a false statement or a misrepresentation; and
- (b) because of the false statement or misrepresentation, the rate at which austudy payment was paid to a person was more than it should have been;

the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

Payment of arrears of periodic compensation—suspension or cancellation

(7) If:

- (a) an adverse determination is made in relation to a person because of point 1067L-D24 (payment of arrears of periodic compensation payments); and
- (b) an austudy payment has been paid to the person or the person's partner when, because of the payment of arrears of periodic compensation, austudy payment should have been cancelled or suspended;

the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

Payment of arrears of periodic compensation payments—rate reduction

(8) If:

- (a) an adverse determination is made in relation to a person because of point 1067L-D24 (payment of arrears of periodic compensation payments); and
- (b) the rate at which austudy payment was paid to the person or the person's partner was, because of the payment of arrears of periodic compensation, more than the rate at which austudy payment should have been paid;

the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

Section 586C statements

- (9) If the adverse determination is made following a person having given the Department a statement about a matter in accordance with section 586C, the determination takes effect on the day on which the matter arose.

Division 10—Bereavement payments on death of partner

592 Qualification for payments under this Division

Qualification for payment

(1) If:

- (a) a person is receiving an austudy payment; and
- (b) the person is a long-term social security recipient; and
- (c) the person is a member of a couple; and
- (d) the person's partner dies; and
- (e) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a service pension; or
 - (iii) was a long-term social security recipient; and
- (f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Division is less than the sum of:
 - (i) the amount that would otherwise be payable to the person under section 592C (person's continued rate) on that payday; and
 - (ii) the amount (if any) that would otherwise be payable to the person under section 592A (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Division to cover the bereavement period.

Note 1: Section 592A provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 592B provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For **first available bereavement adjustment payday** and **bereavement period** see section 21.

Choice not to receive payments

- (2) A person who is qualified for payments under this Division may choose not to receive payments under this Division.

Form of choice

- (3) A choice under subsection (2):
- (a) must be made by written notice to the Secretary; and
 - (b) may be made after the person has been paid an amount or amounts under this Division; and
 - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

Rate during bereavement period

- (4) If a person is qualified for payments under this Division in relation to the partner's death, the rate at which austudy payment is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 592C.

592A Continued payment of partner's pension or benefit

If a person is qualified for payments under this Division in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

Note: For *bereavement rate continuation period* see section 21.

592B Lump sum payable in some circumstances

If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

Lump sum calculator

Method statement

Step 1. Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is the **combined rate**.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the **person's individual rate**.

Step 3. Take the person's individual rate away from the combined rate: the result is the **partner's instalment component**.

Step 4. Work out the number of the partner's paydays in the **bereavement lump sum period**.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

592C Adjustment of person's austudy payment rate

If:

- (a) a person is qualified for payments under this Division; and
 - (b) the person does not elect under subsection 592(2) not to receive payments under this Division;
- the rate of the person's austudy payment during the bereavement period is worked out as follows:
- (c) during the bereavement rate continuation period, the rate of austudy payment payable to the person is the rate at which the austudy payment would have been payable to the person if the person's partner had not died;
 - (d) during the bereavement lump sum period (if any), the rate at which austudy payment is payable to the person is the rate at which austudy payment would be payable to the person apart from this Division.

592D Effect of death of person entitled to payments under this Division

If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to any person that the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

Lump sum calculator

Method statement

Step 1. Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday

	immediately after the day on which the person dies; and
(b)	the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;
	the result is the combined rate .
Step 2.	Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is the person's individual rate .
Step 3.	Take the person's individual rate away from the combined rate: the result is the partner's instalment component .
Step 4.	Work out the number of paydays of the partner in the period that begins on the day after the person dies and ends on the day on which the bereavement period ends.
Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

592E Matters affecting payments under this Division

Recovery/reduction of amount payable

(1) If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died

has been paid under this Act or under Part III of the Veterans' Entitlements Act; and

- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount is more than the amount payable to the person under this Division;

- (e) the amount payable to the person under this Division is to be reduced by the amount referred to in paragraph (b).

Financial institution not liable

(2) If:

- (a) a person is qualified for payments under this Division in relation to the death of the person's partner; and
- (b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (financial institution); and
- (c) the financial institution pays to the person, out of the account, an amount not more than the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, despite anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

7 After Part 3.5

Insert:

Part 3.5A—Austudy Payment Rate Calculator

1067H Definitions

In this Part:

living at home has the meaning given by section 1067J.

long term income support student has the meaning given by section 1067K.

1067J Person living at home

A person ***lives at home*** if the person lives at the home of either or both of his or her parents.

Note: For parent see section 5 (paragraph (a) of the definition of ***parent***).

1067K Long term income support student

- (1) A person is a ***long term income support student*** if the person:
- (a) is not a member of a couple; and
 - (b) does not have a dependent child; and
 - (c) is undertaking study (whether as a full-time student or as a concessional study-load student) in respect of a course of education that the person has commenced after turning 21; and
 - (d) has, for at least 26 out of the preceding 39 weeks, been receiving one or more of the following:
 - (i) newstart allowance;
 - (ii) sickness allowance;
 - (iii) special benefit;
 - (iv) disability support pension;
 - (v) wife pension;
 - (vi) carer payment;
 - (vii) bereavement allowance;
 - (viii) disability wage supplement;
 - (ix) pension PP (single);
 - (x) sole parent pension;
 - (xi) benefit parenting allowance;
-

(xii) benefit PP (partnered).

Note 1: For **dependent child** see subsections 5(2) to (9).

Note 2: For **full-time student** and **concessional study-load student** see sections 569C and 569D.

(2) A person is also a **long term income support student** if the person:

- (a) is not a member of a couple; and
- (b) does not have a dependent child; and
- (c) does not have English as a first language; and
- (d) is undertaking a course in English, being a course that the Secretary has approved.

Note: For **dependent child** see subsections 5(2) to (9).

1067L Rate of austudy payment

Austudy Payment Rate Calculator

(1) The rate of austudy payment of a person referred to in subsection 581(1) is to be calculated in accordance with the Rate Calculator in this section.

Limit on rate of payment

(2) If:

- (a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person; and
- (b) the other person is of the opposite sex and under the age of consent that applies in the State or Territory in which they are living;

the rate of the person's austudy payment is not to be more than the rate at which the austudy payment would be payable to the person if the other person were the person's partner.

Austudy Payment Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate

1067L-A1 The rate of payment is a fortnightly rate.

Method statement

- Step 1.* Work out the person's maximum basic rate using Module B below.
- Step 2.* Work out the amount a fortnight (if any) of pharmaceutical allowance using Module C below.
- Step 3.* Add up the amounts obtained in Steps 1 to 2: the result is the **maximum payment rate**.
- Step 4.* Apply the income test using Module D below to work out the person's income reduction.
- Step 5.* Take away the person's income reduction from the maximum payment rate: the result is the **provisional payment rate**.
- Note: If a person's rate is reduced under this step, the order in which the reduction is to be made is laid down by section 1207 (maximum basic rate first, then pharmaceutical allowance).
- Step 6.* The rate of payment is the difference between:
- (a) the provisional payment rate; and
 - (b) any advance payment deduction (see Part 3.16A);
- plus any applicable amount of remote area allowance (see Module F below).

Module B—Maximum basic rate*Maximum basic rate*

- 1067L-B1 A person's maximum basic rate is to be worked out as follows:
- (a) if the person is not a long term income support student (see section 1067K)—use Table BA;
 - (b) if the person is a long term income support student—use point 1067L-B3.

Person who is not a long term income support student

- 1067L-B2 If the person is not a long term income support student (see section 1067K), work out whether the person:
- (a) is a member of a couple (see section 4); and
 - (b) has a dependent child (see subsections 5(2) to (9)).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BA—Maximum basic rates (persons who are not long term income support students)

Column 1	Column 2	Column 3
Item	Person's situation	Rate
1	Does not have a dependent child	\$265.50
2	Has a dependent child and is not a member of a couple	\$347.80
3	Has a dependent child and is a member of a couple	\$291.60

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191 to 1194).

Long term income support student

- 1067L-B3 If the person is a long term income support student (see section 1067K), the person's maximum basic rate is \$322.40.

Note: The rate provided for in this point is indexed annually in line with CPI increases (see sections 1191 to 1194).

Module C—Pharmaceutical allowance

Qualification for pharmaceutical allowance

- 1067L-C1 Subject to point 1067L-C2, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if:
- (a) the person is in Australia; and
 - (b) the person has turned 60; and
 - (c) the person has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act and not a service pensioner

- 1067L-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:
- (a) the person is a member of a couple; and
 - (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act; and
 - (c) the person's partner is not receiving a service pension.

Note: If paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

Amount of pharmaceutical allowance

1067L-C3 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following table:

Table C—Pharmaceutical allowance amounts		
Column 1	Column 2	Column 3
Item	Person's family situation	Amount per fortnight
1	Not a member of a couple	\$5.40
2	Partnered	\$2.70
3	Member of an illness separated couple	\$5.40
4	Member of a respite care couple	\$5.40
5	Partnered (partner getting service pension)	\$2.70
6	Partnered (partner in gaol)	\$5.40

Note 1: For *member of a couple*, *partnered*, *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases on 1 January (see sections 1191 to 1194 and 1206A).

Module D—Income test*Effect of ordinary income on maximum payment rate*

1067L-D1 This is how to work out the effect of:

- (a) a person's ordinary income; and
 - (b) the ordinary income of a partner of the person;
- on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067L-D2 to 1067L-D24).

Note: The person's ordinary income may be reduced under Module E below (student income bank).

Step 2. If the person is a member of a couple, work out the partner income free area using point 1067L-D25.

Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's benefit.

Step 3. Use point 1067L-D26 to work out the person's partner income excess. (If there is no partner income excess under that point, the person's partner income excess is taken to be nil.)

Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1067L-D27.

Step 5. Use point 1067L-D29 to work out the person's ordinary income excess. (If there is no ordinary income excess under that point, the person's ordinary income excess is taken to be nil.)

Step 6. Use the person's ordinary income excess to work out the person's ordinary income reduction using points 1067L-D30, 1067L-D31 and 1067L-D32.

Step 7. Add the person's partner income reduction and ordinary income reduction: the result is the **person's income reduction** referred to in Step 4 of the Method statement in point 1067L-A1.

Note 1: For **ordinary income** see subsection 8(1).

Note 2: The application of the income test is affected by provisions concerning the following:

- (a) the general concept of ordinary income (sections 1072 and 1073);
- (b) business income (sections 1074 and 1075);
- (c) deemed income from financial assets (sections 1076 to 1084A);
- (d) income from income streams (sections 1096 to 1099D);
- (e) disposal of income (sections 1106 to 1112).

Ordinary income of members of certain couples

1067L-D2 If a person is a member of a couple and the person's partner is receiving a social security pension, a service pension or a rehabilitation allowance, the person's ordinary income is taken to be one half of the sum of:

- (a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
- (b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

Termination payments

1067L-D3 Subject to points 1067L-D4 to 1067L-D16 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Rolling over lump sum leave payments

1067L-D4 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum leave payment from the person's former employer; and
- (c) the person rolls over the lump sum leave payment into an approved deposit fund, a superannuation fund or a deferred annuity;

the lump sum leave payment is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

Certain leave payments taken to be ordinary income—employment continuing

1067L-D5 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain leave payments taken to be ordinary income—employment terminated

1067L-D6 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the payment relates.

More than one leave payment on a day

1067L-D7 If:

- (a) the person is covered by point 1067L-D6; and
 - (b) the person receives more than one leave payment on a day;
- the income maintenance period is worked out by adding the leave periods to which the payments relate.

Start of income maintenance period—employment continuing

1067L-D8 If the person is covered by point 1067L-D5, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1067L-D9 If the person is covered by point 1067L-D6, the income maintenance period starts, subject to point 1067L-D10, on the day on which the person is paid the leave payment.

Commencement of income maintenance period where there is a second leave payment—employment terminated

1067L-D10 If:

- (a) a person who is covered by point 1067L-D6 is subject to an income maintenance period (the **first period**); and
- (b) the person is paid another leave payment during that period (the **second leave payment**);

the income maintenance period for the second leave payment starts on the day after the end of the first period.

Leave payments in respect of periods longer than a fortnight

1067L-D11 If:

- (a) a person receives a leave payment; and
- (b) the payment is in respect of a period of leave longer than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

- (c) dividing the amount received by the number of days in the period of leave to which the payment relates (**daily rate**); and
- (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period of leave.

Secretary may determine in certain circumstances that the whole or a part of an income maintenance period does not apply

1067L-D12 The Secretary may determine that the whole or any part of an income maintenance period that would, apart from this point, apply to the person, does not apply to the person if the Secretary is satisfied that:

- (a) the application of the income maintenance period to the person would cause the person severe financial hardship; and
- (b) the circumstances that would cause the severe financial hardship were not reasonably foreseeable by the person.

When a person receives a leave payment

1067L-D13 For the purposes of points 1067L-D4 to 1067L-D12 (inclusive), a person (**first person**) is taken to receive a leave payment if:

- (a) the payment is made to another person:
 - (i) at the direction of the first person or a court; or
 - (ii) on behalf of the first person; or
 - (iii) for the benefit of the first person; or
- (b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of leave—employment terminated

1067L-D14 If a person who is covered by point 1067L-D6 receives a single payment in respect of different kinds of leave, then, for the purposes of the application of points 1067L-D4 to 1067L-D13 (inclusive):

- (a) each part of the payment that is in respect of a different kind of leave is taken to be a separate payment; and
- (b) the income maintenance period in respect of the single payment is worked out by adding the leave periods to which the separate payments relate.

Definitions

1067L-D15 In points 1067L-D4 to 1067L-D14 (inclusive):

payment fortnight means a fortnight in respect of which an austudy payment is paid, or would be paid apart from the application of an income maintenance period, to a person.

roll-over, in relation to a lump sum leave payment, has the meaning that **roll-over** has in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

Meaning of leave payment

1067L-D16 In points 1067L-D4 to 1067L-D15 (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

Ordinary income includes certain periodical payments from relatives

1067L-D17 Subject to point 1067L-D18 (and despite paragraph 8(8)(z)), a person's ordinary income for the purposes of this Module includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

Board and lodging

1067L-D18 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to the person's father, mother, son, daughter, brother or sister.

Ordinary income generally taken into account when first earned, derived or received

1067L-D19 Subject to points 1067L-D20, 1067L-D21, 1067L-D23 and 1067L-D24 and section 1073, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received.

Claimant or recipient receives lump sum amount for remunerative work

- 1067L-D20 If a person whose claim for austudy payment has been granted receives, after the claim was made, a lump sum amount that:
- (a) is paid to him or her in relation to remunerative work; and
 - (b) is not a payment to which point 1067L-D21 applies; and
 - (c) is not an exempt lump sum;
- the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

Partner of claimant or recipient receives lump sum amount for remunerative work

- 1067L-D21 If:
- (a) a person whose claim for austudy payment has been granted is a member of a couple; and
 - (b) after the person has made the claim, the person's partner receives a lump sum amount that:
 - (i) is paid to him or her in relation to remunerative work; and
 - (ii) is not a payment to which point 1067L-D23 applies; and
 - (iii) is not an exempt lump sum;
- the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

Operation of points 1067L-D20 and 1067L-D21

- 1067L-D22 Points 1067L-D20 and 1067L-D21 have effect even if the person who has made the claim is, during the period of 12 months referred to in those points, subject to a liquid assets test waiting period, or an income maintenance period, in respect of the allowance claimed.

Ordinary income received at intervals longer than one fortnight

1067L-D23 Subject to points 1067L-D4 to 1067L-D16 (inclusive), if:

- (a) a person receives a number of ordinary income payments;
and
- (b) each payment is in respect of a period (**work period**) that is greater than a fortnight; and
- (c) there is reasonable predicability or regularity as to the timing of the payments; and
- (d) there is reasonable predicability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

- (e) dividing the amount received by the number of days in the work period (**daily rate**); and
- (f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

Payment of arrears of periodic compensation payments

1067L-D24 If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving an austudy payment; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

- (c) dividing the amount received by the number of days in the periodic payments period (**daily rate**); and
- (d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For **periodic payments period** see section 17.

Partner income free area

1067L-D25 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or
- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

Partner income excess

1067L-D26 If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not receiving a social security pension, service pension or a rehabilitation allowance; and
- (c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

- (d) the person has a partner income excess; and
- (e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

Partner income reduction

1067L-D27 If a person has a partner income excess, the person's partner income reduction is an amount equal to 70% of the person's partner income excess.

Example:

Facts: Alice's partner Martin has an ordinary income of \$612. Assume that the partner income free area under point 1067L-D25 is \$462.

Result: Martin's ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067L-D26 of:

$$\$612 - \$462 = \$150$$

Alice's partner income reduction under point 1067L-D27 is therefore:

$$70\% \times \$150 = \$105$$

Ordinary income free area

1067L-D28 A person's ordinary income free area is \$230.

Ordinary income excess

1067L-D29 If a person's ordinary income exceeds the person's ordinary income free area:

- (a) the person has an ordinary income excess; and
- (b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

Ordinary income reduction

1067L-D30 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

- (a) the person's lower range reduction (if any) (see point 1067L-D31); and
- (b) the person's upper range reduction (if any) (see point 1067L-D32).

Lower range reduction

1067L-D31 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed \$80.

Upper range reduction

1067L-D32 The person's upper range reduction is an amount equal to 70% of the part (if any) of the person's ordinary income excess that exceeds \$80.

Example:

Facts: Further to the example at the end of point 1067L-D27, Alice has ordinary income of \$265.

Result: Alice's ordinary income free area under point 1067L-D28 is \$230.

Her ordinary income exceeds her ordinary income free area. She therefore has an ordinary income excess under point 1067L-D29 of:

$$\$265 - \$230 = \$35$$

Because her ordinary income excess does not exceed \$80:

(a) her lower range reduction under point 1067L-D31 is:

$$50\% \times \$35 = \$17.50$$

(b) there is no upper range reduction under point 1067L-D32.

Her ordinary income reduction under point 1067L-D30 is therefore \$17.50.

Alice's income reduction referred to in Step 4 of point 1067L-A1 is:

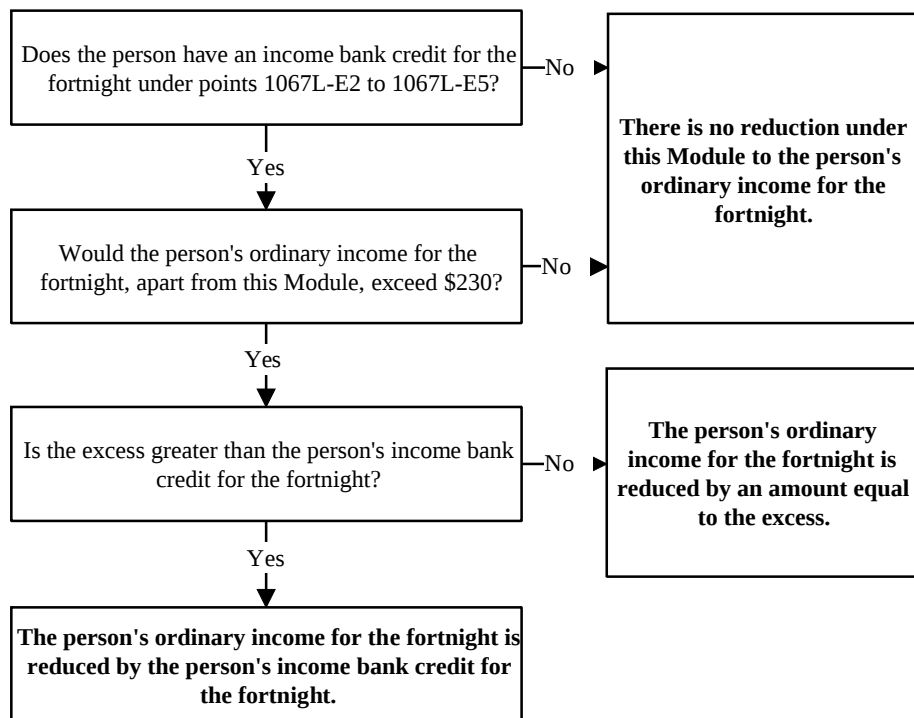
$$\$105 + \$17.50 = \$122.50$$

Module E—Student income bank

Student income bank

1067L-E1 A person's ordinary income under Module D may be reduced under this Module. This diagram sets out how to work out:

- (a) whether the person's ordinary income for a particular fortnight in respect of which austudy payment may be payable to the person, is to be reduced; and
- (b) if it is to be reduced, the amount of the reduction.



Income bank credit

1067L-E2 A person's income bank credit for a particular income bank fortnight of the person is to be worked out as follows:

Method statement

- Step 1.* Assume that the person's income bank credit, at the time this Module starts applying to the person, is an opening balance of zero.
- Step 2.* If, for the person's first income bank fortnight, the person has an income credit under point 1067L-E3, add it to the opening balance.

Step 3. For each subsequent income bank fortnight of the person, up to but not including the fortnight in question, either:

- (a) if the person has an income credit for that fortnight under point 1067L-E3—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond \$6,000; or
- (b) if the person has, in respect of that fortnight, drawn from the person's income bank credit under point 1067L-E4—deduct from that balance the amount drawn, but not so as to reduce the balance below zero.

The result is the person's income bank credit for the fortnight in question.

Income credit

1067L-E3 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is less than \$230:

- (a) the person has an income credit for that fortnight; and
- (b) the income credit is an amount equal to the difference between \$230 and the first-mentioned amount.

Drawing from income bank credit

1067L-E4 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is greater than \$230:

- (a) the person is taken to have drawn from the person's income bank credit in respect of that fortnight; and
- (b) the amount drawn is taken to be an amount equal to the difference between the first-mentioned amount and \$230.

Income bank fortnight

1067L-E5 For the purposes of this Module, an income bank fortnight of a person is any fortnight in respect of which an austudy payment may be payable to the person.

Module F—Remote area allowance*Remote area allowance—person physically in remote area*

1067L-F1 An amount by way of remote area allowance is to be added to a person's rate of austudy payment if:

- (a) the person's rate of austudy payment apart from this point is greater than nil; and
- (b) the person's usual place of residence is situated in the remote area; and
- (c) the person is physically present in the remote area.

Note 1: For **remote area** see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2)).

Rate of remote area allowance

1067L-F2 A person's rate of remote area allowance is worked out using Table F. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus the additional corresponding amount in column 4 for each child of the person, being a child to whom point 1067L-F8 applies.

Table F—Remote area allowance

Column 1	Column 2	Column 3	Column 4
Item	Person's family situation	Basic allowance	Additional allowance for each child
1	Not a member of a couple	\$17.50	\$7.00

Table F—Remote area allowance

Column 1	Column 2	Column 3	Column 4
Item	Person's family situation	Basic allowance	Additional allowance for each child
2	Partnered	\$15.00	\$7.00
3	Member of an illness separated couple	\$17.50	\$7.00
4	Partnered (partner in gaol)	\$17.50	\$7.00

Note: For *member of a couple, partnered, illness separated couple* and *partnered (partner in gaol)* see section 4.

Meaning of remote area allowance

1067L-F3 In Table F, remote area allowance means an amount added to a person's austudy payment by way of remote area allowance.

In remote area

1067L-F4 For the purposes of Table F, a person is in the remote area if:

- (a) the person's usual place of residence is in the remote area;
- and
- (b) the person is physically present in the remote area.

Children must be physically present in Australia

1067L-F5 A person's remote area allowance is not to include additional allowance for a child unless the child is physically present in Australia.

Special rule if partner has a child but is not receiving a pension

1067L-F6 If:

- (a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple;
- and

(b) the person's partner is not receiving a social security pension or social security benefit; and

(c) the person's partner has a child to whom point 1067L-F8 applies;

the child is taken, for the purposes of this Module, to be a child of the person, being a child to whom point 1067L-F8 applies.

Special rule if partner has a child but is not receiving additional allowance for the child

1067L-F7 If:

(a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and

(b) the person's partner has a child to whom point 1067L-F8 applies; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be a child of the person, being a child to whom point 1067L-F8 applies.

Child to whom this point applies

1067L-F8 This point applies to a dependent child in respect of whom family allowance is payable at a rate exceeding the minimum family allowance rate.

Note 1: For **dependent child** see subsections 5(2) to (9).

Note 2: For **minimum family allowance rate** see subsection 6(1).

Schedule 2—Amendment of the Social Security Act 1991 relating to youth allowance

1 Section 3 (index)

Insert the following entry in its appropriate alphabetical position, determined on a letter-by-letter basis:

study

23(1)

2 Subsection 4(6A)

Repeal the subsection, substitute:

(6A) A person who:

- (a) has claimed youth allowance and is not independent within the meaning of Part 3.5; or
- (b) is receiving a youth allowance and is not independent within the meaning of Part 3.5; or
- (c) is a member of a couple of which a person referred to in paragraph (b) is the other member;

is not a **member of a couple** for the purposes of:

- (d) the provisions of this Act referred to in the table at the end of this subsection; and
- (e) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (d); and
- (f) any provision of this Act that applies for the purposes of Module E (Ordinary income test) of the Pension PP (Single) Rate Calculator in section 1068A or section 500Q (Parenting payment assets test for person not member of a couple).

Note: Paragraphs (e) and (f) have the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test, liquid assets test or compensation recovery provisions, including section 8 (Income test definitions), section 11 (Assets test definitions), section 14A (Social security benefit liquid assets test provisions), section 17 (Compensation recovery definitions), section 19B (Financial hardship provisions liquid assets test definition), Part 3.10 (General provisions relating to the ordinary

income test) and Part 3.12 (General provisions relating to the assets test).

Affected provisions		
Item	Provisions of this Act	Subject matter
1	Subdivision AB of Division 2 of Part 2.11	Youth allowance assets test
2	sections 549A to 549C	Youth allowance liquid assets test
3	Subdivision B of Division 2 of Part 2.11A	Austudy payment assets test
4	sections 575A to 575C	Austudy payment liquid assets test
5	section 598	Newstart allowance liquid assets test
6	sections 611 and 612	Newstart allowance assets test
7	sections 660YCJ and 660YCK	Mature age allowance assets test
8	section 676	Sickness allowance liquid assets test
9	sections 680 and 681	Sickness allowance assets test
10	sections 733 and 734	Special benefit assets test
11	section 771HF	Partner allowance assets test
12	Module E of Pension Rate Calculator A	Ordinary income test
13	Module G of Pension Rate Calculator A	Assets test
14	Module F of Pension Rate Calculator D	Ordinary income test
15	Module H of Pension Rate Calculator D	Assets test
16	Module H of Youth Allowance Rate Calculator	Income test
17	Module D of the Austudy Payment Rate Calculator	Income test
18	Module G of Benefit Rate Calculator B	Income test
19	Part 3.14	Compensation recovery

3 After subsection 13(2)

Insert:

(2A) If:

- (a) youth allowance is payable to a person; and
- (b) the person is not independent (see section 1067A) and is required to live away from home (see section 1067D); and
- (c) the person is attending boarding school while living away from home;

then, for the purposes of subsection (2):

- (d) the boarding school is taken to be the person's principal home while the person is attending the school; and
- (e) any fees charged for attending the boarding school are taken to be payable by the person.

4 Subsection 23(1)

Insert:

study includes vocational training.

5 Subsection 541(3)

Omit "the person" (first occurring).

6 Paragraph 541(3)(a)

Before "is employed", insert "the person".

7 Paragraph 541(3)(b)

Before "is employed", insert "except in the case of a person who is undertaking full-time study—the person".

8 Paragraph 541(3)(c)

Before "is", insert "except in the case of a person who is undertaking full-time study—the person".

9 Paragraph 541B(1)(b)

Repeal the paragraph, substitute:

- (b) the person:

- (i) is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course; or
 - (ii) intends to undertake in the next study period for which he or she intends to enrol for the course;
- at least three quarters of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); and

10 Subsection 541B(4)

Repeal the subsection, substitute:

- (4) For the purposes of paragraph (1)(b), a person is taken to be undertaking full-time study in respect of a course during the period (the **relevant period**):
- (a) starting on the first day of classes in a study period; and
 - (b) ending on the Friday of the second week of classes in the study period;
- if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

11 Subsection 541B(5)

Omit all the words from and including “determined”, substitute “determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act”.

12 Before paragraph 547(a)

Insert:

- (aa) if the value of the person’s assets is more than the person’s asset value limit (see Subdivision AB); or

13 Paragraph 547(e)

Omit “an alternative support”, substitute “a multiple entitlement”.

14 After Subdivision A of Division 2 of Part 2.11

Insert:

Subdivision AB—Assets test

547A Allowance not payable if assets value limit exceeded

A youth allowance is not payable to a person if:

- (a) the person is not excluded from the application of the youth allowance assets test; and
- (b) the value of the person's assets is more than the person's assets value limit.

Note 1: For persons excluded from application of test see section 547B.

Note 2: For **assets value limit** see section 547C.

547B Who is excluded from application of assets test?

- (1) A person is excluded from the application of the youth allowance assets test if the person is independent but the person's partner is receiving:
 - (a) a payment of pension, benefit or allowance referred to in Module L; or
 - (b) a payment under Part 5 or 6 of the *Farm Household Support Act 1992*.
- (2) A person is excluded from the application of the youth allowance assets test if:
 - (a) the person is not independent; but
 - (b) in working out the rate of youth allowance payable to the person, the parental income test is not applied because of point 1067G-F3 (other than paragraph (d)).

547C Assets value limit

- (1) A person's **assets value limit** is:
 - (a) \$407,250 if the person is not independent (see section 1067A); or
 - (b) \$125,750 if the person:
 - (i) is independent; and

- (ii) is not a member of a couple (see section 4); and
- (iii) is a homeowner; or
- (c) \$215,750 if the person:
 - (i) is independent; and
 - (ii) is not a member of a couple; and
 - (iii) is not a homeowner; or
- (d) \$178,500 if the person:
 - (i) is independent; and
 - (ii) is a member of a couple; and
 - (iii) is a homeowner; or
- (e) \$268,500 if the person:
 - (i) is independent; and
 - (ii) is a member of a couple; and
 - (iii) is not a homeowner.

Note 1: For **homeowner** see subsection 11(4).

Note 2: The amount in paragraph (a) is indexed annually on 1 January and the amounts in paragraphs (b), (c), (d) and (e) are indexed annually on 1 July (see sections 1191 to 1194).

- (2) If the Secretary determines in writing a higher amount in substitution for the amount specified in paragraph (1)(b), (c), (d) or (e) (the **existing amount**), the higher amount is taken, from the commencement of this section, to have been substituted for the existing amount. A determination under this subsection is a disallowable instrument.
- (3) Subsection (2) and this subsection are repealed at the end of 31 December 1998.

547D Value of person's assets to include value of assets of partner or family members in certain circumstances

The value of a person's assets is the sum of the following values:

- (a) the value of the person's assets (disregarding paragraphs (b) and (c));

(b) if the person is independent (see section 1067A) and is a member of a couple (see section 4)—the value of the assets of the person's partner;

(c) if the person is not independent—the value of the assets of each person who is a family member of the person.

Sections 547E to 547G apply for the purpose of working out the value of the assets of the person and of any other person who is the partner, or a family member, of the person.

547E Assets of trust in which person benefits

A person's assets include:

(a) any benefit to which the person is entitled directly or indirectly out of the assets of a trust; and

(b) any asset of a trust that the person can deal with directly or indirectly to his or her advantage; and

(c) any interest in the assets of a trust which has been assigned to someone else but which the person can directly or indirectly control.

547F Exclusion of certain farm assets

If:

(a) an exceptional circumstances certificate referred to in section 8A of the *Farm Household Support Act 1992* was issued in respect of a person; and

(b) the certificate has effect;

the person's assets do not include any asset that is an exempt asset in respect of the person within the meaning of that Act.

547G How business assets are treated

(1) If (and only if) paragraph 547D(c) applies in working out the value of the assets of a person, assets of a business are treated in accordance with subsections (2) and (3). For this purpose, a business includes:

(a) the carrying on of primary production; and

- (b) the provision of professional services.
- (2) Subject to subsection (3), 50% of the value of a person's interest in the assets of a business is disregarded if the person, or his or her partner, is wholly or mainly engaged in the business and the business:
 - (a) is owned by the person; or
 - (b) is carried on by a partnership of which the person is a member; or
 - (c) is carried on by a company of which the person is a member; or
 - (d) is carried on by the trustee of a trust in which the person is a beneficiary.
- (3) Subsection (2) does not apply to assets of a business that are of any of the following kinds:
 - (a) cash on hand, bank deposits, bank bonds, or similar readily realisable assets;
 - (b) shares in companies, or rights in relation to shares;
 - (c) rights to deal in real or personal property;
 - (d) assets leased out by the business, unless leasing is a major activity of the business;
 - (e) assets used for private or domestic purposes by the owners of the business.

15 Paragraph 548C(2)(a)

Omit "payment", substitute "allowance".

16 At the end of subparagraph 548E(b)(ii)

Add "and".

17 Subsection 549A(3)

Repeal the subsection, substitute:

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting

period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For *in severe financial hardship* see subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Note: The heading to subsection 549A(3) is altered by omitting “*disadvantage or*”.

18 Paragraph 549D(1)(a)

Omit “1 January 1993”, substitute “4 March 1997”.

19 Subparagraph 549D(3)(a)(ii)

After “1973”, insert “as in force immediately before the commencement of this section”.

20 At the end of section 549D

Add:

(4) Subsection (1) does not apply to a person if:

(a) the person would:

- (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident’s waiting period under this Act; or
- (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a newly arrived resident’s waiting period under Part 8 of that Act;

and that period would have ended; or

(b) the person has had:

- (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
- (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or

(c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

(5) Subsection (1) does not apply to a person if:

(a) the person is a New Zealand citizen; and

(b) the person became, or first became, an Australian resident before 1 July 1998; and

(c) one of the following subparagraphs applies to the person:

(i) when the person made the claim for youth allowance, the person had been an Australian resident for the immediately preceding 12 months or had been continuously present in Australia for the immediately preceding 6 months; or

(ii) the person was immediately before 1 July 1998 qualified for sickness allowance or youth training allowance; or

(iii) the person has previously received sickness allowance or youth training allowance.

21 Paragraph 549E(a)

Omit “on or after 1 January 1993”.

22 Subdivision F of Division 2 of Part 2.11 (heading)

Repeal the heading, substitute:

Subdivision F—Multiple entitlement exclusions

23 Section 552

Omit “an alternative support”, substitute “a multiple entitlement”.

Note: The heading to section 552 is altered by omitting “**Alternative support**” and substituting “**Multiple entitlement**”.

24 Subsection 552A(2)

Omit “an alternative support”, substitute “a multiple entitlement”.

25 At the end of section 1067B (but before the note)

Add:

; and (f) is not a person who:

- (i) qualified for the independent living allowance under the AUSTUDY scheme, as in force immediately before the commencement of Schedule 11 to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, only under AUSTUDY Regulation 68, as in force at that time; and
- (ii) had not, at that time, turned 25.

26 After paragraph 1067F(1)(b)

Insert:

(ba) does not have a dependent child; and

27 At the end of paragraph 1067F(1)(d)

Add:

- ; (xii) benefit parenting allowance;
- (xiii) benefit PP (partnered).

28 Point 1067G-A1 (steps 5 to 7 of the method statement)

Repeal the steps.

29 Paragraph 1067G-D1(h)

Omit “payment” (wherever occurring), substitute “allowance”.

30 Section 1067G (Module E of the Youth Allowance Rate Calculator)

Repeal the Module.

31 Paragraph 1067G-F3(c)

Omit “AUSTUDY or” (wherever occurring).

32 Before paragraph 1067G-F7(a)

Insert:

(aa) a person's combined parental income for the tax year following the base tax year is substantially less than it was in the base tax year and is likely to continue to be so for 2 years after the later of:

- (i) 1 January in the tax year following the base tax year; or
- (ii) the day on which the combined parental income is reduced; and

33 Paragraph 1067G-F7(a)

Omit "a person", substitute "the person".

34 Paragraph 1067G-F10(d)

Omit "rental property", substitute "passive business".

35 Paragraph 1067G-F10 (note 5)

Repeal the note, substitute:

Note 5: For *net passive business loss* see subpoint 1067G-F11(4).

36 Subpoint 1067G-F11(4)

Repeal the subpoint, substitute:

1067G-F11(4) A person's *net passive business loss* for a tax year is the difference between:

- (a) the total amount of the person's loss or outgoings for that year that are or will be deductible under the Income Tax Assessment Act because they were necessarily incurred in relation to a passive business; and
- (b) the gross income from the business for that year.

Note: For *passive business* see point 1067G-F19A.

37 After point 1067G-F19

Insert:

1067G-F19A(1) In subpoint 1067G-F11(4):

passive business, in relation to a person, means a business in relation to which the person is usually engaged for less than 17.5 hours in a week.

1067G-F19A(2) In this point:

business includes:

- (a) the carrying on of primary production; and
- (b) the provision of professional services; and
- (c) the earning of income as a rentier;

but does not include employment (whether or not the employment is remunerated by wages or salary).

38 Paragraph 1067G-F24(b)

Repeal the paragraph, substitute:

- (b) the student is undertaking full-time study in a course of study or instruction that the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act; and

39 Paragraph 1067G-F24(d)

After “student”, insert “is”.

40 Point 1067G-G1

Omit all the words to and including “limit”, substitute “This is how to work out the effect (if any) of the actual means of a person’s family on the person’s maximum payment rate in respect of a particular youth allowance payment period”.

41 Point 1067G-G1 (after step 1 of the method statement)

Insert:

Step 1A. If the family actual means test applies to the person, identify the appropriate tax year using point 1067G-G2A.

42 Point 1067G-G1 (step 2 of the method statement)

Omit all the words to and including “work”, substitute “Work”.

43 Point 1067G-G1 (after step 2 of the method statement)

Insert:

<i>Step 2A. Work out the person’s family actual means free area using point 1067G-G3A.</i>

44 Point 1067G-G1 (step 3 of the method statement)

Before “actual”, insert “family”.

45 After point 1067G-G2

Insert:

Appropriate tax year

1067G-G2A The ***appropriate tax year*** for a youth allowance payment period is to be identified as provided in the regulations.

46 After point 1067G-G3

Insert:

Family actual means free area

1067G-G3A A person’s ***family actual means free area*** is to be worked out in the way specified in the regulations.

47 Point 1067G-G4

Before “actual”, insert “family”.

Note: The heading to point 1067G-G4 is altered by inserting “*family*” before “*actual*”.

48 Points 1067G-H11 to 1067G-H14 (inclusive)

Repeal the points, substitute:

Certain leave payments taken to be ordinary income—employment continuing

1067G-H11 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the **income maintenance period**) equal to the leave period to which the leave payment entitlement relates.

Certain leave payments taken to be ordinary income—employment terminated

1067G-H12 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the **income maintenance period**) equal to the leave period to which the payment relates.

More than one leave payment on a day

1067G-H13 If:

- (a) the person is covered by point 1067G-H12; and
 - (b) the person receives more than one leave payment on a day;
- the income maintenance period is worked out by adding the leave periods to which the payments relate.

Start of income maintenance period—employment continuing

1067G-H14 If the person is covered by point 1067G-H11, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1067G-H14A If the person is covered by point 1067G-H12, the income maintenance period starts, subject to point 1067G-H14B, on the day the person is paid the leave payment.

Commencement of income maintenance period where there is a second leave payment—employment terminated

1067G-H14B If a person who is covered by point 1067G-H12 is subject to an income maintenance period (the **first period**) and the person is paid another leave payment during that period (the **second leave payment**), the income maintenance period for the second leave payment commences the day after the end of the first period.

49 Point 1067G-H18

Repeal the point, substitute:

Single payment in respect of different kinds of leave—employment terminated

1067G-H18 If a person who is covered by point 1067G-H12 receives a single payment in respect of different kinds of leave, then, for the purposes of the application of points 1067G-H10 to 1067G-H17 (inclusive), each part of the payment that is in respect of a different kind of leave is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the leave periods to which the separate payments relate.

50 Point 1067G-H23

Omit “1067G-H24 and 1067G-H25”, substitute “1067G-H23A, 1067-H23B, 1067G-H24 and 1067G-H25 and section 1073”.

51 After point 1067G-H23

Insert:

Claimant or recipient receives lump sum amount for remunerative work

1067G-H23A If a person whose claim for youth allowance has been granted receives, after the claim was made, a lump sum amount that:

- (a) is paid to him or her in relation to remunerative work; and
- (b) is not a payment to which point 1067G-H24 applies; and
- (c) is not an exempt lump sum;

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

Partner of claimant or recipient receives lump sum amount for remunerative work

1067G-H23B If:

- (a) a person whose claim for youth allowance has been granted is a member of a couple; and
- (b) after the person had made the claim, the person's partner receives a lump sum amount that:
 - (i) is paid to him or her in relation to remunerative work; and
 - (ii) is not a payment to which point 1067G-H24 applies; and
 - (iii) is not an exempt lump sum;

the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

Operation of points 1067G-H23A and 1067G-H23B

1067G-H23C Points 1067G-H23A and 1067G-H23B have effect even if the person who has made the claim:

- (a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or
 - (b) is subject to a seasonal work preclusion period;
- during the period of 12 months referred to in those points.

52 Point 1067G-H26

Repeal the point, substitute:

Partner income free area

1067G-H26 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or
- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

53 Point 1067G-K8

Omit “payment” (wherever occurring), substitute “allowance”.

54 Point 1067G-K8 (note 2)

Omit “**payment**”, substitute “**allowance**”.

55 Section 1067G (table items 19 and 27 in Module L of the Youth Allowance Rate Calculator)

Repeal the items.

Schedule 3—Amendment of the Social Security Act 1991 relating to youth allowance and austudy payment provisions

Part 1—Amendments commencing after youth allowance and austudy payment provisions commence and the Budget Measures Act has been assented to

1 Subsection 5(1) (subparagraph (b)(ii) of the definition of *independent young person*)

Omit “a youth training allowance or”.

2 Paragraph 8(11)(b)

Omit “1067-H5R, 1067E-G6R”, substitute “1067G-H20, 1067L-D16”.

3 After subparagraph 541(2)(c)(iv)

Insert:

(v) an activity that is included in the CSP;

4 After paragraph 544B(1)(i)

Insert:

(ia) an activity approved by the Secretary under the CSP;

5 At the end of subsection 544B(5)

Add:

; and (d) may be cancelled by the Secretary after a review under
paragraph (c).

6 After subparagraph 549A(5)(a)(i)

Insert:

(ia) an activity approved by the Secretary under the CSP; or

Schedule 3 Amendment of the Social Security Act 1991 relating to youth allowance and austudy payment provisions

Part 1 Amendments commencing after youth allowance and austudy payment provisions commence and the Budget Measures Act has been assented to

7 Subsection 550B(3)

Repeal the subsection, substitute:

Period stops applying from start of involvement in certain programs, courses or activities

(3) If:

(a) an activity test non-payment period under this Part applies to a person (or would apply to a person apart from this subsection); and

(b) the person starts to participate in a program, course or activity described in paragraph 541(2)(b) or (c);

the period stops applying to the person from and including the day on which the person starts to participate in the program, course or activity (whether or not the person completes the program, course or activity).

8 Paragraph 552A(1)(d)

Omit “students; and”, substitute “students.”.

9 Paragraph 552A(1)(e)

Repeal the paragraph.

10 Subsection 552A(1) (note 2)

Repeal the note.

11 After subparagraph 553B(2)(a)(i)

Insert:

(ia) an activity approved by the Secretary under the CSP; or

12 After subparagraph 553C(2)(a)(i)

Insert:

(ia) an activity approved by the Secretary under the CSP; or

13 Subsection 557A(3)

Repeal the subsection, substitute:

*Period stops applying from start of involvement in certain
programs, courses or activities*

(3) If:

(a) an activity test breach rate reduction period under this Part
applies to a person (or would apply to a person apart from
this subsection); and

(b) the person starts to participate in a program, course or
activity described in paragraph 541(2)(b) or (c);

the period stops applying to the person from and including the day
on which the person starts to participate in the program, course or
activity (whether or not the person completes the program, course
or activity).

14 Subsection 558A(3)

Repeal the subsection, substitute:

*Period stops applying from start of involvement in certain
programs, courses or activities*

(3) If:

(a) an administrative breach rate reduction period under this Part
applies to a person (or would apply to a person apart from
this subsection); and

(b) the person starts to participate in a program, course or
activity described in paragraph 541(2)(b) or (c);

the period stops applying to the person from and including the day
on which the person starts to participate in the program, course or
activity (whether or not the person completes the program, course
or activity).

15 Paragraph 578A(1)(d)

Omit “students; and”, substitute “students.”.

16 Paragraph 578A(1)(e)

Schedule 3 Amendment of the Social Security Act 1991 relating to youth allowance and austudy payment provisions

Part 1 Amendments commencing after youth allowance and austudy payment provisions commence and the Budget Measures Act has been assented to

Repeal the paragraph.

17 Subsection 578A(1) (note 2)

Repeal the note.

**Part 2—Other amendments commencing on 1 July
1998 after certain provisions of the Budget
Measures Act**

18 Subsection 19C(1) (note 1)

After “claim for”, insert “austudy payment or”.

19 Subsection 19C(2)

After “claim for”, insert “austudy payment or”.

20 Subsection 19C(2)

After “rate of the”, insert “payment or”.

21 Subsection 19C(3)

After “claim for”, insert “austudy payment,”.

22 Paragraph 19C(8)(c)

Repeal the paragraph, substitute:

- (c) in relation to youth allowance—means the maximum payment rate worked out at Step 4 of the Method statement in Module A of the Youth Allowance Rate Calculator in section 1067G; or
- (ca) in relation to austudy payment—means the maximum payment rate worked out at Step 3 of the Method statement in Module A of the Austudy Payment Rate Calculator in section 1067L; or

23 Subsection 19C(9)

Repeal the subsection.

Schedule 3 Amendment of the Social Security Act 1991 relating to youth allowance and austudy payment provisions

Part 3 Amendment commencing on 20 September 1998

Part 3—Amendment commencing on 20 September 1998

24 Point 1067G-H1 (paragraph (d) of note 2)

Repeal the paragraph, substitute:

- (d) income streams (sections 1095 to 1099D);

Part 4—Amendments commencing on 1 July 1999 after some provisions of the Budget Measures Act

25 Subsection 19C(1) (note 1)

After “claim for”, insert “austudy payment or”.

26 Subsection 19C(1) (note 3)

After “parenting payment”, insert “, austudy payment”.

27 Subsection 19C(2)

After “parenting payment”, insert “, austudy payment”.

28 Subsection 19C(3)

After “parenting payment”, insert “, austudy payment”.

29 Point 1067G-H16

Repeal the point, substitute:

1067G-H16 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the allowance claimed may not be payable to the person; or
- (b) the amount of the allowance payable to the person may be reduced.

30 Point 1067L-D12

Schedule 3 Amendment of the Social Security Act 1991 relating to youth allowance and austudy payment provisions

Part 4 Amendments commencing on 1 July 1999 after some provisions of the Budget Measures Act

Repeal the point, substitute:

1067L-D12 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the allowance claimed may not be payable to the person; or
- (b) the amount of the allowance payable to the person may be reduced.

Schedule 4—Amendment of the Social Security Act 1991 relating to pensioner education supplement

1 Section 3 (index)

Insert the following entries in their appropriate alphabetical position, determined on a letter-by-letter basis:

full year course	23(10C)
late starting course	23(10D)
pensioner education supplement payday	23(1)
short course	23(1)

2 Subsection 7(6)

After “a mobility allowance”, insert “, a pensioner education supplement”.

3 Subsection 23(1)

Insert:

full year course has the meaning given by subsection (10C).

late starting course has the meaning given by subsection (10D).

pensioner education supplement payday means:

- (a) the Wednesday that falls on 15 July 1998; and
- (b) each succeeding alternate Wednesday.

short course means a course of education that lasts for 30 weeks or less including vacations.

4 After subsection 23(10B)

Insert:

(10C) For the purposes of this Act:

full year course means:

- (a) a course of education that starts:
 - (i) on 1 January; or
 - (ii) after 1 January and before 1 April; or
 - (iii) on 1 July; or
 - (iv) after 1 July and before 1 August;and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
 - (i) on 1 January; or
 - (ii) after 1 January and before 1 April; or
 - (iii) on 1 July; or
 - (iv) after 1 July and before 1 August;and the length of whose courses (including vacations) add up to more than 30 weeks.

(10D) For the purposes of this Act:

late starting course means:

- (a) a course of education that starts:
 - (i) on 1 April; or
 - (ii) after 1 April and before 1 July; or
 - (iii) after 31 July;and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
 - (i) on 1 April; or
 - (ii) after 1 April and before 1 July; or
 - (iii) after 31 July;and the length of whose courses (including vacations) add up to more than 30 weeks.

(10E) In subsections (10C) and (10D):

articulated short course sequence means a sequence of 2 or more articulated short courses that:

- (a) is undertaken by a person during a 12 month period; and
- (b) begins on the first day of the first course in the sequence; and

(c) ends at the end of the last day of the last course in the sequence.

(10F) For the purposes of subsection (10E), if:

- (a) a person undertakes at least 2 short courses of education; and
- (b) the person starts the second short course and (if applicable) each subsequent short course:
 - (i) within 28 days after completing the immediately preceding short course; or
 - (ii) within such longer period after completing the immediately preceding short course as the Secretary approves on being satisfied that this was due to circumstances beyond the person's control; and
- (c) each of the short courses is an approved course of education or study within the meaning of paragraph 1061PB(1)(b); and
- (d) the person may, as a result of undertaking each of the short courses, receive an accreditation or an award from an educational institution for another approved course of education or study within the meaning of paragraph 1061PB(1)(b);

each of the short courses is an *articulated short course*.

5 After Part 2.24

Insert:

Part 2.24A—Pensioner education supplement

Division 1—Qualification for pensioner education supplement

Subdivision A—The basic rules

1061PA Qualification for pensioner education supplement

A person is qualified for a pensioner education supplement if the person:

- (a) is undertaking qualifying study (see Subdivision B); and
- (b) is receiving a payment attracting pensioner education supplement (see Subdivision C); and
- (c) is of pensioner education supplement age (see Subdivision D); and
- (d) meets the residency requirements under Subdivision E.

Note: Division 2 sets out situations in which pensioner education supplement is not payable even if the person qualifies for it.

Subdivision B—Undertaking qualifying study

1061PB Undertaking qualifying study

General

- (1) For the purposes of this Part, a person is ***undertaking qualifying study*** if the Secretary is satisfied that:
- (a) the person:
 - (i) is enrolled in a course of education at an educational institution; or
 - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
 - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
 - (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 1061PC); and
 - (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 1061PD and 1061PE); and

- (d) the person satisfies the progress rules (see sections 1061PH and 1061PI).

Persons not undertaking qualifying study

- (2) A person is not undertaking qualifying study if the person:
 - (a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or
 - (b) has completed a course for:
 - (i) a degree of Master or Doctor at an educational institution; or
 - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For **educational institution** see subsection 23(1).

Taken to be undertaking qualifying study from 1 January

- (3) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 January in a particular year if:
 - (a) the person is enrolled in a course of education that is a full year course starting before 1 April in that year; and
 - (b) the person starts his or her full year course before that day; and
 - (c) either:
 - (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or
 - (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study from 1 July

- (4) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 July in a particular year if:
- (a) the person is enrolled in a course of education that is a full year course starting on or after 1 July in that year; and
 - (b) the person starts his or her full year course on or after that day; and
 - (c) either:
 - (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or
 - (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study until 31 December

- (5) For the purpose of subsection (1), a person is taken to be undertaking qualifying study until the end of 31 December in a particular year if:
- (a) the person completes his or her course of education after 15 September but before 31 December in that year; and
 - (b) the person's course of education is a full year course or a late starting course.

Industrial instruments

- (6) In paragraph (2)(a):

industrial instrument means an award or agreement (however described) that:

- (a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:
 - (i) regulates the relationships between employers and employees; or

- (ii) provides for the prevention or settlement of disputes between employers and employees; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

1061PC Approved course of education or study

For the purposes of paragraph 1061PB(1)(b), a course is an approved course of education or study if it is a course that the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

1061PD Full-time students

For the purposes of this Subdivision, a person is a **full-time student** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 1061PF.

1061PE Concessional study-load students

- (1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:
 - (a) 25% concessional study-load students; and
 - (b) 66% concessional study-load students.

- (2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- (3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- Note: For **normal amount of full-time study** see section 1061PF.
- (4) Subsection (2) applies to a person if:
- (a) an officer in the Commonwealth Rehabilitation Service has stated in writing that:
 - (i) the person has a substantial physical disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

- (b) a medical practitioner specialising in psychiatry has stated in writing that:
 - (i) the person has a substantial psychiatric disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
 - (c) a psychologist who is registered with the Australian Psychologist Society has stated in writing that the person:
 - (i) has an intellectual disability; and
 - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
 - (d) the person is receiving:
 - (i) a disability support pension, a carer payment or a pension PP (single) under this Act; or
 - (ii) an invalidity service pension or a carer service pension under the Veterans' Entitlements Act; or
 - (e) the person has a dependent child aged less than 16 years and:
 - (i) is receiving a widow B pension under this Act; or
 - (ii) is a sole parent and is receiving a special benefit under this Act; or
 - (iii) is receiving a widow allowance under this Act; or
 - (iv) is receiving a pension under Part II of the Veterans' Entitlements Act; or
 - (v) is receiving pension under Part IV of the Veterans' Entitlements Act.
- (5) Subsection (3) applies to a person if:
- (a) the person cannot undertake the course as a full-time student because of:
 - (i) the relevant educational institution's usual requirements for the course; or
 - (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
 - (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that
-

the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

1061PF Normal amount of full-time study

- (1) For the purposes of this Subdivision, the ***normal amount of full-time study*** in respect of a course is:
 - (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*—the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
 - (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
 - (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.
- (2) Without limiting subsection (1), the ***normal amount of full-time study*** in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

1061PG First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the ***relevant period***):

- (a) starting on the first day of classes in a study period; and
 - (b) ending on the Friday of the second week of classes in the study period;
-

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

1061PH Progress rules—secondary students

General rule

- (1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 1061PB(1)(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

- (2) A person does not satisfy the progress rules if:
- (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
 - (b) the person has been a full-time student in respect of a course at that level (a **previous course**) in each of 2 previous years; and
 - (c) none of the following circumstances apply:
 - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
 - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
 - (iii) the person failed a previous course because English is not the person's native language;
 - (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
 - (v) each of the previous courses was undertaken more than 10 years before the present study.

Course at year 12 level

- (3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

- (4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

Meaning of secondary course

- (5) For the purposes of this section, a course is a **secondary course** if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a secondary course for the purposes of that Act.

1061PI Progress rules—tertiary students

Full-time students

- (1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
 - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

- (2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:

- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
- (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

- (3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:
 - (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
 - (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
 - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
 - (ii) the student's further progress in the course depends on passing a whole year's work in the course;the minimum amount of time plus 1 year; or
 - (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

- (4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student.

Time spent by person studying part-time

- (5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full - time study}}$$

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

- (6) If:
- (a) a person is undertaking a course as a full-time student; and
 - (b) the person has previously undertaken:
 - (i) part of the course; or
 - (ii) one or more than one other course at the same level as that course;as a concessional study-load student; and
 - (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the **previous study**) is not to be disregarded under subsection (7);
- the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

- (7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:
- (a) if the person has completed a course (a ***pre-requisite course***), the completion of which is the normal requirement for admission to the course in which the person is enrolled, or intends to enrol—time spent undertaking the pre-requisite course;
 - (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
 - (c) time spent undertaking a course that has been permanently discontinued because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
 - (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
 - (e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;
 - (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
 - (g) time spent undertaking a course after 1973 if the course was not:
 - (i) approved for the Tertiary Education Assistance Scheme; or
 - (ii) approved for the AUSTUDY scheme; or
 - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
 - (h) time spent undertaking a course at a foreign institution;

- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
 - (i) AUSTUDY; or
 - (ii) a benefit under the Tertiary Education Assistance Scheme; or
 - (iii) youth allowance; or
 - (iv) austudy payment;because of the application of rules in respect of academic progress.

Levels of tertiary courses

- (8) There are 4 levels of tertiary courses—levels A, B, C and D.

Level A courses

- (9) The following are Level A courses:
- (a) a postgraduate bachelor degree course, with or without honours;
 - (b) a graduate or postgraduate diploma course;
 - (c) a course of practical legal training at a higher education institution;
 - (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
 - (e) a graduate certificate course.

Level B courses

- (10) The following are Level B courses:
- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
 - (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;

- (c) a diploma course other than:
 - (i) a graduate or postgraduate diploma course; or
 - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
 - (iii) a TAFE course;
- (d) a Master's qualifying course;
- (e) the Barristers or Solicitors Admission Board's course;
- (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

- (11) The following are Level C courses:
 - (a) an associate degree course;
 - (b) an associate diploma course;
 - (c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
 - (d) a 2-year undergraduate diploma course.

Level D courses

- (12) The following are Level D courses:
 - (a) a TAFE course at a higher education institution;
 - (b) a TAFE course, unless the course is in Level A, B or C.

Meaning of tertiary course

- (13) For the purposes of this section, a course is a **tertiary course** if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a tertiary course for the purposes of that Act.

Subdivision C—Payments attracting pensioner education supplement

1061PJ Payments attracting pensioner education supplement

General

- (1) A person is receiving a payment attracting pensioner education supplement if the person is receiving:
- (a) a payment under this Act set out in subsection (2); or
 - (b) a pension under the Veterans' Entitlements Act set out in subsection (3).

Payments under this Act

- (2) The payments under this Act are the following:
- (a) a disability support pension;
 - (b) in the case of a person whose partner is receiving a disability support pension—a wife pension;
 - (c) a carer payment;
 - (d) a pension (PP) single;
 - (e) a widow B pension;
 - (f) a widow allowance;
 - (g) in the case of a person who is a sole parent—a special benefit;
 - (h) a rehabilitation allowance payable under clause 35 of Schedule 1A.

Pensions under the Veterans' Entitlements Act

- (3) The pensions under the Veterans' Entitlements Act are the following:
- (a) in the case of a person who has a dependent child—a pension under Part II of that Act;
 - (b) an invalidity service pension;
 - (c) in the case of a person whose partner is receiving an invalidity service pension—a partner service pension;

- (d) a carer service pension;
- (e) in the case of a person who has a dependent child—a pension under Part IV of that Act.

Subdivision D—Pensioner education supplement age

1061PK Pensioner education supplement age

For the purposes of this Part, a person is of pensioner education supplement age if the person:

- (a) is at least 16 years old; or
- (b) is independent and has reached the minimum school leaving age for the State or Territory in which the person is living.

1061PL When a person is regarded as independent

Application

- (1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part. A person is not to be regarded as independent except as provided by this section.

Person with a dependent child

- (2) A person is independent if:
 - (a) the person has a natural or adopted child who is wholly or substantially dependent on the person or his or her partner; or
 - (b) the person previously had a natural or adopted child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

Orphan

- (3) A person is independent if both the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

If parents cannot exercise responsibilities

- (4) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):
- (a) serving a prison sentence of at least 10 years; or
 - (b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or
 - (c) living in a nursing home and likely to remain there for an indefinite period; or
 - (d) missing;
- whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

Refugee

- (5) A person is independent if the person:
- (a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or
 - (b) while the holder of such a permit, was granted Australian citizenship.

However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

Person in State care

- (6) A person is independent if the person is not living with a parent, and:
- (a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or
 - (b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or
 - (c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part, to be ***in State care***.

Unreasonable to live at home

- (7) A person is independent if:
- (a) the person cannot live at the home of either or both of his or her parents:
 - (i) because of extreme family breakdown or other similar exceptional circumstances; or
 - (ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar exceptional circumstances; and
 - (b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and
 - (c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

Subdivision E—Residency

1061PM Residency requirements

For the purposes of this Part, a person meets the residency requirements if the person:

- (a) is an Australian resident; and
- (b) subject to section 1061PN, is in Australia.

1061PN Absence of persons overseas

General

- (1) A person who is undertaking qualifying study is taken to be in Australia while the person:

- (a) is absent from Australia for the purpose of undertaking part of the studies for the course of education in respect of which the person is undertaking qualifying study; or
- (b) is absent from Australia, for any other purpose, for not more than 26 weeks.

Temporary return to Australia

- (2) If the person:
- (a) returns to Australia after having been outside Australia (whether before or after the commencement of this section) for more than 13 weeks; and
 - (b) leaves Australia before the end of 13 weeks after he or she so returned to Australia;
- the person is taken to have continued to be absent from Australia throughout the period from the time of the person's return to the time when the person so left Australia.

Division 2—Situations in which pensioner education supplement is not payable

Subdivision A—The basic rules

1061PO Pensioner education supplement not payable in some circumstances

Even though a person is qualified for a pensioner education supplement, the supplement may not be payable to the person because:

- (a) the supplement has not commenced to be payable (see Subdivision B); or
- (b) the person is subject to a newly arrived resident's waiting period (see Subdivision C); or
- (c) the person is subject to a multiple entitlement exclusion (see Subdivision D).

Note: A pensioner education supplement is not payable if the person is in gaol or is undergoing psychiatric confinement because the person has

been charged with committing an offence (see Division 4 of Part 3.13).

Subdivision B—Provisional commencement day

1061PP Pensioner education supplement generally not payable before claim

A pensioner education supplement is not payable to a person before the person's provisional commencement day (see sections 1061PQ, 1061PR and 1061PS).

1061PQ Provisional commencement day—basic rule

Subject to this Subdivision, a person's provisional commencement day is the day on which the person claims a pensioner education supplement.

1061PR Claim made within 4 weeks of becoming qualified

Subject to section 1061PS, if a person claims a pensioner education supplement within 4 weeks after becoming qualified for the supplement, the person's provisional commencement day is the day on which he or she became qualified.

1061PS Claims made before closing dates

Claims made before 1 April

- (1) If:
- (a) a person claims a pensioner education supplement before 1 April in a particular year; and
 - (b) the person's course of education is a full year course that starts before that day;
- the person's provisional commencement day is 1 January of that year.

Claims made before 1 August

- (2) If:
- (a) a person claims pensioner education supplement before 1 August in a particular year; and
 - (b) the person's course of education is a full year course that starts in that year:
 - (i) on 1 July; or
 - (ii) after 1 July and before 1 August;
- the person's provisional commencement day is 1 July of that year.

Subdivision C—Newly arrived resident's waiting period

1061PT Pensioner education supplement not payable during newly arrived resident's waiting period

A pensioner education supplement is not payable to a person while the person is subject to a newly arrived resident's waiting period (see sections 1061PU and 1061PV).

1061PU Newly arrived resident's waiting period

Basic rule

- (1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
- (a) has entered Australia on or after 4 March 1997; and
 - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 104 weeks.

Note: For **Australian resident** see subsection 7(2).

Exception—qualifying resident exemption

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For **qualifying residence exemption** see subsection 7(6).

Exception—person already subject to waiting period etc.

- (3) Subsection (1) does not apply to a person if:
- (a) the person has been subject to:
 - (i) a newly arrived resident's waiting period under this Act; or
 - (ii) a waiting period under Part 2 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; or
 - (iii) a newly arrived resident's waiting period under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; and
 - (b) that period has ended.
- (4) Subsection (1) does not apply to a person if:
- (a) the person would:
 - (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident's waiting period under this Act; or
 - (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a newly arrived resident's waiting period under Part 8 of that Act;and that period would have ended; or
 - (b) the person has had:
 - (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
 - (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or
 - (c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

1061PV Length of newly arrived resident's waiting period

If a person is subject to a newly arrived resident's waiting period, the period:

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- (a) starts on the day on which the person first entered Australia; and
 - (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 104 weeks after that day.

Note: For *Australian resident* see subsection 7(2).

Subdivision D—Multiple entitlement exclusion

1061PW Meaning of multiple entitlement exclusion

For the purposes of this Division, a person is subject to a multiple entitlement exclusion if the person is receiving a pensioner education supplement under the ABSTUDY scheme.

1061PX Multiple entitlement exclusion

A pensioner education supplement is not payable to a person if the person is subject to a multiple entitlement exclusion.

Division 3—Claim for pensioner education supplement

1061PY Need for a claim

Proper claim

- (1) A person who wants to be granted a pensioner education supplement must make a proper claim for a pensioner education supplement.

Note For *proper claim* see section 1061PZ (form), section 1061PZA (lodgment of claim) and section 1061PZB (residence/presence in Australia).

Claim taken not to be made

- (2) For the purposes of subsection (1), if:
 - (a) a claim for pensioner education supplement is made by or on behalf of a person; and

- (b) at the time the claim is made, the claim cannot be granted because the person is not qualified for pensioner education supplement;
- the claim is taken not to have been made.

1061PZ Form of claim

To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

1061PZA Lodgment of claim

To be a proper claim, a claim must be lodged:

- (a) at an office of the Department; or
- (b) at a place in Australia approved for the purpose by the Secretary; or
- (c) with a person in Australia approved for the purpose by the Secretary.

1061PZB Claimant must be Australian resident and in Australia

A claim by a person is not a proper claim unless the person is:

- (a) an Australian resident; and
- (b) in Australia;

on the day on which the claim is lodged.

Note: For *Australian resident* see subsections 7(2) and (3).

1061PZC Claim may be withdrawn

Withdrawal of claim

- (1) A claimant for a pensioner education supplement or a person on behalf of a claimant may withdraw a claim that has not been determined.

Effect of withdrawal

- (2) A claim that is withdrawn is taken not to have been made.
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Manner of withdrawal

- (3) A withdrawal may be made orally or in writing.

Division 4—Determination of claim

1061PZD Secretary to determine claim

The Secretary must, in accordance with this Part, determine a claim for pensioner education supplement.

1061PZE Grant of claim

The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

- (a) the person is qualified for a pensioner education supplement; and
- (b) the supplement is payable.

1061PZF Date of effect of determination

Date of effect

- (1) Subject to this section, a determination under section 1061PZE takes effect on the day on which the determination is made or on any later day or earlier day that is stated in the determination.

Notified decision—review sought within 3 months

- (2) If:
- (a) a decision (***previous decision***) is made rejecting a person's claim for pensioner education supplement; and
 - (b) a notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

- (d) a determination granting the claim is made as a result of the application for review;
the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

- (3) If:
 - (a) a decision (**previous decision**) is made rejecting a person's claim for pensioner education supplement; and
 - (b) a notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;the determination takes effect on the day on which the person sought the review.

Decision not notified

- (4) If:
 - (a) a decision (**previous decision**) is made rejecting a person's claim for pensioner education supplement; and
 - (b) no notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;the determination takes effect on the day on which the previous decision took effect.

Division 5—Rate of pensioner education supplement

1061PZG Rate of pensioner education supplement

The pensioner education supplement rate is \$60.00 per fortnight.

Division 6—Payment of pensioner education supplement

1061PZH Start of pensioner education supplement

Pensioner education supplement becomes payable to a person on the first day on which:

- (a) the person is qualified for the supplement; and
- (b) no provision of this Act makes the supplement not payable to the person.

Note 1: For qualification see Subdivision A of Division 1.

Note 2: For circumstances in which a pensioner education supplement may not be payable see section 1061PO.

1061PZI Payment by instalments

- (1) Subject to section 1061PZJ, a full instalment of pensioner education supplement is payable to a person on each pensioner education supplement payday on which:
 - (a) the person is qualified for the supplement; and
 - (b) the supplement is payable to the person.
- (2) If the person is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pensioner education supplement paydays as the Secretary determines for the purposes of this subsection.

1061PZJ Effect on instalments of back-dating claim

If:

- (a) a person claims a pensioner education supplement on a particular day (the ***claim day***); and

- (b) the person's provisional commencement day is before the claim day; and
- (c) there are one or more pensioner education supplement paydays on or after the provisional commencement day and before the claim day;

then:

- (d) no instalment of pensioner education supplement is payable on that payday or those paydays; and
- (e) a full instalment of pensioner education supplement in respect of that payday or each of those paydays is payable on the first pensioner education supplement payday on or after that payday or the last of those paydays.

Note: For **provisional commencement day** see Subdivision B of Division 2.

1061PZK Instalment to be paid to person or nominee

Payments to person

- (1) Subject to subsection (2), instalments of a person's pensioner education supplement are to be paid to the person.

Direction to pay to someone else

- (2) The Secretary may direct that the whole or a part of the instalments of a person's pensioner education supplement is to be paid to someone else on behalf of the person.

Payment in accordance with direction

- (3) If the Secretary gives a direction under subsection (2), the instalments are to be paid in accordance with the direction.

1061PZL Payment into bank account etc.

Manner of payment

- (1) An amount that is to be paid to a person under section 1061PZK is to be paid in the manner set out in this section.

Payment into account

- (2) Subject to this section, the amount is to be paid, at the intervals that the Secretary directs, to the credit of a bank account, credit union account or building society account nominated and maintained by the person.

Joint or common account

- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.

Secretary may direct payment in different way

- (4) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).

Payment in accordance with direction

- (5) If the Secretary gives a direction under subsection (4), the amount is to be paid in accordance with the direction.

1061PZM If supplement payday would fall on public holiday etc.

If the Secretary is satisfied that an amount of pensioner education supplement that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

1061PZN Payment of supplement after death

Payment to person determined by Secretary

- (1) If:
- (a) a pensioner education supplement is payable to a person; and
 - (b) the person dies; and

- (c) at the date of the person's death, the person had not received an amount of pensioner education supplement payable to him or her; and
- (d) another person applies to receive the amount; and
- (e) the application is made:
 - (i) within 6 months after the death; or
 - (ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.

No further liability for Commonwealth

- (2) If the Secretary pays an amount of pensioner education supplement under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of pensioner education supplement.

Division 7—Protection of pensioner education supplement

1061PZO Pensioner education supplement to be absolutely inalienable

Supplement absolutely inalienable

- (1) Subject to subsections (2) and (3) and section 1359, pensioner education supplement is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Payments to Commissioner of Taxation at recipient's request

- (2) The Secretary may make deductions from the instalments of pensioner education supplement payable to a person if the person asks the Secretary:
 - (a) to make the deductions; and
 - (b) to pay the amount to be deducted to the Commissioner of Taxation.

Schedule 4 Amendment of the Social Security Act 1991 relating to pensioner education supplement

Note: The Secretary must make deductions from a person's pensioner education supplement if requested by the Commissioner of Taxation (see section 1359).

Deductions from instalments with recipient's consent

- (3) The Secretary may make deductions from the instalments of pensioner education supplement payable to a person if the person consents under section 1234A to the Secretary making the deduction.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a pensioner education supplement.

1061PZP Effect of garnishee or attachment order

Court order not to apply to saved amount

- (1) If:
- (a) a person has an account with a financial institution; and
 - (b) instalments of pensioner education supplement payable to the person are being paid (whether on the person's own behalf or not) to the credit of that account; and
 - (c) a court order in the nature of a garnishee order comes into force in respect of the account;
- the court order does not apply to the saved amount (if any) in the account.

Method of working out saved amount

- (2) The saved amount is worked out as follows:

Method statement

- Step 1.* Work out the total amount of pensioner education supplement payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force.
- Step 2.* Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

Single, joint or common account

- (3) This section applies to an account whether it is maintained by a person:
- (a) alone; or
 - (b) jointly with another person; or
 - (c) in common with another person.

Division 8—Obligations of recipients

1061PZQ Secretary may require notice from recipient of the happening of an event or a change in circumstances

Secretary may give notice requiring information

- (1) The Secretary may give a person to whom a pensioner education supplement is being paid a notice that requires the person to tell the Department if:
- (a) a stated event or change of circumstances occurs; or
 - (b) the person becomes aware that a stated event or change of circumstances is likely to occur.

Event or change relevant to payment

- (2) An event or change of circumstances is not to be stated in a notice under subsection (1) unless the occurrence of the event or change

of circumstances might affect the payment of the pensioner education supplement.

Formalities related to notice

- (3) Subject to subsection (4), a notice under subsection (1):
- (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must state how the person is to give the information to the Department; and
 - (d) must state the period within which the person is to give the information to that Department; and
 - (e) must state that the notice is a recipient notification notice given under this Act; and
 - (f) must state the effect of failure by the person to comply with the requirement set out in the notice.

Validity of notice

- (4) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (3)(c) or (e).

Period within which information to be given

- (5) Subject to subsection (6), the period stated under paragraph (3)(d) must end at least 14 days after:
- (a) the day on which the event or change of circumstances occurs; or
 - (b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

Person leaving Australia

- (6) If a notice requires the person to tell the Department of any proposal by the person to leave Australia, subsection (5) does not apply to that requirement.

Refusal or failure to comply with notice

- (7) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

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.

Application overseas

- (8) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

1061PZR Secretary may require recipient to give particular information relevant to payment of pensioner education supplement

Secretary may give notice requiring statement on matter

- (1) The Secretary may give a person to whom a pensioner education supplement is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pensioner education supplement to the person.

Formalities related to notice

- (2) Subject to subsection (3), a notice under subsection (1):
- (a) must be in writing; and
 - (b) may be given personally or by post; and

- (c) must state how the statement is to be given to the Department; and
- (d) must state the period within which the person is to give the statement to the Department; and
- (e) must state that the notice is a recipient statement notice given under this Act; and
- (f) must state the effect of failure by the person to comply with the requirement set out in the notice.

Validity of notice

- (3) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).

Period within which statement to be provided

- (4) The period stated under paragraph (2)(d) must end at least 14 days after the day on which the notice is given.

Statement must be in approved form

- (5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.

Refusal or failure to comply with notice

- (6) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

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.

Application overseas

- (7) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

Division 9—Continuation, variation and termination

Subdivision A—General

1061PZS Continuing effect of entitlement determination

A determination that:

- (a) a person's claim for a pensioner education supplement is to be granted; or
 - (b) a pensioner education supplement is payable to a person;
- continues in effect until:
- (c) the supplement ceases to be payable under section 1061PZT, 1061PZU or 1061PZV; or
 - (d) a further determination in relation to the supplement under section 1061PZX or 1061PZY has taken effect.

Note 1: For paragraph (a) see section 1061PZE.

Note 2: For paragraph (b) see section 1061PZZA—this paragraph is relevant if the determination in question reverses an earlier cancellation or suspension.

Note 3: For paragraph (d) see also section 1061PZZ.

Subdivision B—Automatic termination

1061PZT Automatic termination—compliance with section 1061PZQ notification obligations

If:

- (a) a person who is receiving a pensioner education supplement is given a notice under section 1061PZQ; and

- (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (***notification period***); and
 - (c) the event or change in circumstances occurs; and
 - (d) the person tells the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
 - (e) because of the occurrence of the event or change in circumstances:
 - (i) the person ceases to be qualified for the supplement; or
 - (ii) the supplement would, apart from this section, cease to be payable to the person; and
 - (f) the supplement is not cancelled before the end of the notification period;
- the supplement continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

1061PZU Automatic termination—non-compliance with section 1061PZQ notification obligations

If:

- (a) a person who is receiving a pensioner education supplement is given a notice under section 1061PZQ; and
 - (b) the notice requires the person to tell the Department of the occurrence of an event or change in circumstances within a stated period (***notification period***); and
 - (c) the event or change in circumstances occurs; and
 - (d) the person does not tell the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
 - (e) because of the occurrence of the event or the change in circumstances:
 - (i) the person ceases to be qualified for the supplement; or
 - (ii) the supplement ceases to be payable to the person;
-

the supplement ceases to be payable to the person immediately before the day on which the event or change in circumstances occurs.

1061PZV Automatic termination—failure to provide section 1061PZR statement

Supplement ceases to be payable

- (1) If:
- (a) a person who is receiving a pensioner education supplement is given a notice under section 1061PZR requiring the person to give the Department a statement; and
 - (b) the notice relates to the payment of the supplement in respect of a period stated in the notice; and
 - (c) the person does not comply with the notice;
- then, subject to subsection (2), the supplement ceases to be payable to the person as from the first day in that period.

Secretary may determine that supplement continues

- (2) If the Secretary is satisfied that, in the special circumstances of the case, it is appropriate to do so, the Secretary may determine in writing that subsection (1) does not apply to the person from a day stated in the determination.

Stated day

- (3) The day stated under subsection (2) may be before or after the making of the determination.

1061PZW Changes to payments by computer following automatic termination

If:

- (a) a person is receiving a pensioner education supplement on the basis of data in a computer; and

(b) the supplement is automatically terminated by the operation of a provision of this Act; and

(c) the automatic termination is given effect to by the operation of a computer program approved by the Secretary stopping payment of the supplement;

there is taken to be a decision by the Secretary that the automatic termination provision applies to the person's supplement.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision C—Determinations

1061PZX Cancellation or suspension determination

If the Secretary is satisfied that a pensioner education supplement is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the supplement is to be cancelled or suspended.

Note 1: A determination under this section is not necessary if an automatic termination is produced by section 1061PZT, 1061PZU or 1061PZV (see section 1061PZS).

Note 2: For the date of effect of a determination under this section see section 1061PZZC.

1061PZY Cancellation or suspension for failure to comply with section 1061PZR, 1304 or 1305 notice

If:

(a) a person who is receiving a pensioner education supplement is given a notice under section 1061PZR, 1304 or 1305; and

(b) the person does not comply with the requirements set out in the notice;

the Secretary may determine that the supplement is to be cancelled or suspended.

Note 1: This section will not apply if section 1061PZT or 1061PZX applies.

Note 2: For the date of effect of a determination under this section see section 1061PZZC.

1061PZZ Changes to payments by computer

If:

- (a) payment of a pensioner education supplement to a person is based upon data in a computer; and
- (b) the supplement is cancelled or suspended, because of the operation of a computer program approved by the Secretary; and
- (c) the program causes the change for a reason for which the Secretary could determine the change;

the change is taken to have been made because of a determination by the Secretary for that reason.

Note: The determination that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

1061PZZA Resumption of payment after cancellation or suspension

Secretary to determine supplement payable

(1) If the Secretary:

- (a) cancels or suspends a person's pensioner education supplement under section 1061PZX or 1061PZY; and
- (b) reconsiders the decision to cancel or suspend; and
- (c) becomes satisfied that because of the decision to cancel or suspend:
 - (i) the person did not receive a pensioner education supplement that was payable to the person; or
 - (ii) the person is not receiving a pensioner education supplement that is payable to the person;

the Secretary is to determine that a pensioner education supplement was or is payable to the person.

Reconsideration on application or Secretary's initiative

- (2) The reconsideration referred to in paragraph (1)(b) may be a reconsideration of an application under section 1240 for review or a reconsideration on the Secretary's own initiative.

Note: For the date of effect of a determination under this section see section 1061PZZB.

Subdivision D—Date of effect of determination

1061PZZB Date of effect of favourable determination

Method of working out date

- (1) The day on which a determination under section 1061PZZA (**favourable determination**) takes effect is worked out in accordance with this section.

Notified decision—review sought within 3 months

- (2) If:
- (a) a decision (**previous decision**) is made in relation to a pensioner education supplement; and
 - (b) a notice is given to the person to whom the supplement is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
 - (d) a favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

- (3) If:
- (a) a decision (**previous decision**) is made in relation to a pensioner education supplement; and
-

- (b) a notice is given to the person to whom the supplement is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 more than 3 months after the notice is given, for review of the previous decision; and
 - (d) a favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the person sought the review.

Decision not notified

- (4) If:
- (a) a decision (**previous decision**) is made in relation to a pensioner education supplement; and
 - (b) no notice is given to the person to whom the supplement is payable telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Notified change of circumstances

- (5) If the favourable determination is made following a person having told the Department of a change in circumstances, the determination takes effect on the day on which the Department was told or the day on which the change occurred, whichever is the later.

Other determinations

- (6) In any other case, the favourable determination takes effect on the day on which the determination was made or on any later day or

earlier day (other than a day more than 3 months before the determination was made) that is stated in the determination.

1061PZZC Date of effect of adverse determination

General

- (1) The day on which a determination under section 1061PZX or 1061PZY (***adverse determination***) takes effect is worked out in accordance with this section.

Note: If the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review (see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal)).

Date determination takes effect

- (2) Subject to subsection (6), the adverse determination takes effect on:
- (a) the day on which the determination is made; or
 - (b) if another day is stated in the determination—that day.

Later date than determination

- (3) Subject to subsections (4) and (5), the day stated under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act by person whose supplement is affected

- (4) If:
- (a) the person whose supplement is affected by the adverse determination has contravened a provision of this Act (other than section 1061PZR, 1304, 1305, 1306 or 1307); and
 - (b) the contravention causes a delay in making the determination;
- the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.
-

False statement or misrepresentation—suspension or cancellation

- (5) If:
- (a) a person has made a false statement or a misrepresentation;
and
 - (b) because of the false statement or misrepresentation, the
supplement has been paid to a person when it should have
been cancelled or suspended;
- the day stated under paragraph (2)(b) may be earlier than the day
on which the determination is made.

Section 1061PZR statements

- (6) If the adverse determination is made following a person having
given the Department a statement about a matter in accordance
with section 1061PZR, the determination takes effect on the day on
which the matter arose.

6 At the end of Part 3.13

Add:

Division 4—Pensioner education supplement

**1162A Pensioner education supplement not payable while person in
gaol or in psychiatric confinement following criminal
charge**

A pensioner education supplement is not payable to a person on a
pensioner education supplement payday if on that payday the
person is:

- (a) in gaol; or
- (b) undergoing psychiatric confinement because the person has
been charged with committing an offence.

Note 1: For *pensioner education supplement payday* see subsection 23(1).

Note 2: For *in gaol* see subsection 23(5).

Note 3: For *psychiatric confinement* see subsections 23(8) and (9).

Schedule 5—Amendments relating to the Student Financial Supplement Scheme

Part 1—Amendment of the Social Security Act 1991

1 Section 3 (index)

Insert the following entry in its appropriate position, determined on a letter-by-letter basis:

financial supplement	23(1)
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2 Subsection 5(1) (paragraph (ca) of the definition of *prescribed educational scheme*)

Omit “the”, substitute “a”.

3 Paragraph 8(8)(zfa)

Omit “the Student”, substitute “a Student”.

4 Subsection 23(1)

Insert:

financial supplement means financial supplement under the Student Financial Supplement Scheme established under Chapter 2B.

5 Subsection 23(1) (paragraph (b) of the definition of *student assistance benefit decision*)

After “Scheme”, insert “constituted by Part 4A of the *Student Assistance Act 1973*”.

6 Subsection 23(1) (definition of *Student Financial Supplement Scheme*)

Repeal the definition, substitute:

Student Financial Supplement Scheme means:

- (a) the scheme constituted by Part 4A of the *Student Assistance Act 1973*; or

(b) the scheme established under Chapter 2B of this Act.

7 Paragraph 500V(2)(c) and subparagraph 660XCO(1)(a)(iii)

Omit “the”, substitute “a”.

8 Paragraphs 665A(b), 665E(b), 665I(b), 665M(c) and 665ZFA(b)

Omit “under the Student Financial Supplement Scheme”.

9 Subparagraph 771HA(1)(c)(ii) and paragraph 771HJ(c)

Omit “the”, substitute “a”.

10 After Chapter 2A

Insert:

Chapter 2B—Student Financial Supplement Scheme

1061ZW Object of this Chapter

The object of this Chapter is to provide for the establishment by the Minister of a Student Financial Supplement Scheme enabling certain tertiary students to obtain a repayable financial supplement by entering into a contract for that purpose with a financial corporation that participates in the scheme.

1061ZX Minister may establish a Student Financial Supplement Scheme

- (1) The Minister may, by instrument in writing, establish a Student Financial Supplement Scheme under which certain tertiary students to whom youth allowance, austudy payment or pensioner education supplement is payable, or to whom youth allowance would be payable except for the youth allowance parental income test, can obtain a repayable financial supplement by entering into a contract

for that purpose with a financial corporation that participates in the scheme.

- (2) The Minister may, from time to time, vary or revoke the scheme by instrument in writing.
- (3) The scheme, whether as originally established or as varied, must include provisions of the kind mentioned in section 1061ZY, in addition to satisfying the requirements of subsection (1).
- (4) An instrument under this section has effect according to its terms, despite anything else in this Act or in any other Act.
- (5) An instrument under this section is a disallowable instrument.

1061ZY Essential provisions of the scheme

- (1) The scheme must provide for the reduction of the rate of youth allowance, austudy payment or pensioner education supplement payable to a student who obtains financial supplement. It must also contain provisions under which the amount of supplement that the student is eligible to obtain depends on the total rate of youth allowance, austudy payment or pensioner education supplement that the student chooses to receive. The provisions must allow the student to choose to repay some or all of the youth allowance, austudy payment or pensioner education supplement, or to receive a lower rate of payment of such allowance, payment or supplement, in order to receive a higher amount of financial supplement.
- (2) The scheme must provide that the student is not liable to pay interest to the financial corporation in respect of financial supplement received by the student, but must provide for payment by the Commonwealth, without cost to the student, of a subsidy to the financial corporation that includes an amount in lieu of interest.
- (3) The scheme must provide for the amount of the financial supplement that has to be repaid under a contract to be indexed on 1 June in the year next following the year in which the contract is entered into, and on 1 June in each subsequent year. The amount

by which the supplement is increased by indexation is to be owed by the student to the Commonwealth and not to the financial corporation. Under the scheme, the student is to be entitled, but not required, to make early repayments in respect of the supplement during the period of the contract. The scheme is to provide for a discount for any repayments before the end of that period.

- (4) The scheme must provide that if financial supplement paid to a student is not repaid in full before the end of the period of the contract, the obligation to repay the outstanding amount of the supplement is assigned to the Commonwealth, and the indexed amount is repayable by the student to the Commonwealth through the taxation system when the student's income reaches a specified level.

1061ZZ Other matters that may be covered in a section 1061ZX instrument

Without limiting section 1061ZX, an instrument under that section may include any provisions that are necessary or convenient for carrying out or giving effect to the scheme, including, for example, provisions relating to the following matters:

- (a) the tertiary students who are eligible to obtain financial supplement;
- (b) the circumstances in which youth allowance, austudy payment or pensioner education supplement is taken to be payable to a person, and the rate at which it is taken to be so payable, for the purposes of the scheme;
- (c) applications for financial supplement;
- (d) the amount of financial supplement that a student can obtain, and the effect of payment of financial supplement on the student's rate of youth allowance, austudy payment or pensioner education supplement;
- (e) the payment of financial supplement;
- (f) the protection of financial supplement;
- (g) the obligations of students who obtain financial supplement;

- (h) the circumstances in which payments of financial supplement are to stop;
- (i) the repayment of financial supplement during the contract period;
- (j) the recovery of outstanding amounts of financial supplement after the end of the contract period;
- (k) the application of the *Bankruptcy Act 1966* in relation to rights and liabilities arising under or out of financial supplement contracts;
- (l) the exemption from State and Territory taxes of assignments and other acts and transactions under the scheme;
- (m) the review of decisions made under the scheme and the effect of decisions made on such reviews;
- (n) the delegation of powers conferred on the Secretary under the scheme;
- (o) transitional matters arising out of the enactment of this Chapter, the establishment of the scheme and the consequential amendment of Part 4A of the *Student Assistance Act 1973*.

1061ZZA Secretary may request recipient to give statement of recipient's tax file number

Request for tax file number

- (1) The Secretary may request but not compel a person who is obtaining financial supplement:
 - (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
 - (b) if the person does not have a tax file number:
 - (i) to apply to the Commissioner of Taxation for a tax file number; and
 - (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

Failure to satisfy request

- (2) A person is not eligible to obtain financial supplement if, at the end of 28 days after a request is made:
- (a) the person has failed to satisfy the request; and
 - (b) the Secretary has not exempted the person from having to satisfy the request.

1061ZZB Secretary may request recipient to give statement of parent's tax file number

Request for parent's tax file number

- (1) If:
- (a) a person (**recipient**) is obtaining financial supplement; and
 - (b) the income of a parent of the recipient is required to be taken into account for the purpose of working out the recipient's eligibility for financial supplement; and
 - (c) the parent is in Australia;
- the Secretary may request but not compel the recipient to give the Secretary a written statement of the tax file number of the parent.

Failure to satisfy request

- (2) A recipient is not eligible to obtain financial supplement if, at the end of 28 days after a request is made:
- (a) the recipient has failed to satisfy the request; and
 - (b) the Secretary has not exempted the recipient from having to satisfy the request.

- (3) In this section:

parent has the same meaning as in paragraph (b) of the definition of **parent** in subsection 5(1).

11 At the end of subsection 1304(1)

Add:

- ; or (g) whether a person who has applied for financial supplement is eligible to obtain it; or
- (h) whether a person who has obtained a financial supplement is or was eligible to obtain it; or
- (i) the determination of the maximum amount of financial supplement that a person is eligible to obtain.

12 At the end of subsection 1304(10)

Add:

- ; and (d) all persons, irrespective of their nationality, who are applying, or who have applied, for financial supplement; and
- (e) all persons, irrespective of their nationality, who are obtaining, or have obtained, financial supplement.

13 Subsection 1305(1)

After “this Act”, insert “, the Student Financial Supplement Scheme established under Chapter 2B”.

14 At the end of subsection 1305(9)

Add:

- ; and (d) all persons, irrespective of their nationality, who are applying, or who have applied, for financial supplement; and
- (e) all persons, irrespective of their nationality, who are obtaining, or have obtained, financial supplement.

15 Paragraph 1306(1)(a)

After “this Act”, insert “, the Student Financial Supplement Scheme established under Chapter 2B”.

16 At the end of subsection 1306(8)

Add:

- ; and (d) all persons, irrespective of their nationality, who are applying, or who have applied, for financial supplement; and
- (e) all persons, irrespective of their nationality, who are obtaining, or have obtained, financial supplement.

17 Subsection 1307(1)

Omit “either or both”, substitute “all or any”.

18 At the end of subsection 1307(1)

Add:

- ; (c) detecting cases in which financial supplement has been paid when it should not have been paid;
- (d) verifying the eligibility of persons who have applied for financial supplement.

19 At the end of subsection 1307(5)

Add “or who have obtained, are obtaining, or who have applied for, financial supplement”.

20 At the end of subsection 1307(13)

Add:

- ; and (d) all persons, irrespective of their nationality, who are applying, or who have applied, for financial supplement; and
- (e) all persons, irrespective of their nationality, who are obtaining, or have obtained, financial supplement.

21 At the end of section 1343

Add:

- ; and (d) all persons, irrespective of their nationality, who are applying, or who have applied, for financial supplement; and
- (e) all persons, irrespective of their nationality, who are obtaining, or have obtained, financial supplement.

22 After paragraph 1344(1)(a)

Insert:

- (aa) application for financial supplement; or

Note: The heading to section 1344 is altered by inserting “, **applications**” after “**claims**”.

23 At the end of subsection 1345(1)

Add:

; or (c) affect the amount of financial supplement that a person is eligible to obtain.

24 At the end of paragraph 1348(b)

Add “or”.

25 After paragraph 1348(b)

Insert:

(ba) payment of financial supplement;

26 Paragraph 1351(1)(b)

After “payment”, insert “or financial supplement”.

Note: The heading to section 1351 is altered by omitting “**or allowance**” and substituting “**, allowance or financial supplement**”.

27 Subsection 1363(1)

After “Act”, insert “, and payments by the Commonwealth to financial corporations under the Student Financial Supplement Scheme established under Chapter 2B of this Act,”.

Part 2—Consequential amendments of other Acts

Data-matching Program (Assistance and Tax) Act 1990

28 Subsection 3(1) (subparagraph (b)(iia) of the definition of *personal assistance*)

Repeal the subparagraph, substitute:

- (iia) financial supplement under the Student Financial Supplement Scheme constituted by Part 4A of the *Student Assistance Act 1973*;

29 Subsection 3(1) (after paragraph (ca) of the definition of *personal assistance*)

Insert:

- (cb) a payment of financial supplement under the Student Financial Supplement Scheme established under Chapter 2B of the *Social Security Act 1991*; or

Veterans' Entitlements Act 1986

30 Paragraph 118AA(c)

After “Scheme”, insert “constituted by Part 4A of the *Student Assistance Act 1973* or established under Chapter 2B of the *Social Security Act 1991*”.

Schedule 6—Amendment of the Social Security Act 1991 relating to fares allowance

1 Section 3 (index)

Insert the following entry in its appropriate position, determined on a letter-by-letter basis:

fares allowance	23(1)
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2 Subsection 23(1)

Insert:

fares allowance means fares allowance under an instrument in force under section 1061ZAAA.

3 At the end of Chapter 2

Add:

Part 2.26—Fares allowance

1061ZAAA Minister may provide for fares allowance

- (1) The Minister may, by instrument in writing, provide for the payment of fares allowance to certain tertiary students.
- (2) The Minister may from time to time, by instrument in writing, vary or revoke an instrument made under this section.
- (3) An instrument made under this section has effect according to its terms.
- (4) An instrument made under this section is a disallowable instrument.

1061ZAAB Matters that may be covered in a section 1061ZAAA instrument

Without limiting section 1061ZAAA, an instrument made under that section may include provisions relating to the following matters:

- (a) the tertiary students who are eligible for fares allowance;
- (b) claims, and the determination of claims, for fares allowance;
- (c) the kinds of journeys for which, and the circumstances in which, fares allowance may be paid;
- (d) the amount, or the calculation of the amount, of fares allowance that may be paid to a student;
- (e) the payment of fares allowance;
- (f) the protection of fares allowance;
- (g) the obligations of students to whom fares allowance is paid;
- (h) the review of decisions made under the instrument and the effect of decisions made on such review;
- (i) the delegation of powers conferred on the Secretary by the instrument;
- (j) the recovery by the Commonwealth of amounts paid by way of fares allowance that should not have been paid;
- (k) transitional matters arising out of the enactment of this Part and the making of an instrument providing for fares allowance under section 1061ZAAA.

4 After paragraph 1304(1)(c)

Insert:

- (ca) whether a person who has made a claim for fares allowance, is or was eligible for fares allowance; or

5 Paragraphs 1304(10)(b), 1305(9)(b) and 1306(8)(b)

After “Act”, insert “, or for fares allowance”.

6 At the end of paragraphs 1304(10)(c), 1305(9)(c) and 1306(8)(c)

Add “or to whom fares allowance has been paid”.

7 Paragraph 1307(1)(a)

After “Act”, insert “or of fares allowance”.

8 Paragraph 1307(1)(b)

Repeal the paragraph, substitute:

- (b) verifying the qualification of persons who have made claims for social security payments under this Act, or the eligibility of persons who have made claims for fares allowance, for the payments or allowance.

9 After subsection 1307(5)

Insert:

- (5A) The Secretary may specify a particular class of persons in the notice whether or not the Secretary is able to identify any of the persons in that class as being persons:
 - (a) who have been paid fares allowance; or
 - (b) who have made claims for fares allowance.

10 Paragraph 1307(13)(b)

After “Act”, insert “or for fares allowance”.

11 At the end of paragraph 1307(13)(c)

Add “or to whom fares allowance has been paid”.

12 Paragraph 1343(b)

After “Act”, insert “or for fares allowance”.

13 At the end of paragraph 1343(c)

Add “or to whom fares allowance has been paid”.

14 Paragraph 1344(1)(a)

After “Act”, insert “or for fares allowance”.

15 After paragraph 1345(1)(a)

Insert:

(aa) affect the amount of fares allowance that may be paid to a person; or

16 Paragraph 1347(a)

After “Act”, insert “or of fares allowance”.

17 Section 1347

Omit “which is:”, substitute “for which the person is not eligible, or which is:”.

18 Paragraph 1348(a)

After “Act”, insert “or of fares allowance”.

19 Paragraph 1351(1)(b)

After “by way of”, insert “fares allowance,”.

20 After subsection 1363(1)

Insert:

(1A) Payments of fares allowance must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Schedule 7—Amendment of the Social Security Act 1991 relating to indexation

1 Section 1190 (table item 2, column 4)

Omit “[Benefit Rate Calculator A—point 1067-B1—Table B—column 3A—all amounts]”.

2 Section 1190 (table item 3, column 4)

Omit “[Benefit Rate Calculator A—point 1067-B1—Table B—column 3B—all amounts]”.

3 Section 1190 (table item 3A)

Repeal the item, substitute:

3A.	Maximum basic rate for youth allowance	YA MBR	[Youth Allowance Rate Calculator—point 1067G-B2—Table BA—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B3—Table BB—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B4—Table BC—column 3—all amounts]
3B.	Maximum basic rate for austudy payment	AP MBR	[Austudy Payment Rate Calculator—point 1067L-B2—Table BA—column 3—all amounts] [Austudy Payment Rate Calculator—point 1067L-B3—Table BB—column 3—all amounts]

4 Section 1190 (table item 18, column 4)

Omit “[Benefit Rate Calculator A—point 1067-F13—Table F—column 4—all amounts]”.

5 Section 1190 (table item 18AA)

Repeal the item, substitute:

18AA.	Rate of rent assistance for youth allowance	YA RA	[Youth Allowance Rate Calculator—point 1067G-D6—Table DB—column 4—all amounts]
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6 Section 1190 (table item 18A, column 2)

Omit “sickness benefit”, substitute “sickness allowance”.

7 Section 1190 (table item 18A, column 4)

Omit “[Benefit Rate Calculator A—point 1067-F1A—Table FA—column 3—all amounts]”.

8 Section 1190 (table item 18A, column 4)

Omit “[Benefit Rate Calculator A—point 1067-F13—Table F—column 3—rent threshold amounts]”.

9 Section 1190 (table item 18B)

Repeal the item, substitute:

18B.	Rent threshold rate for youth allowance	YA rent threshold	[Youth Allowance Rate Calculator—point 1067G-D2—Table DA—column 3—all amounts]
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10 Section 1190 (table item 28, column 4)

After “[subsection 408CE(2)—table—column 3—item 1]”, insert:

[paragraph 547C(b)]

[paragraph 573B(a)]

11 Section 1190 (table item 29, column 4)

After “[subsection 408CE(2)—table—column 3—item 2]”, insert:

[paragraph 547C(c)]

[paragraph 573B(b)]

12 Section 1190 (table item 30, column 4)

Before “[subsection 611(2)—table—column 3A—item 2]”, insert:

[paragraph 547C(d)]

[paragraph 573B(c)]

13 Section 1190 (table item 31, column 4)

Before “[subsection 611(2)—table—column 3B—item 2]”, insert:

[paragraph 547C(e)]

[paragraph 573B(d)]

14 Section 1190 (after table item 33)

Insert:

33A.	Assets value limit for youth allowance for person who is not independent (see section 1067A)	YA (non-independent) AVL	[paragraph 547C(a)]
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15 Section 1190 (before table item 41, column 2)

Omit “**Parental means test**”, substitute “**Parental income test**”.

16 Section 1190 (table item 41, column 3)

After “parental”, insert “income”.

17 Section 1190 (table item 41, column 4)

Omit “[Benefit Rate Calculator A—point 1067-G17—Table G—column 1]”, substitute “[paragraph 1067G-F22(a)]”.

18 Section 1190 (table item 42)

Repeal the item.

19 Section 1190 (table item 45, column 4)

Omit “[Benefit Rate Calculator A—point 1067-D9—table—column 3—item 1]”.

20 Section 1190 (table item 47, column 4)

Omit “[Benefit Rate Calculator A—point 1067-D9—table—column 3—item 2]”.

21 Section 1190 (table item 49, column 4)

Omit “[Benefit Rate Calculator A—point 1067-D9—table—column 3—items 4 and 5]”.

22 Section 1190 (table item 49B, column 4)

Omit “[Benefit Rate Calculator A—point 1067-D9—table—column 3—item 5]”.

23 Section 1190 (table item 49D, column 4)

Omit “[Benefit Rate Calculator A—point 1067-D9—table—column 3—item 7]”.

24 Section 1190 (table items 49E to 49J)

Repeal the items, substitute:

49E.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is not a member of a couple	PA (YA/AP) single	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 1—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 1—column 3]
49F.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered	PA (YA/AP) partnered	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 2—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 2—column 3]

Schedule 7 Amendment of the Social Security Act 1991 relating to indexation

49G.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is a member of an illness separated couple or a respite care couple	PA (YA/AP) (item 49G)	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—items 3 and 4—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—items 3 and 4—column 3]
49H.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner getting service pension)	PA (YA/AP) (item 49H)	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 5—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 5—column 3]
49J.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner in gaol)	PA (YA/AP) (item 49J)	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 6—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 6—column 3]

25 Section 1190 (table items 3, 18, 45, 47, 49, 49B and 49D)

Omit “(other than sickness allowance payable to a person referred to in subsection 709(3))”.

26 Section 1190 (table items 18A and 28 to 33)

Omit “(other than sickness benefit payable to a person referred to in subsection 709(3))”.

27 Subsection 1191(1) (table item 3A)

Repeal the item, substitute:

3A.	YA MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	\$0.10
3B.	AP MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	\$0.10

28 Subsection 1191(1) (table item 12AA)

Repeal the item, substitute:

12AA.	YA RA	(a) 20 March	(a) December	highest June or December quarter before reference quarter (but not earlier than June quarter 1997)	\$0.20
		(b) 20 Sept	(b) June		

29 Subsection 1191(1) (table item 12B)

Repeal the item, substitute:

12B.	YA Rent threshold	(a) 20 March	(a) December	highest June or December quarter before reference quarter (but not earlier than June quarter 1997)	\$0.20
		(b) 20 Sept	(b) June		

30 Subsection 1191(1) (table item 24)

Repeal the item, substitute:

24.	YA (non-independent) AVL	1 January	June	most recent June quarter before reference quarter	\$250.00
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31 Subsection 1191(1) (before table item 30, column 2)Omit “**Parental means test**”, substitute “**Parental income test**”.**32 Subsection 1191(1) (table item 33A)**

Repeal the item, substitute:

33A.	PA (YA/AP) partnered (item 49F) and PA (YA/AP) (item 49H)	1 January	September	highest September quarter before reference quarter (but not earlier than Sept quarter 1997)	\$0.10
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33 Section 1198A (table, column 2)

Omit “Benefit Rate Calculator A—point 1067-B1—Table B”
(wherever occurring).

34 Section 1198A (table items 1 to 4)

Repeal the items.

35 Section 1198A (table items 9 to 12)

Repeal the items.

36 Section 1198B (table, column 2)

Omit “Benefit Rate Calculator A—point 1067-B1—Table B”
(wherever occurring).

37 Section 1198B (table items 1 to 4)

Repeal the items.

38 Section 1198B (table items 9 to 12)

Repeal the items.

39 Subsection 1206A(4)

Repeal the subsection, substitute:

- (4) This Act has effect as if, on 1 January 1999 and on 1 January in each later year, there were substituted for the PA (YA/AP) single rate, the PA (YA/AP) (item 49G) rate and the PA (YA/AP) (item 49J) rate the amount worked out by using the formula:

$$\text{Current PA(YA / AP) partnered rate} \times 2$$

where:

current PA (YA/AP) partnered rate means the current figure, as at that 1 January, for the PA (YA/AP) partnered rate.

Schedule 8—Amendment of the Social Security Act 1991 relating to Rate Calculators

1 Subparagraph 38B(6)(a)(iii)

Omit “1067”, substitute “1067G, 1067L”.

2 Subparagraph 38B(6)(a)(iv)

Repeal the subparagraph.

3 Paragraph 38B(6)(b)

Omit “526(1)(j)”, substitute “547(c), section 553B or paragraph”.

4 Paragraphs 408PB(7)(a) and (8)(a)

Omit “1067-H8A or”.

5 At the end of subparagraph 607A(1)(b)(ii)

Add “worked out under Module B of Benefit Rate Calculator B”.

6 Subsection 607A(2)

Repeal the subsection.

7 At the end of paragraph 607B(2)(b)

Add “worked out under Module B of Benefit Rate Calculator B”.

8 Subsection 607B(3)

Repeal the subsection.

9 Section 644A

Repeal the section.

10 Section 644H (step 1 of the method statement)

Repeal the step, substitute:

Step 1. Work out the person's maximum basic rate of newstart allowance specified in Table B of Module B of Part 3.6 (Benefit Rate Calculator B): the result is called the ***maximum payment rate***.

11 Section 644H (step 3 of the method statement)

Omit "Benefit Rate Calculator A in section 1067 or Benefit Rate Calculator B in section 1068, as the case requires", substitute "Benefit Rate Calculator B in section 1068".

12 Paragraphs 660L(7)(a), 660L(8)(a), 660YJR(7)(a), 660YJR(8)(a), 728R(7)(a), 728R(8)(a), 771NS(7)(a) and 771NS(8)(a)

Omit "1067-H8A or".

13 Subsection 1061EE(6)

Omit "the relevant Benefit Rate Calculator", substitute "Benefit Rate Calculator B".

14 Point 1064-E4 (at the end of note 2)

Add "and point 1064-E12".

15 Section 1064 (at the end of Module E of Pension Rate Calculator A)

Add:

1064-E12 In this Module:

dependent child, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

16 Paragraphs 1064-H5(b), 1065-E4(b), 1066-H4(b), 1066A-I4(b), 1066B-F4(b), 1068-B1A(c), 1068-F14(b) and 1068-J7(b)

Omit "or a youth training allowance".

17 Point 1066-E4 (at the end of note 1)

Add “and point 1066-E10”.

18 Section 1066 (at the end of Module E of Pension Rate Calculator C)

Add:

1066-E10 In this Module:

dependent child, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

19 Point 1066A-F3 (at the end of note 2)

Add “and point 1066A-F11”.

20 Section 1066A (at the end of Module F of Pension Rate Calculator D)

Add:

1066A-F11 In this Module:

dependent child, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

21 Point 1068-G9

Repeal the point, substitute:

Partner income free area

1068-G9 The partner income free area for a person is:

- (a) if the person’s partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person’s partner is not receiving a social security benefit and has turned 21—the amount of income of the

partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or

- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

22 Point 1068A-E14 (at the end of note 1)

Add “and point 1068A-E21”.

23 Section 1068A (at the end of Module E of the Pension PP (Single) Rate Calculator)

Add:

1068A-E21 In this Module:

dependent child, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

24 Point 1068B-D22

Repeal the point, substitute:

Partner income free area

1068B-D22 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or

- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

25 Subparagraph 1068B-F5(b)(i)

Omit “or a youth training allowance”.

26 Subparagraph 1068B-F5(b)(ii)

Omit “Module H of Benefit Rate Calculator A, Module G of the Sickness Allowance Rate Calculator”, substitute “Module H of the Youth Allowance Rate Calculator, Module D of the Austudy Payment Rate Calculator”.

27 Subparagraph 1068B-F5(b)(ii)

Omit “or” (last occurring).

28 Subparagraph 1068B-F5(b)(iii)

Repeal the subparagraph.

29 Subsection 1131(1A)

Omit “section 1067 (Benefit Rate Calculator A)”, substitute “section 1067G (Youth Allowance Rate Calculator)”.

30 Subsection 1132(2) (note)

Omit “Step 5 of the Method statement in point 1067-A1”, substitute “Step 4 of the Method statement in point 1068-A1”.

31 Paragraph 1132(6)(b)

Omit “1067”, substitute “1067G, 1067L”.

32 Subsection 1157A(1) (note 2)

Omit “Module G of Benefit Rate Calculator A in section 1067”, substitute “Module F of the Youth Allowance Rate Calculator in section 1067G”.

33 Subsection 1207(2) (table row relating to Benefit Rate Calculator A)

Repeal the row, substitute:

Youth Allowance Rate Calculator (section 1067G)	Module C	Module D	Module H		Not applicable
Austudy Payment Rate Calculator (section 1067L)	Module C	Not applicable	Module D		Not applicable

34 Paragraph 41(3)(f) of Schedule 1A

Repeal the paragraph.

35 Clause 47 of Schedule 1A

Repeal the clause.

Schedule 9—Consequential amendments of the Social Security Act 1991

Part 1—Amendments relating to definitions

1 Section 3 (index)

Omit:

automatic deferment provision	23(1)
education leavers waiting period	23(1)

2 Subparagraphs 4(11)(b)(iia) and (c)(iia)

Repeal the subparagraphs.

3 Paragraph 4(11)(e)

Omit “or a youth training allowance”.

4 Subsection 5(1) (note after the definition of *parent*)

Repeal the note.

5 Subsection 5(1) (paragraph (a) of the definition of *prescribed educational scheme*)

Repeal the paragraph.

6 Paragraphs 5(6)(ba) and (9A)(ca)

Repeal the paragraphs.

7 Subsection 5(10)

Repeal the subsection.

8 Subsection 5A(6) (paragraph (b) of the definition of *recipient child*)

Repeal the paragraph.

9 Subsections 7(6) and (6AA)

Omit “, a seniors health card or a youth training allowance”, substitute
“or a seniors health card”.

10 Paragraph 8(8)(s)

Omit “, a youth training allowance”.

11 Paragraph 8(8)(z) (note)

Omit “Benefit Rate Calculator A (point 1067-H6)”, substitute “Youth Allowance Rate Calculator (point 1067G-H21), Austudy Payment Rate Calculator (point 1067L-D15),”.

12 Paragraph 8(8)(z) (note)

Omit “Points 1067-H6”, substitute “Points 1067G-H21, 1067L-D15”.

13 Paragraph 8(8)(zf)

Repeal the paragraph, substitute:

- (zf) a payment of a pensioner education supplement under this Act or under the ABSTUDY scheme to a person who is receiving:
 - (i) a social security or service pension; or
 - (ii) a social security benefit;

14 Subparagraph 8(8)(zm)(i)

Omit “or a youth training allowance”.

15 Subsection 10A(2)

Omit “Module G of Benefit Rate Calculator A in section 1067”, substitute “Module F of the Youth Allowance Rate Calculator in section 1067G”.

16 Subsections 14A(1) and (2)

After “Parts”, insert “2.11, 2.11A,”.

17 Subsection 14A(1) (definition of *liquid assets*)

Omit all the words from and including “but does not include”, substitute:

but does not include:

- (d) an amount that is a qualifying eligible termination payment for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act; or
- (e) in the case of a person who:
 - (i) has claimed or is receiving a youth allowance or an austudy payment; and
 - (ii) is undertaking a tertiary course of education in any year or part of a year;
an amount necessary to cover the reasonable expenses incurred, or likely to be incurred, by the person in that year or that part of a year and that are directly related to his or her undertaking the course, including:
 - (iii) up front course fees; and
 - (iv) HECS payments; and
 - (v) union fees; and
 - (vi) costs of text books; and
 - (vii) costs of any tools or equipment required to undertake the course, including computer software; and
 - (viii) expenses directly related to any field trips undertaken for the purposes of the course; and
 - (ix) such other expenses as are approved by the Secretary.

18 Paragraph 14A(3)(a) and subparagraph 14A(3)(b)(ii)

Before “newstart”, insert “youth allowance, austudy payment,”.

19 Paragraphs 14A(5)(b) and (c)

After “work”, insert “or study”.

20 After subsection 14A(5)

Insert:

(5A) If:

- (a) a person has or had a debt not related to the person’s principal home or to any other residential property in which

the person holds or held, solely or jointly, any right or interest; and

(b) since becoming qualified for youth allowance or austudy payment (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and

(c) since becoming qualified for youth allowance or austudy payments (as the case requires), the person had not already made such a payment in order to discharge that debt in part;

the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.

21 Subsection 14A(6)

After "section", insert "549A, 575A,".

22 Subsection 17(1) (definition of *former payment type*)

Add at the end:

; or (p) a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force.

23 Subsection 19C(1) (paragraph (c) of the note)

Repeal the paragraph.

24 Subsection 19C(2)

After "claim for", insert "austudy payment or".

25 Section 22 (paragraph (b) of the definition of *review*)

Omit "*and Youth*".

26 Subsection 23(1) (paragraph (a) of the definition of *activity test breach*)

After "section", insert "550A, 576A,".

27 Subsection 23(1) (paragraph (a) of the definition of *activity test breach rate reduction period*)

After “section”, insert “557, 582 or”.

28 Subsection 23(1) (paragraph (a) of the definition of *activity test non-payment period*)

After “section”, insert “550, 576 or”.

29 Subsection 23(1) (paragraph (a) of the definition of *administrative breach rate reduction period*)

After “section”, insert “558, 583 or”.

30 Subsection 23(1) (definition of *approved program of work supplement*)

Add at the end “or under section 556A to a person receiving youth allowance”.

31 Subsection 23(1) (definition of *AUSTUDY allowance*)

Add at the end “, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force”.

32 Subsection 23(1) (definition of *automatic deferment provision*)

Repeal the definition.

33 Subsection 23(1) (definition of *education leavers waiting period*)

Repeal the definition.

34 Subsection 23(1) (definition of *family member*)

Repeal the definition, substitute:

family member has the meaning given by subsections (14) and (15).

35 Subsection 23(1) (definition of *income maintenance period*)

Omit “1067-H5G and 1067-H5H, 1067E-G6G and 1067E-G6H”,
substitute “1067G-H11 and 1067G-H12, 1067L-D5 and 1067L-D6”.

**36 Subsection 23(1) (after paragraph (b) of the definition of
newly arrived resident's waiting period)**

Insert:

- (c) a youth allowance newly arrived resident's waiting period
under section 549D; or
- (ca) an austudy payment newly arrived resident's waiting period
under section 575D; or
- (cb) a pensioner education supplement newly arrived resident's
waiting period under section 1061PU; or

**37 Subsection 23(1) (after paragraph (ga) of the definition of
recipient notification notice)**

Insert:

- (h) section 561B (youth allowance); or
- (ha) section 586B (austudy payment); or
- (hb) section 1061PZQ (pensioner education supplement); or

**38 Subsection 23(1) (after paragraph (ga) of the definition of
recipient statement notice)**

Insert:

- (h) section 561C (youth allowance); or
- (ha) section 586C (austudy payment); or
- (hb) section 1061PZR (pensioner education supplement); or

**39 Subsection 23(1) (subparagraph (b)(ii) of the definition of
Secretary)**

Omit “*and Youth*”.

**40 Subsection 23(1) (after paragraph (aa) of the definition of
social security benefit)**

Insert:

- (aab) youth allowance; or

(aac) austudy payment; or

41 Subsection 23(1) (after paragraph (h) of the definition of *social security entitlement*)

Insert:

(ha) a youth allowance; or

(hb) an austudy payment; or

42 Subsection 23(1) (paragraph (a) of the definition of *social security recipient status*)

Omit “job search allowance” (first occurring), substitute “youth allowance, an austudy payment”.

43 Subsection 23(1) (paragraphs (a) and (b) of the definition of *social security recipient status*)

Omit “a job search allowance,”.

44 Subsection 23(1) (paragraphs (c), (fd) and (i) of the definition of *waiting period*)

Repeal the paragraphs.

45 Subsection 23(1) (definition of *youth training allowance*)

Add at the end “as previously in force”.

46 Subsection 23(4A)

After “Parts”, insert “2.11,”.

47 Subparagraph 23(6)(b)(ii)

Omit “or a youth training allowance”.

48 Sub-subparagraph 23(7)(b)(ii)(B)

Repeal the sub-subparagraph.

49 Subsection 23(10AA)

Repeal the subsection.

50 Subsection 23(10B)

After “sections”, insert “549A to 549C, 575A to 575C,”.

51 At the end of section 23

Add:

- (14) For the purposes of this Act other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a **family member** in relation to a person (the **relevant person**):
- (a) the partner, father or mother of the relevant person;
 - (b) a sister, brother or child of the relevant person;
 - (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person’s relations described in paragraph (a) or (b).
- (15) For the purposes of Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a **family member** in relation to a person (the **relevant person**):
- (a) a parent of the relevant person;
 - (b) a child of a parent of the relevant person who is wholly or substantially dependent on the parent, being either a child under 16 or a child who:
 - (i) is at least 16 years of age but has not yet attained the maximum age for youth allowance under section 543B (disregarding subsection 543B(2)); and
 - (ii) is not independent (see section 1067A); and
 - (iii) is not receiving a pension, benefit or allowance referred to in Module L of the Rate Calculator.

Note: For parent see subsection 5(1), paragraph (b) of the definition of **parent**.

Part 2—Amendments relating to newstart allowance

52 Subparagraph 593(1)(g)(i)

Omit “16”, substitute “21”.

53 Paragraph 593(1)(i)

Omit “youth training allowance”, substitute “youth allowance”.

54 Subsection 593(1) (note 12)

Omit “youth training allowance” (wherever occurring), substitute “youth allowance”.

55 Subsection 593(1) (note 12)

Omit “section 67 of the *Student and Youth Assistance Act 1973*”, substitute “section 540C”.

56 Subparagraph 593(1B)(b)(i)

Omit “16”, substitute “21”.

57 Paragraph 593(1B)(c)

Omit “youth training allowance”, substitute “youth allowance”.

58 Subparagraph 593(2)(g)(i)

Omit “18”, substitute “21”.

59 Paragraph 593(2)(i)

Omit “youth training allowance”, substitute “youth allowance”.

60 Subsection 593(2) (note 9)

Omit “youth training allowance” (wherever occurring), substitute “youth allowance”.

61 Subsection 593(2) (note 9)

Omit “section 67 of the *Student and Youth Assistance Act 1973*”, substitute “section 540C”.

62 Subsection 593(2B)

Repeal the subsection.

63 Subparagraph 603A(3)(a)(ii)

Repeal the subparagraph, substitute:

(ii) subsection 542H(1) of this Act;

64 Subsection 604(1B)

Repeal the subsection.

65 Paragraph 604(2)(b)

Repeal the paragraph, substitute:

(b) immediately before that day, the person was a party to a Youth Allowance Activity Agreement; and

66 Subparagraph 607A(1)(a)(i)

Repeal the subparagraph.

67 Subparagraph 607A(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) a youth allowance; and

68 Subparagraph 607B(1)(a)(i)

Repeal the subparagraph.

69 Subparagraph 607B(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) a youth allowance; and

70 Subparagraph 607B(2)(a)(i)

Repeal the subparagraph.

71 Subparagraph 607B(2)(a)(iii)

Repeal the subparagraph, substitute:

(iii) a youth allowance; and

72 Subsection 611(1A)

Repeal the subsection.

73 Paragraph 615(1)(aa)

Omit “youth training allowance” (wherever occurring), substitute “youth allowance”.

74 Subparagraph 620(1)(j)(ii)

Omit “, social security benefit or youth training allowance”, substitute “or social security benefit”.

75 Subsection 621(5)

Repeal the subsection.

76 Paragraphs 621(7)(a) and (c)

After “work”, insert “or study”.

77 Paragraph 635(3)(a)

Omit “youth training allowance”, substitute “youth allowance”.

78 Section 643

Repeal the section, substitute:

643 How to work out a person’s newstart allowance rate

A person’s newstart allowance rate is to be worked out using Benefit Rate Calculator B at the end of section 1068.

Note: For double payments on release from gaol see section 1161.

79 Section 644A

Repeal the section.

Part 3—Amendments relating to sickness allowance

80 Paragraph 666(1)(a)

After “work”, insert “or study”.

81 Paragraph 666(1)(ca)

Omit “either”, substitute “one”.

82 Subparagraph 666(1)(ca)(ii)

Omit “the AUSTUDY scheme or”.

83 At the end of paragraph 666(1)(ca)

Add:

- (iii) immediately before the incapacity occurred the person was undertaking qualifying study and receiving austudy payment, and the Secretary is satisfied that the person is committed to resuming qualifying study when the incapacity ends; and

84 Paragraph 666(1)(e)

Omit “16”, substitute “21”.

85 Subsections 666(1A) and (1B)

Repeal the subsections.

86 Paragraph 667(4)(a)

Omit “16”, substitute “21”.

87 Subsection 667(4A)

Repeal the subsection.

88 Paragraph 676(1)(a)

After “work”, insert “or study”.

89 Subsection 676(1) (note 3)

Repeal the note.

90 At the end of subsection 676(2)

Add:

Note: For *transferee to sickness allowance* see subsections 23(6) and (7).

91 Subsection 676(3)

Repeal the subsection, substitute:

- (3) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (3A), (3B) and (3C).
- (3A) Work out the number of formula weeks (disregarding any fractions of a week) in relation to the claim using the formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

liquid assets means the person's liquid assets.

maximum reserve amount means the maximum reserve in relation to the person under subsection 14(1).

divisor means, in relation to a person:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
- (b) otherwise—\$1,000.
- (3B) If the number of formula weeks is equal to or greater than 13 weeks, the liquid assets test waiting period in relation to the claim is 13 weeks.
- (3C) If subsection (3B) does not apply, the liquid assets test waiting period in relation to the claim is the number of weeks equal to the number of formula weeks.

92 At the end of subsection 676(4)

Add “or study”.

93 At the end of paragraph 676(4A)(a)

Add “or study”.

94 Paragraph 676(4A)(c)

After “work” (first occurring), insert “or study”.

95 At the end of paragraph 676(4A)(c)

Add “or study”.

96 Subsection 676(5)

Repeal the subsection, substitute:

(5) If:

- (a) a person becomes qualified for austudy payment; and
- (b) because of paragraph 572(c), austudy payment is not payable to the person while the person is subject to a liquid assets test waiting period (see section 575A); and
- (c) within the liquid assets test waiting period referred to in paragraph (b):
 - (i) the person becomes incapacitated for study; and
 - (ii) the person claims sickness allowance;

the liquid assets test waiting period in relation to the claim for sickness allowance starts on the day on which the person becomes qualified for austudy payment.

97 Subsection 680(2)

Repeal the subsection.

98 Subsection 694(7)

Repeal the subsection.

99 Section 709

Repeal the section, substitute:

709 How to work out a person's sickness allowance rate

A person's sickness allowance rate is to be worked out using
Benefit Rate Calculator B at the end of section 1068.

100 Sections 713 and 714

Repeal the sections.

Part 4—Amendments relating to family allowance

101 Paragraph 838(1A)(a)

Omit “, youth training allowance”.

102 Section 843

Add at the end:

(4) If:

- (a) a person (**youth allowance claimant**) makes a claim for youth allowance (**initial claim**); and
- (b) on the day on which the initial claim is made, another person is qualified for family allowance for the youth allowance claimant; and
- (c) that person subsequently makes a claim for family allowance in respect of the youth allowance claimant; and
- (d) the Secretary is satisfied that it is reasonable for this subsection to apply to that person;

that person’s provisional commencement day is the day on which the initial claim is made.

103 At the end of section 894

Add:

; and (c) subject to subsection (2), the child’s age during the bereavement rate continuation period were taken to be the age of the child when he or she died.

(2) Paragraph (1)(c) does not apply to a child who was 12 years of age when he or she died.

104 Subsection 1069-B2(1) (table item 3)

Omit “\$55.70”, substitute “\$23.50”.

105 At the end of point 1069-H30

Add:

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; or (c) a child who is receiving a youth allowance.

106 Point 1070-E1 (definition of *ordinary income*)

After “include”, insert “a pensioner education supplement or”.

Part 5—Amendment relating to child disability allowance

107 After subparagraph 953(b)(iii)

Insert:

(iiia) the child receiving youth allowance; or

Part 6—Amendments relating to family tax payments

108 After subsection 900AA(1)

Insert:

- (1A) A person (the **young person**) who is receiving a youth allowance is taken to be a dependent child of another person for the purposes of this Division if:
- (a) but for paragraph 5(6)(b), the young person would be a dependent child of that other person; and
 - (b) the young person is not independent within the meaning of section 1067A; and
 - (c) the young person is under 18 years of age and is undertaking full-time secondary study.

109 Subsection 900AA(3)

Omit “subsection (4)”, substitute “subsections (1A) and (4)”.

110 After subsection 900AD(3)

Insert:

- (3A) Subject to subsections (5) and (6), a person is qualified for family tax payment if:
- (a) the person has at least one FTP child; and
 - (b) either:
 - (i) that child is a dependent child of the person because of the operation of subsection 900AA(1A); or
 - (ii) that child is a person referred to in subsection 900AA(4); and
 - (c) the person has a notional family allowance excess.

Note: For **notional family allowance excess** see subsection (3B).

- (3B) Use the Method statement below to work out if a person has a notional family allowance excess for the purposes of subsection (3A).

Method statement

- Step 1.* Work out the person's family allowance rate using the Family Allowance Rate Calculator in section 1069 as if the amount in column 3 of item 3 of Table B in point 1069-B2 were \$60.20 and each FTP child of the person were an FA child.
- Step 2.* Work out the person's minimum family allowance rate (see subsection 6(1)) as if each FTP child of the person were an FA child.
- Step 3.* If the person's family allowance rate is greater than the person's minimum family allowance rate, the person has a ***notional family allowance excess***.

Part 7—Amendments relating to education leaver's waiting period

111 Paragraph 608(1)(h)

Repeal the paragraph.

112 Subsection 615(7)

Repeal the subsection.

113 Subsection 616(2) (paragraph (c) of note 2)

Repeal the paragraph.

114 Subsection 616(2) (note 4)

Repeal the note.

115 Subsection 616A(2) (paragraph (c) of note 1)

Repeal the paragraph.

116 Subsection 616A(3) (note 2)

Repeal the note.

117 Subsection 616A(5) (note 2)

Repeal the note.

118 Sections 622, 623 and 623AA

Repeal the sections.

119 Paragraph 677(1)(i)

Repeal the paragraph.

120 Subsection 687(3)

Repeal the subsection.

121 Subsection 688(2) (paragraph (c) of note 1)

Repeal the paragraph.

122 Subsection 688(3) (note 2)

Repeal the note.

123 Subsection 688(6) (note 2)

Repeal the note.

124 Subsection 694(1) (note 2)

Repeal the note.

125 Sections 695, 696 and 696A

Repeal the sections.

Part 8—Amendments relating to education entry payments and employment entry payments

126 Paragraph 661(1)(a)

Omit “18”, substitute “21”.

127 Subparagraph 661(1)(c)(i)

Omit “a job search allowance or”.

128 Sections 663 and 664

Repeal the sections.

129 Subsection 665(1)

Omit “663”.

130 Paragraphs 665A(b) and (ba)

Repeal the paragraphs, substitute:

(b) a pension education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person’s whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

131 Paragraphs 665E(b) and (c)

Repeal the paragraphs, substitute:

(b) a pension education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person’s whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

132 Paragraphs 665I(b) and (c)

Repeal the paragraphs, substitute:

(b) a pension education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

133 Paragraphs 665M(c) and (d)

Repeal the paragraphs, substitute:

- (c) a pensioner education supplement is payable to the person;
and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

134 Division 6 of Part 2.13A (heading)

Repeal the heading, substitute:

Division 6—Former job search or newstart allowance recipients

135 Subparagraph 665U(1)(a)(i)

Omit "AUSTUDY scheme or".

136 Subparagraph 665U(1)(b)(i)

Omit "or a youth training allowance".

137 Subparagraph 665U(1)(c)(i)

Omit "or youth training allowance".

138 Subparagraphs 665U(1)(c)(ii) and (iii)

Omit "AUSTUDY scheme or".

139 Subparagraph 665U(1)(c)(iv)

Repeal the subparagraph.

140 Subparagraph 665Y(a)(i)

Omit "AUSTUDY or".

141 Subparagraph 665ZC(a)(i)

Omit “AUSTUDY scheme or”.

142 Paragraphs 665ZFA(b) and (c)

Repeal the paragraphs, substitute:

- (b) a pensioner education supplement is payable to the person;
and

Note: Pensioner education supplement is payable to a person even if a person’s whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

143 Subparagraphs 665ZG(a)(i), 665ZL(a)(i) and 665ZQ(a)(i)

Omit “AUSTUDY scheme or”.

Part 9—Amendments relating to incorrect or inappropriate claims

144 Subparagraphs 46(2)(a)(ia)

Repeal the subparagraph.

145 Subparagraph 100(2)(a)(ia)

Repeal the subparagraph.

146 Subparagraph 150(2)(a)(ia)

Repeal the subparagraph.

147 Subparagraph 201(2)(a)(ia)

Repeal the subparagraph.

148 Subparagraph 318(2)(a)(ia)

Repeal the subparagraph.

149 Subparagraph 366(2)(a)(ia)

Repeal the subparagraph.

150 Subparagraph 415(2)(a)(ia)

Repeal the subparagraph.

151 Subparagraph 500K(3)(a)(ia)

Repeal the subparagraph.

152 Subparagraph 615(2)(a)(ia)

Repeal the subparagraph.

153 Subparagraph 660XCC(2)(a)(ia)

Repeal the subparagraph.

154 Subparagraph 660XCK(2)(a)(ia)

Repeal the subparagraph.

155 Subparagraph 660YCC(2)(a)(ii)

Repeal the subparagraph.

156 Subparagraph 689(a)(ia)

Repeal the subparagraph.

157 Subparagraph 731(2)(a)(ia)

Repeal the subparagraph.

158 Subparagraph 771HN(2)(a)(ia)

Repeal the subparagraph.

159 Subparagraph 784(2)(a)(ia)

Repeal the subparagraph.

Part 10—Amendments relating to claims made by telephone, facsimile or computer

160 Subparagraph 100A(1)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) a youth allowance; or
- (v) an austudy payment; and

161 Paragraph 500M(1)(a)

After “section 100A”, insert “, 554C, 579C”.

162 Subparagraph 615A(1)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) a youth allowance; or
- (v) an austudy payment; and

163 Subparagraph 687A(1)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) a youth allowance; or
- (v) an austudy payment; and

Part 11—Amendments relating to multiple entitlement exclusion provisions

164 Paragraphs 103(2)(b), 202(2)(b), 321(2)(b) and 500S(3)(b)

Omit “, youth training allowance”.

165 Paragraph 500T(2)(b)

Omit “or a youth training allowance”.

166 Subsection 500T(2) (note 3)

Repeal the note.

167 Paragraph 614(2)(b)

Omit “, a youth training allowance”.

168 Subsection 686(1)

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

169 Paragraphs 686(2)(b) and 771HI(2)(b)

Omit “, youth training allowance”.

Part 12—Amendments relating to automatic termination provisions

170 Paragraphs 136(b), 175B(b), 225A(b), 225B(c), 344A(b), 392A(b) and 508(2)(b)

Omit “, youth training allowance”.

171 Paragraphs 660A(b), 660XJB(b), 660XJC(b), 728D(b), 762A(b) and 771NB(b)

Omit “, a youth training allowance”.

172 Sections 175B, 225A, 225B, 344A, 392A, 508, 660A, 660XJB, 660XJC, 728D, 762A and 771NB

Omit “, benefit or allowance”, substitute “or benefit”.

173 Paragraph 508A(2)(b)

Omit “or a youth training allowance”.

174 Subsection 508A(2)

Omit “or youth training allowance”.

Part 13—Amendments relating to automatic rate reduction provisions

175 Subparagraph 73A(b)(ia)

Repeal the subparagraph.

176 Subparagraph 141(b)(ia)

Repeal the subparagraph.

177 Subparagraph 227A(b)(ia)

Repeal the subparagraph.

178 Subparagraph 509A(b)(ii)

Repeal the subparagraph.

179 Paragraph 509A(c)

Omit “, benefit or allowance”, substitute “or benefit”.

180 Section 509A

Omit “, benefit or allowance” (last occurring), substitute “or benefit”.

181 Subparagraphs 660E(b)(ii)

Repeal the subparagraph.

182 Subparagraph 660XJF(b)(ia)

Repeal the subparagraph.

183 Paragraph 660XJF(c)

Omit “, benefit or allowance”, substitute “or benefit”.

184 Section 660XJF

Omit “, benefit or youth training allowance”, substitute “or benefit”.

185 Paragraph 728G(b)

Omit “(ii) a youth training allowance; or”.

186 Paragraph 728G(c)

Omit “, benefit or youth training allowance”, substitute “or benefit”.

187 Section 728G

Omit “, benefit or youth training allowance” (last occurring), substitute “or benefit”.

188 Paragraph 771NH(b)

Omit “or a youth training allowance”.

189 Paragraph 771NH(c)

Omit “or youth training allowance”.

190 Section 771NH

Omit “or youth training allowance” (last occurring).

Part 14—Amendments relating to mobility allowance

191 Subparagraph 1035(ba)(ii)

Omit “or youth training allowance under the *Student and Youth Assistance Act 1973*”, substitute “youth allowance or austudy payment”.

192 Subparagraph 1058(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) to receive youth allowance for a reason other than the application of section 541A, 544A, 544C, 550, 553B or 565C; or
- (iii) to receive an austudy payment for a reason other than the application of section 569, 576 or 590C; or

Part 15—Amendments relating to special benefit

193 Paragraph 729(2)(ba)

Repeal the paragraph.

194 Paragraph 729(2)(c)

Omit “solely”.

195 Paragraph 729(2)(d)

Omit “solely by”, substitute “because of”.

196 Paragraphs 729(2)(da) and (db)

Repeal the paragraphs, substitute:

- (da) the person is not disqualified for a youth allowance for the period because of the operation of:
 - (i) section 541A (failure to satisfy the activity test); or
 - (ii) section 544 (requirements relating to Youth Allowance Activity Agreements); and
- (db) the person is not disqualified for an austudy payment for the period because the person fails to satisfy the activity test within the meaning of section 569; and
- (dc) youth allowance is not payable to the person for the period and that result is not because of the operation of:
 - (i) section 550 (application of activity test non-payment period); or
 - (ii) section 553B (move to an area of lower employment prospects); or
 - (iii) section 565C (failure to comply with section 561C, 1304 or 1305 notices); and
- (dd) austudy payment is not payable to the person for the period and that result is not because of the operation of:
 - (i) section 576 (application of activity test non-payment period); or

- (ii) section 588D (non-compliance with section 586C notification obligations); and

197 Subsection 729(4A)

Omit “(db) a youth training allowance”, substitute “(dc) a youth allowance”.

198 After subsection 729(4A)

Insert:

- (4B) For the purposes of paragraph (2)(dd), an austudy payment is taken not to be payable to a person for a period because of the operation of a provision if:
 - (a) the person has claimed the payment for the period and the payment is not payable to the person because of the operation of the provision; or
 - (b) were the person to claim the payment for the period, the payment would not be payable to the person because of the operation of the provision.

199 Subsections 737(1) and 738(1)

Omit “16” (wherever occurring), substitute “18”.

200 Subsection 746(2)

Omit “youth training allowance” (wherever occurring), substitute “youth allowance, austudy payment”.

Part 16—Amendments relating to exclusion from assets test

201 Subsections 611(1) and (1A)

Repeal the subsections, substitute:

- (1) A newstart allowance is not payable to a person if the value of the person's assets is more than the person's assets value limit.

202 Subsections 680(1) and (2)

Repeal the subsections, substitute:

- (1) A sickness allowance is not payable to a person if the value of the person's assets is more than the person's assets value limit.

203 Paragraphs 733(2)(b) to (e)

Repeal the paragraphs, substitute:

- (b) is not independent within the meaning of section 1067A.

**Part 17—Amendments relating to the value of the
assets of members of couples**

204 Subparagraph 612(1)(b)(ii)

Omit “and”.

205 Subparagraph 612(1)(b)(iii)

Repeal the subparagraph.

206 Subparagraph 612(2)(b)(ii)

Omit “or”.

207 Subparagraph 612(2)(b)(iii)

Repeal the subparagraph.

208 Subparagraphs 681(1)(b)(ii) and (2)(b)(ii)

Omit “or youth training allowance”.

209 Subparagraphs 734(1)(b)(ii) and (2)(b)(ii)

Omit “or a youth training allowance”.

Part 18—Amendments relating to partner allowance

210 Subparagraph 771HA(1)(c)(i)

Before “newstart”, insert “youth allowance, austudy payment,”.

211 Subparagraph 771HA(1)(c)(ii)

Omit “AUSTUDY allowance,”.

212 After subsection 771HA(1B)

Insert:

- (1BA) For the purposes of paragraph (1)(c), the person’s partner is taken to be receiving youth allowance if the person’s partner would be receiving youth allowance except for the imposition of:
- (a) a period of non-payment under Subdivision D of Division 2 of Part 2.11; or
 - (b) an employment-related exclusion under section 553A or 553B.
- (1BB) For the purposes of paragraph (1)(c), the person’s partner is taken to be receiving austudy payment if the person’s partner would be receiving austudy payment except for the imposition of a period of non-payment under Subdivision E of Division 2 of Part 2.11A.

213 Subsection 771HA(3)

Omit “youth training allowance”, substitute “youth allowance, austudy payment,”.

214 Paragraph 771HA(3)(b)

Repeal the paragraph, substitute:

- (b) a period of non-payment applies to the person under paragraph 608(1)(j), Subdivision D of Division 2 of Part 2.11 or Subdivision E of Division 2 of Part 2.11A; or
- (c) the person is subject to an employment-related exclusion for a period under section 553B or 553C;

215 At the end of subsection 771HA(3)

Add:

Note 4: Subdivision D of Division 2 of Part 2.11 and Subdivision E of Division 2 of Part 2.11A provide respectively for non-payment periods for youth allowance recipients and non-payment periods for austudy payment recipients in certain circumstances.

216 Subsection 771HA(3A)

Omit “Part 2.12 or Part 8 of the *Student and Youth Assistance Act 1973*”, substitute “Subdivision B of Division 5 of Part 2.11, Subdivision B of Division 5 of Part 2.11A or Subdivision AA of Division 4 of Part 2.12”.

217 Subsection 771HA(3B)

Omit “Part 2.12 or Part 8 of the *Student and Youth Assistance Act 1973*”, substitute “Subdivision C of Division 5 of Part 2.11, Subdivision C of Division 5 of Part 2.11A or Subdivision B of Division 4 of Part 2.12”.

218 Subsection 771KE(2)

Omit “youth training allowance” (wherever occurring), substitute “youth allowance, austudy payment”.

219 Paragraph 771NU(3)(a)

Repeal the paragraph.

220 Paragraph 771NU(3)(aa)

Omit “youth training allowance” (first occurring), substitute “youth allowance or an austudy payment”.

221 Subparagraph 771NU(3)(aa)(i)

Omit “youth training allowance”, substitute “youth allowance or austudy payment (as the case may be)”.

222 Subsection 771NX(2)

Repeal the subsection.

223 Subsection 771NX(2A)

Omit “youth training allowance” (first and second occurring), substitute “youth allowance or austudy payment”.

Note: The heading to subsection 771NX(2A) is altered by omitting “*youth training allowance*” and substituting “*youth allowance or austudy payment*”.

224 Paragraph 771NX(2A)(a)

Omit “youth training allowance”, substitute “youth allowance or an austudy payment”.

Part 19—Amendments relating to parenting payment

225 Paragraph 500I(1)(i)

Omit “or youth training allowance”, substitute “, youth allowance or austudy payment”.

226 Subparagraph 500K(3)(a)(ia)

Repeal the subparagraph.

227 Paragraph 500M(1)(a)

Before “615A”, insert “554C, 579C,”.

228 Paragraph 500M(1)(a)

Omit “, or section 91A of the *Student and Youth Assistance Act 1973*,”.

229 Paragraph 500S(3)(b)

Omit “, youth training allowance”.

230 Paragraph 500T(2)(b)

Omit “or a youth training allowance”.

231 Subsection 500T(2) (note 3)

Repeal the note.

232 Paragraph 500V(2)(a)

Repeal the paragraph.

233 Paragraphs 500Y(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) a period of non-payment of youth allowance has been applied to the person under Subdivision D of Division 2 of Part 2.11;
or
- (d) the person is subject to an employment-related exclusion for a period under section 553B or 553C; or

- (e) an activity test breach rate reduction period or an administrative breach rate reduction for youth allowance has been applied to the person under Subdivision B or C of Division 5 of Part 2.11; or
- (f) a period of non-payment of austudy payment has been applied to the person under Subdivision E of Division 2 of Part 2.11A; or
- (g) an activity test breach rate reduction period or an administrative breach rate reduction for austudy payment has been applied to the person under Subdivision B or C of Division 5 of Part 2.11A;

Note: The heading to section 500Y is altered by omitting “**and youth training allowance**” and substituting “**, youth allowance and austudy payment**”.

234 Paragraph 508(2)(b)

Omit “, youth training allowance”.

235 Subsection 508(2)

Omit “pension, benefit or allowance”, substitute “social security pension, the benefit or the service pension”.

236 Paragraph 508A(2)(b)

Omit “or a youth training allowance”.

237 Subsection 508A(2)

Omit “or youth training allowance”.

238 Paragraphs 508B(c) and 509E(2)(b)

Omit “an AUSTUDY allowance”, substitute “a payment under the ABSTUDY scheme (the **ABSTUDY payment**)”.

Note: The headings to sections 508B and 509E are altered by omitting “**AUSTUDY allowance**” and substituting “**a payment under the ABSTUDY scheme**”.

239 Section 508B and subsection 509E(2)

Omit “the AUSTUDY allowance”, substitute “the ABSTUDY payment”.

240 Paragraph 1068A-E17(d)

Omit “or the AUSTUDY scheme”.

241 Paragraph 1068B-B2(c)

Omit “an AUSTUDY allowance”, substitute “a payment under the ABSTUDY scheme”.

Part 20—Amendments relating to advance payments

242 Subsection 1061A(1)

Omit “subsection (4)”, substitute “this section”.

243 After subsection 1061A(1)

Insert:

- (2) The Secretary may determine in writing that paragraph (1)(b) does not apply to a person who has applied for an advance of youth allowance or austudy payment and the determination has effect accordingly. The determination is a disallowable instrument.

244 Subsections 1061EE(1) and (6)

Before “mature age”, insert “youth allowance, austudy payment,”.

Note: The heading to section 1061EE is altered by inserting “**youth allowance, austudy payment,**” before “**mature age**”.

245 Subsection 1061EE(4)

Before “newstart”, insert “youth allowance, austudy payment or”.

Part 21—Amendments relating to overpayment and debt recovery

246 Subsection 1222(1) (note 1)

Insert the following entry in its appropriate place:

- section 1227B debts—debts arising under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998.

247 Subsection 1222(2) (after table item 8)

Insert:

8AA	1227B	deductions	1231, 1234A
	(youth training allowance debts)	legal proceedings	1232
		garnishee notice	1233

248 Subparagraph 1223(7)(b)(iv)

Omit “newstart allowance—the rate of the person’s newstart allowance”, substitute “youth allowance or newstart allowance—the rate of the person’s allowance”.

249 Subsection 1223(7) (note)

Repeal the note, substitute:

Note: For *newstart training supplement* see section 644 and for *approved program of work supplement* see sections 556A and 644AAA.

250 Paragraph 1223AA(1)(b)

Before “section 658”, insert “section 561C (youth allowance), section 586C (austudy payment),”.

251 Paragraph 1224AA(1)(a)

Omit “instalment”, substitute “amount”.

252 After section 1227A

Insert:

1227B Debts arising under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998

If an amount that was a debt due to the Commonwealth under Part 8 of the *Student Assistance Act 1973* (as in force immediately before 1 July 1998) remained still due immediately before that day, that amount is a debt that is due to the Commonwealth under this Act.

253 Subparagraph 1228(2)(c)(i)

After “Scheme”, insert “, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force”.

254 Paragraph 1228(2)(ca)

Repeal the paragraph.

255 Section 1230B

After “1227A”, insert “, 1227B”.

256 Subsection 1230C(2) (paragraph (a) of the definition of *debt*)

After “1227”, insert “, 1227B”.

257 Paragraph 1234A(1)(a)

After “1992”, insert “or incurred a debt under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998”.

258 After subsection 1237AAC(1)

Insert:

(1A) If:

- (a) a debt arises from overpayments to a youth allowance recipient (the **debtor**); and
- (b) the debtor would have been an FA child of another person for the period when the overpayments were made if the debtor had not been a youth allowance recipient; and

- (c) an amount of family allowance would have been payable to the other person in respect of the debtor for the period when the overpayments were made if:
 - (i) the debtor had been an FA child of the other person for that period; and
 - (ii) the other person had lodged a claim;
- the Secretary must waive the debt to the extent set out in subsection (2A).

259 After subsection 1237AAC(2)

Insert:

- (2A) The Secretary must waive under subsection (1A) the right to recover the amount of debt equal to the amount of family allowance that would have been payable to the other person in the 3-year period ending on the day on which the overpayment is stopped if:
- (a) the debtor had been an FA child of the person; and
 - (b) the other person had lodged a claim for family allowance.

260 Subsection 1237AAC(3)

Omit “subsection (2)”, substitute “subsections (2) and (2A)”.

Part 22—Amendments relating to compensation recovery

261 Paragraphs 1166(4)(b) and 1166(4A)(c)

Omit “a youth training allowance,”.

262 Subparagraph 1166(4A)(e)(ii)

Omit “youth training allowance or”.

263 Subparagraph 1166(4B)(e)(ii)

Omit “and any payments of youth training allowance”.

264 Paragraphs 1168(3A)(b) and 1168(3B)(b)

Omit “a youth training allowance”.

265 Paragraphs 1168(4)(c) and (d)

Omit “, a parenting payment or a youth training allowance”, substitute “or a parenting payment”.

266 Subsection 1168(5) (definition of *Partner’s excess compensation rate*)

Omit “parenting payment or youth training allowance”, substitute “or parenting payment”.

267 Paragraphs 1170(4)(b) and 1170(4A)(b)

Omit “a youth training allowance,”.

268 Subparagraph 1170(4A)(d)(ii)

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

269 Subparagraph 1170(4B)(d)(ii)

Omit “and (if applicable) payment of youth training allowance”.

270 Paragraphs 1174(5)(b), 1174(6)(b), 1179(5)(b) and 1179(6)(b)

Omit “or a youth training allowance”.

271 Subparagraph 1174(6)(c)(ii)

Omit “youth training allowable or”.

272 Subparagraph 1179(6)(c)(ii)

Omit “and (if applicable) amounts of youth training allowance”.

Part 23—Amendments relating to the review of decisions

273 Subsection 1239(1) (note 1)

After “509F,”, insert “563E, 564C, 588D, 589C,”.

274 Subsection 1239(1) (note 1)

After “510H,”, insert “565D, 590D,”.

275 After section 1242A

Insert:

1242B Automatic payment if review of section 544C terms decision sought

- (1) This section applies to a decision to give a notice under section 544C because of a person’s failure to agree to terms of a Youth Allowance Activity Agreement proposed by the Secretary (subparagraph 544C(1)(b)(iii)).

Note: Notice results in disqualification for youth allowance for failure to enter Youth Allowance Activity Agreement.

- (2) If:

- (a) a person applies under subsection 1240(1) or 1240(1AA) for review of a decision to which this section applies; and
- (b) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

- (c) payment of the youth allowance is to be made pending the determination of the review, as if the Youth Allowance Activity Agreement had not been required;
- (d) if payment of the allowance had ceased for a period before the person applied for the review—arrears of allowance are payable to the person for the period in spite of section 566A;

(e) this Act (other than this Chapter) applies as if the Youth Allowance Activity Agreement had not been required.

(3) Subsection (2) ceases to have effect if:

- (a) the application for review is withdrawn; or
- (b) the review of the decision is determined.

276 After subparagraph 1245(1)(a)(i)

Insert:

- (ia) a decision under section 544B to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; and

277 After subsection 1248(1)

Insert:

- (1A) The Social Security Appeals Tribunal may only review a decision under section 544B (to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force) if the application is expressed to be an application for review of that decision.

278 Paragraph 1250(1)(d)

After “423”, insert “, 554A, 554B, 579A, 579B”.

279 After section 1252A

Insert:

1252B Automatic payment if review of section 544C terms decision sought

(1) If:

- (a) a decision has been made, whether before or after the commencement of this paragraph, to give a notice under section 544C because of a person’s failure to agree to terms of a Youth Allowance Activity Agreement proposed by the Secretary (subparagraph 544C(1)(b)(iii)); and

- (b) a person applies to the Social Security Appeals Tribunal under subsection 1247(1) for review of the decision; and
 - (c) the person makes the application within 14 days after being notified of the decision;
- the following provisions have effect:
- (d) payment of the youth allowance is to be made pending the determination of the review, as if the Agreement had not been required;
 - (e) if payment of the allowance had ceased for a period before the person applied for the review—arrear of allowance are payable to the person for the period in spite of section 566A;
 - (f) this Act (other than this Chapter) applies as if the Agreement had not been required.
- (2) Subsection (1) ceases to have effect if:
- (a) the application for review is withdrawn; or
 - (b) the review of the decision is determined.

280 Section 1254A

After “force” (second occurring), insert “, a decision under section 544B to the extent to which it relates to the terms of the Youth Allowance Activity Agreement that is in force”.

281 After paragraph 1255(6)(a)

Insert:

- (ab) a decision under section 544B to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or

282 After paragraph 1256A(1)(a)

Insert:

- (ab) a decision under section 544B to the extent to which it relates to the terms of a Youth Allowance Activity Agreement that is in force; or

283 Subsections 1260(1), 1261(1A) and 1263(1), paragraph 1264(2)(b), subsection 1269(1), paragraphs 1273(2)(b), 1273(2)(c), 1279(1)(a) and 1279(5)(aa)

Omit “*and Youth*”.

284 Subsection 1261(1)

Omit all the words to and including “the Secretary”, substitute “If an application under Part 6.2 of this Act, under Division 2 of Part 9 of the *Student Assistance Act 1973* or under Part 2 of Chapter 9 of the *Child Care Payments Act 1997* is sent or delivered to an office of the Agency, the Secretary”.

Part 24—Miscellaneous amendments

285 Subparagraph 82(5)(b)(iib)

Repeal the subparagraph.

286 Subsections 94(6) and 95(2)

Omit “or youth training allowance”, substitute “, youth training allowance, youth allowance or austudy payment”.

287 Paragraph 98(1)(f)

Omit “or a youth training allowance”.

288 Subparagraph 146F(5)(b)(iib)

Repeal the subparagraph.

289 Paragraph 148(1)(d)

Omit “or a youth training allowance”.

290 Sub-subparagraph 236A(1)(d)(ii)(BA)

Repeal the sub-subparagraph.

291 Subsections 316(1)(c) and 364(1)(c)

Omit “or a youth training allowance”.

292 Subparagraph 408CF(6)(c)(i)

Repeal the subparagraph.

293 Paragraph 500I(1)(i)

Omit “or youth training allowance”, substitute “, youth allowance or austudy payment”.

294 Subparagraph 660XCO(1)(a)(i)

Repeal the subparagraph.

295 Subparagraph 660XKA(6)(b)(iib)

Repeal the subparagraph.

296 Paragraph 660XKA(7)(a)

Omit “, job search allowance”.

297 Subparagraph 660YCG(3)(c)(i)

Repeal the subparagraph.

298 Subsection 666(9)

After “obtaining”, insert “youth allowance, austudy payment,”.

299 Subsection 667(5)

After “obtaining”, insert “youth allowance, austudy payment,”.

300 Subparagraph 738(3)(b)(i)

Repeal the subparagraph.

301 Paragraph 771HC(1)(c)

Omit “or a youth training allowance,”.

302 Paragraph 771HJ(a)

Repeal the paragraph.

303 Subparagraph 822(5)(b)(iib)

Repeal the subparagraph.

304 Paragraph 831A(3)(aa)

Repeal the paragraph.

305 Subsection 1061P(2) (notes 1 and 2)

Omit “, a social security benefit or a youth training allowance”,
substitute “or a social security benefit”.

306 Paragraph 1064-E8(d)

Omit “or the AUSTUDY scheme”.

307 Paragraph 1066-E6(d)

Omit “or the AUSTUDY scheme”.

308 Paragraph 1066A-F7(d)

Omit “or the AUSTUDY scheme”.

309 Point 1069-H1 and paragraph 1069-K2(a)

Omit “, a youth training allowance”.

310 Section 1073

Omit “1067-H5A to 1067-H5R (inclusive), 1067E-G6A to 1067E-G6R”, substitute “1067G-H5 to 1067G-H20 (inclusive), 1067L-D4 to 1067L-D16”.

311 Paragraph 1131(2)(b)

Omit “or youth training allowance”, substitute “, youth allowance or austudy payment”.

312 Paragraph 1161(1)(b)

After “widow allowance,”, insert “youth allowance, austudy payment,”.

313 Paragraph 1224B(1)(b)

Omit “an approved course of education under the AUSTUDY or ABSTUDY scheme”, substitute “the course in relation to which the education entry payment was made”.

314 Paragraph 1307(2)(j)

Repeal the paragraph, substitute:

- (j) in relation to a course of study undertaken by the person:
 - (i) the name of the educational institution that the person is attending;
 - (ii) the name of any educational institution previously attended by the person;
 - (iii) the person’s enrolment status;
 - (iv) the person’s student identification number;

- (v) the name of the course;
- (vi) the course code;
- (vii) the date on which the course starts;
- (viii) the date on which the course ends;
- (ix) the subject or unit code;
- (x) the normal full-time study work load for the course;
- (xi) indicators of the person's work load, including (but not limited to) effective full-time student units, credit points, contact hours, number of subjects undertaken and number of assignments completed;
- (xii) the number of semesters required to complete the course;
- (xiii) the date on which the person first attended, or will first attend, the course;
- (xiv) the date on which the person last attended, or will last attend, the course;
- (xv) whether the person has discontinued the course and, if the person has discontinued the course, the date on which it happened;
- (xvi) details of any unapproved absences from the course;
- (xvii) the results or grade obtained by the person;

315 Subsection 1312(1), paragraph 1312(1A)(d), subparagraph 1312A(b)(i), section 1312A (note 2), paragraph 1312B(b), section 1313, paragraph 1314(1)(a) and subsection 1318(3)

Omit "Part 8 of the *Student and Youth Assistance Act 1973*," (wherever occurring).

316 Paragraphs 1336(3)(c) and (d), subsections 1336(5) and (7) and section 1337

Omit " , the *Student and Youth Assistance Act 1973*".

317 Subsection 1363(3)

Repeal the subsection.

Schedule 10—Amendment of the Social Security Act 1991 relating to saving and transitional provisions

1 At the end of Schedule 1A

Add:

109 Application of liquid assets test waiting period for sickness allowance

This Act, as amended by item 91 of Schedule 9 to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, applies to sickness allowance for which a claim was lodged on or after the commencement of that item.

2 At the end of Schedule 1A

Add:

110 Youth allowance in place of newstart allowance (under 21 years), sickness allowance (under 21 years), youth training allowance and AUSTUDY living allowance (youth allowance age)

Continuing effect of certain determinations

- (1) If a determination, notice, statement or other instrument made or given under this Act in relation to a newstart allowance or sickness allowance for a person under 21 years was in force, or had effect, immediately before 1 July 1998, then, subject to clause 114, the determination, notice, statement or other instrument:
 - (a) continues to be in force, or continues to have effect, on and after that day; and
 - (b) may be amended or revoked;

as if it were a determination, notice, statement or other instrument made or given under this Act in relation to a youth allowance.

- (2) If a determination, notice, statement or other instrument made or given under the *Student Assistance Act 1973* in relation to a youth training allowance:
- (a) was in force, or had effect; or
 - (b) is to be taken to have been in force, or to have had effect; immediately before 1 July 1998, that determination, notice, statement or other instrument:
 - (c) continues, or is taken to continue, to be in force or to have effect, on and after that day; and
 - (d) may be amended or revoked;
- as if it were a determination, notice, statement or other instrument made or given under this Act in relation to a youth allowance.

Person of youth allowance age receiving AUSTUDY living allowance immediately before 1 July 1998

- (3) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of:
- (a) a person who is of youth allowance age on that day; or
 - (b) a person who, immediately before that day, was receiving rent assistance under regulation 102B of the AUSTUDY Regulations as then in force; or
 - (c) a person referred to in paragraph 68(a) or (b) of the AUSTUDY Regulations as in force immediately before that day;
- then, on and after that day:
- (d) a youth allowance is payable, or is to be taken to have been payable, to the person; and
 - (e) subject to subclause (4), Part 2.11 applies to the person;
- as if he or she had made a claim for youth allowance under that Part and the claim had been granted.

- (4) If:
-

- (a) youth allowance is payable, or is to be taken to have been payable, because of subclause (3), to a person referred to in paragraph (3)(b) or (c); and
 - (b) the person ceases to undertake the course of study that the person was undertaking immediately before 1 July 1998; youth allowance ceases to be payable to the person.
- (5) A person referred to in paragraph (3)(c) who is under 25 on 1 July 1998 is taken to be independent for the purposes of Parts 2.11 and 3.15.

Pending claims of youth training allowance etc.

- (6) If:
 - (a) one of the following circumstances apply:
 - (i) a person lodged a claim for a youth training allowance (under the *Student Assistance Act 1973*) before 1 July 1998;
 - (ii) a person who is of youth allowance age lodged an application for an AUSTUDY living allowance (under the AUSTUDY regulations) before 1 July 1998;
 - (iii) a person who is under 21 years lodged a claim for newstart allowance or sickness allowance before 1 July 1998; and
 - (b) the claim was not determined, or the application dealt with, before that date;the claim or application has effect on or after that date as if it were a claim for youth allowance lodged under this Act.
- (7) Subclause (6) has effect subject to item 131 of Part 2 of Schedule 11 to the *Social Security Legislation (Youth Allowance Consequential and Related Measures) Act 1998*.

111 Austudy payment in place of AUSTUDY living allowance

Person of austudy age receiving AUSTUDY living allowance immediately before 1 July 1998

(1) If:

- (a) an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person other than:
 - (i) a person who, immediately before that day, was receiving rent assistance under regulation 102B of the AUSTUDY Regulations as then in force; or
 - (ii) a person referred to in paragraph 68(a) or (b) of the AUSTUDY Regulations as in force immediately before that day; and
- (b) the person is of austudy age on that day;

then, on and after that day:

- (c) an austudy payment is payable, or is to be taken to have been payable, to the person; and
- (d) Part 2.11A applies to the person;

as if he or she had made a claim for austudy payment under that Part and the claim had been granted.

Note: A youth allowance is payable to a person referred to in subparagraph (a)(i) or (ii) (see clause 109).

Pending claims for AUSTUDY living allowance

(2) If:

- (a) a person who is of austudy age lodged an application for an AUSTUDY living allowance (under the AUSTUDY regulations) before 1 July 1998; and
 - (b) the application was not dealt with before that date;
- the application has effect on or after that date as if it were a claim for austudy payment lodged under this Act.

111A \$3,000 opening balance for student income bank for students transferring from AUSTUDY

- (1) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person who is of youth allowance age on that day, then Step 1 of the Method Statement in point 1067G-J3 applies to the person as if the reference in that Step to zero were a reference to \$3,000.
- (2) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person who is of AUSTUDY age on that day, then Step 1 of the Method Statement in point 1067L-E2 applies to the person as if the reference in that Step to zero were a reference to \$3,000.

112 Pensioner education supplement under the Social Security Act in place of pensioner education supplement under the Austudy Regulations

Person receiving pensioner education supplement immediately before 1 July 1998

- (1) If a pensioner education supplement under the AUSTUDY Regulations was payable, or is to be taken to have been payable, immediately before 1 July 1998, to a person, then, on and after that day:
 - (a) a pensioner education supplement under this Act is payable, or is to be taken to have been payable, to the person; and
 - (b) Part 2.24A applies to the person;as if he or she had made a claim for pensioner education supplement under that Part and the claim had been granted.

Pending claims of pensioner education supplement

- (2) If:

- (a) a person lodged an application for a pensioner education supplement under the AUSTUDY Regulations before 1 July 1998; and
 - (b) the application was not determined, or the application dealt with, before that date;
- the application has effect on or after that date as if it were a claim for pensioner education supplement lodged under this Act.

113 Certain persons receiving benefit PP (partnered) and pensioner education supplement immediately before 1 July 1998

(1) If:

- (a) immediately before 20 March 1998, a person who satisfied the qualification requirements for sole parent pension under subparagraph 249(1)(a)(ii) or (iv) was receiving a sole parent pension; and
- (b) a benefit PP (partnered) became payable to the person on that day and continued to be payable until immediately before 1 July 1998; and
- (c) a pensioner education supplement under the AUSTUDY Regulations was payable, or is to be taken to have been payable, immediately before 1 July 1998, to the person;

then, on and after 1 July 1998:

- (d) a pensioner education supplement under this Act is payable, or is to be taken to have been payable, to the person; and
- (e) subject to subclauses (2), (3) and (4), Part 2.24A applies to the person;

as if he or she had made a claim for pensioner education supplement under that Part and the claim had been granted.

- (2) If the person ceases to undertake the course of study that the person was undertaking immediately before 1 July 1998, pensioner education supplement ceases to be payable to the person.
- (3) For the purposes of Part 2.24A, the person is taken to be receiving a payment attracting pensioner education supplement under this Act if the person satisfies the requirements referred to in

subparagraph 249(1)(a)(ii) or (iv) as in force immediately before 20 March 1998.

Note: Subparagraphs 249(1)(a)(ii) and (iv) were repealed by the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*.

- (4) For the purposes of Part 2.24A, subsection 1061PE(2) is taken to apply to the person.

114 Claims for newstart allowance (under 21 years) or sickness allowance (under 21 years) made on or after 1 July 1998 in respect of period before that date

If:

- (a) a person who is under 21 years lodges a claim for newstart allowance or sickness allowance on or after 1 July 1998; and
- (b) the claim is made in respect of a period commencing before 1 July 1998;

the claim has effect as if it had been made immediately before that date.

115 Persons under 21 receiving newstart allowance or sickness allowance on 17 June 1997

(1) If:

- (a) a person was, on 17 June 1997, under 21 years of age and a recipient of newstart allowance or sickness allowance; and
- (b) the person did not cease to be, and was immediately before 1 July 1998, a recipient of newstart allowance or sickness allowance; and
- (c) the person was, immediately before 1 July 1998, under 21 years of age;

then:

- (d) clause 109 does not apply in relation to the person; and
- (e) the person is to continue to receive the newstart allowance or sickness allowance on and after that day; and

- (f) subject to subclauses (2) and (3), Part 2.12 or 2.14 (as the case may be) as in force immediately before that day continues to apply to the person.
- (2) If, on or after 1 July 1998, the Secretary cancels or suspends:
 - (a) a person's newstart allowance under section 660I or 660IA; or
 - (b) a person's sickness allowance under section 728L or 728M; a determination by the Secretary under section 660J or 728P (as the case may be) that the allowance is payable to the person does not have effect unless the determination is made within 6 weeks after the Secretary's decision to cancel or suspend the allowance.
- (3) Newstart allowance or sickness allowance ceases to be payable to a person who has been receiving it because of subclause (1) if the person makes a claim for youth allowance and the claim is granted.

116 Newstart or sickness allowance bereavement payment in respect of death of partner

If:

- (a) immediately before 1 July 1998:
 - (i) a person was qualified for a payment under Division 9 of Part 2.12 or Division 9 of Part 2.14; and
 - (ii) the period for which the person was qualified had not yet ended; and
- (b) the person is under 21 years;

then:

- (c) the person remains qualified for that payment on and after 1 July 1998 as if:
 - (i) in the case of a person qualified for a payment under Division 9 of Part 2.12—that Part and Part 3.5 or 3.6 (whichever was applicable), as in force immediately before that date, continued to apply to him or her; or
 - (ii) in the case of a person qualified for a payment under Division 9 of Part 2.14—that Part and Part 3.5, 3.5A or

- 3.6 (whichever is applicable), as in force immediately before that date, continued to apply to him or her; and
- (d) subclause 109(1) (dealing with continuing effect of determinations) does not apply to the person; and
 - (e) on the day after the end of the period referred to in subparagraph (a)(ii), the person is taken to have made a claim for youth allowance.

117 Youth training allowance bereavement payment in respect of death of partner

If, immediately before 1 July 1998:

- (a) a person was qualified for a payment under Division 10 of Part 8 of the *Student Assistance Act 1973*; and
- (b) the period for which the person was qualified had not yet ended;

then:

- (c) the person remains qualified for that payment on and after 1 July 1998 as if Part 8 of, and Schedule 1 to, that Act as in force immediately before that date were still in force; and
- (d) subclause 109(1) (dealing with continuing effect of determinations) does not apply to the person; and
- (e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for youth allowance.

118 Qualification for double orphan pension for certain young persons who were qualified to receive payments under the AUSTUDY scheme immediately before 1 July 1998

If a person or an approved care organisation was, immediately before 1 July 1998, qualified (under section 999) for a double orphan pension for a young person who, at the time:

- (a) was over 16, but under 22, years of age; and
- (b) was qualified to receive payments under the AUSTUDY scheme;

the person or approved care organisation continues to be qualified for a double orphan pension for the young person until the young person:

- (c) turns 22; or
 - (d) ceases to be a youth allowance recipient; or
 - (e) ceases to undertake full-time study;
- whichever occurs first.

119 Payment of family allowance—young person ceasing to be a FA child on becoming youth allowance recipient

If:

- (a) on the last family allowance payday before 1 July 1998, a person (the **FA recipient**) received an instalment of family allowance (the **relevant instalment**) that was paid to the person at a rate higher than the person's minimum family allowance rate; and
- (b) the relevant instalment consisted of, or included, an amount in respect of an FA child (the **young person**) who becomes a youth allowance recipient before the first family allowance payday after 1 July 1998;

there is payable to the FA recipient in respect of the young person, on the first family allowance payday after 1 July 1998, an amount of family allowance equal to the amount of family allowance that was payable to the FA recipient in respect of the young person on the last family allowance payday before 1 July 1998.

120 Application—income maintenance period rules

- (1) Point 1067G-H11 (dealing with income maintenance periods in relation to continuing employment) applies to the following persons in respect of a leave period starting on or after 1 July 1998:
 - (a) a person who makes a claim for youth allowance on or after 1 July 1998 and to whom subclause (2) does not apply;
 - (b) a youth allowance recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.

(2) If:

- (a) a determination applying an income maintenance period to a person who was or is in employment had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
- (b) a youth allowance becomes payable to the person on or after 1 July 1998; and
- (c) the income maintenance period has not ended when the youth allowance becomes payable to the person;

point 1067G-H11 (dealing with income maintenance periods in relation to continuing employment) applies to the person in respect of a leave period starting on or after 20 March 1998.

(3) Point 1067G-H12 (dealing with income maintenance periods in relation to terminated employment) applies to the following persons in respect of any leave payment received by those persons on or after 1 July 1998:

- (a) a person who makes a claim for youth allowance on or after 1 July 1998 and to whom subclause (4) does not apply;
- (b) a youth allowance recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.

(4) If:

- (a) a determination applying an income maintenance period to a person whose employment has been terminated had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
- (b) a youth allowance becomes payable to the person on or after 1 July 1998; and
- (c) the income maintenance period has not ended when the youth allowance becomes payable to the person;

point 1067G-H12 (dealing with income maintenance periods in relation to terminated employment) applies to the person in respect of any leave payment received by the person on or after 20 September 1997.

- (5) Point 1067L-D5 (dealing with income maintenance periods in relation to continuing employment) applies to the following persons in respect of a leave period starting on or after 1 July 1998:
 - (a) a person who makes a claim for austudy payment on or after 1 July 1998 and to whom subclause (6) does not apply;
 - (b) an austudy payment recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.
 - (6) If:
 - (a) a determination applying an income maintenance period to a person who was or is in employment had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
 - (b) an austudy payment becomes payable to the person on or after 1 July 1998; and
 - (c) the income maintenance period has not ended when the austudy payment becomes payable to the person;point 1067L-D5 (dealing with income maintenance periods in relation to continuing employment) applies to the person in respect of a leave period starting on or after 20 March 1998.
 - (7) Point 1067L-D6 (dealing with income maintenance periods in relation to terminated employment) applies to the following persons in respect of any leave payment received by those persons on or after 1 July 1998:
 - (a) a person who makes a claim for austudy payment on or after 1 July 1998 and to whom subclause (8) does not apply;
 - (b) an austudy payment recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.
 - (8) If:
 - (a) a determination applying an income maintenance period to a person whose employment has been terminated had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
 - (b) an austudy payment becomes payable to the person on or after 1 July 1998; and
-

(c) the income maintenance period has not ended when the austudy payment becomes payable to the person;
point 1067L-D6 (dealing with income maintenance periods in relation to terminated employment) applies to the person in respect of any leave payment received by the person on or after 20 September 1997.

Schedule 11—Amendment of the Student and Youth Assistance Act 1973, and related transitional provisions

Part 1—Amendment of the Student and Youth Assistance Act 1973

1 Title

Omit “students and young people”, substitute “certain students”.

2 Section 1

Omit “and Youth”.

3 Subsection 3(1) (definition of *education institution*)

Repeal the definition, substitute:

education institution means:

- (a) a higher education institution; or
- (b) a technical and further education institution; or
- (c) a secondary school; or
- (d) any other institution (including an educational institution), authority or body, that is in Australia and that, in accordance with a determination by the Minister, is to be regarded as an education institution for the purposes of this Act.

4 Subsection 3(1) (definition of *higher education institution*)

Repeal the definition, substitute:

higher education institution means an educational institution in Australia that, in accordance with a determination by the Minister, is to be regarded as a higher education institution for the purposes of this Act.

5 Subsection 3(1) (definition of *prescribed benefit*)

Omit “the AUSTUDY scheme or”.

6 Subsection 3(1) (definition of *secondary school*)

Repeal the definition, substitute:

secondary school means an educational institution in Australia that, in accordance with a determination by the Minister, is to be regarded as a secondary school for the purposes of this Act.

7 Subsection 3(1) (definition of *student assistance*)

Repeal the definition.

8 Subsection 3(1) (paragraph (a) of the definition of *student assistance benefit*)

Repeal the paragraph, substitute:

- (a) the AUSTUDY scheme under this Act as in force before 1 July 1998; or

9 Subsection 3(1) (paragraph (b) of the definition of *student assistance benefit*)

After “Scheme”, insert “(including the Scheme as in force before 1 July 1998)”.

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

Repeal the paragraph, substitute:

- (a) an amount:
 - (i) paid under the AUSTUDY scheme under this Act as in force before 1 July 1998; and
 - (ii) that should not have been paid; or

11 Subsection 3(1) (paragraph (b) of the definition of *student assistance overpayment*)

Omit “12U(2)(c)”, substitute “12U(2)(c) (including a debt accrued under either of those paragraphs as in force before 1 July 1998)”.

12 Subsection 3(1) (definition of *technical and further education institution*)

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Repeal the definition, substitute:

technical and further education institution means an educational institution in Australia that, in accordance with a determination by the Minister, is to be regarded as a technical and further education institution for the purposes of this Act.

13 Subsection 3(1) (definition of youth training allowance overpayment)

Repeal the definition.

14 After subsection 3(2)

Insert:

- (2A) A determination by the Minister for the purposes of the definition of ***education institution***, ***higher education institution***, ***secondary school*** or ***technical and further education institution*** is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

15 Subsection 5(1)

Repeal the subsection, substitute:

- (1) This Act binds the Crown in all its capacities.

16 At the end of Part 1

Add:

5D Minister may determine secondary and tertiary courses etc.

- (1) The Minister may, for the purposes of this Act, determine in writing that:
- (a) a course of study or instruction is a secondary course, or a tertiary course; or
 - (b) a part of a course of study or instruction is a part of a secondary course, or a part of a tertiary course.
- (2) For the purposes of this section, a determination that:
-

(a) was made under paragraph 7(1)(c) as in force before the day on which this section commences; and

(b) was in force immediately before that day;
is taken to be a determination under subsection (1) of this section and may be amended or repealed accordingly.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

17 Parts 2 and 4

Repeal the Parts.

18 Subsection 12A(1)

Omit “the AUSTUDY parental income test or”.

19 Subsection 12A(1)

Omit “the AUSTUDY scheme or”.

20 Subsection 12A(2)

Omit “AUSTUDY scheme or”.

21 Subparagraph 12C(1)(b)(i)

Omit “the AUSTUDY scheme or”.

22 Subparagraph 12C(1)(b)(ii)

Omit “AUSTUDY scheme or”.

23 Subsection 12C(2)

Repeal the subsection, substitute:

(2) If:

(a) a person is undertaking a course of study or instruction, or a part of a course of study or instruction, offered by an education institution; and

(b) for the purposes of that course or that part of that course, the person is required or allowed by that institution to attend, and attends, a place other than:

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- (i) that institution; or
 - (ii) a place in respect of which a determination under subsection (3) is in force;
- the person is, for the purposes of this section, taken to be undertaking that course or that part of that course wholly at that institution.
- (3) The Minister may determine in writing that subsection (2) does not apply in relation to a place, or a class of place, specified in the determination.
- (4) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) If a person is undertaking, or proposes to undertake, by correspondence with an education institution:
 - (a) a course of study or instruction; or
 - (b) a part of a course of study or instruction;offered by that education institution, the person is, for the purposes of this section, taken to be undertaking that course, or that part of that course, wholly at that institution.

24 Section 12E

Omit “the AUSTUDY scheme or”.

25 Subsections 12H(1) and (2)

Omit “the AUSTUDY scheme or” (wherever occurring).

26 After subsection 12X(5)

Insert:

- (5A) The Minister must cause to be published in the *Gazette* before each 1 June the indexation factor worked out under subsection (4) (as affected by subsection (5)) in relation to the period of 12 months beginning on that day.

- (5B) An indexation factor published under subsection 12ZZB(3) before the commencement of this subsection has effect as if it were an indexation factor published under subsection (5A).

27 After subsection 12ZF(7)

Insert:

- (7A) The Commissioner must cause to be published in the *Gazette* before each 1 June the indexation factor worked out under subsection (6) (as affected by subsection (7)) that is applicable in working out FS debts and accumulated FS debts incurred in the 1 June concerned.
- (7B) An indexation factor published under subsection 12ZZB(4) before the commencement of this subsection has effect as if it were an indexation factor published under subsection (7A).

28 Part 4B

Repeal the Part.

29 Part 6 (heading)

Repeal the heading, substitute:

Part 6—Overpayments arising under this Act and certain administrative schemes

30 Section 38

Repeal the section.

31 Before section 40

Insert:

Division 1—Debts recoverable by the Commonwealth

38 What is a debt?

In this Part:

debt means an amount of any of the following kinds (whether the amount has arisen before or after the commencement of this Part):

- (a) a special educational assistance scheme overpayment;
- (b) a student assistance overpayment;
- (c) an amount payable to the Commonwealth in relation to an amount of a kind referred to in paragraph (a) or (b) (including an amount payable under section 40 or subsection 42(10)).

39 Debts are recoverable by the Commonwealth

If a person:

- (a) has been paid an amount of a kind referred to in paragraph (a) or (b) of the definition of **debt** in section 38; or
- (b) incurs an amount referred to in paragraph (c) of that definition;

the amount is a debt owed by the person to the Commonwealth.

Division 2—Recovery of debts

39A Secretary may allow payment of debt by instalments

Decision of Secretary

- (1) The Secretary may, on behalf of the Commonwealth, decide to allow a person to pay an amount of debt by one or more instalments.

When decision takes effect

- (2) A decision made under subsection (1) takes effect:
 - (a) if a day is so stated in the decision as the day on which the decision takes effect—on the day so stated (whether that day is before, on or after the day on which the decision was made); or
 - (b) if a day is not so stated in the decision—on the day on which the decision is made.

Saving provision

- (3) For the purposes of this section, a decision that:
- (a) was made under section 284 as applied by subsection 43(2) as in force before 1 July 1998; and
 - (b) was in force immediately before that day;
- is taken to be a decision under subsection (1) of this section.

32 Subsection 40(1)

Repeal the subsection, substitute:

- (1) This section applies if a person has been paid (whether before or after the commencement of this subsection) an amount (the **recoverable amount**) that is a special educational assistance scheme overpayment or a student assistance overpayment.

33 Subsection 40(5)

Repeal the subsection, substitute:

- (5) Interest is not payable under this section in relation to the recoverable amount in relation to any period during which a decision under section 39A is in force in relation to the recoverable amount unless the decision provides that interest is to be so payable or an instalment is not paid in accordance with the decision.

34 Subsection 42(1)

Repeal the subsection.

35 Paragraph 42(2)(a)

Omit “recoverable amount”, substitute “debt”.

36 Subsections 42(3), (9) and (10)

Omit “recoverable amount” (wherever occurring), substitute “debt”.

37 Subsection 42(11)

Omit “recoverable amount”, substitute “debt referred to in paragraph (2)(a)”.

38 Subsection 42(13)

Repeal the subsection, substitute:

- (13) If a person has unsatisfied liabilities to the Commonwealth in relation to more than one debt, the Secretary may:
- (a) for the purposes of this section, treat the debts as a single debt; but
 - (b) apportion any amount recovered under this section in relation to the debts in such proportion as the Secretary considers appropriate.

39 Section 43

Repeal the section, substitute:

Division 3—Non-recovery of debts

43 Secretary may write off debt

Writing off debt

- (1) The Secretary may, on behalf of the Commonwealth, write off a debt.

Class of debts

- (2) For the purposes of subsection (1), the Secretary may write off debts that are included in a class of debts determined by the Minister by notice published in the *Gazette*.

When decision takes effect

- (3) A decision made under subsection (1) takes effect:
- (a) if a day is stated in the decision as the day on which the decision takes effect—on the day so stated (whether that day

is before, on or after the day on which the decision is made);
or

- (b) if a day is not so stated in the decision—on the day on which the decision is made.

Note: If the Secretary writes off a debt, this means an administrative decision has been made that, in the present circumstances, there is no point in trying to recover the debt. In law, however, this debt still exists and may later be pursued.

43A Power to waive Commonwealth's right to recover debt

Secretary's limited power to waive

- (1) The Secretary may, on behalf of the Commonwealth, waive the Commonwealth's right to recover the whole or a part of a debt only in the circumstances described in section 43B, 43C, 43D, 43E or 43F.

When waiver takes effect

- (2) A waiver takes effect:
- (a) if a day is stated in the waiver as the day on which the waiver takes effect—on the day so stated (whether that day is before, on or after the day on which the decision to waive is made);
or
- (b) if a day is not so stated in the waiver—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.

43B Waiver of debt arising from error

Administrative error

- (1) Subject to subsection (2), 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

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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).

Circumstances under which subsection (1) applies

- (2) Subsection (1) only applies if:
- (a) the debt is not raised within a period of 6 weeks from the first payment that caused the debt; or
 - (b) if the debt arose because a person has complied with an obligation to provide information or documents to the Department under this Act, the debt is not raised within a period of 6 weeks from the end of the period within which the person was required to comply with that obligation;
- whichever is the later.

Underestimating value of property

- (3) 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

- (4) For the purposes of this section, a proportion of a debt may be 100% of the debt.
- (5) In this section:

parent, in relation to a person, means:

- (a) if the person is not an adopted child—a natural parent of the person; or
- (b) if the person is an adopted child—an adoptive parent of the person.

partner has the same meaning as in the *Social Security Act 1991*.

43C Waiver of debt relating to an offence

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

43D Waiver of small debt

The Secretary must waive the right to recover a debt if:

- (a) the debt is, or is likely to be, less than \$50; and
- (b) it is not cost effective for the Commonwealth to take action to recover the debt.

43E Waiver in relation to settlements

Settlement of civil action

- (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.

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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 of the whole of the debt; and
 - (c) the debtor cannot repay a greater proportion of the debt;
- the Secretary must waive the right to recover 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 are determined by the Secretary; and
- (c) it would take at least 12 months to recover the unpaid amount under this Part 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:

$$\frac{\text{Annual repayment}}{\text{Interest}} \times \left(1 + \frac{\text{Interest}}{100} \right)^{\frac{1}{\text{Repayment period}}}$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under this Part 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: Terry owed a debt of \$8,000 to the Commonwealth. He has repaid \$2,000 with the remaining debt being \$6,000.

Terry, with the assistance of his mother, offers to make a single payment of \$4,700 in full satisfaction, leaving \$1,300 of the debt unpaid. Without Terry's mother's assistance, Terry can only pay fortnightly instalments amounting to \$1,200 a year and, at that rate, would take 5 years to pay the remaining \$6,000.

Assume that the Minister has specified an interest rate of 10%.

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Result: The present value of the unpaid amount of \$6,000 to be repaid in 5 years at a 10% interest rate is worked out as follows:

$$\frac{\$1,200}{0.1} \times \frac{1}{1 + 0.1^5} = \$4,548$$

As the proposed payment of \$4,700 is more than the present value of the unpaid amount (which is \$4,548 as shown), and as the other conditions in subsection (5) apply, the Secretary may accept Terry's offer and make an agreement with him as described in subsection (4).

If the Secretary makes the agreement, the Secretary must, in accordance with subsection (4), waive the remaining \$1,300 of the debt (being the difference between the unpaid amount of \$6,000 and the agreed amount of \$4,700).

Notice is a disallowable instrument

- (7) A notice described in the definition of **interest** in subsection (6) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

43F Waiver in special circumstances

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:
 - (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 43 allows the Secretary to write off a debt on behalf of the Commonwealth.

40 Application

The amendments made by items 29 to 39 apply to debts arising before, on or after 1 July 1998.

41 Subsection 44A(1)

Omit “the AUSTUDY scheme or”.

42 Section 48

Omit “under this Act other than Part 8 (including an amount under a financial supplement contract)”, substitute “under a financial supplement contract”.

43 Subparagraph 49(1)(a)(i)

Omit “a request under section 20 or 21 or”.

44 Subparagraph 49(1)(a)(ii)

Omit “other than Part 8”.

45 Subparagraph 49(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) to affect the rate of a benefit referred to in paragraph (a) of the definition of *student assistance benefit*; or

46 Paragraphs 49(1)(b) and (c) and subsections 49(2), (3) and (4)

Omit “other than Part 8” (wherever occurring).

47 Subsections 50(1) and (2)

Omit “(other than Part 8)” (wherever occurring).

48 Paragraph 51(1)(a)

Omit “other than Part 8”, substitute “(including an amount that was paid as a student assistance benefit under this Act as in force before 1 July 1998)”.

49 Paragraph 55A(1)(a)

Repeal the paragraph.

50 Subsection 55A(1B)

Repeal the subsection, substitute:

- (1AA) The Consolidated Revenue Fund is appropriated as necessary for the purposes of Part 2 of Schedule 11 to the *Social Security Legislation (Youth Allowance Consequential and Related Measures) Act 1998*.

Note: Part 2 of Schedule 11 to the *Social Security Legislation (Youth Allowance Consequential and Related Measures) Act 1998* makes various transitional provisions, with effect from 1 July 1998, that relate to the abolition of the Youth Training Allowance, AUSTUDY and Financial Supplement relating to AUSTUDY. Subsection (1AA) of this section enables money to be appropriated for purposes such as the payment of a benefit under the AUSTUDY scheme after 1 July 1998 following a review under a transitional provision in that Part of that Schedule.

51 Paragraph 56(a)

Omit “the AUSTUDY scheme or”.

52 Paragraph 56(ab)

Omit “under the AUSTUDY scheme or”.

53 Paragraph 56(e)

Repeal the paragraph.

54 At the end of section 56

Add:

- (2) Regulations may also be made under this section to prescribe matters in relation to any transitional matters (including prescribing any saving or application provisions) arising out of:
- (a) the abolition of:
 - (i) the youth training allowance; and
 - (ii) the AUSTUDY scheme; and
 - (iii) that part of the Student Financial Supplement Scheme that is connected with the AUSTUDY scheme; and

- (b) their replacement by allowances, benefits or payments under the *Social Security Act 1991*.
- (3) Without limiting subsection (2), and in spite of any other provisions in this Act or any other Act, regulations under subsection (2) may modify the effect of a provision in Part 2 of Schedule 11 to the *Social Security Legislation (Youth Allowance Consequential and Related Measures) Act 1998* so as to:
 - (a) enable a payment of a benefit under the AUSTUDY scheme (as previously in force under this Act) to be made to a person in respect of a period ending at the end of 3 July 1998 in specified circumstances; and
 - (b) enable such a payment, to the extent that it relates to the period beginning on 1 July 1998 and ending at the end of 3 July 1998, to be disregarded in determining the person's entitlement to any youth allowance or austudy payment under the *Social Security Act 1991*; and
 - (c) enable the receipt by the person of any youth allowance or austudy payment under the *Social Security Act 1991*, to the extent that it relates to the period referred to in paragraph (b), to be disregarded in determining the person's entitlement to the payment referred to in paragraph (a).

55 Part 8

Repeal the Part.

56 Paragraph 302(a)

Repeal the paragraph.

57 Paragraph 302(c)

Omit "or" (last occurring).

58 Paragraph 302(d)

Repeal the paragraph.

59 Subsection 303(1) (note)

Repeal the note.

60 Subsection 303(2)

Repeal the subsection, substitute:

Decisions that are not reviewed

- (2) Subsection (1) does not apply to a decision of the Secretary that relates to the Secretary's powers under section 326A to settle proceedings before the Administrative Appeals Tribunal.

61 Subsection 304(1) (note)

Repeal the note.

62 Subsection 304(2)

Repeal the subsection, substitute:

Period within which application for internal review to be sought

- (2) An application under subsection (1) for the review of a decision must be made within:
- (a) 3 months; or
 - (b) such longer period as the Secretary, in special circumstances, allows;
- after the making of the decision.

63 Subsection 305(1)

Omit "benefit under the AUSTUDY scheme, Financial Supplement, or youth training allowance," substitute "Financial Supplement".

64 Subsection 305(5) (definition of *adverse decision*)

Repeal the definition, substitute:

adverse decision means a decision under section 12R or 12T to stop the payment of Financial Supplement to a person.

65 Section 307

Repeal the section.

66 Paragraph 309(a)

Repeal the paragraph.

67 Paragraph 309(c)

Omit “or” (last occurring).

68 Paragraph 309(d)

Repeal the paragraph.

69 Subsection 311(1) (note)

Repeal the note.

70 Subsection 311(3)

Repeal the subsection, substitute:

Period within which application for review by SSAT to be sought

(3) An application under subsection (1) to the Social Security Appeals Tribunal for review of a decision must be made within:

(a) 3 months; or

(b) within such longer period as the Secretary, in special circumstances, allows;

after the original decision was affirmed, varied or set aside by the Secretary or an authorised review officer.

71 Section 312

Repeal the section.

72 Section 313

Repeal the section, substitute:

313 Non-reviewable decisions

The Social Security Appeals Tribunal cannot review a decision:

(a) under section 343 or 345 (notice requiring information from any person); or

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- (b) under section 305 or 314 (continuation of payment pending review of adverse decision).

73 Subsection 314(1)

Omit “benefit under the AUSTUDY scheme, Financial Supplement or youth training allowance”, substitute “Financial Supplement”.

74 Subsection 314(6) (definition of *adverse decision*)

Repeal the definition, substitute:

adverse decision means a decision under section 12R or 12T to stop the payment of Financial Supplement to a person.

75 Section 315

Repeal the section.

76 Subsections 316(2) and (3)

Repeal the subsections, substitute:

- (2) If the Social Security Appeals Tribunal sets a decision aside and substitutes for it a decision that a person is entitled to Financial Supplement, the Tribunal must:
- (a) assess the rate at which Financial Supplement is to be paid to the person; or
 - (b) ask the Secretary to assess the rate at which Financial Supplement is to be paid to the person.

77 Paragraph 316(5)(b)

Omit “benefit under the AUSTUDY scheme, Financial Supplement or youth training allowance”, substitute “Financial Supplement”.

78 Paragraphs 316(5)(d) and (e)

Repeal the paragraphs.

79 Paragraph 316(5)(g)

Omit “or” (last occurring).

80 Paragraphs 316(5)(h) and (i)

Repeal the paragraphs.

81 Subsection 316(7)

Repeal the subsection.

82 Section 317

Repeal the section.

83 Subsection 318(3)

Omit “subsections (4) and”, substitute “subsection”.

84 Subsection 318(4)

Repeal the subsection (including the note).

85 Subsection 318(6)

Repeal the subsection.

86 Section 319

Repeal the section.

87 Subparagraph 320(1)(a)(iii)

Repeal the subparagraph.

88 Subsection 322(2)

Repeal the subsection.

89 Paragraph 323(a)

Repeal the paragraph.

90 Paragraph 323(c)

Omit “or” (last occurring).

91 Paragraph 323(d)

Repeal the paragraph.

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92 Section 326

Repeal the section.

93 Subsection 331(1)

Omit all the words after “by the Administrative Appeals Tribunal”, substitute “were references to the Secretary”.

94 Subsection 331(2)

Omit “or the Secretary to the Department of Social Security, as the case requires,”.

95 Subsection 331(2)

Omit “128”, substitute “1281”.

96 Section 334

Omit all the words (other than the note) after “made the decision”, substitute “were references to the Secretary”.

97 Paragraph 335(1)(b)

Repeal the paragraph.

98 Subsection 335(3)

Omit “of the Department of which he or she is an officer”.

99 Section 337

Repeal the section.

100 Subsection 338(1A)

Repeal the subsection.

101 Subsection 338(2)

Repeal the subsection, substitute:

Secretary may not delegate power under paragraph 355(1)(b)

- (2) The Secretary must not delegate the Secretary's power under paragraph 355(1)(b) to anyone except the CEO.

CEO may not subdelegate power under paragraph 355(1)(b)

- (2A) If the Secretary delegates to the CEO the Secretary's power under paragraph 355(1)(b), the CEO cannot, despite section 33 of the Agency Act, delegate the power to an employee of the Agency.

102 Subsections 338(3), (4) and (5)

Repeal the subsections.

103 Section 338A

Repeal the section.

104 Subsection 339(1)

Omit "Subject to subsection (2), the", substitute "The".

105 Subsection 339(2)

Repeal the subsection.

106 Subsection 341(1)

Omit "other than Part 8".

107 Subsection 341(2)

Repeal the subsection.

108 Subsection 343(2)

Repeal the subsection (except the note).

109 Subsection 344(2)

Repeal the subsection (including the note).

Note: The heading to subsection 344(1) is altered by omitting "*other than Part 8*".

110 Subsection 345(2)

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Repeal the subsection (except the note).

Note: The heading to subsection 345(1) is altered by omitting “*other than Part 8*”.

111 Section 346

Repeal the section.

112 Subsection 347(1)

Omit “, 345 or 346”, substitute “or 345”.

113 Paragraph 347(2)(d)

Omit “and”.

114 Paragraph 347(2)(e)

Repeal the paragraph.

115 Subsection 347(3)

Repeal the subsection.

116 Subsections 347(7), (8) and (9)

Repeal the subsections.

117 Subsection 347(10)

Omit “, 345 or 346”, substitute “or 345”.

118 Section 348

Omit “of Social Security”.

119 Section 349

Repeal the section.

120 Subsection 351(1)

Omit “or the Social Security Act”.

121 Paragraph 351(2)(d)

Omit “or the Social Security Act”.

122 Section 352 (note 2)

Omit “or the Social Security Act”.

123 Paragraph 353(b)

Omit “or the Social Security Act”.

124 Section 354

Omit “or the Social Security Act” (wherever occurring).

125 Paragraph 355(1)(a)

Omit “or the Social Security Act”.

126 Section 358 (note 4)

Repeal the note.

127 Subsection 359(2) (note 3)

Repeal the note.

128 Subsection 359(3)

Omit “or the Social Security Act”.

129 Schedules 1, 2, 3 and 5

Repeal the Schedules.

Part 2—Transitional provisions

130 Definitions

In this Part, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

applicable decision means a decision by an officer under the SA Act as in force at any time before the commencement day in relation to:

- (a) the AUSTUDY scheme; or
- (b) the youth training allowance; or
- (c) the Student Financial Supplement Scheme, to the extent that it is in connection with the AUSTUDY scheme.

authorised review officer means an authorised review officer under the SA Act.

commencement day means 1 July 1998.

officer has the same meaning as in the SA Act.

SA Act means the *Student Assistance Act 1973*, and includes any regulations in force under that Act.

Secretary means:

- (a) in relation to a decision of the kind referred to in paragraph (a) or (c) of the definition of **applicable decision**—the Secretary to the Department of Employment, Education, Training and Youth Affairs; or
- (b) in relation to a decision of the kind referred to in paragraph (b) of the definition of **applicable decision**—the Secretary to the Department of Social Security.

SSAT means the Social Security Appeals Tribunal.

131 Transitional provisions—AUSTUDY payment for period ending on 3 July 1998

- (1) If:
- (a) a payment of a benefit under the AUSTUDY scheme (including an advance payment) was made before the commencement day to a person in respect of a period that ends at the end of 3 July 1998; and
 - (b) the payment would have been lawfully made under the SA Act if that Act were not amended by this Schedule;
- that payment is taken to have been lawfully made as if the SA Act as in force immediately before the commencement day had continued in force.
- (2) To avoid doubt, subitem (1) does not affect the working out of an amount of student assistance benefit overpayment under Part 6 of the SA Act.
- (3) In spite of any provision in any other legislation:
- (a) a person's receipt of a benefit under the AUSTUDY scheme as referred to in subitem (1), to the extent that it relates to a period beginning on 1 July 1998 and ending at the end of 3 July 1998, is to be disregarded in working out the person's entitlement to any youth allowance or austudy payment under the *Social Security Act 1991*; and
 - (b) any youth allowance or austudy payment under the *Social Security Act 1991* that the person receives, to the extent that it relates to that period, is to be disregarded in working out the person's entitlement to a benefit that is authorised to be paid under subitem (1).

132 Transitional provisions—claims and applications

- (1) If:
- (a) a person lodged an application for a benefit under the AUSTUDY scheme under the SA Act as in force before the commencement day; and
 - (b) the application is made in respect of a period commencing before that day; and
 - (c) the application was not dealt with before that day;
-

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the application has effect, on and after that day, as if the SA Act as in force immediately before that day had continued in force.

(2) If:

- (a) a person lodges a claim for a youth training allowance under the SA Act on or after the commencement day; and
- (b) the claim is made in respect of a period commencing before that day;

the claim has effect as if it had been made immediately before that day and that Act as in force immediately before that day had continued in force.

(3) If:

- (a) one of the following circumstances applies:
 - (i) a person lodges an application for a benefit under the AUSTUDY scheme under the SA Act on or after the commencement day;
 - (ii) a person lodges an application for a financial supplement in connection with a benefit under the AUSTUDY scheme under the SA Act on or after that day; and
- (b) the application is made in respect of a period commencing before that day;

the application has effect as if it had been made immediately before that day and the SA Act as in force immediately before that day had continued in force.

(4) Nothing in this item permits the granting of a benefit under the AUSTUDY scheme, a youth training allowance or a financial supplement for a period after the commencement day.

Note: Section 56 of the SA Act is amended by this Schedule to enable regulations to be made to modify provisions in this Part of the Schedule so as to allow payments of AUSTUDY benefit to be made to a person for a period ending on 3 July 1998 in specified circumstances.

133 Transitional provisions—review of decisions made before commencement day

- (1) Subject to subitem (4), if:
- (a) an applicable decision might have been reviewed by the Secretary under section 303 of the SA Act before the commencement day; but
 - (b) the Secretary did not so review that decision before that day;
- then, on and after that day:
- (c) the Secretary may review that decision; and
 - (d) the review and any further review of the decision have effect;
- as if the SA Act as in force immediately before that day had continued in force.
- (2) Subject to subitem (4), if:
- (a) a person might have applied to the Secretary, the SSAT or the AAT for a review of an applicable decision under Part 9 of the SA Act before the commencement day; but
 - (b) the person did not apply for such a review before that day;
- then, on and after that day:
- (c) subject to any limitation regarding the time during which such an application must be made under the SA Act as in force immediately before that day, the person may make the application; and
 - (d) the application and any review (including any further review) resulting from that application have effect;
- as if the SA Act as in force immediately before that day had continued in force.
- (3) Subject to subitem (4), if:
- (a) an application to the Secretary, the SSAT or the AAT for a review of an applicable decision under Part 9 of the SA Act was made before the commencement day; and
 - (b) the application was not determined before that day;
- then, on and after that day, the application and any review (including any further review) resulting from that application have effect as if the SA Act as in force immediately before that day had continued in force.
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- (4) The Secretary, an authorised review officer, the SSAT or the AAT, when determining a review because of the operation of subitem (1), (2) or (3), may make a decision in relation to the payment of a benefit under the AUSTUDY scheme, a youth training allowance or Financial Supplement only to the extent that the payment is in respect of a period that ends before the commencement day.

Note: Section 56 of the SA Act is amended by this Schedule to enable regulations to be made to modify provisions in this Part of the Schedule so as to allow payments of AUSTUDY benefit to be made to a person for a period ending on 3 July 1998 in specified circumstances.

- (5) For the purposes of this item, if an applicable decision was the original decision that has been the subject of a review, or further review, by the Secretary, an authorised review officer, the SSAT or the AAT in accordance with the SA Act, a reference in this item to an applicable decision includes a reference to:
- (a) if a decision has been affirmed in connection with that review or further review—the decision as affirmed; or
 - (b) if a decision has been varied in connection with that review or further review—the decision as varied; or
 - (c) if a decision has been set aside and a new decision substituted in connection with that review or further review—the new decision.

134 Transitional provisions—review of decisions made on or after commencement day

- (1) Subject to subitem (2), if:
- (a) on or after the commencement day an officer made a decision in relation to the AUSTUDY scheme, or in relation to the Student Financial Supplement Scheme in connection with the AUSTUDY scheme, under:
 - (i) Part 6 of the SA Act; or
 - (ii) the SA Act as continued in force because of this Part of the Schedule; and
 - (b) apart from the amendments to that Act made by this Schedule, a person would have a right to apply to the

Secretary, the SSAT or the AAT under the SA Act for a review of that decision;

the person has that right as if the SA Act as in force immediately before the commencement day had continued in force.

- (2) The Secretary, an authorised review officer, the SSAT or the AAT, when determining a review because of the operation of subitem (1), may make a decision in relation to the payment of a benefit under the AUSTUDY scheme or the payment of a financial supplement only to the extent that the payment is in respect of a period that ends before the commencement day.

Note: Section 56 of the SA Act is amended by this Schedule to enable regulations to be made to modify provisions in this Part of the Schedule so as to allow payments of AUSTUDY benefit to be made to a person for a period ending on 3 July 1998 in specified circumstances.

- (3) For the purposes of this item, if a decision referred to in paragraph (1)(a) was the original decision that has been the subject of a review, or further review, by the Secretary, an authorised review officer, the SSAT or the AAT in accordance with the SA Act, a reference in subitem (1) to that decision includes a reference to:
- (a) if a decision has been affirmed in connection with that review or further review—the decision as affirmed; or
 - (b) if a decision has been varied in connection with that review or further review—the decision as varied; or
 - (c) if a decision has been set aside and a new decision substituted in connection with that review or further review—the new decision.

135 Transitional provisions—obligations to waive the right to recover amounts

- (1) In this item:

applied provisions means the provisions applied by subsection 43(2) of the SA Act as in force before the commencement day.

recoverable amount means an amount of any of the following kinds:

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- (a) a special educational assistance scheme overpayment;
- (b) a student assistance overpayment;
- (c) an amount payable to the Commonwealth in relation to an amount of a kind referred to in paragraph (a) or (b) (including an amount payable under section 40 or subsection 42(10) of the SA Act).

Secretary means:

- (a) the Secretary to the Department of Employment, Education, Training and Youth Affairs; or
- (b) the Secretary to the Department of Social Security.

- (2) If a Secretary was, immediately before the commencement day, obliged to waive the right to recover a recoverable amount under the applied provisions, then, on and after the commencement day, the Secretary to the Department of Employment, Education, Training and Youth Affairs is taken to be obliged to waive that right as if:
 - (a) in the case of an obligation under subsection 290B(1) of the applied provisions, the obligation were an obligation under subsection 43E(1) of the SA Act; and
 - (b) in the case of an obligation under subsection 290B(2) of the applied provisions, the obligation were an obligation under subsection 43E(2) of the SA Act; and
 - (c) in the case of an obligation under paragraph 290B(3)(b) of the applied provisions, the obligation were an obligation under paragraph 43E(3)(b) of the SA Act; and
 - (d) in the case of an obligation under subsection 290B(4) of the applied provisions, the obligation were an obligation under subsection 43E(4) of the SA Act.

Schedule 12—Consequential taxation amendments

Income Tax Assessment Act 1936

1 Subsection 6(1) (subparagraph (b)(i) of the definition of *Commonwealth education or training payment*)

Repeal the subparagraph.

2 Paragraph 16(4)(hb)

After “the Secretary to the Department of Education”, insert “and the Secretary to the Department of Social Security”.

3 Subsections 24ABZE(4) and (5)

Repeal the subsections.

4 Subsections 24ABZF(2), (3), (4) and (5)

Repeal the subsections.

5 Subsection 51(6AA) (note)

After “*Higher Education Funding Act 1988*”, insert “, the *Social Security Act 1991*”.

6 Subsection 79A(4) (paragraph (a) of the definition of *prescribed allowance*)

Omit “, Part 8 of the *Student and Youth Assistance Act 1973*”.

7 Subsection 82A(2) (paragraph (c) of the definition of *expenses of self-education*)

After “under”, insert “Chapter 2B of the *Social Security Act 1991* or”.

8 Subsection 160AAA(1) (paragraph (a) of the definition of *rebatable benefit*)

After “2.8A,”, insert “2.11, 2.11A,”.

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9 Subsection 160AAA(1) (paragraph (b) of the definition of *rebatale pension*)

After “PP (partnered),”, insert “2.11, 2.11A,”.

10 Subsection 163B(10)

Insert:

FS assessment debt means an FS assessment debt under:

- (a) an instrument under Chapter 2B of the *Social Security Act 1991* establishing a Student Financial Supplement Scheme; or
- (b) the *Student Assistance Act 1973*.

11 Subsection 163B(10)

Insert:

HEC assessment debt has the same meaning as in Chapter 5A of the *Higher Education Funding Act 1988*;

12 After paragraph 202(h)

Insert:

- (ha) to facilitate the administration of a provision of an instrument under Chapter 2B of the *Social Security Act 1991* establishing a Student Financial Supplement Scheme, being a provision relating to the recovery through the taxation system of a student’s outstanding indebtedness in respect of financial supplement paid to the student in accordance with the Scheme; and

13 Paragraph 202CB(6)(a)

After “applicant for”, insert “an austudy payment,”.

14 Paragraph 202CB(6)(a)

Omit “or a sickness allowance”, insert “, a sickness allowance or a youth allowance”.

15 Paragraph 202CB(6)(aa)

Repeal the paragraph.

16 Paragraph 202CB(6)(b)

Omit “such a benefit or pension”, substitute “a payment referred to in paragraph (a)”.

17 Paragraph 202CE(7)(a)

After “applicant for”, insert “an austudy payment,”.

18 Paragraph 202CE(7)(a)

Omit “or a sickness allowance”, insert “, a sickness allowance or a youth allowance”.

19 Paragraph 202CE(7)(aa)

Repeal the paragraph.

20 Paragraph 202CE(7)(b)

Omit “such a benefit or pension”, substitute “a payment referred to in paragraph (a)”.

21 Subsection 221A(1) (paragraph (c) of the definition of *prescribed non-resident*)

After “Part” insert “2.11, 2.11A,”.

22 Subsection 221ZY(1) (definition of *FS assessment debt*)

Repeal the definition, substitute:

FS assessment debt means an FS assessment debt under:

- (a) an instrument under Chapter 2B of the *Social Security Act 1991* establishing a Student Financial Supplement Scheme;
or
- (b) the *Student Assistance Act 1973*.

23 Application—payments of AUSTUDY

The amendments to the *Income Tax Assessment Act 1936* made by this Part do not apply to payments of benefits under the AUSTUDY scheme under Part 2 of the *Student Assistance Act 1973* (as in force before 1 July 1998).

Note: This Act repeals Part 2 of the *Student Assistance Act 1973* (as in force before 1 July 1998), and payments of benefits under the AUSTUDY scheme will cease to be made under that Part.

24 Application—payments of youth training allowance

The amendments to the *Income Tax Assessment Act 1936* made by this Part do not apply to payments of youth training allowance under Part 8 of the *Student Assistance Act 1973* (as in force before 1 July 1998).

Note: This Act repeals Part 8 of the *Student Assistance Act 1973* (as in force before 1 July 1998), and payments of youth training allowance will cease to be made under that Part.

Income Tax Assessment Act 1997

25 Section 11-15 (table item headed “social security or like payments”)

Omit:

youth training allowance, payment of..... 24ABZE and 24ABZF

26 Paragraph 26-20(1)(d)

After “under”, insert “Chapter 2B of the *Social Security Act 1991* or”.

27 Section 52-10 (after table item 2.1)

Insert:

2A.1	Austudy payment	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
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28 Section 52-10 (after table item 13.1)

Insert:

13A.1	Fares allowance	Exempt	Exempt	Not applicable	Not applicable
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29 Section 52-10 (after table item 22.1)

Insert:

22A.1	Pensioner education supplement	Exempt	Exempt	Not applicable	Not applicable
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30 Section 52-10 (at the end of the table)

Add:

35.1	Youth allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
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31 Section 52-15 (table item 1, paragraph (d) of the column relating to the supplementary amount)

Omit “; and”.

32 Section 52-15 (table item 1, paragraph (e) of the column relating to the supplementary amount)

Repeal the paragraph.

33 Section 52-15 (table item 2)

After “Widow allowance”, insert “Youth allowance”.

34 Section 52-15 (table item 2, paragraph (c) of the column relating to the supplementary amount)

Omit “; and”.

35 Section 52-15 (table item 2, paragraph (d) of the column relating to the supplementary amount)

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Repeal the paragraph.

36 Section 52-15 (table item 4, paragraph (d) of the column relating to the supplementary amount)

Repeal the paragraph.

37 Section 52-15 (at the end of the table)

Add:

5	Austudy payment	(a) so much of the payment as is included by way of remote area allowance; and
		(b) so much of the payment as is included by way of pharmaceutical allowance

38 Subsection 52-20(3) (after table item 5)

Insert:

5A	Division 10 of Part 2.11	paragraph 567(1)(f)
5B	Division 10 of Part 2.11A	paragraph 592(1)(f)

39 Subsection 52-30(1)

Before “Mature age allowance (paid under Part 2.12B)”, insert “Austudy payment”.

40 Subsection 52-30(1) (at the end of the table)

Add “Youth allowance”.

41 Section 52-40 (after table item 2)

Insert:

2A	Austudy payment	Part 2.11A	Section 592A	Section 592B
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42 Section 52-40 (after table item 13)

Insert:

13A	Fares allowance	Part 2.26	Not applicable	Not applicable
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43 Section 52-40 (after table item 22)

Insert:

22A	Pensioner education supplement	Part 2.27	Not applicable	Not applicable
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44 Section 52-40 (at the end of the table)

Add:

35	Youth allowance	Part 2.11	Section 567A	Section 567B
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45 Paragraph 52-70(c)

Omit “allowance; and”, substitute “allowance.”.

46 Paragraph 52-70(d)

Repeal the paragraph.

Taxation (Interest on Overpayments and Early Payments) Act 1983**47 Subsection 3(1) (definition of *FS assessment debt*)**

Repeal the definition, substitute:

FS assessment debt means an FS assessment debt under:

- (a) an instrument under Chapter 2B of the *Social Security Act 1991* establishing a Student Financial Supplement Scheme; or
- (b) the *Student Assistance Act 1973*.

Schedule 13—Amendment of various Acts consequential on youth allowance and austudy payment

Aged Care Act 1997

**1 Clause 1 of Schedule 1 (paragraph (c) of the definition of
income support payment)**

Omit “1992; or”, substitute “1992.”.

**2 Clause 1 of Schedule 1 (paragraph (d) of the definition of
income support payment)**

Repeal the paragraph.

3 Application

The amendments made by items 1 and 2 apply for the purposes of working out whether a person was receiving income support payment at or after the commencement of this item.

Bankruptcy Act 1966

**4 Section 139L (subparagraph (b)(iii) of the definition of
income)**

Repeal the subparagraph.

Child Care Payments Act 1997

5 After paragraph 15(1)(b)

Insert:

(ba) receives a youth allowance or a newstart allowance under Part 2.11 or 2.12 of the *Social Security Act 1991*; or

6 Paragraph 15(1)(d)

Repeal the paragraph.

7 Subsection 15(2)

Repeal the subsection.

8 Paragraph 17(a)

Repeal the paragraph, substitute:

- (a) receives youth allowance under the *Social Security Act 1991* and is undertaking full-time study (as defined in that Act); or
- (aa) receives austudy payment under the *Social Security Act 1991*; or
- (ab) receives a pensioner education supplement under the *Social Security Act 1991*; or

Data-matching Program (Assistance and Tax) Act 1990

9 Subsection 3(1) (at the end of paragraph (da) of the definition of *personal assistance*)

Add “as in force before 1 July 1998”.

Disability Services Act 1986

10 Subsection 22(4) (paragraph (b) of the definition of *pensioner or beneficiary*)

After “2.7,”, insert “2.11, 2.11A,”.

11 Subsection 22(4) (paragraph (ca) of the definition of *pensioner or beneficiary*)

Repeal the paragraph.

Farm Household Support Act 1992

12 Subsection 3(1)

After “*Australian resident*”, insert “*austudy payment*”.

13 Subsection 3(1)

After “*social security benefit*”, insert “*youth allowance*”.

14 Subsection 3(2) (definition of *youth training allowance*)

After “1973”, insert “as in force before 1 July 1998”.

15 Subsection 5(2)

Omit “or partner allowance”, substitute “, partner allowance, youth allowance or austudy payment”.

16 Paragraph 8(2)(b)

Omit “or partner allowance”, substitute “, partner allowance, youth allowance or austudy payment”.

17 Subsection 12(1)

Omit “a youth training allowance,”.

18 Subsection 12(2)

Omit “youth training allowance or newstart allowance”, substitute “newstart allowance, youth allowance or austudy payment”.

19 Subsection 21A(1)

Omit “18”, substitute “21”.

Note: The heading to section 21A is altered by omitting “18” and substituting “21”.

20 Paragraphs 21A(1)(a) and (b)

Omit “training” (wherever occurring).

21 Subsection 22(1)

Omit “18”, substitute “21”.

Note: The heading to section 22 is altered by omitting “18” and substituting “21”.

22 Paragraph 43(1)(a)

Omit “a youth training allowance,”.

23 Paragraphs 43(1)(b) and (d)

Omit “youth training allowance or newstart allowance”, substitute “newstart allowance, youth allowance or austudy payment”.

24 Subsection 52(3)

Omit “18”, substitute “21”.

25 Subsection 52(4)

Repeal the subsection, substitute:

- (4) If the farm was sold within the period of 9 months from the beginning of the grant period in relation to the person and the person had not reached the age of 21 years at the time of the sale:
- (a) the person is entitled to a grant equal to the amount of youth allowance that would be payable to the person in respect of the period (the **youth qualifying period**) from the time of the sale of the farm to the end of the period of 9 months or the time when the person reaches the age of 21 years, whichever first happens, if, under Part 2.11 of the *Social Security Act 1991*:
 - (i) the person were entitled to receive youth allowance for the youth qualifying period; and
 - (ii) youth allowance were payable to him or her at the rate that would be the person’s maximum payment rate at the beginning of the youth qualifying period; and
 - (b) if the person reaches the age of 21 years before the end of the period of 9 months, the person is entitled to a grant equal to the amount of newstart allowance that would be payable to the person in respect of the period (the **post-21 period**) from the time when the person reached that age until the end of the period of 9 months if, under the *Social Security Act 1991*:
 - (i) the person were entitled to receive newstart allowance for the post-21 period; and
 - (ii) newstart allowance were payable to the person at the rate that would be the person’s maximum payment rate at the beginning of the post-21 period.

Note: For the person’s maximum payment rate, see the Youth Allowance Rate Calculator in Part 3.5 of the *Social Security Act 1991* or Module A of the Benefit Rate Calculator applicable to the person under section 643 of that Act (as appropriate).

26 Application

Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures)
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The amendments made by items 24 and 25 apply in relation to the sale of farms on or after the commencement of this item.

Health Insurance Act 1973

27 Subsection 3(1) (definition of *DSS benefit dependant*)

Omit “or a youth training allowance under the *Student and Youth Assistance Act 1973*”, substitute “, or the recipient of youth allowance under that Act who is not undertaking full-time study for the purposes of that Act”.

28 Subsection 3(1)

Insert:

youth allowance means youth allowance under the *Social Security Act 1991*.

29 Subsection 4D(1A)

Omit “training allowance under Part 8 of the *Student and Youth Assistance Act 1973*”, substitute “allowance but is not undertaking full-time study as defined in the *Social Security Act 1991*”.

30 Subsection 4D(3) (definition of *qualified recipient*)

Repeal the definition, substitute:

qualified recipient means:

- (a) a person who is in receipt of:
 - (i) a social security pension (except a special needs pension) under the *Social Security Act 1991*; or
 - (ii) a social security benefit (except a youth allowance or austudy payment) under that Act; or
 - (iii) a Commonwealth allowance; or
- (b) a person who is in receipt of youth allowance but is not undertaking full-time study as defined in the *Social Security Act 1991*.

31 Transitional provision for qualified recipients

Section 4D of the *Health Insurance Act 1973* as amended by item 30 operates as if a person who received youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973* before the commencement of that item had received a social security benefit under the *Social Security Act 1991* for each period for which the person received youth training allowance.

32 After subsection 5B(1)

Insert:

(1A) If:

- (a) a person was declared under section 5D to be a disadvantaged person; and
- (b) on the last day for which that declaration was in force he or she:
 - (i) was undertaking full-time study (as defined in the *Social Security Act 1991*); and
 - (ii) was an eligible person; and
- (c) he or she received youth allowance for that day;

this section applies to him or her as if he or she had lodged on that day an application in accordance with subsection (1) of this section.

33 Subsection 5B(12) (definition of *dependant*)

Repeal the definition, substitute:

dependant of a person means:

- (a) a child of the person; or
- (b) the person's partner (as defined in the *Social Security Act 1991*), if:
 - (i) the partner is a DSS benefit dependant of the person and the person is receiving a youth allowance or unemployment benefit; or
 - (ii) the partner would be a DSS benefit dependant of the person were the person receiving a youth allowance or unemployment benefit.

34 Subsection 5B(12) (definition of *income*)

Omit “or Part 8 of the *Student and Youth Assistance Act 1973*”.

35 Subsection 5B(12) (paragraph (aa) of the definition of *income*)

Repeal the paragraph.

36 Paragraph 5D(1)(a)

Omit “youth training allowance”, substitute “youth allowance”.

Note: The heading to section 5D is altered by inserting “, **youth allowance**” after “**newstart allowance**”.

37 After subsection 5D(1)

Insert:

- (1AA) However, the Secretary must not declare a person to be a disadvantaged person under subsection (1) if the person is undertaking full-time study (as defined in the *Social Security Act 1991*) when he or she is granted a youth allowance.

38 Paragraph 5D(1A)(b)

Omit “youth training allowance”, substitute “youth allowance”.

39 After subsection 5D(1A)

Insert:

- (2) However, the Secretary must not declare a person to be a disadvantaged person under subsection (1A) if the person is undertaking full-time study (as defined in the *Social Security Act 1991*) when a determination is made to pay him or her a youth allowance.
- (3) Subsections (1AA) and (2) do not cause a declaration under this section to cease to be in force if the person who is the subject of the declaration starts to undertake full-time study (as defined in the *Social Security Act 1991*) while the declaration is in force.

40 Subsection 5D(8) (definition of *youth training allowance*)

Repeal the definition.

41 Saving provision

A declaration made under section 5D of the *Health Insurance Act 1973* as in force before the commencement of this item continues in force for the period specified in the declaration, despite the amendment of that section by this Act.

42 Section 130H

Omit “and sections 351 to 360 of the *Student and Youth Assistance Act 1973*”.

National Health Act 1953

43 Subsection 4(1) (subparagraph (aa)(iii) of the definition of *pensioner*)

After “mature age allowance”, insert “or austudy payment”.

44 Subsection 4(1) (subparagraph (a)(i) of the definition of *social security beneficiary*)

After “benefit”, insert “(other than youth allowance or austudy payment)”.

45 Subsection 4(1) (paragraph (aa) of the definition of *social security beneficiary*)

Repeal the paragraph, substitute:

- (aa) a person who is in receipt of youth allowance under the *Social Security Act 1991* and is not undertaking full-time study (as defined in that Act); or

46 Application

The amendments made by items 44 and 45 apply for the purposes of working out whether a person is a social security beneficiary (within the meaning of the *National Health Act 1953*) at a time after the commencement of those items.

47 Subsection 84(1) (paragraph (ae) of the definition of *concessional beneficiary*)

Repeal the paragraph, substitute:

(ae) a person who is being paid youth allowance under the *Social Security Act 1991* but is not undertaking full-time study (as defined in that Act); or

Registration of Deaths Abroad Act 1984

48 Subsection 3(1) (paragraph (ca) of the definition of *prescribed person*)

Repeal the paragraph.

Telecommunications Act 1997

49 Subsection 23(11) (paragraph (a) of the definition of *tertiary education institution*)

Omit “*Student and Youth Assistance Act 1973*”, substitute “*Student Assistance Act 1973*”.

Veterans’ Entitlements Act 1986

50 Section 5 (index)

Omit:

education leavers waiting period	5Q(1)
youth training allowance	5Q(1)

51 Section 5 (index)

Insert in their appropriate alphabetical position, determined on a letter-by-letter basis:

austudy payment	5Q(1)
youth allowance	5Q(1)

52 Subsection 5E(1) (definition of *member of a couple*)

Omit “and (4)”, substitute “, (4) and (4A)”.

53 After subsection 5E(4)

Insert:

(4A) The partner of a person who:

- (a) is receiving a youth allowance under the Social Security Act;
and
- (b) is not independent within the meaning of Part 3.5 of that Act;
is not a ***member of a couple*** for the purposes of:
- (c) the provisions of this Act referred to in the table at the end of
this subsection; and
- (d) any provision of this Act that applies for the purposes of a
provision mentioned in paragraph (c).

Note: Paragraph (d) has the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test or compensation recovery provisions, including section 5H (Income test definitions), section 5L (Assets test definitions), section 5NB (Compensation recovery definitions) and Divisions 1 to 11 of Part IIIB (General provisions relating to the income and assets tests).

Affected provisions		
Item	Provisions of this Act	Subject matter
1	Part IIIC	Compensation recovery
2	Module E of the Rate Calculator in Part 2 of Schedule 6	Ordinary/adjusted income test
3	Module F of the Rate Calculator in Part 2 of Schedule 6	Assets test

54 Subparagraph 5E(5)(b)(iv)

Repeal the subparagraph.

55 Subparagraph 5E(5)(c)(iia)

Repeal the subparagraph.

56 Paragraph 5E(5)(e)

Omit “or a youth training allowance”.

57 Subsection 5F(1) (at the end of paragraph (j) of the definition of *child*)

Add “(except youth allowance paid because the person is at least 16 but less than 25 and is receiving full-time education at a school, college or university)”.

58 Subsection 5F(1) (definition of *child*)

Omit “or if the person is receiving a youth training allowance”.

59 Subsection 5F(5)

Repeal the subsection.

60 Paragraph 5H(8)(ha)

Repeal the paragraph.

61 Application

The repeal of paragraph 5H(8)(ha) of the *Veterans’ Entitlements Act 1986* applies for the purposes of working out income earned, derived or received after 1 July 1998.

62 Subparagraph 5H(8)(v)(i)

After “allowance”, insert “or youth allowance”.

63 Paragraph 5H(8)(zg)

Repeal the paragraph.

64 Subsection 5Q(1)

Insert:

austudy payment has the meaning given by the *Social Security Act 1991*.

65 Subsection 5Q(1) (definition of *education leavers waiting period*)

Repeal the definition.

66 Subsection 5Q(1) (after paragraph (aa) of the definition of *social security benefit*)

Insert:

- (ab) youth allowance under Part 2.11; or
- (ac) austudy payment under Part 2.11A; or

67 Subsection 5Q(1)

Insert:

youth allowance has the meaning given by the *Social Security Act 1991*.

68 Subsection 5Q(1) (definition of *youth training allowance*)

Repeal the definition.

69 Paragraph 13(7)(d)

Repeal the paragraph, substitute:

- (d) by way of youth allowance; or

70 At the end of paragraphs 13(7)(e) and (f)

Add “or”.

71 After subsection 53E(2)

Insert:

- (2A) If a veteran has a child who is receiving youth allowance, subsection 53E(2) applies to the veteran as if the child were a dependent child.

72 After point 53F-6

Insert:

53F-6A Points 53F-4, 53F-5 and 53F-6 apply to a person (the *parent*) as if each other person who is a child of the parent and is receiving youth allowance were a dependent child of the parent.

73 Paragraph 53F-7(d)

Repeal the paragraph.

74 Paragraph 70(10A)(a)

Repeal the paragraph, substitute:

(a) by way of youth allowance; or

75 Paragraph 118AA(c)

Omit “AUSTUDY scheme”, substitute “Social Security Act or the *Student Assistance Act 1973*”.

76 Subparagraph 118AA(d)(i)

Omit “an approved course under the AUSTUDY scheme”, substitute “the subject of a determination made under section 5D of the *Student Assistance Act 1973* by the Minister administering that Act”.

77 Subsection 205(8) (paragraph (d) of the definition of *prescribed educational scheme*)

Repeal the paragraph.

78 Saving provision

The amendment made by item 77 does not affect arrangements or proceedings for recovery of an amount purportedly paid under the AUSTUDY scheme before the commencement of this item but was not lawfully payable under that scheme.

79 After subclause 10(3) of Schedule 5

Insert:

- (3A) Subclause (2) ceases to apply to the rate of service pension or income support supplement payable to a person:
- (a) from the start of the day the *Social Security Legislation Amendment (Youth Allowance) Act 1998* commences, if the child or youngest child because of whom this clause applies to the person is 16 or over then; or
 - (b) from the start of the 16th birthday of the child or youngest child because of whom this clause applies to the person, if that child is under 16 on the day that Act commences.
-

(3B) In working out the amount of:

(a) a person's notional pension/supplement child-related amount;
and

(b) the notional family allowance child-related amount for a
person or his or her partner;

at a time at or after the commencement of the *Social Security
Legislation Amendment (Youth Allowance) Act 1998*, disregard a
child who is 16 or over at the time.

80 Paragraph SCH6-E10(d) of Schedule 6

Repeal the paragraph.

81 Paragraph SCH6-G4(b) of Schedule 6

Omit “, a social security benefit or a youth training allowance”,
substitute “or a social security benefit”.

**82 At the end of Module E of the Rate Calculator in Schedule
6**

Add:

SCH6-E12 In this Module:

dependent child, in relation to a person, includes any child of the
person who is under 18 and is receiving a youth allowance.

Schedule 14—Amendment of the Social Security Act 1991 relating to minimum age for youth allowance

1 Paragraph 543A(2A)(p)

Repeal the paragraph, substitute:

- (p) is receiving Commonwealth funded intensive assistance for jobseekers or State, Territory or community provided case management approved by the Secretary or, where no intensive assistance or case management place is available to the person, is suitable for and agrees to undertake intensive assistance or case management; or

*[Minister's second reading speech made in—
House of Representatives on 5 March 1998
Senate on 1 April 1998]*

(11/98)

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