1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STUDENT AND YOUTH ASSISTANCE AMENDMENT (YOUTH TRAINING ALLOWANCE) BILL (NO. 2) 1995

EXPLANATORY MEMORANDUM

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

75271 Cat. No. 95 5504 8 ISBN 0644 343230

9 780644 343237

STUDENT AND YOUTH ASSISTANCE (YOUTH TRAINING ALLOWANCE) BILL (No. 2) 1995

OUTLINE

This Bill proposes changes to the Youth Training Allowance provisions contained in Part 8 of the *Student and Youth Assistance Act 1973* ("the Principal Act"). Part 8 was incorporated into the Principal Act in 1994. Many of these provisions are modelled on the Job Search Allowance provisions contained in the *Social Security Act 1991* ("the Social Security Act"). As the Youth Training Allowance ("YTA") and the Job Search Allowance are closely aligned it is important that any changes to the Job Search Allowance provisions are mirrored in the YTA provisions and that they commence operation at or about the same time. Many of the provisions establishing the framework for the Job Search Allowance are being amended by the Social Security Legislation Amendment (Carer Pension and Other Measures) Bill 1995 ("the Carers Bill"). This Bill makes necessary amendments to the provisions establishing the Youth Training Allowance.

Schedule 1–Amendments relating to compensation recovery

These amendments mirror amendments proposed to the *Social Security Act* by Schedule 16 of the Carers Bill 1995.

These amendments affect the calculation of YTA entitlement for those who receive as a lump sum any periodic payments for which they are entitled made under the law of a State or Territory. The amendments also affect the level of YTA entitlement of people who are partners with people who receive, or are entitled to receive, various pensions payable under the *Veterans' Entitlements Act 1986* .

Schedule 2–Amendments relating to qualification for Youth Training Allowance

These amendments mirror amendments proposed to the Social Security Act by Schedule 20 of the Carers Bill 1995.

It is proposed to allow 15 year olds who fall within the YTA definition of "independent" to be paid YTA, rather than Special Benefit, payable by the Department of Social Security, even if they do not meet workforce requirements that must usually be met before YTA is payable. The amendments also allow 15 year olds who have a workforce history and who live with parents who are in receipt of Commonwealth income support to qualify immediately for YTA.

Schedule 3–Amendments relating to debt recovery

These amendments permit any youth training allowance overpayments to be offset against student assistance payments (such as AUSTUDY) which a person may be subsequently be entitled to receive.

Schedule 4–Amendments relating to change of benefit during waiting period

These amendments mirror amendments proposed to the Social Security Act by Schedule 17 of the Carers Bill 1995.

It is proposed to permit any part of a particular waiting period already served, eg the 13 week education leavers waiting period, to be transferable across payment types ie YTA, Job Search Allowance, Newstart Allowance and Sickness Allowance.

At present, if a client applies and qualifies for one allowance but then, during the waiting period, claims another, the client is are required to start serving the entire waiting period applicable to the other allowance. It is proposed that time spent on a particular waiting period will be able to count towards a different allowance if the client changes benefits during the waiting period.

Schedule 5–Amendments relating to waiver of debts and reviewability of decisions

These amendments amend the provisions dealing with the waiver and recoverability of debts. The amendments will permit part (or whole) of a debt to be waived, in certain circumstances, as well as to permitting debts over $50 to be recovered by withholdings from YTA payments. The amendments also permit negotiated settlements to avoid unnecessary and costly administrative appeals, provide for part-payment of a debt based on commercial considerations relating to present versus future value of the debt and permit non-recovery of a debt where there are special circumstances (with certain limitations) that make recovery inequitable. The amendments also permit Administrative Appeal Tribunal proceedings that relate to recovery of a debt to be settled.

Schedule 6–Amendments relating to nomination of bank accounts for payments of Youth Training Allowance

These amendments mirror amendments proposed to the *Social Security Act* by Schedule 22 of the Carers Bill 1995.

These amendments will require Youth Training Allowance clients to nominate a bank account into which payments of the allowance can be made. If there is no nomination the allowance will not be payable.

Schedule 7–Amendments to increase the rent assistance threshold

These amendments mirror amendments proposed to the *Social Security Act* by Schedule 5 of the Carers Bill 1995.

These amendments will increase the rent assistance threshold by $5 for those clients who are eligible for YTA.

Schedule 8–Minor amendments

The amendments in this Schedule make minor amendments to the Principal Act.

FINANCIAL IMPACT

The provisions to rearrange the present waiver and debt recovery provisions are estimated to save $223,000 in 1995-6, $230,000 in 1996-7 and $280,000 in both financial years 1997-98 and 1998-99. The other provisions in the Bill have either no or negligible financial impact.

STUDENT AND YOUTH ASSISTANCE AMENDMENT (YOUTH TRAINING ALLOWANCE) BILL 1995

NOTES ON CLAUSES

Clause 1 - Short Title

Clause 1 allows the Act to be cited as the *Student and Youth Assistance Amendment (Youth Training Allowance) Act (No. 2) 1995*.

Clause 2 - Commencement

Clause 2 sets the dates that each item of each Schedule commences. In this explanatory memorandum, the time each item of each Schedule commences is indicated in the notes explaining the relevant Schedule.

Clause 3 - Schedules

Clause 3 amends the Act in the manner set out in the Schedules.

SCHEDULE 1

AMENDMENTS RELATING TO COMPENSATION RECOVERY

1. Summary of proposed changes

Schedule 1 contains two measures.

(a) amendments relating to entitlement to periodic compensation payments converted to a lump sum; and

(b) amendments relating to the treatment of compensation affected payments where one member of a couple is in receipt of youth training allowance and the other is a Veterans' Affairs client.

(a) Amendments relating to entitlement to periodic compensation payments converted to a lump sum.

2. Background

Division 12 of Part 8 of the Principal Act, among other things, provides for the treatment of periodic compensation payments (by way of $ for $ reduction from the rate of compensation affected payment otherwise payable) and lump sums (by the so called 50% rule).

Certain State and Territory laws, for example section 42a of the South Australian *Workers Rehabilitation and Compensation Act*, allow for a person's entitlement to periodic compensation payments to be paid by way of a lump sum.

Section 225 of the Principal Act provides that, when a person's entitlement to periodic compensation payments is converted to a lump sum and paid by way of two or more instalments, that receipt is to be treated, for the purposes of Part 8 of the Act, as equivalent to receipt by that person of fortnightly payments each equal an amount equivalent to the lump sum amount divided by the number of fortnights in the period.

However, in most cases, when a person's entitlement to periodic compensation payments is converted into an entitlement to a lump sum that is calculated by reference to a period, only a single payment is made. In other words, the lump sum is not paid in two or more instalments as is currently required by paragraph 225(d) of the Principal Act. These amendments make technical changes to the legislation to enable all compensation payments which refer to a period to be treated as periodic compensation payments rather than as a lump sum compensation payment paid in one or more instalments.

3. Schedule and clauses involved in the changes

Clause 2(1): specifies the commencement day as the date of Royal Assent.

Clause 3: provides for the Principal Act to be amended in accordance with the applicable items of Schedule 2.

Schedule 2

Item 1: amends paragraph 225(c) of the Principal Act.

Item 2: omits paragraph 225(d) of the Principal Act.

Item 3: amends paragraph 225(e) by omitting the current paragraph and substituting a new paragraph into the Principal Act.

Item 4: inserts a new subsection 225(2) into the Principal Act.

4. Explanation of the changes

The amendments made to section 225 of the Principal Act will ensure that when a person's entitlement to periodic compensation payments is converted into an entitlement to a lump sum payment that is calculated by reference to a period, the person is considered to have received, in each fortnight during the period, a periodic compensation payment equal to the lump sum amount divided by the number of fortnights in the period, irrespective of whether the lump sum is paid by a single payment or in instalments. This will close a loophole in the current law whereby a lump sum paid by a single payment, in the situation described, is not subject to the provisions contained in section 225.

5. Commencement

These amendments commence on Royal Assent.

(b) Amendments relating to the treatment of compensation affected payments where one member of a couple is in receipt of youth training allowance and the other is a Veterans' Affairs client.

Background

These amendments are to ensure that if a person is receiving a compensation affected payment of YTA and they receive a lump sum compensation payment, and their partner is entitled to receive either an invalidity service pension, a partner service pension, carer service pension or an income support supplement payable under the *Veterans' Entitlement Act 1986* ("VEA"), then the smaller of the compensation part of the lump sum or the amount obtained by adding the compensation affected YTA payments made and the pension payments under the VEA are recoverable.

This will ensure consistency across Commonwealth income support measures.

3. Clauses involved in the changes

Clause 2(1): specifies the commencement day as the date of Royal Assent.

Clause 3: provides for the Principal Act to be amended in accordance with the applicable items of Schedule 2.

Schedule 2

Item 5: amends paragraph 229(4)(b) of the Principal Act.

Item 6: adds a Note at the end of subsection 229(4) of the Principal Act.

Item 7: amends paragraph 229(4A)(b) of the Principal Act.

Item 8: amends paragraph 229(4A)(d) of the Principal Act.

Item 9: adds a Note at the end of subsection 229(4A) of the Principal Act.

Item 10: amends paragraph 231(4)(b) of the Principal Act.

Item 11: adds a Note at the end of subsection 231(4) of the Principal Act.

Item 12: amends paragraph 231(5)(b) of the Principal Act.

Item 13: adds a Note at the end of subsection 231(5) of the Principal Act.

Item 14: amends paragraph 233(4)(b) of the Principal Act.

Item 15: adds a Note at the end of subsection 233(4) of the Principal Act.

Item 16: amends paragraph 233(5)(b) of the Principal Act.

Item 17: amends paragraph 233(5)(d) of the Principal Act.

Item 18: adds a Note at the end of subsection 233(5) of the Principal Act.

Item 19: amends paragraph 237(6)(c) of the Principal Act.

Item 20: adds a Note at the end of subsection 237(6) of the Principal Act.

4. Explanation of the changes

The amendments to section 229 of the Principal Act (**Items 5 to 9**) will ensure that the "recoverable amount" (the amount to be repaid) will be the smaller of the compensation part of the lump sum or the sum of the payments of the compensation affected payment made to the person for the lump sum preclusion period where the person is a member of a couple and their partner does not receive a VEA compensation affected payment. Where a person is a member of a couple and their partner is receiving a VEA compensation affected payment, these amendments will ensure that the recoverable amount will be the smaller of the compensation part of the lump sum or the sum of the payments of the compensation affected payment and the payments of the partner's VEA compensation affected payment for the lump sum preclusion period.

The amendments to sections 231 and 233 of the Principal Act (**Items 10 to 18**) ensure that if one member of a couple is receipt of a "compensation affected payment" (as defined by this Act) and the other is in receipt of a Veterans' Affairs compensation affected payment, only half of any periodic compensation payment received by the DEET or Veterans' Affairs client is treated as a direct deduction from the rate of the DEET payment otherwise payable.

The amendments to section 237 of the Principal Act (**Items 19 and 20**) are consequential amendments required due to the VEA changes.

5. Commencement

These amendments commence on Royal Assent.

SCHEDULE 2

AMENDMENTS RELATING TO QUALIFICATION FOR YOUTH TRAINING ALLOWANCE

1. Summary of proposed changes

It is proposed to allow 15 year olds who fall within the YTA definition of "independent" to be paid YTA, rather than Special Benefit, payable by the Department of Social Security, even if they do not meet workforce requirements that must usually be met before YTA is payable. These amendments also propose to allow 15 year olds who have a workforce history and who live with parents who are in receipt of Commonwealth income support to qualify immediately for YTA.

2. Background

Subsection 65(3) of the Principal Act currently requires that clients who are 15 years old may qualify for YTA if they:

- have reached the minimum school leaving age (subparagraph 65(3)(d)(i)), or
- are exempt from attending school (subparagraph 65(3)(d)(ii)); and
- throughout the period they live away from their parent's home and are unsupported (subparagraph 65(3)(e)(iii)).

In addition to these criteria they are also required to have a workforce background by paragraph 65(3)(c).

Currently, where clients are 15 years old and are unsupported, but do not meet the workforce requirement, they will generally receive Special Benefit, a payment paid by the Department of Social Security, whilst waiting to qualify for YTA. After having been registered with the CES for 13 weeks, they meet the workforce requirements and so qualify for YTA.

There is also an additional group of 15 year olds who generally receive Special Benefit whilst waiting to qualify for YTA. These clients have a workforce history, live with their parents and their parents are in receipt of Commonwealth income support.

3. Clauses involved in the changes

Items 1 and 2: adds a new subsection 65(3A) of the Act.

4. Explanation of the Changes

These amendments have the following effects.

The first is to allow 15 year olds (other than those who are a member of a couple) who are "independent" to receive youth training allowance immediately even if they do not meet the workforce requirements usually required before being eligible to receive the benefit. The categories of person who is considered to be "independent" for the purposes of the Principal Act are found in clause 2 of Schedule 1 of the Act. **(paragraph 65(3A)(a))**

The second is to allow 15 year olds who have a workforce history, but who live with parents who are in receipt of Commonwealth income support, to qualify immediately for youth training allowance **(paragraph 65(3A)(b)**

5. Commencement

These amendments commence on 1 January 1996.

SCHEDULE 3

AMENDMENTS RELATING TO DEBT RECOVERY

1. Summary of proposed changes

These amendments permit any youth training allowance overpayments which a person may owe to the Commonwealth to be recovered from subsequent student assistance entitlements (such as AUSTUDY), as similarly, for instance, social security overpayments can be recovered from subsequent student assistance entitlements. It also makes a consequential change to the definition of "late payment charge" to take account of the repeal of the *Seamen's War Pensions and Allowances Act 1940.*

2. Background

Items 2 and 3 permit youth training allowance overpayments to be recovered from entitlements to other benefit schemes created by the Principal Act.

3. Clauses involved in the changes

Item 1	omits paragraph (d) of the definition of "late payment charge" in subsection 3(1).
Item 2	inserts a definition of "youth training allowance overpayment" in subsection 3(1)
Item 3	inserts a new subparagraph 38(2)(a)(ia) of the Act..

4. Explanation of the Changes

Item 1 removes an otiose reference to the now repealed *Seamen's War Pensions and Allowances Act 1940* in the definition of "late payment charge" in subsection 3(1).

The other amendments permit the Commonwealth to recover any youth training allowance overpayments which a person may owe to the Commonwealth from subsequent student assistance entitlements of that person.

5. Commencement

These amendments commence on 1 January 1996.

SCHEDULE 4

AMENDMENTS RELATING TO CHANGE OF BENEFIT DURING WAITING PERIOD

1. Summary of proposed changes

This measure is to make sure that people who transfer between different types of allowance during a waiting period are also able to transfer any of a waiting period already served so that they are not disadvantaged compared to people who do not transfer between allowances.

2. Background

People who claim either YTA or sickness allowance (SA) will generally be subject to one or more waiting periods before payment commences. The waiting periods that may apply are the liquid assets test waiting period, the unused annual leave waiting period, the ordinary waiting period, the education leavers waiting period and the newly arrived residents waiting period.

As a general rule, any part of a waiting period already served for one allowance type is not transferable if the person should claim, during the waiting period, a different allowance type that also has waiting period requirements. This may well result in the person having to serve, in addition to any waiting period already served, some or all of an additional waiting period before payment of the different allowance may commence.

The lack of waiting period transferability described above does not produce a practical problem in relation to some waiting periods. In some cases, the commencement date of the waiting period is the same date whichever allowance is claimed so that there can be no question of the waiting period being served a second or subsequent time. For example, the newly arrived residents waiting period commences for all allowance types on the date on which the person's permanent visa comes into force.

Other cases are different. For example, if a person has served part of a liquid assets test waiting period for SA, then ceases to be incapacitated for work and claims YTA, then the person's waiting period recommences.

For the sake of consistency, it is necessary specifically to provide for any part of a waiting period already served to be transferable across allowance types.

3. Schedule and clauses involved in the changes

Clause 2(1): provides that the amendments will commence on Royal Assent.

Clause 3: provides that the Principal Act is amended as set out in Schedule 5.

Schedule 4

Item 1: alteration to existing section 95 .

Item 2: adds to existing section 95 a new subsection (2).

Item 3: adds to existing section 97 a new subsections (4).

Item 4: adds to existing section 99 a new subsection (4A).

Item 5: adds to existing section 100 a new subsection (4A).

4. Explanation of the changes

Where a person originally applied to receive sickness allowance, and because of his or her circumstances must serve an "unused annual leave waiting period" before being eligible to receive it, but, during the waiting period, ceases to be sick and applies for YTA, then any "unused annual leave waiting period" served whilst waiting to receive the sickness allowance will be taken into account when calculating the waiting period of the same name before which YTA can be paid. (new subsection 95(2))

The same applies for a person who changes from sickness allowance to YTA, but who must wait for an "ordinary waiting period" (new subsection 97(4)), a "non-secondary schools education leaver's waiting period" (new subsection 99(4A)) or "education leavers waiting period" (new subsection 99(4)(A)) as the case requires before receiving YTA.

5. Commencement

These amendments will commence on Royal Assent to the Bill.

SCHEDULE 5

AMENDMENTS RELATING TO WAIVER OF DEBTS AND REVIEWABILITY OF DECISIONS

1. Summary of the proposed changes

Amendments to the waiver provisions of the Principal Act are proposed to provide more consistency and flexibility. In summary, the Principal Act will be amended to:

- amend sections 288, 289 and 290 to clarify that they allow for part of a debt to be waived as well as allowing for the whole of a debt to be waived;
- provide for general recovery of debts over $50 where recovery can be effected by withholdings from YTA payments;
- provide for negotiated settlements to avoid unnecessary and costly administrative appeals;
- provide for recovery of debts based on commercial considerations relating to present versus future value of the debt; and
- provide for non-recovery where there are special circumstances (with certain limitations) that make recovery inequitable.

As part of these amendments sections 288, 289 and 290 will be rewritten as part of sections 288, 289, 290, 290A, 290B and 290C. The new sections will simplify the operation of the waiver provisions.

Subject to the amendments listed in the remainder of this Schedule:

- subsections 289(1) and 290(1) of the Principal Act have been re-written as subsection 288(1) (Secretary's limited power to waive) and subsections 289(6) and 290(4) of the Principal Act have been re-written as subsection 288(2) (When waiver takes effect)
- subsections 289(2) and 289(4) of the Principal Act have been re-written as subsections 289(1) and (2) (administrative error and valuing property)
- subsection 289(3) of the Principal Act has been re-written as subsection 290(1) (conviction of an offence)
- subsection 289(5) of the Principal Act has been re-written as subsection 290A(1) (debts under $200)
- subsection 290(2) of the Principal Act has been re-written as subsection 290B(3) (Waiver where at least 80% 0f debt recovered and debtor cannot pay more)

(a) ***amend sections 288, 289 and 290 to clarify that the sections allow for part of a debt to be waived as well as allowing for the whole of a debt to be waived.***

2. Background

In the case of *Re Dennis* (1994) the Administrative Appeals Tribunal (AAT) considered waiver under subsection 289(3) (waiver on conviction of an offence). The AAT concluded that, as section 289 refers to waiver of "the whole of a debt", the AAT was not able to waive part of a debt under section 289. The AAT suggested that, if it had a discretion in the matter, it would have waived part of the debt.

It is not desirable to limit the use of the waiver powers under section 289 to waiving the whole of a debt. In many cases part of a debt will be due to a circumstance that allows the debt to be waived and part of the debt will be due to other circumstances that do not allow waiver.

Accordingly, new section 288 will provide that the Secretary will be able to waive the whole or part of a debt.

3. Schedules and clauses involved in the changes

Clause 2(3): specifies the commencement date as 1 January 1996

Clause 3: specifies that the Principal Act is amended in accordance with Schedule 5.

Schedule 5

Item 2: repeals sections 288, 289 and 290 and inserts new sections 288, 289, 290, 290A, 290B and 290C

4. Explanation of the changes

Item 2 inserts new section 288. The repealed section 288 provided that the repealed sections 289 and 290 applied to debts owed to the Commonwealth that arose under Part 8 of the Principal Act. The repealed section 289 provided that the Secretary must waive the whole of a debt where there was administrative error (subsection 289(2)), conviction of an offence (subsection 289(3)), undervalued property (subsection 289(4)) or debts less than $200 (subsection 289(5)). The repealed section 290 provided that the Secretary may waive part of a debt in settlement of civil action (subsection 290(2) and provided for recovery of part of a debt in full satisfaction for the whole of a debt (subsection 290(3).

The new section 288 provides that the Secretary may waive all or part of a debt in the circumstances referred to in new sections 289 to 290C. Accordingly, decision-makers can now waive part of a debt in situations where it is not appropriate (or not possible) to waive the whole debt.

The new section 289 provides for the waiver of a debt where the debt was attributable solely to an administrative error and where the amount was received in good faith by the debtor. This amendment will require the Secretary to waive only that part of a debt that is solely due to administrative error. Subsection 289(3) allows the Secretary to waive the whole of the debt if 100% of the debt was due solely to administrative error.

A debt is attributable solely to administrative error where the debt was solely caused by an error by an officer of the Commonwealth. New section 289 does not apply to that part of a debt that was partly caused by administrative error and partly caused by other factors, for example, an error by the debtor (a note to subsection 289(1) informs the reader of this limitation).

It is possible that a person could receive an overpayment in good faith that was solely caused by administrative error if the Department coded two children into the system instead of one child. If the person later received a notice from the Department advising that two children were being taken into account then, following that notice, the person could no longer be considered to be receiving the payment in good faith. Under new section 289, the Secretary will be able to waive that <u>part</u> of the debt that was received in good faith (the extra payments received prior to the Department's notice) but will not be able to waive that part of the debt received by the person after the notice was given.

New section 290 provides for the waiver of a debt where a person was convicted of an offence and the court indicated in sentencing that it imposed a longer custodial sentence because the debtor was unable or unwilling to pay the debt. The new section overcomes the problem identified by the AAT in *Re Dennis* and provides that part of a debt can be waived if the longer sentence did not take the whole of the debt into account.

(b) general recovery of debts over $50 where recovery can be effected by withholdings from Youth Training Allowance payments.

2. Background

New section 290A provides for the waiver of a small debt (less than $50 or $200 depending on whether it is possible to make withholdings from a social security payment). It is not appropriate to allow for part waiver of these debts as the provision is exercised only where it is not cost-effective to recover the whole debt.

Prior to this amendment subsection 289(5) of the Principal Act provided that the Secretary must waive if a debt is likely to be less than $200 and it is not cost-effective for the Commonwealth to take action to recover the debt.

The use of subsection 289(5) was limited to cases where it was not cost-effective to recover a debt. The decision, however, was sometimes a difficult one and resulted in inconsistency in the use of this provision.

This amendment will assist consistent decision-making by clarifying that it is cost-effective to recover amounts over $50 where it is possible to withhold those amounts from a person's youth training allowance.

Accordingly, subsection 289(5) will be omitted and a new subsection inserted to provide that the Secretary is only able to waive debts on cost-effectiveness grounds if the debt is, or is likely to be:

- less than $50, if the debt is recoverable under the deduction provision in section 281; or
- less than $200 if the debt is not recoverable under the deduction provision in section 281 of the Principal Act.

3. Schedules and clauses involved in the changes

Clause 2(4): specifies the commencement date as 1 January 1996

Clause 3: specifies that the Principal Act is amended in accordance with Schedule 5.

Schedule 5

Item 2: inserts new section 290B to provide for the waiver of small debts.

4. Explanation of the changes

Item 2 inserts new section 290B that provides that the Secretary is only able to waive debts if the debt is, or is likely to be:

- less than $50 if the debt is recoverable under the deduction provision in section 281; or
- less than $200 if the debt is not recoverable under the deduction provision in section 281 of the Principal Act.

(c) ***provide for negotiated settlements to avoid unnecessary and costly administrative appeals.***

2. Background

Prior to these amendments, subsection 290(2) provided that, if the Secretary agreed to settle a civil action against a person for recovery of a debt for less than the full amount of the debt, the Secretary must waive the difference between the debt and the amount that is the subject of the settlement. New subsection 290B(1) mirrors the old subsection 290(2).

There was no similar provision in the old subsection 290(2) to allow "out-of-court" settlements where a case is to be heard by the Administrative Appeals Tribunal (AAT). It is arguable that there is an anomaly if the Secretary can settle a debt in a civil matter but cannot settle a debt in an AAT matter.

Accordingly, new subsection 290B(2) will allow the Secretary to settle an action before the AAT for recovery of less than the full amount of a debt. If the Secretary so agrees, the Secretary must waive the difference between the debt and the amount that is the subject of the settlement.

The amendment is to allow the Secretary to settle debts without recourse to the AAT if it is cost-effective to do so. Accordingly, the Secretary's discretion will be exempt from review by the SSAT and the AAT as to allow review would defeat the purpose of the clause. This will mean that these decisions are only reviewable by delegates of the Secretary (such delegates to be limited to a small number of persons).

Cases at the original decision-maker or authorised review officer level will not be subject to the new provision because these reviews are relatively quick and informal and therefore the costs outweigh the benefits of allowing an "out-of-tribunal" settlement.

3. Schedules and clauses involved in the changes

Clause 2(4): specifies the commencement date as 1 January 1996

Clause 3: specifies that the ***Student Assistance (Youth Training Allowance) Amendment Act 1994*** is amended in accordance with Schedule 5.

Schedule 5

Item 2: inserts new subsection 290C(2) to provide for waiver of the balance of a debt where the Secretary has agreed to settle proceedings before the AAT.

Item 3: inserts new paragraph 303(2) to provide that the Social Security Appeals Tribunal (and therefore the AAT) cannot review an agreement to settle a debt recovery matter before the AAT.

Item 4: inserts new section 326A to provide that if a debt recovery matter before the AAT is settled, the application for review of the decision by the AAT is taken to have been dismissed.

4. Explanation of the changes

Item 4 inserts new section 326A to allow the Secretary to settle a debt recovery matter that has been appealed to the AAT. There are occasions when it is cost-effective to settle a matter "out-of-court" for less than the debt calculated rather than undertaking a costly and time-consuming case before the AAT.

Accordingly, section 326A allows the Secretary to settle a matter before the AAT and provides that the AAT appeal is dismissed where the matter:

- relates to recovering a debt;
- the Secretary and the other parties to the proceedings before the AAT agree to settle the proceedings;
- the settlement is in writing; and
- the Secretary gives the AAT a copy of the agreement to settle the proceedings.

The Secretary is required to provide the AAT with a written copy of the agreement to settle. This will ensure that a matter is not dismissed before the AAT pursuant to section 326A unless the AAT has evidence that all relevant parties have agreed to the matter being settled.

Where a matter is dismissed before the AAT, all parties to that proceedings are prevented from undertaking future proceedings before the AAT in relation to the same matter (see Items 3 and 4 of this Schedule).

Item 2 inserts new subsection 290B(2) to provide for negotiated settlements in the administrative process in addition to settlements in civil action.

New subsection 290B(2) provides that where the Secretary agrees to settle proceedings before the AAT relating to recovery of a debt, the Secretary must waive the difference between the amount of the debt and the amount that is the subject of the settlement.

New subsection 290B(2) mirrors new subsection 290B(1) that provides for settlement of civil actions.

Item 3 inserts new paragraph 303(2)(e) (review by the SSAT and the AAT) to provide that an authorised review officer, the SSAT and the AAT cannot review a decision of the Secretary on whether to exercise the Secretary's power to settle a matter under section 326 of the Principal Act. This mirrors the position that currently exists where the Secretary settles a civil matter out-of-court.

The purpose of the settlement power in section 326 of the Principal Act is to allow the Secretary to settle a debt recovery matter before the AAT if it is cost-effective to do so. It is not appropriate that the decision be subject to review by the AAT because then it would (generally) not be cost-effective to settle a matter before the AAT if the person could later have the matter reviewed by the AAT.

Accordingly, new paragraph 303(2)(e) prevents the SSAT and the AAT from reviewing a decision to settle a matter under section 326 of the Principal Act.

(d) provide for recovery of debts based on commercial considerations relating to present versus future value of the debt.

2. Background

Prior to this amendment subsection 290(3) of the Principal Act provided that if:

(a) the Commonwealth has recovered at least 80% of the original value of the debt from the person; and

(b) the Commonwealth and the person agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the person does not have the capacity to repay a greater proportion of the debt;

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

This provision has been re-written as new subsection 290B(3).

It is proposed to extend the application of subsection 290B(3) to allow recovery of part of a debt in full satisfaction of the debt where it is more cost-effective to do so based upon commercial considerations. Part of the debt may be waived where the person makes a current offer in full settlement of the debt and it is more cost-effective to accept that offer than to pursue future recovery of the debt. It will be more cost-effective to recover the outstanding balance of the debt if the amount offered is greater than the "present value" of the outstanding balance of the debt.

The concept of "present value" recognises that money has a time value. The concept is commonly used in making decisions whether to invest (or forego) a sum of money now in return for a greater amount (the future value) that may be payable at a future date.

In relation to waiver, it may be cost-effective to accept a smaller sum of money in the present rather than a larger sum of money paid as a series of instalments over a future period. That is, the money offered could be invested to obtain interest by the Commonwealth or it could be used to offset the Commonwealth's borrowings. In addition, the future value of money is reduced by the effects of inflation.

Where the Secretary makes a settlement under the new provision, the Secretary must waive the difference between the remaining balance of the debt and the amount that is the subject of the settlement.

3. Schedules and clauses involved in the changes

Clause 2(4): specifies the commencement date as 1 January 1996

Clause 3: specifies that the Principal Act is amended in accordance with Schedule 5.

Schedule 6

Item 2: inserts new subsections 290B (4), (5), (6) and (7) to provide for waiver of the remaining debt where the Secretary agrees to part-payment in full satisfaction of the remaining balance of the debt.

4. Explanation of the changes

Item 2 inserts new subsections 290B (4), (5), (6) and (7) to allow for part-payment of a debt in full satisfaction of the outstanding balance of the debt.

New subsection 290B(4) provides that, if the Secretary and the debtor agree to settle a debt for less than the full amount of the debt, then the Secretary must waive the right

to recover the difference between the remaining balance of the debt and the agreed amount.

New subsection 290B(5) provides that the Secretary can only accept part-payment in full satisfaction of the outstanding balance of the debt the Secretary is satisfied that:

the debtor cannot repay more of the debt than the amount offered under new subsection 290B(4);

the amount offered is equal to or greater than the present value (as defined in subsection 290B(6)) of the balance of the debt outstanding; and

it would take more than a year to recover the outstanding balance of the debt if an offer was not made under subsection 290B(4).

New subsection 290B(5) is intended to ensure that part-payment of the outstanding balance of a debt is only acceptable where it is more cost-effective to accept the offer than to pursue future recovery.

New subsection 290B(6) provides a formula that is to be used in determining whether an offer is greater than present value of the outstanding balance of the debt.

The Present Value (PV) of a sum to be received in the future is worked out according to the formula:

$$PV = \frac{S\,(1 - 1/(1+i)^{n})}{i}$$

where "S" is the amount to be repaid per period, "i" is the interest rate, and "n" is the number of periods.

New subsection 290B(6) allows the Minister to determine the 'notional' interest rate to be used in the above formula for the purposes of deciding whether it is cost-effective to settle a debt under subsection (4).

New subsection 290B(7) provides that a declaration by the Minister under subsection 1237AAB(6) is a disallowable instrument.

Example:

If a person has a $30,000 debt to the Department which is being repaid at $125 per month ($1500 pa), it would take 20 years to repay the whole debt.

At a notional interest rate of 5% pa the present value of $1500 pa over those 20 years would be approximately $18,700. If the person wished to settle the debt, the Commonwealth would be financially better off to accept immediate payment of an offer greater than $18,700 rather than recovering the full amount over the next 20 years.

(e) provide for non-recovery of debts where there are special circumstances (with certain limitations) that make recovery inequitable.

2. Background

Special Circumstances

A "special circumstances" clause was omitted from the present waiver legislation because of perceived inconsistencies in decision-making by appeal tribunals. In practice, the special circumstances clause tended to be used incorrectly to circumvent other waiver requirements.

For example, the AAT has tended to waive debts because of compassionate considerations and especially because of financial hardship, notwithstanding that the debt may have been caused by deliberate fraud (for example, the AAT decision in *Re Hodgson (1992))*.

In addition, it was considered that tribunals were incorrectly considering financial hardship as a major factor in deciding whether or not to waive a debt. A more appropriate alternative in many cases is to "write off" the debt rather than to waive the debt.

Write off is provided for in section 287 of the Principal Act and means that recovery action is suspended for up to 6 years pending a change in the debtor's circumstances. Waiver on the grounds that a debtor has no capacity to pay, however, creates a permanent bar to future recovery even if recovery subsequently becomes possible.

The problem is that there are some cases involving an innocent mistake by a debtor that makes waiver desirable although not possible under the current waiver provisions. Accordingly, it is proposed to insert a new special circumstances waiver provision, but with some restrictions on the circumstances under which the new clause can be used.

The new special circumstances clause will be available where:

- there are special circumstances other than financial hardship alone;
- the Secretary is satisfied that the debt did not arise wholly or partly because of deliberate fraud by the debtor (including deliberate non-compliance with the Principal Act); and
- it is more appropriate to waive the debt than to write off the debt pursuant to section 287.

3. Schedules and clauses involved in the changes

Clause 2(4): specifies the commencement date as 1 January 1996 (immediately after the commencement of the ***Social Security Legislation (Family Measures) Act 1995***.

Clause 3: specifies that the ***Student Assistance (Youth Training Allowance) Amendment Act 1994*** is amended in accordance with Schedule 6.

Schedule 6

Item 2: inserts new section 290C to provide for waiver in special circumstances.

4. Explanation of the changes

Item 2 inserts new section 290C to provide for waiver in special circumstances.

New section 290C applies where the Secretary is satisfied that:

- the debt did not result wholly or partly from deliberate fraud by the debtor or another person (including deliberate non-compliance with the Principal Act); and
- there are special circumstances (other than financial circumstances alone) that makes it desirable to waive; and
- it is more appropriate to waive than to write off the debt or part of the debt.

The term "special circumstances" has been examined by courts and tribunals in many decisions and in different contexts. In *Re Beadle and Director-General of Social Security* (1984) 6 ALD 1, Toohey J stated:

> An expression such as "special circumstances" is by its very nature incapable of precise or exhaustive definition. The qualifying adjective looks to circumstances that are unusual, uncommon or exceptional. Whether circumstances answer any of these descriptions must depend on the context in which they occur. For it is the context which allows one to say that the circumstances in one case are markedly different from the usual run of cases. This is not to say that the circumstances must be unique but they have a particular quality of unusualness that permits them to be described as special.

These amendments make several exceptions to the broad definition of "special circumstances".

The first exception provides that the Secretary will be prevented from exercising the discretion in section 290C where the debt arose either solely or partly because of deliberate fraud by the debtor or another person (see the second criterion above). That is, the discretion may be exercised where a debt arose wholly because of an innocent mistake.

This provision differs from subsection 290(1) (that applies to waiving debts attributable solely to an administrative error) and reflects the decision of the full Federal Court in *Director-General of Social Services v Hales* (1983) 47 ALR 281, where it was held that "it is sufficient if the failure or omission to comply is a contributing cause of the overpayment".

Accordingly, the new special circumstances provision can only be used where the debt arose because of an innocent mistake by a social security recipient. The rationale for this exception is that it is not considered appropriate to provide relief under section 290C if a debtor has deliberately set out to defraud the Commonwealth.

Secondly, financial hardship, of itself, is not a sufficient reason to waive under the new special circumstances provision.

Thirdly, it must not be more appropriate to write off the debt than to waive the debt. Consideration as to the circumstances of a debtor are central to a decision to write off a debt under section 287 of the Principal Act and should not be the basis for a decision to waive. Where a debtor has no present capacity to repay it is proper that write off action be taken, leaving the Commonwealth with the right to commence recovery proceedings at a later stage if the person's financial circumstances improve.

It may be appropriate, for example, to exercise the discretion to waive under this provision in the following case.

A young refugee from Afghanistan was paid job search allowance because his visa stated he was 16 years of age. It was subsequently ascertained that he was only 14 and so not qualified for NSA. The uncertainty about the refugee's age arose because the refugee was unsure of his exact age as he had led a tribal existence prior to travelling to Australia.

It would not be appropriate, however, to waive a debt in the following example.

A person knowingly defrauded the Commonwealth by claiming job search allowance while working full-time and was successfully prosecuted for that offence. Although the debtor is unable to repay the debt without severe financial hardship, the appropriate course of action is to write off the debt rather than to waive. The Commonwealth may then re-commence recovery action in the future if the person later has capacity to repay the debt.

5. Commencement

These amendments will commence on 1 January 1996.

Item 1 inserts an applications clause to provide that the new waiver provisions only apply to debts arising after 1 January 1996 and, where a debt existed prior to 1 January 1996, to the outstanding balance of the debt as at 1 January 1996 (**new section 288**).

SCHEDULE 6

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

1. Summary of proposed changes

These amendments will clarify the conditions under which a person's pension, benefit or allowance will cease to be payable due to the person's failure to notify a bank account into which the person's social security payment can be made. A person can be paid a social security payment up to 28 days from the day the person becomes entitled to the payment. The person then has 3 months from the date the payment ceases to be payable to nominate an account. If the person nominates an account within 3 months then arrears are payable. If the person nominates after 3 months, arrears are not payable for the period prior to the date that the nomination is made.

2. Background

Section 142 states that YTA is not to be paid unless a person nominates a bank account or the Secretary directs that payment is to be made in a different way.

Subsection 142(5) provides that the sum is to be paid when the person subsequently nominates a bank account. There is no provision to cancel or suspend if a person fails to nominate an account. The money is simply kept by the Department and paid under subsection 142(5) when the person subsequently advises an account.

It is therefore proposed to amend section 142 (and all the other bank nomination provisions) to provide that a person can be paid a YTA payment up to 28 days from the day the person becomes entitled to the payment. The person then has 3 months from the date the payment ceases to be payable to nominate an account. If the person nominates an account within 3 months then arrears are payable. If the person nominates after 3 months, arrears are not payable for the period prior to the date on which the nomination is made.

3. Clauses involved in the changes

Clause 2(1): specifies the commencement day as the date of Royal Assent.

Clause 3: provides that the Principal Act is amended as set out in Schedule 6.

Schedule 6: amends provisions in the Principal Act relating to cancellation or suspension of payments if a client fails to comply with a request to provide a bank account.

Schedule 6:

Items 1 and 2: amends the bank account nomination provisions to provide that a person has 28 days to provide an account for a financial institution otherwise the relevant YTA ceases to be payable. The person can be paid arrears if the person nominates an account within 3 months of the payment ceasing to be payable, otherwise social security is only payable from the date an account is nominated.

4. Explanation of the changes

Items 1 and 2 amend section 142 by omitting subsections 142(4) and (5) and inserting new subsections 142(8) and (9).

Item 1 omits subsections 142(4) and (5).

Prior to the amendment, subsection 142(4) provided that an amount of YTA is not to be paid where a person has not nominated a bank, credit union or building society account pursuant to subsection 142(2). Subsection 142(5) provided that the YTA withheld under subsection 142(4) should be paid once a person nominated an account.

There was no provision to cancel or suspend if a person failed to nominate an account. The section required that money be kept by the Department and paid under subsection 142(5) when the person subsequently advised an account.

Item 2 inserts new subsections 142(8) and (9) to replace subsections 142(4) and (5). New subsection 142(8) allows the Department to cancel a YTA payment if a person has not nominated an account within 28 days of the social security payment becoming payable. An exception to this subsection is provided if the Secretary determines under subsection 142(6) that payment is to be made in a different way other than by depositing the payment in a financial institution account.

New subsection 142(9) provides that, subject to the other payability provisions, if a payment ceases to be payable under subsection (8), arrears may be payable if the person nominates an account within 3 months from the date that age pension ceased to be payable under subsection 142(8). If the person nominates an account after 3 months, then pension is only payable from the date the person nominated an account.

As subsection 142(9) is subject to the other provisions in Division 5, arrears are only payable under subsection 142(9) if age pension continues to be payable under the other provisions in Division 5.

5. Commencement

The changes included in Schedule 6 commence on the date of Royal Assent

SCHEDULE 7

AMENDMENTS OF THE PRINCIPAL ACT TO INCREASE THE RENT ASSISTANCE THRESHOLDS

1. Summary of proposed changes

The Principal Act will be amended to increase rent assistance thresholds by a further $5 per fortnight to coincide with the March 1996 CPI increases to these thresholds. In addition, the maximum rates of rent assistance for families will increase by $5 per fortnight, with effect immediately following the March 1996 CPI increase to these rates.

2. Background

The payment of rent assistance depends on the amount of rent exceeding a threshold specified in the legislation. Thresholds are indexed twice yearly by the CPI (in line with pensions and benefits). The proposed amendments will increase thresholds by a further $5 per fortnight, to coincide with the March 1996 CPI increase.

3. Clauses involved in the changes

Clause 2(5): specifies that Schedule 7 (apart from item 3) commences immediately before 20 March 1996.

Clause 2(6): specifies that **item 3** is taken to have commenced on 1 January 1995

Clause 3: specifies that the Principal Act is amended in accordance with Schedule 7.

Schedule 7: makes amendments to the Principal Act to increase rent assistance thresholds and rent assistance for family payment.

4. Explanation of the changes

Item 1 amends the heading of Division 13 to reflect more accurately the content of this Part.

Item 2 inserts a new paragraph in section 250 to indicate that Division 13, among other things, provides for one-off adjustments of certain amounts (as provided for in new Division 5).

Item 3 replaces a reference to "all amounts" (second occurring) in column 3 of item 2 of the Indexed and Adjusted Amounts Table in section 257 with the term "all rent threshold amounts". This amendment clarifies the operation of the indexation process

in relation to the rent assistance threshold amounts for sickness allowance payable to a person who is under 18. This item is taken to have commenced on 1 January 1995 immediately after the commencement of the *Student Assistance (Youth Training Allowance - Transitional Provisions and Consequential Amendments) Act 1994*, which introduced the youth training allowance scheme.

Item 4 alters Division 13 of the Principal Act to provide for one-off adjustments to the rent assistance thresholds and to the maximum rates of rent assistance for families, both of which have effect on 20 March 1996.

New section 256A provides that when amounts of pension rent threshold are indexed on 20 March 1996, those amounts are in turn increased by $130.00. (Pension rent threshold amounts are calculated on an annual basis. The $130.00 increase gives effect to the fortnightly increase of $5.00).

SCHEDULE 8

MINOR AMENDMENTS

1. Summary of proposed changes

The amendments in this Schedule make minor amendments to the Principal Act.

2. Clauses involved in the changes; and

3. Explanation of the changes

Clause 2(5): specifies that the Schedule commences at the same time as the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995*

Clause 3: specifies that the Principal Act is amended in accordance with Schedule 8.

Item 1 amends the definition of "protected information" created for the purposes of the Act, found in subsection 3(1) of the Principal Act. Protected information is currently defined as meaning "information about a person that is held in the records of the Department of Employment, Education and Training or of the Department of Social Security."

This provision was added to the Act by the *Student Assistance (Youth Training Allowance) Amendment Act 1994.* Materials accompanying the Act's introduction into Parliament indicated that the information that was to fall within the definition was that collected for the purposes of the Act. The definition can be read so widely as to include within it all information held about a person by the Department of Employment, Education and Training or the Department of Social Security, irrespective of the reason for which the information was gathered. This would have the effect that virtually all information held by the two relevant Departments could only be used where it was authorised by this Act, which only deals with the provision of assistance to students and people under the age of 18.

The amendment makes clear that the information falling within the definition is only that information that has been collected for the purposes of the Act.

Items 2 and 3 amend paragraph 274(2)(e), and a note to the paragraph to change the reference to "Labour Force Program" to "Labour Market Program", to take into account a change in name to the Program.

Item 4 amends the note to subsection 278(2) of the Act to make clear that the reference in the note to "subsection 23(1)" is a reference to subsection 23(1) of the *Social Security Act 1991.*

Item 5 amends subsection 351(3) by correcting an erroneous citation of the *Child Support (Registration and Collection) Act 1988*. The subsection currently has the Act as having passed in 1989.

Item 6 adds a note to each of the provisions in the Act that prescribe imprisonment as a sanction for contravening the Act advising that subsection 4B(2) of the *Crimes Act 1914* can impose a fine calculated according to a formula contained in subsection 4AA of the *Crimes Act* in substitution for, or in addition to, a custodial sentence

5. Commencement

The amendments specifies that the Schedule commence at the same time as the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995* .