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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AMENDMENT (TRAINING INCENTIVES) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment Participation the Honourable
Brendan O'Connor MP)

SOCIAL SECURITY AMENDMENT (TRAINING INCENTIVES) BILL 2009

OUTLINE

This bill will amend the social security law to provide for a temporary training supplement for eligible recipients of parenting payment and newstart allowance; and to amend participation requirements for youth allowance (other) for new and existing recipients who have not completed Year 12 or an equivalent qualification.

Additional financial assistance will be provided to low-skilled recipients of certain income support payments in the form of a training supplement of \$41.60 per fortnight, on top of their existing payment, if they undertake approved training to meet their activity test or participation requirements.

The bill also amends the participation requirements for certain young people to encourage them to remain in education and training until they have completed Year 12 or the equivalent, so that they improve their future employment prospects and are equipped to find jobs as the economy improves.

Training Supplement

The bill provides that recipients of newstart allowance and parenting payment may receive a training supplement of \$41.60 per fortnight. Recipients of newstart allowance or parent payment who undertake approved training may be eligible for the training supplement if they have not completed Year 12 or the equivalent, or if they have a trade or vocational qualification that could be upgraded to better equip them to find future employment.

Approved courses for the purpose of the training supplement are courses of up to 12 months in duration at the Australian Qualification Framework Certificate Level II to Certificate IV Level that are approved by the Secretary.

The training supplement will be available for people commencing approved training between 1 July 2009 and 30 June 2011. It will be automatically paid to job seekers who meet the requirements for payment from the commencement date of their approved education or training. The training supplement will be paid fortnightly with the job seeker's normal income support payment. It will continue to be paid until any approved training commenced in between 1 July 2009 and 30 June 2011 is completed.

Changes to participation requirements for youth allowance (other)

The bill will also amend the activity test for youth allowance for people under 21 without Year 12 or an equivalent qualification ('early school leavers'). The amendments provide that early school leavers will satisfy the activity test by undertaking full-time training or education or by complying with a Youth Allowance Employment Pathway Plan that includes a combination of one or more approved courses of training or education and one or more other suitable activities.

Exceptions to the new requirements will apply where no training is reasonably available or the young person does not have the capacity to undertake the training that is available.

The amendments will apply to new applicants for Youth Allowance from 1 July 2009. The new requirements will be progressively implemented for existing Youth Allowance recipients without Year 12 or the equivalent between 1 January 2010 and 30 June 2010.

FINANCIAL IMPACT

Expense (\$ million)

	2008-09	2009-10	2010-11	2011-12	2012-13
Training Supplement	0.0	46.0	25.0	3.1	0.0
Amended participation requirements for Youth Allowance (Other)	0.0	81.6	8.7	-7.0	-41.4

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Social Security Amendment (Training Incentives) Act 2009*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1 to 3 and any provision not covered elsewhere in the table, to commence on Royal Assent; and for Schedule 1 to commence on the later of: immediately after the commencement of items 2 to 5, 8 and 9 of Schedule 4 the *Social Security Legislation Amendment (Employment Services Reform) Act 2009* ('Employment Services Reform Act'); and the day on which the Act receives Royal Assent.

Items 2 to 5, 8 and 9 of Schedule 4 the Employment Services Reform Act amends provisions of the *Social Security Act 1991* ('Social Security Act') with effect from 1 July 2009. Some amendments to the Social Security Act made by this bill will amend provisions amended by the Employment Services Reform Act, so this bill must commence after the Employment Services Reform Act (although on the same day, i.e. 1 July 2009).

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

Clause 3 - Schedule(s)

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

For ease of description, this explanatory memorandum uses the following abbreviation:

'Social Security Act' means the *Social Security Act 1991*

Schedule 1— Amendments

Social Security Act 1991

Item 1 – Subsection 23(1)

Inserts a definition of *approved training course for training supplement* for a person into subsection 23(1). This is defined as a training course that is approved by the Secretary under new section 28B for training supplement for the person.

Item 2 – Subsection 23(1)

Inserts a definition of *training supplement* into subsection 23(1). A training supplement is defined as meaning an amount payable under new subsection 503B(2) to a person receiving a parenting payment or an amount payable under subsection 644AAC to a person receiving newstart allowance.

Item 3 – After paragraph 23(4AA)(a)

Inserts new paragraph 23(4AA)(aa). This amendment has the effect that, for the purposes of determining whether training supplement remains payable to a person, a person will be taken to receive parenting payment or newstart allowance for a certain period after that payment or allowance stops due to the person's or their partner's employment income. This is consistent with the treatment of other supplements, for example, the approved program of work supplement and the language, literacy and numeracy supplement.

Item 4 – After section 28A

Inserts new section 28B which allows the Secretary to approve a training course for training supplement for a person. The person will then be paid the training supplement if they participate in that course.

New subsection 28B(1) provides that the Secretary may approve a training course for training supplement where certain requirements exist in relation to a person and the course, and the Secretary is satisfied the person will meet certain requirements set out in paragraph (4)(a) or (b).

The Secretary will only be able to approve a training course for a person where:

- the person has not completed the final year of secondary school or an equivalent level of education; or
- the person:
 - o has been awarded a VET qualification accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; and

- is not studying for, and has not been awarded, a qualification accredited at diploma level or higher in the Australian Qualifications Framework.

In relation to the course, the Secretary will only be able to declare a training course to be an approved course if:

- the course lasts not more than 12 months; and
- the course:
 - is accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; or
 - is equivalent to a course accredited at any of those levels.

In addition to the above requirements, where the person has been awarded a VET (vocational education and training) qualification accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework and is not studying for, and has not been awarded, a qualification accredited at diploma level or in higher in the Australian Qualifications Framework, the Secretary may only declare a training course to be an approved course where the course:

- leads to a qualification that, in the Australian Qualifications Framework, is directly related to, and at a higher level than, the person's VET qualification; or
- would, in the Secretary's opinion, enhance the person's prospects of employment by allowing the person to acquire skills in a trade or field other than the trade or field covered by the person's VET qualification.

In addition to the above, in order to declare a training course to be an approved course for training supplement the Secretary must be satisfied that either:

- the person will be a full-time student in respect of the course within the meaning given by section 569C; or
- if the person has a partial capacity to work or is the principal carer of at least one child - the person will undertake a number of hours of study per week in respect of the course as is reasonable in the person's circumstances.

New subsection 28B(5) provides that for the purposes of new section 28B, *Australian Qualifications Framework* has the meaning given by the *Higher Education Support Act 2003*.

The objective of this provision is to define clearly what courses a person in receipt of parenting payment or newstart allowance can undertake in order to receive the training supplement. The training supplement is directed at those people who have either not completed Year 12 or an equivalent level of education, or who have a trade qualification of Certificate IV level or lower and need to up-skill or re-skill to enhance their employment prospects. The supplement is intended to be an incentive to those people to obtain qualifications up to Certificate IV level.

In practice, approval of a course for a person will be undertaken by a delegate of the Secretary by including the course in the person's Parenting Payment or Newstart Employment Pathway Plan.

Items 5, 6, 10, 11 and 12 – Multiple entitlement exclusions

Items 5, 6, 10, 11 and 12 provide for multiple entitlement exclusions in relation to the training supplement, that is, ensure that where training supplement and another supplement is payable to a person in respect of the same period, only one supplement is payable.

Item 6 and the new section 644AAB inserted by **item 10** ensure that where a training supplement (of \$41.60) and an approved program of work (“Work for the Dole”) supplement (of \$20.80) are both payable to a person in respect of the same fortnight, only the training supplement is payable to the person. **Item 5** is consequent to the amendment made by item 6.

Item 11 ensures that where a training supplement (of \$41.60) and a language, literacy and numeracy supplement (of \$20.80) are both payable to a person in respect of the same fortnight, only the training supplement is payable to the person.

Item 12 ensures that where a training supplement (of \$41.60) and a CDEP Scheme Participant Supplement (of \$20.80) are both payable to a person in respect of the same fortnight, only the training supplement is payable to the person.

Item 7 – After section 503AA

Inserts new section 503B. This new section provides for a training supplement for a person receiving parenting payment. New section 503B provides that a person’s rate of parenting payment is to be increased by a training supplement of \$41.60 per fortnight for each fortnight the person participates in a course where the person:

- is receiving a parenting payment; and
- is subject to the parenting payment participation requirements; and
- is participating in an approved training course for training supplement for the person; and
- started participating in the course after this section commenced and before 1 July 2011.

New subsection 503B(3) provides that a training supplement is not payable during a fortnight in which the person participates in a course if a Parenting Payment Employment Pathway Plan is in force in relation to the person and, during that fortnight, the person ceases to participate in the course in circumstances that constitute a failure to comply with the plan. Thus, for example, if a person is required by their Parenting Payment Employment Pathway Plan to attend their approved course for 15 hours per week, and they attend the course in the first week in a fortnight but not the second week, training supplement will not be payable to them at all for that fortnight.

Items 8 and 9 – Newstart activity test

Item 8 inserts new subsections 601(4B) and (4C). Section 601 provides for when a person will satisfy the newstart allowance activity test.

New subsection 601(4B) provides that a person satisfies the activity test in respect of a period if, throughout the period, the person:

- is participating in an approved training course for training supplement; and

- is, in the Secretary's opinion, making satisfactory progress towards completing the course.

In determining whether a person is making satisfactory progress towards completing the course, new subsection 601(4C) provides that the Secretary must have regard to any guidelines set under subsection 541B(3B).

Subsection 541B(3B) allows the Minister, by legislative instrument, to set guidelines regarding whether a person is making satisfactory progress towards completing a course for the purposes of satisfying the full-time study requirement for youth allowance.

Item 9 inserts a reference to new subsection 601(4B) into subsection 601(5). This amendment provides that where a person fails to comply with the terms of their Newstart Employment Pathway Plan throughout a period, they will not be able to satisfy the activity test in respect of the period where they satisfy new subsection 601(4B). That is, even if a person is participating in an approved training course for training supplement and is, in the Secretary's opinion, making satisfactory progress towards completing the course, the person will not satisfy the newstart allowance activity test if they are not also complying with the requirements of their Newstart Employment Pathway Plan.

Item 10 – After section 644AAA

Inserts new sections 644AAB and 644AAC.

New section 644AAB provides that an approved program of work ("Work for the Dole") supplement is not payable to a person in respect of a fortnight if a training supplement is payable to the person in respect of the same fortnight; see reference to items 5, 6, 10, 11 and 12 above

New section 644AAC provides for a training supplement for a person receiving newstart allowance. New section 644AAB provides that a person's newstart allowance is to be increased by a training supplement of \$41.60 per fortnight for each fortnight the person participates in a course where the person:

- is receiving a newstart allowance; and
- is participating in an approved training course for training supplement for the person; and
- started participating in the course after this section commenced and before 1 July 2011.

New subsection 644AAB(3) provides that a training supplement is not payable for a fortnight during which a person participates in an approved training course if, during the fortnight, the person ceases to participate in the course in circumstances that constitute a failure of the activity test to which the person is subject; or if a Newstart Employment Pathway Plan is in force in relation to the person, a failure to comply with a requirement in the plan. Thus, for example, if a person is required by their Newstart Employment Pathway Plan to attend their approved course for 15 hours per week, and they attend the course in the first week in a fortnight but not the second week, training supplement will not be payable to them at all for that fortnight

Items 13 and 14 – Subparagraph 1223(7)(b)(iii)

Repeals and substitutes subparagraph 1223(7)(b)(iii). This amendment provides that where a person was receiving a parenting payment or newstart allowance and that parenting payment or newstart allowance was incorrectly increased by an amount of training supplement to which they were not entitled, the amount of training supplement they received to which they were not entitled is a debt due to the Commonwealth.

This amendment will ensure that any over-payments of training supplement are able to be recovered by the Commonwealth.

Part 2—Youth allowance for early school leavers

Social Security Act 1991

Item 15 – Subsection 23(1)

Inserts a definition of *early school leaver* into subsection 23(1). An early school leaver is defined as a person who:

- is less than 21 years old; and
- has not completed the final year of secondary school, or an equivalent level of education; and
- is not undertaking full-time study.

(Section 541B of the Act defines when a person is taken to be undertaking full-time study).

Items 16 to 20 – Youth allowance activity test

Items 16 to 20 amend section 541 of the Social Security Act, which relates to the activity test for youth allowance. A person can only qualify for youth allowance if they satisfy the activity test (or are a CDEP Scheme Participant). The purpose of the amendments is to ensure that early school leavers satisfy the activity test by undertaking full-time study or by complying with a Youth Allowance Employment Pathway Plan that (subject to some exceptions) includes approved training activities or a combination of approved training and other activities.

The amendment made by **item 16** ensures that an early school leaver will not be able to satisfy the youth allowance activity test throughout a period by actively seeking, and willing to undertake, suitable paid work in Australia.

The amendments made by **items 17, 18 and 19** then enable an early school leaver to satisfy the activity test by meeting the requirements of their Youth Allowance

Employment Pathway Plan. The terms of Youth Allowance Pathway Plans for early school leavers will contain requirements relating to training and education; refer to item 42, below.

Item 20 inserts new paragraph 541(2)(aa) which has the effect that an early school leaver will not be able to satisfy the youth allowance activity test by undertaking paid work.

Item 21 – Section 541A

Makes a technical amendment related to item 25.

Item 22 – Paragraph 541A(c)

Paragraph 541A(c) provides that a person is taken to have failed the activity test in respect of a period where the person refuses or fails, without reasonable excuse, to attend a job interview. The amendment made by **item 22** will mean that an early school leaver cannot fail the activity test where they refuse or fail to attend a job interview. This is because an early school leaver should not be required to attend job interviews, as they should be undertaking training, or training and other activities.

Items 23 and 24 – Paragraph 541A(f)

Repeals paragraphs 541A(g) and (h). These paragraphs are being repealed as they make reference to section 541C which has been repealed.

Item 25 – At the end of section 541A

Inserts new subsection 541A(2).

Section 541A contains circumstances where a person cannot be taken to satisfy the activity test for youth allowance.

Paragraph 541A(1)(d) provides that a person cannot be taken to satisfy the activity test in respect of a period where the person voluntarily ceases, without reasonable excuse, to take part in, or is dismissed for misconduct from, a labour market program.

Paragraph 541A(1)(e) provides that a person cannot be taken to satisfy the activity test in respect of a period where the person refuses or fails to commence, or to complete, an approved program of work for income support payment that the person is required to undertake.

Paragraph 541A(1)(f) provides that a person cannot be taken to satisfy the activity test in respect of a period where the person refuses or fails to comply with the conditions

of a labour market program or approved program of work for income support payment.

New subsection 541A(2) provides that paragraphs 541A(1)(d), (e) and (f) will only apply to an early school leaver if participation in the labour market program or approved program of work is included as a requirement in their Youth Allowance Employment pathway Plan. In short, an early school leaver's non-training activities must be included in their Youth Allowance Employment Pathway Plan to be enforceable.

Items 26 to 36 – After subparagraph 542A(1)(a)(i)

Item 26 inserts new subparagraph 542A(1)(a)(i). This amendment will allow an early school leaver with a Youth Allowance Employment Pathway Plan to be exempt from the activity test for a period if they are temporarily unable to fulfil the requirements of their plan due to a temporary medical condition.

Items 27 and 29 to 36 then inserts references to 'the required activities' into subparagraphs 542A(1)(d)(iii) and (iv); subparagraph 542C(2)(a)(i); 542C(2)(b); paragraphs 542C(3)(c) and (d) and (4)(c) and (d); paragraph 542C(5)(b); subparagraph 542C(5)(c)(ii); paragraph 542C(6)(b); subparagraph 542C(6)(c)(ii); and paragraph 542C(7)(c); as a consequence of the amendment made by 26.

Item 28 inserts a definition of *the required activities* in relation to an early school leaver in relation to whom a Youth Allowance Employment Plan is in force into subsection 542A(3). *The required activities* are defined as the activities required to be undertaken by the plan.

37 At the end of section 542C

Inserts new subsection 542C(9) which provides that for the purposes of section 542C the term 'the required activities' has the meaning given by subsection 542A(3).

Item 38 – At the end of paragraph 542E(1)(a)

Inserts new subparagraph 542E(1)(a)(iii). This amendment will extend the provisions which provide for a remote area exemption from the activity test for a period to the case where the Secretary considers it reasonable to assume that an early school leaver is present in an area where there is no locally accessible approved course of training or education (including any such course available by distance education).

Items 39 to 42 – Paragraph 543A(2A)(e)

Subsection 543A(2) provides that where a person is under 18 years of age the person will not be taken to have attained the minimum age to qualify for youth allowance unless the person:

- (a) has completed the final year of secondary school, or an equivalent level of education; or
- (b) is undertaking full-time study; or
- (c) has agreed to enter into a Youth Allowance activity agreement; or
- (d) is a new apprentice.

Item 37 amend paragraph 543A(2)(c) to clarify that a person aged 15 to 17 is of youth allowance age if they have entered into a Youth Allowance Employment Pathway Plan.

Subsection 543A(2A) provides that where the Secretary considers that a person aged 15 to 17 does not have the capacity to undertake full-time study or training because of the circumstances listed in that subsection, the person is taken to meet the minimum age to qualify for youth allowance. Essentially, subsection 543A(2A) lists a series of exemptions from the requirements of subsection (2) that allows a person aged 15 to 17 to qualify for youth allowance.

Item 38 repeals paragraph 543A(2A)(e). This has the effect that a person aged 15 to 17 who does not meet the requirements of subsection (2) is not taken to be of youth allowance merely because they have had full-time work for 6 weeks in the last 13 weeks. This means that a person aged 15 to 17 cannot qualify for youth allowance by working instead of meeting the requirements of subsection (2) e.g. in full-time study or entering into a Youth Allowance Employment Pathway Plan.

Similarly, **item 40** repeals paragraph 543A(2A)(o), with the effect that a person aged 17 who does not meet the requirements of subsection (2) is not taken to be of youth allowance age if they will become 18 in three months. This means that there is not a 3-month period before a person's 18th birthday during which they do not need to meet the requirements of subsection (2).

Item 39 will increase the number of hours contained in paragraph 543A(2A)(l) from 20 to 25 hours, in line with the requirements in a person's Youth Allowance Employment Pathway Plan.

Item 43 – Subsection 544B(1)

Inserts a reference to new section 544DA into subsection 544B(1). This amendment is consequential to item 42.

Item 44 – After section 544D

Inserts new section 544DA regarding Youth Allowance Employment Pathway Plans for early school leavers.

New subsection 544DA(1) provides that section 544DA will apply to a Youth Allowance Employment Pathway Plan that is in force in relation to an early school leaver.

New subsection 544DA(2) provides that unless subsection (5) applies in relation to the person, the plan must require the person to undertake for at least the appropriate number of hours per week:

- one or more approved courses of training or education; or
- a combination of:
 - o one or more approved courses of training or education; and
 - o one or more other activities that the Secretary considers suitable for the person.

New subsection 544DA(3) provides that where subsection (5) applies in relation to the person, the Plan must require the person to undertake, for at least the appropriate number of hours per week, one or more activities (other than an approved course of training or education) that the Secretary considers suitable for the person.

What constitutes an appropriate number of hours per week is defined in new subsection 544DA(4). This is defined as either 25 hours or another number determined by the Secretary to be appropriate having regard to the person's circumstances.

New subsection 544DA(5) will apply in relation to a person if:

- there is no locally accessible approved course of training or education (including a any such course available by distance education); or
- where there is such a course:
 - o there is no place available on the course for the person; or
 - o the person is not qualified to undertake the course; or
 - o the person lacks capacity to undertake the course because the person has a physical, psychiatric or intellectual disability, or a learning disability such as attention deficit disorder; or
- in the Secretary's opinion, special circumstances exist that make it unreasonable to require the person to undertake an approved course of training or education.

New subsection 544DA(6) provides that for the purposes of new section 544DA, a course is an approved course of training or education if it:

- is a course of study or instruction determined under section 5D of the *Student Assistance Act 1973* as a secondary course or a tertiary course for the purposes of that Act; and
- would, in the Secretary's opinion, assist or allow the person to complete the final year of secondary school or an equivalent level of education.

New subsection 544DA(7) empowers the Secretary to set guidelines, by legislative instrument, regarding the exercise of discretion in:

- determining whether special circumstances exist that make it unreasonable to require the person to undertake an approved course of training or education; and

- determining whether an approved course of training or education would assist or allow the person to complete the final year of secondary school or an equivalent level of education.
- New subsection 544DA(8) requires the Secretary to have regard to the guidelines set under 544DA(6) in determining whether special circumstances exist and whether an approved course of training or education would assist or allow the person to complete the final year of secondary school or an equivalent level of education.

The purpose of new section 544DA is to ensure that the Youth Allowance Employment Pathway Plans of early school leavers contain terms that require the early school leavers to undertake 25 hours of training and education, or 25 hours of training and education and other activities. The training and education undertaken by early school leavers under their Youth Allowance Employment Pathway Plans must assist or allow those early school leavers to complete Year 12 or an equivalent level of education. Only where the circumstances set out in subsection (5) arise can the terms of an early school leaver's Youth Allowance Employment Pathway Plan not include training and study.

Item 45 – Application of amendments in Part 2

Inserts an application provision. Subitem (1) provides that the amendments made by Part 2 will apply in relation to youth allowance payments claimed on or after the day on which the amendments commence; and in relation to existing youth allowance recipients will apply on or after 1 July 2010.

However, if an existing youth allowance recipient (being an early school leaver) enters into a Youth Allowance Employment Pathway Plan complying with the requirements in new section 544DA between 1 January and 30 June 2010 (the *transition period*), the amendments in Part 2 will apply to the existing youth allowance recipient from the time the Employment Pathway Plan is entered into.

Subitem (3) provides a definition of *existing youth allowance recipient* for the purposes of this item. An existing youth allowance recipient for the purposes of this item is defined as a person in receipt of youth allowance as a result of a claim for youth allowance made before the day on which the amendments made by this Part commence.