EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations)
SOCIAL SECURITY AMENDMENT (STUDENT INCOME SUPPORT REFORMS) BILL 2011

GENERAL OUTLINE

The Bill amends the Social Security Act 1991 to implement policy announced by the Government on 14 September 2011 following consideration of the recommendations of the Review of Student Income Support Reforms. The amendments remove the distinctions between Inner Regional and other regional and remote students for independent Youth Allowance as well as providing additional support for students from regional Australia who need to relocate to study.

The Bill has three principal measures.

The first measure changes the criteria under which youth allowance recipients from Inner Regional Australia are considered to be “independent”. The rate of youth allowance for independent recipients is not subject to a test for parental income, family actual means or family assets.

The arrangements for independence through the part-time and earnings workforce participation criteria available to young people from Outer Regional, Remote and Very Remote Australia will be extended to young people from Inner Regional Australia.

No person who is currently independent because of the existing workforce participation criteria will be affected by this change. In addition, no transitional or retrospective arrangements will be in place for young people who left secondary school in 2009 and 2010.

The second measure adjusts the amount of the relocation scholarship to provide additional assistance in the second and third years to eligible higher education students from regional or remote areas who are required to live away from home to study, in recognition of the multiple barriers and high costs faced by this group.

This amendment resets Relocation Scholarship values from 2012. For eligible students from regional areas, the 2012 values will be $4000 in the first year of living away, $2000 in each of the second and third years and $1000 in any subsequent years of study. For eligible students from Major Cities, the 2012 values will be $4000 in the first year of living away and $1000 in subsequent years of study. From 2013, indexation will apply annually, as per current arrangements. There is no change to eligibility criteria for the relocation scholarship.

Note: The 2011 values of relocation scholarship were $4124 in the first year and $1031 in subsequent years for all eligible students.

The third measure changes the amount of the student start-up scholarship for eligible students.

This amendment resets the student start-up scholarship value in 2012 to $1025 per half year payment. These amounts will be indexed each year from 2013. There is no change to eligibility criteria for student start-up scholarship.

Note: The 2011 value of student start-up scholarship was $1097 per half year payment.
The Bill brings forward by 18 months the cessation of the Rural Tertiary Hardship Fund, which provides a one-off payment of $3000 under a grants-based scheme in the first year that a higher education student from a regional or remote area is required to live away from home. The $20 million Rural Tertiary Hardship Fund will cease after 2011 and the savings form part of the offsets for the package of reforms.

The Bill also makes amendments of a technical nature.

**FINANCIAL IMPACT STATEMENT**

<table>
<thead>
<tr>
<th>Year</th>
<th>Expense ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-12</td>
<td>5.3</td>
</tr>
<tr>
<td>2012-13</td>
<td>32.4</td>
</tr>
<tr>
<td>2013-14</td>
<td>33.2</td>
</tr>
<tr>
<td>2014-15</td>
<td>33.9</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>104.9</strong></td>
</tr>
</tbody>
</table>

Note: The financial impact statement does not include estimated total savings of $115.3 million ($111.0 million from Department of Education Employment and Workplace Relations and $4.3 million from Department of Human Services) from delaying by two years the extension of youth allowance and austudy to students undertaking any Masters programs by coursework. This measure was to be implemented from 1 January 2012 and will now be implemented from 1 January 2014. The measure will be effected by legislative instrument and does not form part of this Bill.
SOCIAL SECURITY AMENDMENT (STUDENT INCOME SUPPORT REFORMS) BILL 2011

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be cited as the Social Security Amendment (Student Income Support Reforms) Act 2011 (the Act).

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions of 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 anything not covered elsewhere in the table to commence on Royal Assent;
- Schedule 1 and Part 1 of Schedule 2 to commence on 1 January 2012; and
- Part 2 of Schedule 2 will commence immediately after the commencement of Item 15 of Schedule 2 to the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011 (which commences on 1 January 2012).

A Note makes it clear that these commencement times will not be amended by any later amendments of the Act (once enacted).

Subclause 2(2) provides that any information in column 3 of the table does not form part of the Act. Information in column 3 may be inserted or varied in any published version of the Act (once enacted).

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 abbreviations:

Schedule 1 – Student Income Support Reforms

Part 1 – Independence

Social Security Act 1991

Item 1 – Paragraph 1067A(10E)(a)

Subsection 1067A(10) sets out three situations in which a person is considered to be independent because they have been supporting themselves through paid work. Subsection 1067A(10A), which was put in place under the Social Security and Other Legislation Amendment (Income Support for Students) Act 2010, has the effect of removing the potential application of two of the three of these situations, unless subsection (10B), (10C) or (10E) applies to the person.

Subsection 1067A(10E), which took effect from 1 January 2011, currently enables certain students from Outer Regional Australia, Remote Australia and Very Remote Australia, (based on the Australian Standard Geographical Classification (ASGC)) to still be regarded as independent if any of the three situations applies to them.

Item 1 amends subsection 1067A(10E) to allow all three situations specified in section 1067A(10) to also apply, from 1 January 2012, to certain students from Inner Regional Australia, as classified under ASGC.

This amendment enables students from Inner Regional Australia to qualify as independent via two of three workforce participation criteria under the same conditions currently applying to students from Outer Regional, Remote and Very Remote Australia. In doing so, it will remove distinctions between students from regional and remote Australia for access to independent status so that more students will be able to receive youth allowance.

Part 2 – Amount of relocation scholarship payment

Social Security Act 1991

Item 2 – Subsection 5(1) (paragraphs (a) and (b) of the definition of parent)

Item 2 amends paragraphs (a) and (b) of the definition of parent in subsection 5(1) of the Social Security Act, so that it applies to the new section 592L (see Item 3). The new section uses the concept of “parent” in subsection (5) in connection with the notion of a person’s parental home.

Item 3 – Section 592L

Item 3 repeals current section 592L and replaces it with new section 592L.

Consistent with existing provisions, under new subsection 592L(1) a person’s relocation scholarship amount will be $4000 unless the person has previously received a “student relocation payment”, that is, a relocation scholarship payment or its equivalent. The term “student relocation payment” is defined in new subsection (7) and captures the payments that are equivalent to a relocation scholarship. These mirror the comparable provisions in the existing
subsection 592L(3). The result is identical to the current situation, where a person who has already received a relocation scholarship payment or equivalent (i.e. a “student relocation payment”) is not entitled to the $4000 relocation scholarship payment amount.

The $4000 payment is intended to assist young people with the higher costs associated with their first year of relocation to study; the $4000 is not intended to be available to a young person who has already relocated and commenced study, even if they have not previously received a relocation scholarship or equivalent.

Therefore, consistent with existing provisions, a person will not be eligible for the $4000 payment amount in new subsection 592L(1) where they have, at any time before the calendar year containing the qualification time, undertaken full-time study in what would have been an “approved scholarship course” had the person undertaken it at the qualification time, and they were either independent or required to live away from home at a time while the person was undertaking the study and which time was also more than 6 months before the qualification time (new subsection 592L(2)). The purpose of this provision is to replicate the current exception to the $4000 relocation scholarship payment amount in the existing subsection 592L(2). However, the exception is broadened somewhat to capture people who were studying approved scholarship courses (or courses that would become approved scholarship courses) in calendar years earlier than the calendar year before the year in which the person qualified for a relocation scholarship payment.

Proposed subsection 592L(3) provides for the usual amount of a relocation scholarship payment. This amount is $1000, and is the amount a person is entitled to receive if the person is not entitled to the $4000 payment under subsection (1) or the $2000 payment under subsection (4).

Proposed subsection 592L(4) is the key provision for the new section 592L. In recognition of the additional barriers and high costs facing young people from regional and remote areas who need to relocate in order to undertake higher education, this provision is intended to provide eligible relocation scholarship recipients who come from regional and remote areas with higher rates of assistance ($2000 in 2012) in their second and third year of living away to study.

A person is entitled to a $2000 relocation scholarship amount if:

- the person is a from a remote or regional location (defined in subsections (7)); and
- the person was undertaking full-time study in a course (that is an approved scholarship course at the time the person qualifies for a relocation scholarship payment) in a calendar year before the year in which they qualify for a relocation scholarship payment; and
- at the time the person was undertaking that study (i.e. in that prior year), he or she:
  - was independent for at least one of the reasons set out in subsections 1067A(3), (5), (6), (7), (8), (9) or (11); or
  - was required to live away from home (a term defined in section 1067D); or
  - received a student relocation payment (e.g. an earlier relocation scholarship payment).

The operation of paragraph 592L(4)(b) – in particular its reference to “in 1 or 2 (but no more) of the prior years” – ensures that the person is only entitled to the $2000 payment no more than twice. Proposed subsections 592L(5) and (6) define the classes of people – the students from remote and regional locations – who are entitled to the new $2000 payment under subsection (4).
Eligible recipients of relocation scholarship who are dependent will be able to access the $2000 rates in their second and third year of living away if their parental home is in a regional or remote location.

Proposed subsection 592L(5) provides that a person is entitled to the $2000 payment if:
- at the time the person qualifies for the relocation scholarship payment:
  - the person is not independent but is required to live away from home; and
  - the home of a parent of the person is in a regional or remote location (defined in proposed subsection 592L(7)).

Eligible recipients of relocation scholarship who are independent will be able to access the $2000 rates in their second and third year of living away if they were living in a regional or remote location 6 months prior to commencement of higher education study. In acknowledgement that young people who move away from regional areas to access higher education will usually need to relocate some weeks or months prior to the start of the academic year, this provision is intended to ensure that independent young people from regional and remote areas who relocate to a major city up to 6 months prior to commencement of study are able to access the higher rates of assistance.

Proposed subsection 592L(6) provides that a person is entitled to the $2000 payment if:
- at the time the person qualifies for the relocation scholarship payment, the person is independent for at least one of the reasons set out in subsections 1067A(3), (5), (6), (7), (8), (9) or (11); and
- at the time 6 months before the time the person first undertook study in a prior year, the person’s usual place of residence was in a regional or remote location (defined in proposed subsection 592L(7)).

Proposed subsection 592L(7) defines the terms regional or remote location and student relocation payment for the purposes of section 592L.
- The definition of regional and remote location includes Inner Regional Australia as set out in the ASGC.
- As mentioned above in connection with subsection 592L(2), the definition of student relocation payment is identical to the list of kinds of payments that, under the current law, make a recipient ineligible for the $4000 relocation scholarship payment.

**Item 4 – Application**

**Item 4** is an application provision. It provides that new section 592L will apply with respect to amounts of relocation scholarship payments for which the qualification times are on or after commencement of Part 2 of Schedule 1. This will ensure that students who have received relocation scholarships before the commencement of this provision will not be affected by this amendment.

When determining whether new subsection 592L(1) applies, subsection (2) of Item 4 provides that it is necessary to take account of payments and value received before, on or after the commencement of Part 2 of Schedule 1. With respect to determining whether new subsection 592L(4) applies, subsection (3) of Item 4 provides that it is necessary to take account of prior years occurring before or after the commencement of Part 2 of Schedule 1.
Item 5 – Section 1190 (table item 69, column 4)

Item 5 makes consequential amendments to table item 69 of the “indexed and adjusted amounts table” contained in section 1190 of the Social Security Act.

Item 6 – Transitional – no indexation on 1 January 2012

Item 6 inserts a transitional provision which provides that the relocation scholarship payment amount will not be indexed on 1 January 2012.

Part 3 – Amount of student start-up scholarship payment

Social Security Act 1991

Item 7 – Section 592H

Item 7 repeals section 592H of the Social Security Act and inserts new section 592H. New Section 592H resets the value of the student start-up scholarship which, from 1 January 2012, will be $1025 per payment. Eligible students will therefore receive a total payment in 2012 of $2050, as the student start-up scholarship payments are paid to students twice-yearly.

New section 592H also contains in a note that the value of the student start-up scholarship payment will be indexed annually, in line with CPI increases, for a person who is qualified for a student start-up scholarship payment on or after 1 January 2013.

Item 8 – Section 1190 (cell at table item 68, column 4)

Item 8 makes consequential amendments to table item 68, column 4, of the “indexed and adjusted amounts table” contained in section 1190 of the Social Security Act.

Item 9 – Transitional – no indexation on 1 January 2012

Item 9 inserts a transitional provision which provides that indexation on the student start-up scholarship payment will not be applied on 1 January 2012.
Part 4 – Rural Tertiary Hardship Fund

Social Security Act 1991

Item 10 – Chapter 2BA

Item 10 of the Act repeals Chapter 2BA of the Social Security Act. In particular, as the repeal of Chapter 2BA will remove section 1061ZZFW the Minister will no longer have the power to determine a scheme (by legislative instrument) and distribute funds that provide assistance to rural and regional students in higher education.

This will have the effect that the Rural Tertiary Hardship Fund Scheme 2011 (the Scheme) as established under a legislative instrument will cease to exist from 1 January 2012.

Item 11 - Saving

As there may be reviews of refusals of applications for assistance under the Scheme which are unresolved upon commencement of Item 10 described above, Item 11 provides that Chapter 2BA will still apply in relation to such reviews and the making of payments which may arise as a result of successful reviews.
Schedule 2 – Other Amendments

Part 1 – Amendments commencing at the start of 1 January 2012

Social Security Act 1991

Item 1 – Point 1067G-G15 (note)

Section 1067G of the Social Security Act concerns the rate of youth allowance payable to a person and contains a youth allowance rate calculator. Module G of this calculator relates to the family actual means test and Submodule 1067G-G15 concerns a reduction in the rate of youth allowance where there is parental income in common.

Amendments made under the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011 (Election Commitments Act) in most cases, prevent dependent full-time secondary students aged 16-18 from receiving Youth Allowance. From 1 January 2012, new points 1067G-F31 and 1067G-F32 to the Social Security Act provide that students who would otherwise be eligible for Youth Allowance but for the operation of the amendments in Schedule 2 of the Election Commitments Act, and hence to whom the Parental Income Test (PIT) applies, are to be included in the family pool for Youth Allowance.

Students who are precluded from receiving Youth Allowance because of the operation of the amendments in Schedule 2 to whom the Family Actual Means Test applies should also have been included in the family pool. Item 3 of Schedule 2 of the Bill would correct this oversight by inserting a new point 1067G-G20 into the Act.

As a result of this amendment in Item 3 of Schedule 2 of the Bill, this note is required to be amended to include reference to the new 1067G-G20.

Item 1 repeals and substitutes the note to point 1067G-G15. The new note explains that points 1067G-G19 and 1067G-G20 affect whether a person to whom the parent income test applies has parental income in common with certain other people.

Item 2 – Paragraph 1067G-G19(a)

Submodule 6 of Module G of the calculator concerns reductions of youth allowance for family actual means (points 1067G-G15 to 1067G-G19).

Point 1067G-G19 applies Submodule 6 of Module G to a person who receives a payment under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme and to whom a parental income test under that scheme applies as if:

“(a) the parental income test under this Module [ie Module G] applied to the person; and
(b) the total of the amounts described in the following table as relevant to the person were the maximum payment rate for the person for the purposes of this Submodule.”

This wording incorrectly refers to the parental income test being in Module G where in fact it is in Module F.
**Item 2** removes the words “under this Module” from Point 1067G-G19. This is because the parental income test is under Module F.

**Item 3 – Section 1067G (at the end of Module G of the Youth Allowance Rate Calculator)**

**Item 3** inserts new points 1067G-G20 and 1067G-G21 into Submodule 6 of Module G of the youth allowance rate calculator (family actual means test).

New point 1067G-G20 provides that Submodule 6 of Module G applies in relation to an FTB child aged 16 or more who is a senior secondary school child as if:

- the parental income test (Module F) applied to the person, and
- the following amount were the maximum payment for the person:
  - if the person is under 18 – the amount (as indexed) that is specified in column 3 of item 1 of the table in point 1067G-B(2); or
  - if the person is over 18 – the amount (as indexed) that is specified in column 3 of item 2 of the table in point 1067G-B2.

New point 1067G-G21 provides that, for the purposes of the new point, a senior secondary school child has the same meaning as given by section 22B of the Family Assistance Act (disregarding subparagraph 22B(1)(a)(i) of the Family Assistance Act).

**Item 4 – Section 1223ABE – Debts in respect of scholarship payments**

**Item 4** repeals and substitutes section 1223ABE of the Social Security Act which concerns debts arising in respect of scholarship payments.

Substituted section 1223ABE clarifies the circumstances in which a debt arises in respect of scholarship payments where a person does not either start or continue to undertake an approved scholarship course.

Currently, under section 1223ABE a person will incur a debt to the Commonwealth where:

- he or she receives a student start up scholarship or relocation scholarship payment because he or she proposes to undertake an approved scholarship course and does not start to undertake the course (unless this failure to undertake the course is due to exceptional circumstances beyond the person’s control); or
- he or she receives a student start up scholarship or relocation scholarship payment because he or she proposes to undertake an approved scholarship course and, although the person starts to undertake the course, is no longer undertaking it 35 days after the course commences (unless this failure to be undertaking the course is due to exceptional circumstances beyond the person’s control); or
- he or she receives a student start up scholarship or relocation scholarship payment because he or she is undertaking an approved scholarship course, but is no longer undertaking it 35 days after qualifying for the payment (unless this failure to be undertaking the course is due to exceptional circumstances beyond the person’s control).
The amendments clarify:

- that a person does not have to be in the same approved scholarship course at the end of the 35 day period described in section 1223ABE for which they qualified for the scholarship payment in order to retain it (instead they simply have to be in an approved scholarship course at the end of the 35 day period); and
- that a person must be in full-time study (in an approved scholarship course) at the end of the 35 day period in order to retain the scholarship payment.

**Item 5 – Application**

**Item 5** is an application provision that will apply the amendment to be made by Item 4 to scholarship payments that are received on or after the commencement of Part 1 of Schedule 2. Clause 2 provides that Part 1 of Schedule 2 will commence on 1 January 2012.

**Part 2 – Amendments commencing later on 1 January 2012**

**Social Security Act 1991**

**Item 6 – At the end of subsection 543A(2AA)**

Section 543A of the Social Security Act prescribes the minimum age requirement for youth allowance. Paragraph 543A(2)(b) provides that, subject to subsections 543A(2A) and (2B), a person is taken to have attained the minimum age for youth allowance where they are undertaking full-time study and are either at least 16 years old, or are 15 years old and independent.

The Election Commitments Act inserted subsection 543A(2AA) into the Social Security Act. This subsection precludes a dependent full-time secondary student aged 16 to 17 from accessing Youth Allowance unless one of the following apply:

- the person is independent
- the person is taken by section 1067D to be required to live away from home
- the person was receiving Youth Allowance immediately before starting their secondary course.

This subsection will commence on 1 January 2012.

Under current arrangements, and in specific circumstances, some at-risk dependent young people may receive Youth Allowance in their own right rather than it being paid to their parent. This occurs where the young person is not benefiting from the payment, possibly resulting in disengagement from education, as the parent is using the money for other purposes.

This amendment to 543A(2AA) was also intended to include dependent full-time secondary students in at-risk situations as an exception to the preclusion, in the same manner the current protective mechanisms operate for this group under the *Social Security Act 1991*. 
**Item 6** inserts an additional exemption criterion into subsection 543A(2AA) (new paragraph 543A(2AA)(d)). This additional exemption criterion will enable the Secretary to make a determination that a person is not benefiting from family tax benefit that is being paid to his or her parents.

The insertion of **Item 6** will ensure that there are protective mechanisms in the Social Security Act by which dependent full-time secondary students who are assessed as being “at-risk” are able to access youth allowance directly rather than through their parents who would otherwise receive the family tax benefit on their behalf – by enabling the Secretary to make a determination under paragraph 543A(2AA)(d). This provision is designed to provide a protective mechanism to enable this vulnerable cohort of children to remain in full-time secondary school study and in the family home.

**Item 7 – Point 1067G-F31**

The Election Commitments Act inserted new point 1067G-F31 into Submodule 6 of the youth allowance rate calculator (reduction for parental income). New point 1067G-F31 provides that submodule 6 of Module F applies in relation to an FBT child aged 16 or more who is a secondary school child as if the parental income test under Module F applied to the person, and prescribes the maximum payment rates to be used for the purposes of submodule 6.

Under existing legislation a child cannot receive both Youth Allowance and payment from the Assistance for Isolated Children Scheme. Under the 1 January 2012 amendments to Family Tax Benefit however these senior secondary school children may attract both Family Tax Benefit and Assistance for Isolated Children payments.

The amendment is required to ensure that students attracting both Family Tax Benefit and Assistance for Isolated Children payments are not effectively counted twice in determining the maximum rate under the parental income test.

**Item 7** inserts additional words into point 1067G-F31, the effect of which is to make it clear that point 1067G-F31 does not apply to where the senior secondary school child is a child as described in point 1067G-F30 – that is where a payment is made in respect of him or her under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme.