



# **Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007**

**No. 184, 2007**

**An Act to amend the law relating to the provision  
of benefits to students, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend the law relating to the provision of benefits to students, and for related purposes**

*[Assented to 28 September 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Social Security Legislation  
Amendment (2007 Budget Measures for Students) Act 2007*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent.   | 28 September 2007   |
| 2. Schedule 1   | The day on which this Act receives the Royal Assent.   | 28 September 2007   |
| 3. Schedule 2, items 1 to 11  | The day on which this Act receives the Royal Assent.   | 28 September 2007   |
| 4. Schedule 2, item 12  | Immediately after the commencement of Schedule 3 to the <i>Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Act 2007</i> . | 1 January 2008      |
| 5. Schedule 2 items 13 to 18  | The day on which this Act receives the Royal Assent.   | 28 September 2007   |
| 6. Schedule 3   | 1 January 2008.  | 1 January 2008      |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendment of the Student Assistance Act 1973

### *Student Assistance Act 1973*

#### 1 Subsection 3(1)

Insert:

*financial institution* has the same meaning as in the *Social Security Act 1991*.

#### 2 After section 42

Insert:

#### 42A Recovery of amounts from financial institutions

(1) If:

- (a) an amount or amounts of student assistance benefit are paid to a financial institution for the credit of an account kept with the institution; and
- (b) the Secretary is satisfied that the amount or the amounts were intended to be paid for the benefit of someone who was not the person or one of the persons in whose name or names the account was kept;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

- (c) an amount specified in the notice, being the amount, or the sum of the amounts, of the student assistance benefit;
- (d) the amount standing to the credit of the account when the notice is received by the institution.

(2) If:

- (a) an amount or amounts of student assistance benefit that are intended for the benefit of a person are paid to a financial institution for the credit of an account that was kept with the

institution by the person or by the person and one or more other persons; and

- (b) the person died before the amount or amounts were paid; the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:
- (c) an amount specified in the notice, being the amount, or the sum of the amounts, of the student assistance benefit;
- (d) the amount standing to the credit of the account when the notice is received by the institution.
- (3) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:
- (a) the amount sought to be recovered from the deceased person's account; and
- (b) the reasons for the recovery action.
- (4) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

- (5) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

Note: The defendant bears a legal burden in relation to the matter in subsection (5). See section 13.4 of the *Criminal Code*.

- (6) If a notice is given to a financial institution under:
- (a) subsection (1) (amount paid to wrong account) in respect of an amount or amounts of student assistance benefit; or
- (b) subsection (2) (death of person in whose name the account was kept) in respect of an amount or amounts of student assistance benefit;
- any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the amount or amounts of student assistance benefit.

**3 Subsection 347(1) (note)**

Repeal the note, substitute:

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901*, and section 9 of the *Electronic Transactions Act 1999*, set out methods by which the notice may be given.

## Schedule 2—Amendment of the Social Security Act 1991

### *Social Security Act 1991*

#### **1 Subsection 23(1)**

Insert:

*VET provider* has the same meaning as in the *Skilling Australia's Workforce Act 2005*.

#### **2 Subparagraphs 569(2)(b)(i) and (ii)**

Omit “Master or”.

#### **3 Paragraph 569H(7)(e)**

After “TAFE course”, insert “or a course provided by a VET provider”.

#### **4 Subsection 569H(8)**

Repeal the subsection (not including the heading), substitute:

(8) There are 5 levels of tertiary courses: levels M, A, B, C and D.

#### **5 After subsection 569H(8)**

Insert:

*Level M courses*

(8A) A course for a degree of Master (or equivalent) is a Level M course.

#### **6 Subparagraph 569H(10)(c)(iii)**

After “TAFE course”, insert “or a course provided by a VET provider”.

#### **7 Paragraph 569H(11)(c)**

After “TAFE institution”, insert “or provided by a VET provider”.

#### **8 Paragraph 569H(12)(b)**

After “TAFE course”, insert “or a course provided by a VET provider”.

**9 Paragraph 569H(12)(b)**

Before “A,” insert “M,”.

**10 Application**

The amendments made by items 1 to 9 of this Schedule apply in respect of a period commencing on or after 1 January 2008.

**11 At the end of Division 1 of Part 2.23A**

Add:

**1061JL Person not qualified for crisis payment if qualified for crisis payment under ABSTUDY scheme**

A person is not qualified for a crisis payment under section 1061JG, 1061JH or 1061JHA in respect of a circumstance if the Secretary is satisfied that:

- (a) the person is qualified under the ABSTUDY scheme for a crisis payment in respect of that same circumstance; and
- (b) the crisis payment is payable under that scheme in respect of that circumstance.

**12 Section 1061JL**

Omit “ or 1061JHA”, substitute “, 1061JHA or 1061JJ”.

**13 Point 1067L-A1 (method statement)**

After step 2, insert:

|   |
|---|
| <p><i>Step 2A.</i> Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).</p> |
|---|

**14 Point 1067L-A1 (method statement, step 3)**

Omit “Steps 1 to 2”, substitute “Steps 1, 2 and 2A”.

**15 After paragraph 1070(d)**

Insert:

- (da) Austudy Payment Rate Calculator;

**16 Subsection 1070H(1)**

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After “accordance with”, insert “the Austudy Payment Rate Calculator or”.

Note: The heading to section 1070H is altered by inserting “**austudy payment,**” before “**mature age allowance**”.

### **17 Subsection 1070Q(1)**

After “Youth Allowance Rate Calculator”, insert “, the Austudy Payment Rate Calculator”.

Note: The heading to section 1070Q is altered by inserting “**austudy payment,**” after “**youth allowance,**”.

### **18 Application and transitional**

- (1) The amendments made by items 13 to 17 of this Schedule apply in respect of a fortnight that includes 1 January 2008, and later fortnights.
- (2) The applicable amount per fortnight of rent assistance for the purposes of step 2A of the method statement in point 1067L-A1 of the *Social Security Act 1991*, in respect of a fortnight that includes 1 January 2008, is the amount worked out using the formula:

$$\text{Standard amount} \times \frac{\text{Number of eligible days}}{14}$$

where:

**standard amount** is the amount per fortnight that would have applied if each day in the fortnight occurred on or after 1 January 2008.

**number of eligible days** is the number of days in the fortnight that occur on or after 1 January 2008.

## **Schedule 3—Amendment of the Income Tax Assessment Act 1997**

### *Income Tax Assessment Act 1997*

#### **1 Section 11-15 (table)**

After:

**social security or like payments**

insert:

ABSTUDY scheme, payment under..... Subdivision 52-E

#### **2 Section 51-35 (note)**

Omit “52-F”, substitute “52-E or 52-F”.

#### **3 Section 51-40 (note)**

Omit “52-F”, substitute “52-E or 52-F”.

#### **4 After Subdivision 52-D**

Insert:

### **Subdivision 52-E—Exempt payments under the ABSTUDY scheme**

#### **Guide to Subdivision 52-E**

##### **52-130 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the ABSTUDY scheme that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

## **Table of sections**

### **Operative provisions**

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| 52-132 | Supplementary amounts of payments   |
| 52-133 | Tax-free amount of ordinary payment on death of partner if no bereavement payment payable |
| 52-134 | Tax-free amount if you receive a bereavement lump sum payment                             |

## **Operative provisions**

### **52-131 Payments under ABSTUDY scheme**

- (1) This section tells you about the income tax treatment of a payment under the ABSTUDY scheme made in respect of a period commencing at a time when you were at least 16 years old.

Note: The whole of a payment made under the ABSTUDY scheme in respect of a period commencing at a time when you are under 16 years old may be exempt under section 51-10.

- (2) A crisis payment made to you under the ABSTUDY scheme is exempt from income tax.

- (3) If:

- (a) an \*ordinary payment becomes due to you; and
  - (b) the payment is not covered by subsection (4) or (6);
- the \*supplementary amount of the ordinary payment is exempt from income tax.

Note: To work out the supplementary amount of the ordinary payment, see section 52-132.

- (4) If:

- (a) your partner dies; and
- (b) you do not qualify for a payment under the ABSTUDY scheme in respect of that death; and
- (c) an \*ordinary payment becomes due to you during the bereavement period;

the \*supplementary amount and the \*tax-free amount of the ordinary payment are exempt from income tax.

Note 1: To work out the supplementary amount of the ordinary payment, see section 52-132.

Note 2: To work out the tax-free amount of the ordinary payment, see section 52-133.

(5) If a payment becomes due to you under the ABSTUDY scheme because of a person's death (except a lump sum payment because of your partner's death), the payment is exempt from income tax.

(6) If:

- (a) your partner dies; and
- (b) a lump sum payment under the ABSTUDY scheme becomes due to you because of your partner's death;

the total of the following are exempt from income tax up to the \*tax free amount:

- (c) the lump sum payment; and
- (d) all other payments that become due to you under the ABSTUDY scheme during the bereavement lump sum period.

Note: To work out the tax-free amount, see section 52-134.

(7) **ABSTUDY scheme** means the scheme known as ABSTUDY.

(8) **Ordinary payment** means a payment under the ABSTUDY scheme, other than:

- (a) a crisis payment; or
- (b) a payment made because of a person's death.

(9) The following expressions used in this Subdivision have the same meaning as in the ABSTUDY Policy Manual:

- (a) bereavement lump sum period;
- (b) bereavement period;
- (c) illness separated couple;
- (d) lump sum payment;
- (e) partner;
- (f) pension age;
- (g) respite care couple.

Note: In 2007, the ABSTUDY Policy Manual was accessible through the website of the Department of Education, Science and Training.

## **52-132 Supplementary amount of payment**

The \*supplementary amount of a payment is the total of:

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- (a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
  - (i) rent;
  - (ii) living in a remote area;
  - (iii) commencing employment;
  - (iv) travel to, or participation in, courses, interviews, education or training;
  - (v) a child or children wholly or substantially dependent on you;
  - (vi) telephone bills;
  - (vii) living away from your usual residence;
  - (viii) maintaining your usual residence while living away from that residence;
  - (ix) accommodation, books or equipment;
  - (x) discharging a HEC assessment debt (within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*);
  - (xi) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
  - (xii) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
  - (xiii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
  - (xiv) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and
- (b) so much of the payment as is included by way of pharmaceutical allowance.

### **52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable**

This is how to work out the *tax-free amount* of an \*ordinary payment for the purposes of subsection 52-131(4):

*Method statement*

*Step 1.* Work out the \*supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-132.

*Step 2.* Subtract the \*supplementary amount from the amount of the payment.

*Step 3.* Work out what would have been the amount of the payment if your partner had not died.

*Step 4.* Work out what would have been the \*supplementary amount of the payment if your partner had not died.

*Step 5.* Subtract the amount at Step 4 from the amount at Step 3.

*Step 6.* Subtract the amount at Step 5 from the amount at Step 2: the result is the *tax-free amount*.

### **52-134 Tax-free amount if you receive a bereavement lump sum payment**

This is how to work out the *tax-free amount* for the purposes of subsection 52-131(6):

*Method statement*

*Step 1.* Work out the payments under the ABSTUDY scheme that would have become due to you during the bereavement lump sum period if:

- (a) your partner had not died; and
- (b) your partner had been under pension age; and
- (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.

- Step 2.* Work out how much of those payments would have been exempt in those circumstances.
- Step 3.* Work out the payments under the ABSTUDY scheme or the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4.* Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

### 5 At the end of subsection 52-140(1)

Add “(other than a payment to or on behalf of a student under the scheme known as ABSTUDY)”.

### 6 At the end of subsection 52-140(1)

Add:

Note: The income tax treatment of payments under the scheme known as ABSTUDY is dealt with in Subdivision 52-E.

### 7 Subsection 995-1(1) (definition of *ordinary payment*)

Repeal the definition, substitute:

*ordinary payment* is defined as set out in this table:

| <b>Ordinary payment</b> |  |                                  |
|-------------------------|--|----------------------------------|
| <b>Item</b>             | <b><i>Ordinary payment</i>, in relation to this kind of a payment:</b>     | <b>has the meaning given by:</b> |
| 1                       | Payment under the ABSTUDY scheme   | subsection 52-131(8)             |
| 2                       | Payment under the <i>Military Rehabilitation and Compensation Act 2004</i> | subsection 52-114(3)             |
| 3                       | Social security payment  | subsection 52-10(3)              |
| 4                       | Veterans' affairs payment  | subsection 52-65(4)              |

### 8 Subsection 995-1(1) (after table item 2 in the definition of *supplementary amount*)

Insert:

2A Payment under the ABSTUDY scheme section 52-132

**9 Subsection 995-1(1) (at the end of the table in the definition of *tax-free amount*)**

Add:

2 Payment under the ABSTUDY scheme sections 52-133 and 52-134

**10 Application**

The amendments made by this Schedule apply in relation to a payment made on or after 1 January 2008.

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*[Minister's second reading speech made in—  
House of Representatives on 21 June 2007  
Senate on 20 September 2007]*

(123/07)

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