



## Family Assistance Legislation Amendment (Participation Requirement) Bill 2009

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## Glossary

<b>Abbreviation</b>	<b>Definition</b>
COAG	Council of Australian Governments
DEEWR	Department of Education, Employment and Industrial Relations
FAA	<i>A New Tax System (Family Assistance) Act 1999</i>
FAAA	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FTB–A	Family Tax Benefit Part A
LIA	<i>Legislative Instruments Act 2003</i>
NSA	Newstart Allowance
SSA	<i>Social Security Act 1991</i>
SAA	<i>Student Assistance Act 1973</i>
YA	Youth Allowance

## Family Assistance Legislation Amendment (Participation Requirement) Bill 2009

**Date introduced:** 16 September 2009

**House:** House of Representatives

**Portfolio:** Families, Housing, Community Services and Indigenous Affairs

**Commencement:** Sections 1 to 3 on Royal assent. Schedule 1 on 1 January 2010.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

To provide for legislative amendments to family assistance legislation necessary to implement a 2009-10 Budget initiative to improve education participation for young people aged 16 to 20.

### Background

#### Compact with young Australians

At the 30 April 2009 meeting of the Council of Australian Governments (COAG), one of the agreements was the Jobs, Training and Youth Transitions Agreement under the Compact with Young Australians.<sup>1</sup> Under this Compact, the Commonwealth and the States and Territories agreed to implement a National Youth Participation Requirement, to commence on 1 January 2010, which will make participation in education, training or employment compulsory for all young people until they turn 17. The National Youth Participation Requirement will include:

- a mandatory requirement for all young people to participate in schooling (meaning in school or an approved equivalent) until they complete Year 10, and

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1. Council of Australian Governments, *Jobs, Training and Youth Transitions Agreement*, Hobart, 30 April 2009, viewed 7 October 2009, [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2009-04-30/index.cfm#jobs](http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/index.cfm#jobs)

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- a mandatory requirement for young people who have completed Year 10, to participate in full-time (defined as at least 25 hours per week) education, training or employment, or a combination of these activities, until age 17.

COAG further agreed to bring forward the 90 per cent Year 12 or equivalent attainment rate target from 2020 to 2015. COAG also agreed to the development of a 2015 progress measure to ensure progress towards the 2020 target to halve the gap for Indigenous students in Year 12 or equivalent attainment.

To support the National Youth Participation Requirement, the Commonwealth agreed to make education and training a precondition for the young person to access Youth Allowance (YA) or for the parent/carer of a young person to access Family Tax Benefit Part A (FTB-A).<sup>2</sup>

### **2009-10 Budget announcement**

The government announced in the 2009-10 Budget a proposal aimed at improving participation requirements for 15 to 20 year olds.<sup>3</sup> The initiative involves no longer allowing qualification for YA for some unemployed jobseekers aged 15 to 20. Young people without a Year 12 certificate, or its equivalent, will be classified as early school leavers and will be required to be in full-time education or training to be able to qualify for YA, or for their parent/carer to qualify for FTB-A.

The legislation necessary to preclude qualification to YA to early school leavers was provided for with the *Social Security Amendment (Training Incentives) Act 2009*.<sup>4</sup> That Act received Royal Assent on 23 June 2009 and took effect from 1 July 2009.

This Bill is to preclude access to FTB-A for the parent/carer from 1 January 2010, where the young person is an early school leaver and not in education or training.

### **Cost**

The Explanatory Memorandum accompanying the Bill provide estimates of the costs and savings estimated to arise with the participation requirements for both YA and FTB-A in the Budget initiative. These savings and costs are estimated to be costs of \$81.6 million in 2009-10, \$8.7 million in 2010-11 followed by savings of \$7.0 million in 2011-12 and

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2. Council of Australian Governments, Jobs, Training and Youth Transitions Agreement.
  3. Australian Government, *Budget measures: budget paper no 2: 2009-10*, Commonwealth of Australia, 2009, pp. 170-171, viewed 7 October 2009, <http://www.aph.gov.au/budget/2009-10/content/bp2/html/index.htm>
  4. P Yeend, *Social Security Amendment (Training Incentives) Bill 2009*, Bills digest no. 164, 2008-09, Parliamentary Library, Canberra, 2009, viewed 7 October 2009, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd164.htm>

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\$41.4 million in 2012-13.<sup>5</sup> The savings and costs in the Explanatory Memorandum refer to both parts of the Budget initiative for participation requirements, that is, the non access to both YA and also precluding access to FTB-A, where a young person is an early school leaver and is not in education or training. The Budget papers estimate that the overall net cost over four years for this initiative will be \$41.9 million.<sup>6</sup>

The Budget papers did itemise savings and costs by portfolio. The savings in the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio will be mainly in reduced outlays of FTB-A. This was separately itemised as savings of \$18.9 million in 2009–10, \$32.3 million in 2010–11, \$32.4 million in 2011–12 and \$32.9 million in 2012–13.<sup>7</sup> In the Department of Education, Employment and Industrial Relations (DEEWR) portfolio there will be increased outlays for education programs expenditure and some reduced outlays on the YA program. These estimates are mainly based on estimates about the impact of the change by the government.

This proposal has not been done before and no one really knows how many of the current numbers of unemployed jobseekers aged 15 to 20, who are early school leavers, who will take up the education or training requirements to be able to access YA or for their parent/carer to access FTB-A.

### **Access to Youth Allowance as a young person**

YA can be paid to a young person who is:

- aged 16 - 20 years looking for full time work or undertaking a combination of approved activities, or have a temporary exemption from the participation and Activity Test requirements. From 1 July 2009, where the young person does not have a year 12 certificate, or an equivalent qualification (Certificate level II or above), they are required to undertake study or training to meet the activity test, or
- aged 16 - 24 years and studying or undertaking an Australian Apprenticeship full-time.

Youth Allowance - considered dependent and parental means testing

A young person applying for YA is assessed as either dependant or independent. Where the young person is considered dependent, then parental means testing applies as well as

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5. Explanatory Memorandum, Financial impact statement.

6. Australian Government, *Budget measures: budget paper no 2: 2009-10*, Commonwealth of Australia, 2009, pp. 170-171, viewed 20 October 2009, <http://www.budget.gov.au/2009-10/content/bp2/html/index.htm>

7. Australian Government, *Budget measures: budget paper no 2: 2009-10*.

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the personal income and assets tests that apply to YA. Parental means testing includes a Parental Income Test,<sup>8</sup> a Family Assets Test<sup>9</sup> and also the Family Actual Means Test.<sup>10</sup>

Youth Allowance considered independent – personal income and asset testing

Where the young person is considered independent, only the YA personal income and asset testing is applied to the young person. Parental means testing does not apply.

Dependent or independent for Youth Allowance

Independence for YA may be met where a young person:

- has worked full-time (at least 30 hours a week) for at least 18 months in the last two years
- has worked part-time (at least 15 hours a week) for at least two years since leaving school
- has been out of school for at least 18 months and has earned at least 75 per cent of the maximum rate of pay under wage level A of the Australian Pay and Classification Scale in an 18 month period
- has a partial capacity to work as determined by a job capacity assessment
- is or has been previously married or living in a marriage-like relationship for at least 12 months
- has a dependant child
- has parents who cannot exercise their responsibilities
- is unable to live at home due to extreme family breakdown, violence in the home, or serious threats to their health or well-being
- is a refugee without parents living in Australia or is an orphan, or
- is in State care, or only stopped being in State care because of age.

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8. The YA Parental Income Test has a free area of \$32 800 a year in 2009. Income over this amount reduces the maximum rate of YA payable by 25 cents in every \$1.

9. The YA Family Assets Test takes into account personal, business and farm assets. A 75 per cent discount is applied to business and farm assets. No payment can be made if family assets exceed \$571 500.

10. The YA Family Actual Means Test may apply where one or both of the parents in the previous financial year had an interest in a trust, private company or unlisted public company or was self-employed (except as a sole trader engaged wholly or mainly in primary production) or a partner in a partnership.

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To qualify as independent in a marriage-like relationship, the young person must be over the age of consent in the State or Territory they live in for that time. Six month relationships are accepted in special circumstances.

Where the young person does not meet one of these independence tests, they are considered dependent and then therefore parental means testing applies for YA.

### **Family Tax Benefit Part A for a young person aged 16 to 20**

For a young person aged 16 to 24 years, YA is the preferred payment as it can be paid at a higher rate than the rate of FTB-A payable. Where YA is not payable (commonly as family income or assets are too high), an alternative form of assistance commonly claimed by a parent/carer is FTB-A. Where YA is payable to a young person, FTB-A is not payable to a parent/carer. Where YA is not payable to a young person, FTB-A may be payable to a parent/carer if they have:

- a dependant child aged under 21 in their care for at least 35 per cent of the time, or
- a dependant full-time student aged 21–24 in their care for at least 35 per cent of the time.

Whether FTB-A can be paid will depend on the level of the family income. The income test cut-off limits for YA, being income support, are lower than those applying to FTB-A, which is income supplement. So it is common for YA not to be payable as the family income is too high but FTB-A to be payable, as the family income is below the FTB-A cut-off limits.

#### **Youth Allowance family income test limits**

In 2009, the YA parental income test free area is \$32 800 per year. The maximum rate of YA reduces by 25 cents for each \$1 of parental income above this free area. So for a dependant young person aged under 18 years living at home, in 2009 the maximum rate of YA is \$203.30 per fortnight. This means for this young person, YA would not be payable where parental income exceeded about \$54 000. This assumes there are no other children in the parent's/carer's care.

#### **Family Tax Benefit Part A income test limits**

In 2009, the FTB-A family income test free area is \$44 165 per year. The maximum rate of FTB-A<sup>11</sup> reduces by 25 cents in each \$1 of income above this free area until the FTB-A rate reaches the base rate. This FTB-A base rate is paid until annual family income reaches \$94 316.

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11. In 2009 the maximum fortnightly FTB-A rates are \$50.12 - young person aged 16 to 17 years or \$67.34 - young person aged 18 to 24 years.

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The income limits above which only the base rate of FTB-A are set out below.<sup>12</sup>

- This table shows the income limit above which only the base rate of Family Tax Benefit Part A may be paid (\$pa)

No. children aged 0–12 yrs	No. children 13–15 yrs			
	Nil	One	Two	Three
Nil		\$64 240	\$84 315	\$104 390
One	\$58 090	\$78 165	\$98 240	\$118 315
Two	\$72 015	\$92 090	\$112 165	\$132 240
Three	\$85 940	\$106 015	\$126 090	\$146 165

For young persons aged 16 to 17 years, the maximum rate of FTB-A is the same as the base rate and in 2009 this is \$50.12 per fortnight. Likewise, the same applies to the FTB-A rate for a young person aged 18 to 24 years and the 2009 rate is \$67.34 per fortnight. So for FTB-A paid in respect of a young person aged 16 to 17 years or 18 to 24 years the same rate is paid until annual family income exceeds \$94 316. Thereafter, income above \$94 316 reduces the FTB-A rate until income reaches the cut-off limits – see below.<sup>13</sup>

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12. Department of Families, Housing, Community Services and Indigenous Affairs, *A Guide to Australian Government Payments*, 20 September – 31 December 2009, Canberra, 2009, p. 3, viewed 21 October 2009, <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm>
  13. Department of Families, Housing, Community Services and Indigenous Affairs, *A Guide to Australian Government Payments*.

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- This table shows the income limits at which Family Tax Benefit Part A, including the supplement, may not be paid (\$pa)

No. children aged 0–17 yrs	No. children 18–24 yrs			
	Nil	One	Two	Three
Nil		\$102 541	\$114 562	\$127 519
One	\$101 045	\$113 065	\$126 023	\$138 980
Two	\$111 569	\$124 526	\$137 484	\$150 441
Three	*\$123 030	*\$135 987	*\$148 945	*\$161 902

So for a young person aged 16 to 24 years, where YA is not payable as family income is too high, FTB-A may be payable to a parent/carer, where family income is less than the FTB-A cut-off limit.

FTB-A also has an income limit for the young person's personal income and in 2009 FTB-A is not payable where this exceeds \$12 742 a year.

### Comment

The participation requirements for young persons without Year 12 completion have already been put in place for qualification to YA and they commenced from 1 July 2009.<sup>14</sup> The activity test requirements for qualification to FTB-A in this Bill are consistent with the YA requirements. The YA requirements impact on families with lower income, as access to YA under family means testing is tighter than access to FTB-A. The activity test requirements in this Bill for FTB-A will impact on families with higher incomes.

As was the case with the YA changes, the cost and savings estimates for placing activity test requirements for qualification to FTB-A for young people are essentially guesses, as the activity test requirements to be in study or training have not been applied to young persons for FTB-A before.

14. P Yeend, Social Security Amendment (Training Incentives) Bill 2009.

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## Main provisions

### Schedule 1—FTB Activity test

#### **A New Tax System (Family Assistance) Act 1999**

##### Part 1—Amendments

**Item 1** inserts a new definition of ‘approved course of study’ into the *A New Tax System (Family Assistance) Act 1999* (FAA). An ‘approved course of study’ in the FAA is to have the same meaning as set out in sub-section 541B(5) in the *Social Security Act 1991* (SSA).<sup>15</sup> This use of the ‘approved course of study’ definition in the SSA is consistent with other ‘approved course of study’ definitions providing welfare assistance, like for YA.

**Item 4** inserts a **new section 17B** in the FAA describing activity test requirements for FTB and also exemptions from the activity test. The activity test is met for FTB qualification where the young person has completed Year 12 or is studying. Exemptions from the activity test are also described including:

- no course being available
- no course being accessible
- the person is not qualified to undertake the course, or
- the person is unable to undertake the course for reasons of a disability.

**New section 17B** also empowers the Secretary to write guidelines in a Legislative Instrument about the application of **new paragraph 17B(1)(b)**, being whether the young person is undertaking appropriate study to achieve Year 12 completion and also **new paragraph 17B(2)(c)** about special circumstances preventing the young person from being in study. The Minister said in the second reading speech<sup>16</sup> when presenting the Bill, that there will be exemptions for special circumstances and the guidelines will be written by the Secretary and set out in a Legislative Instrument. Legislative Instruments are

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15. Section 541B(5)

For the purposes of paragraph (1)(c), the course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

16. J Macklin, ‘Second reading speech: Family Assistance Legislation Amendment (Participation Requirement) Bill 2009’, House of Representatives, *Debates*, 16 September 2009, pp. 9703–9704, viewed 20 October 2009, <http://www.aph.gov.au/hansard/hansreps.htm>

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generally disallowable by the Parliament under the *Legislative Instruments Act 2003* (LIA), unless the Principal Act, LIA or its regulations, otherwise provides.<sup>17</sup>

**Item 5** makes amendments to the definition of a FTB child in the FAA. The existing definition of a FTB child is replaced with provisions that set out a description for a child aged under 16 with no activity test requirements, followed by separate definitions for a young person aged 16 to 17 with an activity test requirement and also a young person aged 18 to 20, also with an activity test requirement.

### ***A New Tax System (Family Assistance) (Administration) Act 1999***

**Item 11** amends section 29 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAAA). Section 29 contains provisions to empower the Secretary to request information required to determine qualification or the setting of a rate. These are standard information requesting provisions that apply to all income support and supplement payments. Generally they empower the Secretary to request information necessary to determine qualification to a claim or in respect of payments and payment rate. **Item 11** includes references to the activity test and the provision of information required to determine if a person meets, or should be exempted from, the activity test requirements.

#### Part 2—Application and transitional

Whilst the activity test requirements in Schedule 1 commence on 1 January 2010, **item 13** amends this slightly in the case of ‘existing claimants’ for FTB-A paid by instalment. Specifically, if an instalment claim is made before 1 January 2010, only instalments that are payable on or after 1 May 2010 are subject to the Schedule 1 requirements: **subitem 13(2)**. By comparison, the Schedule 1 requirements will immediately apply to any claims made on or after 1 January 2010, even if the first instalment is payable before 1 May 2010: **subitem 13(1)**. However, the requirements do not affect any payment relating to a period before January 2010 – that is, they are not retrospective.

**Item 14** defines the activity test requirements transitional period to be from 1 January to 30 April 2010. **Item 14** also empowers the Secretary to request information in respect of a claim or payments in this transitional period, if it is about payments for a period on or after 1 May 2010.

## **Concluding comments**

The application of activity test requirements for a young person to have completed Year 12 study or to be in education to be a qualifying young person for FTB-A is consistent

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17. M Coombs, *Acts Interpretation Amendment (Legislative Instruments) Bill 2005*, Bills digest no. 11, 2005-06, Parliamentary Library, Canberra, 8 August 2005, viewed 20 October 2009, <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd011.htm>

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with requirements already in place for qualification to YA.<sup>18</sup> These requirements arise from a COAG agreement – the Jobs, Training and Youth Transitions Agreement under the Compact with Young Australians.<sup>19</sup>

The cost and savings estimates for placing activity test requirements for qualification to FTB-A for young people are essentially guesses, as the activity test requirements to be in study or training have not been applied to young persons for FTB-A before.

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18. P Yeend, *Social Security Amendment (Training Incentives) Bill 2009*.

19. Council of Australian Governments, *Jobs, Training and Youth Transitions Agreement*.

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