



Social Security Amendment (Income Support for Regional Students) Bill 2010

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Social Policy Section

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Law and Bills Digest Section

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Social Security Amendment (Income Support for Regional Students) Bill 2010

Date introduced: 28 October 2010

House: Senate

Portfolio: Private Senator's Bill introduced by Senator Nash (National Party)

Commencement: 1 January 2011

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill proposes to extend the eligibility for Independent Youth Allowance based on the workforce participation criterion to students residing in the Inner Regional zone of the Australian Standard Geographical Classification–Remoteness Area.

Background

Following the Bradley Review of Australian Higher Education which reported in December 2008 the Rudd Government undertook extensive reform of higher education and student income support. In response to the review's recommendations that the parental income test for Youth Allowance was too tightly targeted and students from higher income families were able to access Youth Allowance by meeting the workforce participation criterion for independence, the Government introduced reforms that increased the parental income thresholds and cut two of the workforce participation criterion.

The reforms were introduced through the [Social Security and Other Legislation Amendment \(Income Support for Students\) Bill 2009](#).¹ The original Bill was not passed by the Senate and remained in the committee stage of debate when the Senate rose for the summer recess in 2009. The Senate disagreed to the motion to adopt the report of the Committee of the Whole on 24 November 2009.

1. The background to the policy issues and the history of Youth Allowance have been extensively covered in the Bills Digest: L Buckmaster, D Daniels and C Dow, *Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009*, Bills Digest, no. 42, 2009–10, Parliamentary Library, Canberra, 2009, viewed 11 January 2011, <http://www.aph.gov.au/Library/pubs/bd/2009-10/10bd042.pdf>

On the 25 November 2009 the Government introduced the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2] into the House of Representatives. It contained the same package of measures that were presented to the Parliament in the original Bill with changes to reflect the Senate amendments agreed upon by the Government and the amendments negotiated between the Government and the Australian Greens and Senator Xenophon.²

The Bill did not pass until March 2010—as the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2010—after an agreement was reached between the Government and the Opposition which allowed students living in ‘Very Remote’, ‘Remote’ or ‘Outer Regional’ areas to access Youth Allowance under the previous independence test provided they had to leave home to study and met a parental income test of less than \$150 000 a year.³ The National Party was disappointed that inner regional students were not included. This category includes cities such as Bathurst, Goulburn, Lismore, Wagga Wagga, Taree, Albury-Wodonga, Shepparton, Ballarat, Bendigo, Rockhampton, Bundaberg, Bunbury, Launceston and Hobart. The Opposition’s education spokesman, Christopher Pyne, stated ‘the Coalition thinks that the Government could have gone further, we believe that the inner regional young people should have the same tests applied to them as rural and remote young people, but we aren’t prepared to delay this change any longer’.⁴

Basis of policy commitment

The Opposition committed during the 2010 election campaign to ‘relax the eligibility criteria for the Independent Youth Allowance which will be extended to students in the Inner Regional Category’.

On 28 October 2010 a motion by House of Representatives Opposition whip Nola Marino ‘requiring’ the Government to introduce legislation that would make it easier for students in inner regional areas to qualify for independent Youth Allowance’ was passed, with the support of all crossbench members except the Australian Greens’ Adam Bandt, 74 votes to 70.⁵ Despite the motion being passed in the lower chamber the private member’s bill was instead introduced in the Senate by Senator Fiona Nash. The Opposition gave no reason for this but journalist Bernard Lane understood

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2. D Daniels, *Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2]*, Bills Digest, no. 89, 2009–10, Parliamentary Library, Canberra, 2010, viewed 11 January 2011 <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F07SV6%22>
 3. See L Buckmaster, ‘Opposition seeks changes to eligibility for Youth Allowance for inner regional students’ *FlagPost*, 29 October 2010, viewed 11 January 2011, <http://parliamentflagpost.blogspot.com/2010/10/opposition-seeks-changes-to-eligibility.html>
 4. C Pyne, Transcript, Doorstop, *Government backdown on youth allowance*, 16 March 2010, viewed 10 January 2011, <http://www.pyneonline.com.au/news/article/transcript-doorstop-16-march-2010>
 5. House of Representatives, *Votes and Proceedings*, no. 11, 28 October 2010, <http://www.aph.gov.au/house/info/votes/rvpf011.pdf>

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it was 'because the House of Representatives saw the bill as appropriating money, which is the preserve of the executive'.⁶

On 16 November 2010, Senator Nash introduced a motion to have standing orders suspended in order to allow for the Bill to be debated. According to Senator Nash, the suspension was necessary because the Bill needed to be 'dealt with before the end of the year':

We have spent all year with thousands of students across the country who are absolutely desperate because they no longer have access to a funding mechanism that will allow them to start university or further tertiary education next year. That is the reason it is so important to debate this bill now, and why the government's refusal to do so is really quite extraordinary.⁷

The motion was supported by the Opposition and Senator Fielding but opposed by the Government, the Greens and Senator Xenophon and did not pass. The Government, the Greens and Senator Xenophon each argued that the Bill should first be considered by a Senate committee.

The Government opposes the changes in the Bill, arguing that they overturn the arrangements negotiated between the Government and the Opposition and passed only several months earlier. In response, Senator Nash has stated that the Opposition only supported the measures in the March 2010 Bill because it wanted to see other measures in the Bill passed:

We supported them because the then Minister for Education, Employment and Workplace Relations and current Prime Minister, Julia Gillard, refused to split the bill. She refused to deal with the independent youth allowance measures separately from all of those other measures in the bill that did have some value for those students and that we very much wanted to support. It was purely for political reasons that she would not split that bill. So, when Senator Evans stands up and tries to say, 'Gee, the coalition supported this before,' it is now on record exactly why we did it—we did it because we had no choice. But we now have an opportunity to make sure that we get some fairness for regional students.⁸

Committee consideration

The Bill has been referred to the Senate Standing Committee on Education, Employment and Workplace Relations for inquiry and report by 9 February 2011. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/index.htm

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6. B Lane, 'Labor loss opens gap-year fracas', *The Australian*, 29 October 2010, viewed 13 January 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F319723%22>
 7. Senator F Nash, 'Suspension of Standing Orders', Senate, *Debates*, 16 November 2010, p. 1344.
 8. Ibid.

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Policy position of minor parties/independents

As part of its 2010 election platform, the Australian Greens proposed a system in which all students in regional areas would be entitled to independent youth allowance so long as they needed to travel at least 90 minutes to attend university and their families earned less than \$150 000 a year.⁹ This differs from current arrangements and those proposed in the Bill in that eligibility is based around need (that is, the student is required to move away from home) rather than geographic location. This, they suggest would avoid problems inherent to systems based around geographic classification, whereby students can be disadvantaged in relation to others purely on the basis of geographic location. As such, the Greens do not support the provisions in this Bill, on the grounds that the Bill does not adequately address this problem. According to Senator Sarah Hanson Young, 'in its present form this bill does not solve the problem—it only offers a band-aid solution which still discriminates against country students'. The Greens have concerns with the proposed approach to funding the changes in the Bill through existing appropriations (see discussion below), arguing that the 'new system needs proper funding, and this needs to be negotiated with the Government through the Budget process'.¹⁰

Independent Senator, Nick Xenophon, has indicated that 'in the absence of an alternative approach' he will support the Bill.¹¹

While Family First Senator, Steve Fielding, did vote in support of Senator Nash's motion to allow for the Bill to be debated, he does not appear to have directly stated whether he will support the Bill.

Similarly, independent Members of the House of Representatives, Bob Katter, Tony Windsor, Rob Oakeshott and Andrew Wilkie, and Western Australia National, Tony Crook, do not appear to have directly stated whether they will support the Bill. However, each of them voted for Nola Marino's youth allowance motion in the House of Representatives. As discussed above, the motion required the Government to introduce legislation along the lines of that later introduced by Senator Nash in this Bill.

Position of major interest groups

Universities Australia has not commented on the Bill. A number of individual universities have written submissions broadly supporting the provision but with reservations regarding funding it from the Education Investment Fund (EIF).¹²

9. Senator S Hanson-Young, *Greens offer simple solution for student income support*, media release, 9 August 2010.

10. Senator S Hanson-Young, *Greens will work for fairer student income support*, media release, 1 November 2010.

11. J Ross, 'Xenophon to back Nationals on Youth Allowance', *Campus Review*, 17 January 2011; 'Xenophon supports Youth Allowance roll back', *ABC News*, 27 December 2010, viewed 1 February 2011, <http://www.abc.net.au/news/stories/2010/12/27/3102228.htm>

The National Union of Students (NUS) welcomed the passage of the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2010 but claimed ‘more work needs to be done to help rural students. NUS would like to see a commitment to review the changes that have been made for regional and rural students to make sure that it is a fair system which has been implemented’.¹³ In its submission to the Senate Standing Committee on Education, Employment and Workplace Relations NUS states:

Our starting point is that regional education disadvantage needs to be rigorously analysed so that systemic strategies and targets can be developed ... With regards to the bill *per se* NUS in principle supports measures that increase eligibility of our members to financial support. However, NUS does have concerns about further entrenching the use of ASGC [Australian Standard Geographical Classification] or postcode methodologies for the allocation of Centrelink administered benefits rather than a needs based methodology.¹⁴

Financial implications

The Explanatory Memorandum states ‘the financial impact is approximately \$90 million per annum’. However, there is no indication in the Explanatory Memorandum as to how this figure was derived. The Department of Employment, Education and Workplace Relations (DEEWR) estimate the cost will be \$270 million over three years.¹⁵ DEEWR have estimated this cost based on an expectation that in 2011-12 an extra 5500 students would be eligible rising to 11 000 in the budget out years.¹⁶

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12. Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Submissions 55, 83, 91, 147, 152, 199 and 209, http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/submissions.htm
 13. National Union of Students, *Youth allowance passed: first steps towards meaningful reform*, media release, 17 March 2010, viewed 2 February 2011, http://www.unistudent.com.au/site/index.php?option=com_content&view=article&id=282:youth-allowance-passed-first-steps-towards-meaningful-reform&catid=44:latest-news&Itemid=50
 14. Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Submission 186, viewed 2 February 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/submissions.htm
 15. Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Transcript of Evidence, 17 December 2010, pp. 49-55.
 16. Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Questions on Notice, DEEWR Question SIH-W3, (Questions on Notice no. 13), viewed 31 January 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/submissions.htm

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Main issues

Constitutional issues

On 17 November 2010, the President of the Senate, Senator John Hogg, tabled correspondence relating to the Bill. This included a letter from the Government Leader in the Senate, Senator Chris Evans, which enclosed advice from the Attorney-General suggesting that 'there are constitutional problems with the introduction of the Bill as it would, if enacted, appropriate revenue by increasing payments of youth allowance under the relevant standing appropriation'. Senator Evans requested Senator Hogg's 'assistance in drawing this matter to the attention of Senators so that steps may be taken to ensure the Bill does not proceed'.¹⁷

In response, Senator Hogg put the view that 'the bill in question does not appropriate money' and 'does not need to do so because any funds required to support the measures in the bill have already been appropriated by the Parliament in the form of a special appropriation of indefinite amount in section 242 of the *Social Security Administration Act 1999*'.¹⁸ Senator Hogg added that he does 'not intend to take any steps to ensure that the bill does not proceed'; rather, he 'intends to allow proceedings to occur in the usual way and the Senate to come to a decision on the matter'.¹⁹

In submissions to the Committee, both the Attorney-General's Department and the Clerk of the Senate, Dr Rosemary Laing put the contested positions of the Chambers to the Committee for its consideration.²⁰ The Department attaches the Attorney-General's letter to Senator Evans (the responsible Minister in this matter) and in essence endorses the Attorney-General's view that the Bill does appropriate money even though it does not have a formal clause to that effect (and accordingly cannot originate in the Senate).

Dr Laing puts the long-held view of the Senate and quoting from *Odgers'* that:

Money bills, which should properly be called appropriation bills, are those bills which contain clauses which state that money, of specified or indefinite amount, is appropriated for the purpose of the Bills. A bill which does not have such a clause is not an appropriation bill.²¹

She also points out that as this matter relates to a 'proposed law', not a law, the High Court will not entertain the matter and it is for Parliament to resolve (this means it is not justiciable).

17. C Evans (Leader of the Government in the Senate), Letter to Senator J Hogg (President of the Senate), 16 November 2010, tabled 17 November 2010.

18. J Hogg (President of the Senate), Letter to C Evans (Leader of the Government in the Senate), 16 November 2010, tabled 17 November 2010.

19. Ibid.

20. Senate Standing Committee on Education, Employment and Workplace Relations, Submissions 1 and 213.

21. Senate Standing Committee on Education, Employment and Workplace Relations, Submission 1.

The other issue is that if the Bill does pass both Chambers, it still has to be assented to by the Governor-General, who acts on the advice of the Executive. The Governor-General could act on the advice of the Federal Executive²², or heed the majority of the Parliament²³. Another possibility is for the Bill to be returned to the House of Representatives (or evolve in the House of Representatives) as a question of possible no-confidence. However, this issue remains unresolved.

Is the amendment a ‘stop-gap’ measure? Is there an alternative?

Senator Nash is quoted as saying the amendment is a ‘stopgap fix measure,’ and that there are better ways to assist students from regional areas.²⁴ Concerns about the workforce independence criteria contributing to delayed entry to study or discouraging study altogether for non-metropolitan students have given rise to suggestions for alternative mechanisms.

The main alternative canvassed at the committee hearings and elsewhere would involve granting independent status to students who need to move away from home to study. The University of Melbourne submission argues that:

The use of the work independence test at best needlessly delays entry to university. At worst, potential students may not be able to find enough work to satisfy the work test criteria and so still fail to become eligible for the independent Youth Allowance rate. It would be much better to create a new category of independent student, based on needing to move to study. The test in the temporary arrangements for 2009 gap year students—living 90 minutes or more from campus by public transport, and actually moving to study—is a possibility for a long-term measure.²⁵

The Isolated Children’s Parents Association put forward a similar argument:

We know rural students are grossly underrepresented in higher education and we know that access is one of the main contributors inhibiting this participation. Youth allowance guidelines need to include a separate category specifically identifying the students who must leave home to study at a tertiary institution. This new category could be ‘must leave the family home to study at a tertiary institution’ and the home postcode could be used to verify that to attend university

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22. In theory, the Bill could pass both Chambers without the support of the Government. See G Lindell, ‘[Assent or refusal to assent to legislation – on whose advice?](#)’ *Constitutional Law and Policy Review*, August 2009, p. 126.
 23. A Twomey, ‘The refusal or deferral of royal assent’ [2006], *Public Law*, p. 580, referred to in Lindell, above.
 24. J Ross, ‘Gap year extension not a permanent fix: Nationals’, *Campus Review Online*, 22 November 2010, viewed 11 January 2011, <http://www.campusreview.com.au/pages/section/article.php?s=News&idArticle=19355>
 25. University of Melbourne, Submission to the Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Submission 152, http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/submissions.htm

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the student must leave home. In a similar way, the home postcode was previously used to determine eligibility for the Commonwealth accommodation scholarships.²⁶

As noted above, the Australian Greens 2010 election policy was to provide for all students required to travel for more than 90 minutes each way to attend university to be entitled to the 'full rate of Youth Allowance'. This policy has since been costed by the government at \$805 million over the four years 2011-15. The costing document states that:

The proposal would introduce a new eligibility test for independence for Youth Allowance purposes. A university student would be classified as independent for Youth Allowance purposes if the student:

- lives away from home to attend university,
- has a parental home more than 90 minutes away from the place of study, and
- has parents with a combined income of less than \$150,000.²⁷

Other alternative mechanisms for recognising the financial disadvantages faced by non-metropolitan students certainly exist, that would not involve granting independent status to the student. Modifications to the parental means test that make it easier for this target group to qualify as dependent students could be considered or a supplement to the usual rate of payment for this group could be introduced. Both of these options could increase assistance to non-metropolitan students and extend eligibility to part-rate Youth Allowance to students who presently miss out due to the parental income test. However they would maintain the targeting to lower and middle income students, which is the objective of means testing.

How should the measure be funded?

The Explanatory Memorandum states that the change is 'to be budget neutral, with funding to be appropriated from the Education Investment Fund'. Parliament may need to consider the appropriateness of funding student income payments from the Education Investment Fund (EIF) which was established by the *Nation-building Funds Act 2008* to 'support world-leading, strategically-focused infrastructure investments that will transform Australian tertiary education and research'. How the Bill, which is amending the *Social Security Act 1991*, can appropriate funding from the EIF is not clear.

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26. S Quigley, Evidence to the Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, 17 December 2010, p. 8, <http://www.aph.gov.au/hansard/senate/commtee/S13384.pdf>
 27. Costings were prepared by the Department of Finance and Regulation for the Australian Greens and later released following a Freedom of Information (FOI) request. Department of Finance and Regulation, *New policy proposal costing for Australian Greens*, [2011].

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Advice from the Clerk of the Senate, Rosemary Laing, suggests that Senator Nash's proposal to fund the change from the EIF is unnecessary as Parliament has agreed to a standing or special appropriation under the *Social Security Act* which has effectively given 'a perpetual blank cheque for payments to be made. This means that a bill to change entitlements, such as providing wider access to income support, does not need to appropriate any money because the appropriation is already in place'.²⁸ Any increased appropriation arising from the Bill would negate the aim to maintain a budget neutral position.

Key provision

Section 1067A of the Act deals with payability and rates for those who are independent. **Schedule 1** of the Bill proposes to amend **paragraph 1067A(10E)a** by inserting the 'Inner Regional Australia' category to the eligible locations under the Remoteness Structure.

Concluding comments

The Bill proposes to extend the eligibility for Independent Youth Allowance based on the workforce participation criterion to students residing in the Inner Regional zone of the Australian Standard Geographical Classification–Remoteness Area. The Bill is a Private Senator's Bill introduced by Opposition Senator Fiona Nash and seeks to introduce a Coalition election commitment to 'relax the eligibility criteria for the Independent Youth Allowance which will be extended to students in the Inner Regional Category'.

The Bill is controversial on a number of grounds including that it overturns an agreement reached with the Government that Inner Regional students not be included with students in the Very Remote, Remote or Outer Regional areas in being able to access Youth Allowance under the broader test for Independent Youth Allowance that prevailed prior to the passage of the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2010 in March 2010.

Key questions raised by the Bill include:

- how will the Parliament resolve the Constitutional issues associated with the Bill, should this become necessary?
- does the Bill sufficiently address the problem of ensuring adequate income support for students who need it, or are alternative, more fundamental changes required?
- should the measure be funded from the EIF, the standing or special appropriation under the *Social Security Act* or some other mechanism?

28. R Laing, Submission to the Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Submission 1, p. 4, viewed 31 January 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/socialsecurity/submissions.htm

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