

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

STUDENT ASSISTANCE AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Higher Education
and Employment Services, the Hon Peter Baldwin, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

STUDENT ASSISTANCE AMENDMENT BILL 1991

OUTLINE

The Student Assistance Act 1973 gives the statutory basis for the AUSTUDY scheme. It also provides a debt management regime for the student assistance schemes administered by the Department of Employment, Education and Training.

Repeal of Post-graduate Awards

At present, the Student Assistance Act also provides the statutory basis for Post-graduate Awards. These were competitive awards for study in Masters and Doctoral courses. They have now been phased out, being replaced by a scheme of institution-based Australian postgraduate awards.

The new awards are funded under section 23(1)(c) of the Higher Education Funding Act 1988 and are not provided for in the Student Assistance Act. The present Bill therefore deletes references to the former awards from the Student Assistance Act.

Provision of tax file numbers

The Bill will also provide that students are to be paid student assistance only when they have provided their tax file numbers to the Department. This requirement will also apply to parents or spouses if the means test applies to the parents or spouse.

The Bill enables exemptions to be prescribed in the Regulations.

This measure was announced in the 1990 Budget context. It is part of a broader package involving data matching which will generate program savings of \$7m in a full year.

Late payment charge

The Student Assistance Act provides penalties for debtors who do not repay debts promptly, or do not arrange repayments by instalments.

At present, if a debtor is notified of a debt but does not repay it within 3 months, the debtor is liable for:

- a late payment charge comprising \$15 plus 10% of the debt remaining unpaid after the 3 months, up to a maximum of \$515; and

- interest on the debt, accruing from the end of the 3 months. This is to be set at 20%.

The Bill will vary the existing arrangements, so that after the 3 months, the debtor will be liable for:

- a flat late payment charge of \$100; and

- interest on the debt, accruing from the date when the debtor was advised of the debt and becoming payable after the 3 months.

The late payment charge reflects the cost of recovering debts. As the cost of debt recovery is independent of the level of the debt, the late payment charge will be a flat \$100 for all debts, regardless of the amount involved.

The charge will, however, remain a discretionary measure, to be used to encourage prompt repayment of debts rather than to raise revenue.

Protection of student assistance files

There have been some cases where a student's AUSTUDY file was sought by the non-custodial parent in a Family Court action. The Bill will protect information in student assistance files from subpoenas by courts and tribunals. The amendment is parallel to section 1313 of the Social Security Act 1991.

The amendment will not, however, restrict the access to Departmental files by courts or tribunals hearing AUSTUDY appeals.

Decisions of the Student Assistance Review Tribunal

The Bill will provide that the Student Assistance Review Tribunal must provide written decisions within 10 working days of handing down its decision.

Parliamentary review of Ministerial determinations

The Bill will provide that Ministerial determinations under the Student Assistance Act are to be tabled in the Parliament and to be subject to disallowance. However, Ministerial determinations about the manner of paying AUSTUDY will be replaced by corresponding provisions in the AUSTUDY Regulations.

FINANCIAL IMPACT

The measures proposed in the Bill are expected to produce savings of about \$8m a year.

Tax file numbers

The requirement to provide Tax File Numbers is part of a broader package involving data comparison under the Data-Matching Program (Assistance and Tax) Act 1990. Estimated savings to the Department from this package are \$7m in a full year. These will comprise:

- . the collection of past overpayments
- . the prevention of new overpayments identified through the matching process.

Further, there will be additional savings because increased public recognition of the Department's checking procedures will deter against fraud.

Late payment charge

Restructuring the late payment charge is expected to generate revenue of up to \$1m in a full year.

However the charge is not intended as a revenue raising measure. It is intended to produce savings by encouraging debtors to repay promptly or to arrange repayments by instalments.

Other changes

The other provisions in the Bill will have no significant financial impact.

NOTES ON CLAUSES

Clause 1: Short title etc.

Clause 1(1) sets out the short title of the proposed Act.

Clause 1(2) identifies the Student Assistance Act 1973 as the Principal Act.

Clause 2: Commencement

Clause 2(1) provides for the commencement of the Bill. The Bill commences when it receives the Royal Assent, except for clause 16(b) (see clause 2(2)).

Clause 2(2) provides that clause 16(b) takes effect from 2 January 1990. Clause 16(b) corrects a drafting mistake in section 43 of the Principal Act, so that it takes effect from the date when section 43 was inserted into the Principal Act. (Section 43 was inserted by the Student Assistance Amendment Act (No. 2) 1989, Act No. 171 of 1989. It was inserted as section 30G, but was later remembered as section 43.)

Clause 3: Interpretation

Clause 3 amends section 3 of the Principal Act, which sets out definitions.

Clause 3(a) provides that the Living Allowance for English as a Second Language Scheme is to be included as a "current special educational assistance scheme" (the Principal Act provides for a debt management regime in relation to current special educational assistance schemes: see Part 6 of the Principal Act).

The Living Allowance for English as a Second Language Scheme is a small scheme that provides a living allowance for migrant students undertaking certain courses in English as a Second Language. The allowance is at the same level as unemployment benefit.

Clause 3(b) amends the definition of "late payment charge" to replace the reference to section 39 with a reference to section 40(2)(a). This reflects amendments repealing section 39 and providing for the late payment charge in section 40 (see clauses 12 and 13 of the Bill).

Clause 3(c) omits the reference to Post-graduate Awards from the definition of "student assistance". This reflects the repeal of Part 3 of the Principal Act, which provides for Post-graduate Awards (see clause 5 of the Bill).

Clause 3(d) amends the definition of "officer", reflecting the different definition adopted in new section 55A of the Principal Act (inserted by clause 21 of the Bill).

Clause 3(e) omits the definition of "full-time student". This expression is used only in section 8 of the Principal Act, which refers to Post-graduate Awards. Section 8 will be repealed with the repeal of Part 3 of the Principal Act (see clause 5 of the Bill).

Clause 4: Benefits under the AUSTUDY scheme

Clause 4 provides for the Parliamentary review of Ministerial determinations relating to the approval of courses under the AUSTUDY scheme.

New section 7(6) provides that these determinations are to be subject to section 46A of the Acts Interpretation Act. This means that a determination will be tabled in both Houses and may be disallowed by either House.

New section 7(7) makes a transitional provision. Section 7(6) does not apply to determinations made before section 7(6) comes into effect.

Clause 5: Repeal of Part 3

Clause 5 repeals Part 3 of the Principal Act, which provides for Post-graduate Awards.

Clause 6: Source of funds for payment of benefit

Clause 6(1) repeals sections 10(2) and (3) of the Principal Act.

Section 10(2) provides that the Minister may make determinations about the manner in which student assistance is to be paid. These determinations will be replaced by regulations made under section 56(e) (see clause 22(c) of the Bill).

Section 10(3) provides that section 10 applies to advances made under section 11 of the Principal Act. Section 10(3) is being repealed in view of the new section 11(2) (being added by clause 7 of the Bill).

Clause 6(2) is a transitional provision applying to determinations made before the new provisions come into force. Clause 6(2) provides that these determinations will continue in force but may be amended by regulations.

Clause 7: Advances on account of benefits

Clause 7 amends section 11 of the Principal Act, which provides that the Department may pay advances in anticipation of benefits becoming payable. The amendment adds a new section 11(2) to provide that section 10 of the Principal Act applies to advances. New section 11(2) replaces the existing section 10(3), which is repealed by clause 6(1).

Clause 8: Interpretation

Clause 8 amends section 13 of the Principal Act, which defines expressions used in Part 5 of the Principal Act. (Part 5 deals with the appeal process under the Act.)

Clause 8(a) inserts a definition of "working day". This expression is used in the amendments to sections 27 and 28 of the Principal Act (inserted by clauses 9 and 10 of the Bill).

Clause 8(b) amends section 13(2), which provides that references to decisions of authorised persons include references to varying a decision or failing to make a decision. Clause 8(b) has the effect of omitting the existing paragraph 13(2)(a), which refers to a decision as including approvals, directions and determinations; this provision is not needed as the legislation does not refer to such actions.

Clause 9: Review of procedural decision

Clause 9 amends section 27 of the Principal Act, which provides for the review by the Student Assistance Review Tribunal of a "procedural decision". ("Procedural decision" is defined in section 13(1) as a decision relating to the time limit for appealing to the Tribunal.)

The amendment requires the Tribunal to provide a copy of its reasons for decision within 10 working days of reaching its decision. No sanction is provided, however, so that the review will not be invalid if this time limit is not complied with.

Clause 10: Review of primary decision

Clause 10 amends section 28 of the Principal Act, which provides for the review by the Student Assistance Review Tribunal of a "primary decision". ("Primary decision" is defined in section 13(1) and excludes procedural decisions which relate to the time limit for appealing to the Tribunal.)

As with the amendment made by clause 9, the Tribunal is to provide a copy of its reasons for decision within 10 working days of reaching its decision. No sanction is provided, however, so that the review will not be invalid if this time limit is not complied with.

Clause 11: Recovery of certain overpayments by offsetting

Clause 11 amends section 38 of the Principal Act, which provides for the recovery of debts by garnishee action. The amendment omits a reference to determinations under section 10(2), consequential on the repeal of section 10(2) (see clause 6(1)).

Clause 12: Repeal of section 39

Clause 12 repeals section 39. Section 39 provides for a late payment charge comprising \$15 plus 10% of the debt remaining unpaid after 3 months, up to a maximum of \$515.

Section 39 is being replaced by amendments to section 40 (see clause 13). The amendments provide for a late payment charge of \$100 and modify the period for which interest may be charged.

Clause 13: Late payment charge and interest in relation to overpayment of a benefit

Clause 13 amends section 40 of the Principal Act, which provides for the payment of interest on overdue student assistance debts. The amendment will add that a late payment charge of \$100 is to be payable under section 40 and will modify the period for which interest may be charged.

New section 40(1) refers to the case where there is a student assistance overpayment or a special educational assistance scheme overpayment. It provides that the overpayment is a debt owed to the Commonwealth. This provision removes any doubt that overpayments can be recovered under the non-legislated schemes.

New section 40(1A) substantially repeats the provisions of the existing section 40(1). The existing section 40(1) enables a prescribed officer to issue a notice about a debt, drawing the debtor's attention to the consequences if the debt is not repaid within 3 months.

New section 40(2) replaces the existing section 40(2). Existing section 40(2) provides that interest begins to be incurred after 3 months if the debt is not paid. The amendment changes this so that, if the debt is not paid after 3 months:

- . a late payment charge of \$100 is payable; and
- . interest is incurred as from the date when the notice is given under section 40(1A).

New section 40(4) replaces the existing section 40(4). Existing section 40(4) provides that repayments are taken to extinguish the interest before they are applied to the underlying debt. The amendment changes this so that repayments are taken to extinguish, first, the late payment charge under section 40(2), and then the interest on the basic debt.

Clause 14: Determination that late payment interest not to be payable in relation to particular periods

Clause 14 amends section 41 of the Principal Act, which enables the Minister or a prescribed officer to decide that a student assistance debt is not to attract interest.

- Clause 14(a) amends section 41(1), which enables the Minister or prescribed officers to decide that a debt is not to attract interest. The amendment adds that the Minister and the Department may also decide that the new late payment charge should not apply. (The amendments made by clause 13 provide for the new late payment charge.)

Clause 14(b) amends section 41(2), which clarifies that a decision can apply to interest in relation to a period before the decision is taken. The amendment is consequential on the addition to section 41(1) of the reference to the late payment charge.

Clauses 14(c) to (f) make drafting changes.

Clause 14(g) repeals the existing section 41(7) and substitutes a new section 41(7). The existing section 41(7) enables the Minister or a prescribed officer to change a decision made under section 41(1). The new section 41(7) provides that the Minister may change a decision of an officer, but does not enable officers to change a decision of the Minister. (One officer can change the decision of another officer: see new section 52, inserted by clause 18 of the Bill.)

Clause 15: Recovery of certain overpayments from third parties etc.

Clause 15 amends section 42 of the Principal Act, which enables student assistance debts to be recovered by garnishee action. The amendment repeals the reference to the late payment charge under section 39 of the Principal Act; this is consequential on the repeal of section 39 by clause 12 of the Bill.

(Section 42 will now apply to the new late payment charge: see the amendment to the definition of "late payment charge" made by clause 3(b) of the Bill.)

Clause 16: Write off and waiver of certain overpayments etc.

Clause 16 amends section 43 of the Principal Act, which enables debts to be written off or waived.

Clause 16(a) makes a drafting change, consequential on the repeal of existing regulation 39 (by clause 12).

Clause 16(b) corrects a drafting mistake in section 43 of the Principal Act. Section 43 enables student assistance debts to be written off or waived.

(This amendment takes effect from 2 January 1990, when section 43 was inserted into the Principal Act: see notes on clause 2(2) of the Bill.)

Clause 17

Clause 17 inserts a number of sections into Part 7 of the Principal Act ("Miscellaneous").

New section 44A: Provision of tax file numbers

New section 44A(1) provides that student assistance is not to be paid until the Department is given a tax file number (TFN) for the student and the student's parents or spouse. A parent's or spouse's TFN is needed if their income or assets are taken into account when deciding whether assistance is payable or how much is payable.

New section 44A(2) provides that the requirement in section 44A(1) does not apply to a student's parent who lives outside Australia and who has no income that is subject to Australian income tax.

New section 44A(3) provides that the requirement in section 44A(1) does not apply to a student whose application for assistance is lodged before 1 July 1991. As applications for assistance are made each year, this provides a transitional concession for 1991 but will not apply for later years.

New section 44A(4) enables regulations to be made exempting the need for a person's TFN to be given to the Department in particular circumstances. (An exemption would not affect the application of the requirement to other persons. For example, a student's father might be exempt under the regulations but TFNs could still be needed for the student and the student's mother.)

New section 44A(5) provides that, for the ABSTUDY Scheme, a person can comply with the requirement to give a TFN by giving the Department an application for a TFN. The Department will then pass the application to the Australian Taxation Office. The Taxation Office will tell the Department of the person's TFN if the person has agreed to this. This provision applies to the ABSTUDY Scheme in view of the special needs of its client group, but is not available to students under the other schemes.

New section 44A(6) provides for the case where the Department forwards a person's application for a TFN but the Taxation Office refuses to issue a TFN. The result is that the concession in section 44A(5) does not apply, so that the requirements of section 44A(1) have not been complied with. It is, however, open to the person to seek to lodge another application for a TFN with any additional details required by the Taxation Office.

New section 44A(7) defines "tax file number" by reference to the relevant income tax legislation.

Clause 18: Power to obtain information

Clause 18 amends section 17 of the Principal Act, which enables the Department to obtain information. The amendment does not change the law but clarifies that section 17 can be applied in relation to the administration of the various student assistance schemes.

Clause 19: Evidentiary certificates

Clause 19 amends section 51(b) of the Principal Act. Section 51(b) provides that, if a prescribed officer gives a certificate confirming that a notice was given under section 39(1) or 40(1), this is prima facie evidence.

The amendment repeals references to sections 39(1) and 40(1), replacing them with a reference to new section 40(1A) (see the amendments made by clauses 12 and 13 of the Bill).

Clause 20

Clause 20 repeals sections 52 and 53, inserting new sections 52 and 53 in their place.

New section 52: Decisions of authorised persons and prescribed officers

Clause 20 repeals existing section 52 and substitutes a new section 52 in its place. Existing section 52(1) will be replaced by new section 52(1).

Existing section 52(2) will not be replaced. Under the existing section 5(2), the Minister must arrange for the giving public notice of decisions by the Minister or a Ministerial delegate. In future, such decisions will be subject to Parliamentary scrutiny (see other provisions in the Bill).

New section 52(1) provides that a decision by an authorised person may be changed by the authorised person or another authorised person.

New section 52(2) provides that a decision by a prescribed officer may be changed by the prescribed officer or another prescribed officer.

New section 52(3) provides that changing a decision must be done in writing if this was a requirement for the original decision.

New section 52(4) provides that a person must be advised of a change in a decision if this was a requirement for the original decision.

New section 53: Delegation

New section 53 replaces the existing section 53.

The existing section 53(1) enables the Minister to delegate powers under sections 10 and 52(2) to the Secretary of the Department or to Departmental officers in the Senior Executive Service. References to these sections have been omitted from the new section 53 as the sections have been repealed (by clauses 6 and 20 of the Bill).

The existing section 53(2) also enables the Minister to delegate powers under sections 41 and 43(2) to Departmental officers (these refer to the waiver of overpayments or of charges in relation to overpayments). The existing section 53(2) is replaced by the new section 53, which enables the Minister to delegate these powers to the Secretary of the Department or to Departmental officers in the Senior Executive Service.

Clause 21

Clause 21 inserts a new section 55A.

New section 55A: Disclosure of confidential information

New section 55A(1) defines expressions used in new section 55A(2):

- . "court" is defined to include other bodies, such as administrative tribunals
- . "officer" is defined to include former officers, so that they cannot be summoned to give confidential information gained when they were officers.

New section 55A(2) provides that officers cannot be compelled to produce files or give information in relation to student assistance schemes.

However, the exemption in section 55A(2) does not apply for the purposes of the Student Assistance Act. Hence section 55A(2) will not restrict access to Departmental files by tribunals hearing AUSTUDY appeals.

Clause 22: Regulations

Clause 22 amends section 56 of the Principal Act, which provides regulation-making power under the Act.

Clause 22(a) repeals the existing section 22(a), which enables regulations to be made relating to the furnishing of information by applicants for student assistance. The amendment repeals the existing section 22(a) and substitutes new sections 22(a) and (ab).

- . New section 22(a) repeats the provisions of the existing section 22(a), but changes it to apply to students applying for AUSTUDY or a current special educational assistance scheme, rather than for "student assistance" (ie for AUSTUDY or a Post-graduate Award: see the definition of "student assistance" in section 3(1) of the Student Assistance Act).
- . New section 22(ab) extends the existing section 22(a) by enabling regulations to made relating to the furnishing of information by students' parents or spouses if their assets or income is considered when calculating the student's assistance.

Clause 22(b) make a drafting change consequential on the amendment made by clause 22(c).

Clause 22(c) specifies that regulations may be made providing for the manner of paying AUSTUDY benefits. These regulations will replace the present Ministerial determinations made under section 10(2) (that section is being repealed by clause 6(1)).

Clause 23: Transitional provision: decision under Part 3

Clause 23 makes transitional provisions for decisions relating to the former Post-graduate Awards under Part 3 of the Principal Act (Part 3 is repealed by clause 5). Clause 23 preserves a student's right to appeal against such a decision.

Clause 24: Transitional provision: notice under sections 39
or 40

Clause 24 makes transitional provisions preserving the liabilities incurred by a debtor because of a notice issued under the existing section 39 or 40. (These sections refer to notices advising that a late payment charge or interest will be payable if a student assistance debt is not repaid within 3 months. Section 39 is repealed by clause 12 and section 40 is amended by clause 13.)



9 780644 212533