

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STUDENT ASSISTANCE AMENDMENT BILL 1992**

EXPLANATORY MEMORANDUM

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





## STUDENT ASSISTANCE AMENDMENT BILL 1992

### OUTLINE

The Student Assistance Act 1973 gives the statutory basis for the AUSTUDY scheme administered by the Department of Employment, Education and Training and provides a debt management regime for ABSTUDY and the Assistance for Isolated Children Scheme.

The purpose of the Bill is to amend the Student Assistance Act 1973 to introduce an AUSTUDY/ABSTUDY Financial Supplement (the financial supplement) from 1 January 1993, and to legislate the annual indexation of certain parameters of the AUSTUDY scheme. The Bill also amends the Data-matching Program (Assistance and Tax) Act 1990, the Income Tax Assessment Act 1936 and the Taxation (Interest on Overpayments) Act 1983 to provide for repayments of the financial supplement through the taxation system.

### THE AUSTUDY/ABSTUDY FINANCIAL SUPPLEMENT

#### Eligibility for the Financial Supplement

The Bill provides for the introduction of the financial supplement from 1 January 1993, as a voluntary supplement to the current provision of grants to students. The financial supplement will be available as a voluntary loan to tertiary students who either qualify for AUSTUDY/ABSTUDY grants or who would do so except for the application of the parental income test, where their parents' adjusted income is less than \$50 000 per year. The financial supplement will not be available to secondary students.

For those students eligible for an AUSTUDY/ABSTUDY grant, the financial supplement will be obtained by the student choosing to "trade in" part of their grant, on the basis of \$1 of grant for \$2 of financial supplement. Within any year, the amount of financial supplement available to a student will be between \$500 and \$4000 for those students eligible for a grant, and between \$500 and \$2000 for those not eligible for a grant. These amounts will be specified in the Regulations to the Student Assistance Act.

#### Provision by Private Financial Sector

Financial supplements will be provided to eligible students by the private financial sector, with the Commonwealth purchasing outstanding financial supplements after five years. A competitive process is being undertaken to award an initial five-year contract for the provision of financial supplements.

#### Application and Payment

A student seeking access to a financial supplement will first apply for AUSTUDY or ABSTUDY in the normal way. When the application is assessed, the student will be notified if eligible for a financial supplement, and invited to apply to gain access to it. Financial supplements will be paid into students' accounts fortnightly, together with grant payments where applicable.

### Repayment by Recipients

Following assignment of an outstanding financial supplement to the Commonwealth, the recipient student will be required to repay the supplement received through the Australian Taxation Office. Repayments will be on an income contingent basis, commencing when taxable income exceeds a prescribed threshold. Repayment parameters will be the same as those applying to the Higher Education Contribution Scheme (HECS) - in 1992-93, 2% of taxable income where that income is in the range \$27 748-\$31 532, 3% in the range \$31 533-\$44 146 and 4% where taxable income is \$44 147 or more. The threshold values are indexed annually to movements in the Consumer Price Index.

A discount of 15% will be offered for full or partial repayment of a financial supplement to the financial institution during the five year period leading up to the Commonwealth purchase of the financial supplement. However, such repayments will not be obligatory.

Outstanding amounts will be free of any real interest rate, but will be indexed to movements in the Consumer Price Index.

### INDEXATION PROVISION

The maximum AUSTUDY allowance levels have been indexed annually to movements in the Consumer Price Index since the introduction of AUSTUDY in 1987. The Bill provides for this indexation provision to continue, with the added force of being legislated.

### FINANCIAL IMPACT

#### The Financial Supplement

The initial funding of the financial supplement is to be provided by the private financial sector; this provision will not be a charge against the Budget.

The Commonwealth will meet interest charges over the first five years of each financial supplement. Where a recipient decides to pay some or all of the outstanding amount during this period, the Commonwealth will compensate the financial institution for the 15% discount provided.

After five years, the Commonwealth will purchase outstanding financial supplements; this will be a charge against the Budget.

After the Commonwealth purchase of outstanding amounts after five years, student financial supplement recipients become liable for repayments through the Australian Taxation Office when their taxable income exceeds a threshold amount. This revenue is an offset against Budget expenditures on the financial supplement.

The supplement will generate significant savings to the Budget when students "trade in" all or part of their AUSTUDY/ABSTUDY grant to gain access to financial supplements.

Financial estimates have been made on the expectation that 30% of eligible AUSTUDY/ABSTUDY recipients will take an average financial supplement of \$3000 in 1993, rising to 40% in 1994 and 50% in 1995 and subsequent years. It is expected that 85% of those eligible for financial supplements but not eligible for an AUSTUDY/ABSTUDY grant will take an average financial supplement of \$1500 in all years. Total numbers taking up the financial supplement are estimated to be more than 100 000 in 1993, rising to about 150 000 in 1994 and more than 180 000 in 1995.

The estimated net Budget impact of the financial supplement is for there to be savings of \$42.0m in 1992-93, \$114.7m in 1993-94, \$138.7m in 1994-95 and \$137.9m in 1995-96. The Commonwealth will first purchase outstanding amounts in 1997-98.

In real terms, the financial supplement is estimated to produce Budget savings in all years except for a short period, following the commencement of the Commonwealth purchase of outstanding amounts. Savings will rise to well over \$150m per year by 2002-03, as repayments through the taxation system increase.

#### Indexation Provision

The indexation provision has no real financial impact, as it ensures that the value of maximum grants remains constant in real terms.

## NOTES ON CLAUSES

PART 1 - PRELIMINARYClause 1: Short title

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

Clause 2: Commencement

Clause 2 provides for commencement on the day on which the Act receives the Royal Assent.

PART 2 - AMENDMENTS OF THE STUDENT ASSISTANCE ACT 1973Clause 3: Principal Act

Clause 3 identifies the Student Assistance Act 1973 as the Principal Act.

Clause 4: Interpretation

Clause 4(1) is a technical provision to correct an incorrect reference in the Principal Act.

Clause 4(2) amends the definition of 'student assistance overpayment' in section 3 of the Principal Act and substitutes a definition including debts arising from the financial supplement under the new Part 4A (other than Division 6). This definition does not include repayments to be made through the taxation system (covered in Division 6).

Clause 4(3) amends section 3 of the Principal Act, which sets out definitions, by inserting new definitions required for the financial supplement and indexation provisions. Most of these refer to specific new sections, and are covered below.

The definition of "financial corporation" includes a reference to paragraph 51(xx) of the Constitution, which allows the Commonwealth to make laws with respect to "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth".

The "FS debt" will not include a debt assigned to the Commonwealth under new section 12S or 12U below (these apply where the student was wrongly paid the Supplement, and the debt is to be recovered as a normal student assistance debt). Instead, these debts are included in paragraph (b) of the new definition of "student assistance overpayment" in clause 4(1).

Clause 5: Benefits under the AUSTUDY scheme

Clause 5 amends section 7 of the Principal Act to allow a recipient of an AUSTUDY grant to repay that grant within a set period. In this case, the amount is taken not to have been paid, and will not be treated as taxable income. This is required so that a grant recipient "trading in" an amount of their grant already received ("back trading") is not taxed on that part of the grant they have repaid (or "traded in").

Clause 6: New Parts 4A and 4B

Clause 6 inserts new Parts 4A (Financial Supplement for Tertiary Students) and 4B (Indexation of Certain Amounts) into the Principal Act to provide for the financial supplement and indexation provisions.

The new Part 4A is structured as follows:

- Division 1 - Preliminary*
- Division 2 - Applications for financial supplement*
- Division 3 - Payment of financial supplement*
- Division 4 - Payments under financial supplement*  
*contract to stop in certain circumstances*
- Division 5 - Repayments of financial supplement during*  
*contract period*
- Division 6 - Indebtedness existing after termination date*
  - Subdivision A - Introductory*
  - Subdivision B - Voluntary discharge of indebtedness*
  - Subdivision C - Requirement to discharge indebtedness*
  - Subdivision D - Returns and assessments*
  - Subdivision E - Miscellaneous*
- Division 7 - General*

Division 1 - Preliminary

New section 12A - Object and explanation of this Part

The object of the new Part 4A is to enable the provision of financial supplements to eligible students. This section provides a broad outline of the proposed financial supplement. This Explanatory Memorandum provides an outline in the introductory section The AUSTUDY/ABSTUDY Financial Supplement above.

New section 12B - Interpretation

Subsection (1) provides that, unless a contrary intention appears, expressions defined in the Income Tax Assessment Act 1936 have the same meaning as in that Act, thus ensuring uniformity across the two Acts where appropriate.

Subsection (2) extends the meaning of 'student' to cover those who, having previously entered into a financial supplement contract, have subsequently ceased to be students.

New section 12C - Which students are eligible for financial supplement

Subsection (1) provides that students eligible for a financial supplement are tertiary students eligible under the Regulations to the Principal Act for AUSTUDY or ABSTUDY grants, or who would be eligible but for the application of the parental income test. Eligibility for a financial supplement for the latter group is limited to those with adjusted parental income, as defined for AUSTUDY/ABSTUDY purposes, of less than \$50,000.

Subsection (2) relates to the types of course that may be undertaken with financial assistance from AUSTUDY, and provides for the same criteria to apply to eligibility for the financial supplement.

New section 12D - Agreements between Commonwealth and financial corporations

Subsection (1) limits the provision of a financial supplement to eligible students to the financial institution contracted by the Commonwealth to make such provision.

Subsection (2) defines a financial corporation which has entered into an agreement with the Minister for the payment of financial supplements to eligible students as a "participating corporation". The agreement may be entered into either before or after the commencement of this Part of the Principal Act.

Subsection (3) requires the agreement with the participating corporation to be expressed as having effect subject to the Principal Act. It also provides for the Commonwealth to pay subsidies to the corporation in respect of financial supplements which have not been repaid by the recipients. These subsidies will be interest payments in respect of amounts outstanding, and may also include payments to cover agreed administrative costs; they will be specified in the agreement.

Subsection (4) allows an agreement to be made between the Commonwealth and the participating corporation to amend or terminate the initial or amended agreement at a future time, which is required to be at the end of a calendar year.

Subsection (5) provides that any financial supplement contract in force before the amendment or termination agreement takes effect is not affected by the amendment or termination.

Subsection (6) exempts an agreement under this section between the Commonwealth and participating corporation from any State/Territory stamp duty or other tax.

Subsection (7) enables the Commonwealth to give participating corporations information relevant to financial supplement contracts.

#### Division 2- Applications for financial supplement

##### New section 12E - Explanation of Division

Division 2 sets out how an eligible student who so chooses can obtain a financial supplement, how much can be obtained, and the effect of this on other entitlements.

##### New section 12F - Authorised person to give student notice of entitlement

This section specifies how students are to be notified that they are eligible for a financial supplement.

Subsection (1) provides that an authorised person must decide whether a student who elects to take up a financial supplement is eligible, and give written notice of the decision to the student. Where a student is eligible, the notice is to state the minimum and maximum amounts to which the student is entitled and such other information as required by the regulations.

Subsection (2) provides that an application form for the supplement is to be provided to eligible students.

Subsection (3) provides that an authorised person may review the decision on eligibility for a financial supplement at any time before the application form is lodged with participating corporation. If the authorised person alters the decision, a notice of the altered decision and a fresh financial supplement application form are to be provided to the student.

Subsection (4) provides that, where a notice of an altered decision is given to a student, the previous notice given to the student is revoked and is not to be used.

New section 12G - Application for financial supplement

Subsection (1) provides that a person receiving a notice under the previous section stating eligibility for a financial supplement may apply for a supplement by lodging the application form and notice with an office of the participating institution.

Subsection (2) allows a student to withdraw an application for a financial supplement by written notice to the corporation, where no supplement payment has been made. If a payment has been made, a student may request a change in the amount of supplement, within the limits of their eligibility and the amount already received.

New section 12H - Effect of financial supplement on certain other benefits

This section provides that students choosing to receive a financial supplement will have their entitlement to an AUSTUDY/ABSTUDY grant (if any) reduced by an amount equal to one-half the supplement received. That is, students choose to "trade in" \$1 of grant for \$2 of financial supplement. In some circumstances, students will be permitted to trade in all or part of a grant they have already received ("back trade"); this will require the return of previously paid grants which are to be traded in.

Division 3 - Payment of financial supplement

New section 12J - Explanation of Division

Division 3 sets out the legal relationship between a student who applies for a financial supplement and the participating corporation, and indicates that a separate contract between student and corporation is required in respect of each year or part of a year in which the student applies for a financial supplement.

New section 12K - Contract between applicant for financial supplement and participating corporation

Subsection (1) requires the participating corporation to provide a written acceptance of application to each student applying for a financial supplement in accordance with new section 12G.

Subsection (2) provides that the acceptance of the application constitutes a binding contract between the participating corporation and the student, requiring the corporation to make financial supplement payments to the student.

Subsection (3) provides that the validity of the contract is not affected if the student was not in fact an eligible student when the application was accepted, or subsequently ceases to be an eligible student. The procedures to be followed in these circumstances are set out in Division 4 below. Division 4 provides that a student who has received financial supplement payments will still be obliged to repay, and that the participating corporation will not be obliged to continue making payments following the decision that a student is not eligible.

Subsection (4) indicates that despite any other law (State or Territory), the validity of a financial supplement contract is not affected by the age of the student or by any other matter that would normally affect the capacity of the student to enter into the contract. This subsection is required mainly to ensure that a supplement contract is valid if entered into by a student who is less than 18 years of age, or who is mentally ill.

Subsection (5) provides that a financial supplement contract is not invalid because the student is an undischarged bankrupt when the contract is entered into. It also provides that the rights of the participating corporation or the Commonwealth to recover the financial supplement are not affected by these circumstances.

New section 12L - Financial supplement contract exempt from certain laws and taxes

Subsection (1) provides that State and Territory laws relating to credit provision or other financial assistance will not apply to a financial supplement contract. This is largely necessary to relieve the financial institution of the need to supply each student with detailed information relating to the supplement. It will also overcome some State provisions governing contracts entered into by people under 18 years of age.

Subsection (2) provides that a financial supplement contract, or any action or transaction under the contract, is not subject to State/Territory taxes normally applied to financial transactions.

Section 12M - Students (Financial Supplement) Trust Fund

This section provides for the establishment of a trust fund to ensure that money paid by the participating corporation to students does not go into Consolidated Revenue as it flows from the corporation to students.

Subsection (1) provides for the establishment of a Students (Financial Supplement) Trust Fund.

Subsection (2) provides for money in the Fund to be part of the Trust Fund established by the Audit Act 1901.

New section 12N - How payments of financial supplement are to be made

Subsection (1) provides for a participating corporation to make financial supplement payments to the Commonwealth, which will act as an agent for the corporation, unless the agreement between the corporation and the Commonwealth (new section 12D - see above) provides otherwise.

Subsection (2) requires the Commonwealth to pass these monies on to eligible students via the Students (Financial Supplement) Trust Fund; amounts so paid to a student are to be taken as amounts paid to discharge the corporation's liability to make payments to the student under the contract.

Division 4 - Payments under financial supplement contract to stop in certain circumstances

New section 12P - Explanation of Division

Division 4 provides for financial supplement payments to stop if the student so requests, or if the student was never or ceases to be eligible, or if the student dies.

New section 12Q - Payments to stop at request of student

Subsection (1) provides that financial supplement recipients may notify the participating corporation in writing, lodged at any office of the corporation, that they no longer require payments under the contract. This provides a mechanism for students to voluntarily withdraw from the supplement at any time, even though remaining eligible.

Subsection (2) discharges the corporation from any liability to make further payments under the contract when it receives such a notice. If further payments are made, they are taken not to be payments made under the contract, and may be recovered from the student by the corporation. A grace period of 4 weeks is allowed for the corporation to stop payments of the supplement.

New section 12R - Payments to stop if student ceases to be eligible for financial supplement

This section provides the mechanism for the Department to require the cessation of supplement payments in cases where a student is no longer eligible for a supplement.

Subsection (1) requires an authorised person who decides that a student who is party to a financial supplement contract has ceased to be an eligible student to give written notice to the student and the corporation stating the date on which the student ceased to be eligible.

Subsection (2) discharges the corporation from liability to make further payments under the contract when it receives such a notice, unless the decision of the authorised person is set aside or varied, for example under Part 5 of the Principal Act (Review of Decisions). Any payments made by the corporation after the 4 weeks following the notice are taken not to be payments under the contract, are repayable to the corporation by the student, and may be recovered by the corporation, subject to new section 12ZX (below) relating to review procedures. Payments made before the end of 4 weeks following the notice are treated as payments under the contract.

Subsection (3) provides that this section has effect subject to new section 12X (below).

New section 12S - What happens if student fails to notify change in circumstances

This section enables recovery of financial supplements paid to students who are no longer eligible. The Commonwealth may purchase the supplement from the participating corporation; the student then becomes liable to the Commonwealth. A student is allowed a period of 4 weeks grace to notify changed eligibility before the Commonwealth can also recover from the student the interest subsidy it has paid to the corporation.

Subsection (1) allows a prescribed officer, who decides that a student given a notice under new subsection 12R(1) failed within 7 days to notify an authorised person that they had ceased to be an eligible student, to give written notice of this decision to the student and to the corporation.

Subsection (2) provides that if such a notice is given then, unless the decision is set aside or varied, for example under Part 5 of the Principal Act (Review of Decisions), the participating corporation's rights under the financial supplement contract in respect of payments made following the period of 7 days referred to in subsection (1) are assigned to the Commonwealth.

Any repayments made by the student before the notice are first applied towards the wrongly paid financial supplement, and secondly to the remainder of the supplement. The Commonwealth is required to pay the corporation the amount of any wrongly paid supplement not so repaid by the student.

The student is liable to pay the Commonwealth an amount equal to the total of the amount that the Commonwealth is liable to pay the corporation and amounts of subsidy paid to the corporation by the Commonwealth in lieu of interest for the period commencing at the end of the 7 days referred to in subsection (1) and finishing at the end of the 4 week period referred to in new subsection 12R(2) above.

Subsection (3) provides that nothing in this section effects the operation of new section 12R above, relating to cessation of payments if a student ceases to be eligible for financial supplement.

New section 12T - Payments to stop if student is found never to have been eligible for financial supplement

This section provides the mechanism for the Department to require the cessation of supplement payments in cases where a student was never eligible for a supplement.

Subsection (1) requires an authorised person who decides that a student who is party to a financial supplement contract was never eligible to give written notice to the student and the participating corporation stating that the student had never been eligible.

Subsection (2) discharges the corporation from liability to make further payments under the contract when it receives such a notice, unless the decision is set aside or varied, for example under Part 5 of the Principal Act (Review of Decisions). Any payments made to the student by the corporation after the end of 4 weeks from receipt of the notice are taken not to be payments under the contract, are repayable to the corporation by the student, and may be recovered by the corporation subject to the review procedures in new section 12ZX (below).

Subsection (3) provides that this section has effect subject to new section 12ZX (below).

New section 12U - What happens if financial supplement was paid because of provision of false or misleading information

This section enables recovery of financial supplements paid to students who provided false or misleading information to gain access to a financial supplement. The Commonwealth may purchase the supplement from the participating corporation; the student then becomes liable to the Commonwealth. Students are required to fully repay the supplement and interest subsidies in respect of the supplement paid by the Commonwealth to the corporation.

Subsection (1) enables a prescribed officer who decides that the initial decision on eligibility resulted from false or misleading information provided by the student to give written notice of this decision to the student and to the corporation.

Subsection (2) provides in this case, unless the decision is set aside or varied, for example under Part 5 of the Principal Act (Review of Decisions), for the corporation's rights under the financial supplement contract to be assigned to the Commonwealth at the time the notice is given. The Commonwealth is liable to pay an amount to the corporation determined by the formula in subsection 12U(2)(b). The student is liable to repay an amount determined by the formula in subsection 12U(2)(c), including an amount to compensate the Commonwealth for any interest subsidy paid by the Commonwealth to the corporation as defined in subsection (3).

Subsection (4) provides that nothing in this section affects the operation of new section 12T (above), relating to cessation of payments to a student who is found to have never been eligible for financial supplement.

#### New section 12V - Death of student

This section provides that if a student dies during the contract period, the Commonwealth will purchase the supplement from the participating corporation. The student's debt is automatically extinguished.

Subsection (1) provides that if a student who is a party to a financial supplement contract dies before the Commonwealth is due to buy the debt from the participating corporation, an authorised person may give written notice to that effect to the corporation.

Subsection (2) assigns the rights under the contract to the Commonwealth, which is liable to pay the corporation the amount calculated by the formula given in subsection 12V(2)(b). The student's debt to the Commonwealth is discharged under these circumstances.

#### Division 5 - Repayments of financial supplement during contract period

##### New section 12W - Explanation of Division

Division 5 sets out the voluntary repayment mechanisms for student financial supplement recipients during the contract period.

##### New section 12X - Calculation of amount outstanding under financial supplement contract

Subsection (1) gives a formula to calculate the amount outstanding under a financial supplement contract up to 1 June in the year following the making of the contract. The amount outstanding is the principal amount less the sum of actual repayments and notional repayments (if any). Notional repayments are defined in new subsection 12ZA(8)(b) below as the amount by which the 15% discount for payments during the contract period exceeds the indexation amount defined in new section 12Y below.

Subsection (2) gives a formula to calculate the amount outstanding during the following four years. The amount outstanding from 1 June in each year is calculated by multiplying the indexation factor by the amount calculated by deducting the sum of actual and notional repayments from the previous amount outstanding.

Subsection (3) defines the terms used in the formulae in subsections (1) and (2), and specifies the formula to be used to determine the indexation factor each year according to movements in the Consumer Price Index.

Subsection (4) specifies the method to be used to round the indexation factor to three decimal places.

Subsection (5) requires an amount worked out under subsection (2) to be in whole dollars, with the number of cents disregarded. That is, the amount is rounded down, so a student with a financial supplement debt is not disadvantaged.

Subsection (6) ensures that amounts repaid are taken into account when calculating the amount outstanding.

Subsection (7) indicates that this section has effect subject to paragraph 12U(2)(c) above, relating to the liability for repayment by a student who received financial supplement having provided false or misleading information.

#### New section 12Y - Indexation amount

An "indexation amount" is calculated because the procedure to be adopted with repayments during the contract period is to first apply the discount amount against increases in the student's debt arising from indexation procedures (new subsection 12ZA(6) below).

This section provides that an indexation amount exists at a particular time if there is more outstanding than would have been the case had the formula in new subsection 12X(2) been applied with an indexation factor of 1, and there had been no amounts notionally repaid at any previous time. The indexation amount at the relevant time is taken to be the amount of the excess when the indexation factors are applied.

#### New section 12Z - Notice to student of amount outstanding in respect of financial supplement

This section requires the Secretary of the Department of Employment, Education and Training to arrange for a written notice of any amounts outstanding as at 1 June in each year during the contract period to be provided to the student.

#### New section 12ZA - Rights of student during contract period to make repayments in respect of financial supplement

This section allows but does not require repayments during the contract period, and specifies the discount provision and how the discount is to be applied against the outstanding amount.

Subsection (1) provides that a student has no obligation to make any repayment during the contract period, except under new subsection 12S(2) (see above), where the student failed to notify changed circumstances, or new subsection 12U(2) (see above), where the student provided false or misleading information to gain access to a financial supplement.

Subsection (2) provides that non-repayment during the contract period does not constitute default.

Subsection (3) allows a financial supplement recipient to make one or more repayments to the participating corporation at any time during the contract period.

Subsection (4) requires that each such payment be at least an amount prescribed by the regulations unless the total amount outstanding is less than that amount, in which case the payment is to be the total amount outstanding.

Subsection (5) foreshadows that payments under subsection (3) are subject to the provisions in subsections (6) to (10), except to the extent to which a payment is taken to have been made in respect of any wrongly paid financial supplement (new subsection 12S(2) above). Supplement paid wrongly will not attract a discount when repaid.

Subsection (6) provides that such payments attract a 15% discount; the discount is  $[(100 \times \text{the amount repaid}/85) - \text{the amount repaid}]$ .

Subsection (7) provides that amounts worked out using the formula in subsection (4) are to be in whole dollars, with the number of cents disregarded.

Subsection (8) sets out how the discount is to be applied against the amount outstanding. It provides that, if an indexation amount (new section 12Y above) existed immediately before a repayment, and the discount is equal to or less than the indexation amount, the amount outstanding is reduced by the amount of the discount. If, however, the discount is more than the indexation amount, the amount outstanding is reduced by the indexation amount, and the student is taken to have repaid the corporation in respect of the financial supplement an amount equal to the excess ('the amount notionally repaid'). This procedure serves to minimise the flow of funds between the Commonwealth and the participating corporation, as indexation amounts are due to the Commonwealth; if the total discount is taken up by the indexation amount, it is not necessary for the Commonwealth to make a payment to the corporation in respect of the discount.

Subsection (9) states that the Commonwealth is liable to pay the corporation the lesser of the amount notionally repaid or the amount (if any) by which the principal exceeds the total of the actual repayments and the notional repayments.

Where the total of the actual repayments and amounts notionally repaid exceeds the principal sum, the amount outstanding has been fully repaid. Subsection (10) provides that the rights of the corporation are to be assigned to the Commonwealth; if the above total exceeds the principal sum, the corporation is liable to pay the excess to the Commonwealth, because the supplement recipient has overpaid the amount outstanding; the Commonwealth refunds the excess to the student.

#### Example

The following example illustrates the calculation of the amount outstanding during the contract period.

#### *Facts assumed*

|  |        |
|--|--------|
| Financial supplement paid to student in 1993 | \$4000 |
|--|--------|

|                                       |      |
|---------------------------------------|------|
| Indexation factor at 1 June each year | 1.02 |
|---------------------------------------|------|

|   |        |
|---|--------|
| <u>Actual repayment</u> by student to financial institution in May 1996 | \$1000 |
|---|--------|

#### *Calculation*

#### Under new subsection 12X(2):

|                                     |                        |
|-------------------------------------|------------------------|
| Amount outstanding at 1 June 1994 = | \$4080 (\$4000 X 1.02) |
| 1 June 1995 =                       | \$4161 (\$4080 X 1.02) |

When repayment is made in May 1996:

The indexation amount is \$161 (new section 12Y)

The discount is  $[(100/85 \times \$1000) - \$1000] = \$176$

Under new section 12ZA:

The amount outstanding under the contract is reduced by \$161

The student is taken to have repaid to the corporation an amount of \$15 in respect of the contract (\$176 - \$161) (the amount notionally repaid as defined in paragraph 12ZA(6)(b)(ii))

The indexation amount has been cleared

Under new subsection 12X(2):

At 1 June 1996, the amount outstanding is:

|                                     |          |
|-------------------------------------|----------|
| Previous amount outstanding:        | \$4161   |
| <i>minus</i>                        |          |
| Actual repayment:                   | \$1000   |
| <i>minus</i>                        |          |
| Discount against indexation amount: | \$161    |
| <i>minus</i>                        |          |
| Discount against principal sum:     | \$15     |
|                                     | <hr/>    |
|                                     | \$2985   |
| <i>X indexation factor (1.02)</i>   |          |
|                                     | = \$3044 |

If the student makes a further actual payment of \$500 in May 1997, when this occurs:

The indexation amount is \$59 (\$3044 - \$2985)  
 The discount is \$88  
 The amount outstanding under the contract is reduced by \$59 (the indexation amount), and the student is also taken to have repaid the financial institution \$29.

At 1 June 1997, the amount outstanding is:  
 $[\$3044 - (\$500 + \$59 + \$29)] \times 1.02 = \$2505$

The Commonwealth is liable to pay the financial institution \$15 in respect of the May 1996 payment, and \$29 in respect of the May 1997 payment.

New section 12ZB - What happens at end of contract period

This section provides that the corporation's rights are assigned to the Commonwealth at the end of the contract period, and that the Commonwealth is liable to pay the corporation the amount (if any) by which the principal amount exceeds the total of actual repayments and notional repayments.

New section 12ZC - Notice to student

Subsection (1) provides that the Secretary must arrange for written notice to be given to the student stating that the student has ceased to be indebted to the participating corporation, that the student has incurred a specified debt to the Commonwealth, that the student is entitled to make a repayment in respect of that debt at any time, and that any debts not voluntarily repaid will be recovered through the taxation system. The notice is to be provided as soon as practicable after the termination date of the financial supplement contract.

Subsection (2) requires the Secretary to arrange a further written notice if satisfied that a material particular in the notice was, or has become, incorrect.

Subsection (3) provides that a notice given under this section is only to provide information to the student; the student's debt to the Commonwealth is not affected by failure to give such a notice, or by any incorrect statement in the notice.

#### New section 12ZD - Requests for correction of notices

Subsection (1) allows a student to challenge the details on the notice provided following the termination of the contract between the student and the participating corporation. A written request to amend the details must be lodged.

Subsection (2) requires the written request to set out the particular considered incorrect and the grounds on which it is so considered.

Subsection (3) provides that the request does not affect an FS debt.

Subsection (4) requires that the matter must be considered as soon as practicable and the student given written notification of the decision. If it is decided that a material particular was incorrect, a further notice under subsection 12ZC(2) must be provided.

### Division 6 - Indebtedness existing after termination date

#### Subdivision A - Introductory

#### New section 12ZE - Explanation of Division

Section 12ZE gives a broad overview of the operation of proposed Division 6. Section 12ZE also gives a brief definition of some of key terms used in the new Division. Broadly, Division 6 will provide for the repayment of financial supplements through the taxation system in a similar manner as higher education contribution ('HEC') debts are collected.

Division 6 will only apply to financial supplements which have not been repaid to the participating corporation before the end of the financial supplement contract.

#### New section 12ZF - FS debt and accumulated FS debt

This section specifies the amount of financial supplement that a person will owe to the Commonwealth on 1 June each year. The total debt owed by the student to the Commonwealth is called the 'accumulated FS debt'. This amount which will be calculated under this section represents the upper limit that a person can be required to repay the Commonwealth through the taxation system under new section 12ZM (see clause notes below).

Subsection (1) defines the expression 'FS debt' as the amount that a person will owe the Commonwealth on the 1 June immediately following the date on which an amount outstanding under a financial supplement contract debt is taken over by the Commonwealth. An FS debt relates to a single financial supplement contract.

**Example**

The following example illustrates the calculation of a person's FS debt.

**Facts assumed**

Amount outstanding under a  
financial supplement  
contract at 31 May 1999                      \$2 800  
(calculated under section  
12X)

Indexation factor                      1.012  
(determined under subsection  
(6))

The person's FS debt at 1 June 1999 is calculated as follows  
[per subsection (1)]:

$\$2\,800 \times 1.012 = \$2\,833.60$  i.e. \$2 833 [cents to be disregarded  
per subsection (8)]

Subsection (2) applies where a person has never had an FS debt before 1 June. In such a case, the accumulated FS debt on 1 June equals the FS debt calculated under subsection (1) of this section.

Subsection (3), read with subsection (4) and (5), sets out the calculation of an accumulated FS debt on 1 June where a person has had an FS debt at a previous 1 June. Subsection (3) calculates the accumulated FS debt as the sum of the accumulated FS debt as at the immediately preceding 1 June (adjusted by repayments made during the year, FS assessments etc.) indexed to reflect changes in the Consumer Price Index plus the total of any new FS debts.

For the purposes of subsection 12ZF(3), subsection (4) provides that the accumulated FS debt is to be adjusted using the formula:

**accumulated FS debt**

*minus*

**(FSA debts + repayments + increases in FSA debts - reductions in FSA debts)**

where:

'**accumulated FS debt**' means the accumulated FS debt as at the immediately preceding 1 June;

'**FSA debts**' means any FS assessment debt or debts under section 12ZM assessed in respect of income tax returns lodged during the 12 months since the immediately preceding 1 June;

'**repayments**' means the total amount of voluntary payments (i.e. not payments on assessment) applied in reduction of the accumulated FS debt during the 12 months since the immediately preceding 1 June (see section 12ZJ);

'**increases in FSA debts**' means the total amount by which any FS assessment debt was increased on amendment during the 12 months since the immediately preceding 1 June (regardless of when the original assessment was made); and

'**reductions in FSA debts**' means the total amount by which any FS assessment debt was reduced on amendment during the 12 months since the immediately preceding 1 June (regardless of when the original assessment was made).

Subsection (5) provides that for the purposes of the calculation in subsection (4), an assessment or an amended assessment is taken to have been made on the date specified on the notice of assessment or notice of amended assessment.

#### Example

The following example illustrates the calculation of a person's accumulated FS debt [according to the formula in subsection (3)]:

#### *Facts assumed*

|              |   |
|--------------|---|
| 1 June 1999  | Accumulated FS debt \$1 500                                 |
| 30 Sept 1999 | FS assessment debt \$300                                    |
| 2 Jan 2000   | FS assessment debt reduced on amendment by \$50             |
| 26 Jan 2000  | Voluntary payment in discharge of accumulated FS debt \$600 |
| 1 June 2000  | FS debt \$1 000<br>Indexation factor is 1.012               |

Adjusted accumulated FS debt at 1 June 2000 is calculated as follows [per subsection (4)]:

$\$1\,500 - (\$300 + \$600 - \$50) = \$650$

Accordingly, accumulated FS debt at 1 June 2000 is calculated as follows [per subsection (3)]:

$(\$650 \times 1.012) + \$1\,000 = \$1\,657.80$  i.e. \$1 657 [cents to be disregarded per subsection (8)]

Subsections (6) and (7) establish the indexation factor that is to be applied in relation to 1 June of a particular year for the purposes of subsections (1) and (3). The factor is arrived at by dividing the total of the index numbers for each quarter of the 12 months that ended on 31 March of that year by the total of the corresponding index numbers for each quarter of the previous 12 months. The factor will be rounded to 3 decimal places. This indexation procedure is the same as the indexation procedure used for HEC.

Subsection (8) provides that where the calculation of a person's FS debt or accumulated FS debt results in an amount consisting of dollars and cents, the cents are to be disregarded.

#### New section 12ZG - Accumulated FS debt discharges earlier debts

Subsection 12ZG(1) is a technical measure to ensure that once an accumulated FS debt is calculated at 1 June under section 12ZF the new accumulated FS debt will discharge any accumulated FS debt as at the previous 1 June, and any FS debt incurred at 1 June. These debts are automatically incorporated into the new accumulated FS debt.

Subsection 12ZG(2) ensures that subsection (1) will not in any way affect the operation of section 12ZF.

#### New section 12ZH - Notice and certificate to the Commissioner

This section requires the Secretary to the Department of Employment, Education and Training to provide student information to the Commissioner.

Subsection 12ZH(1) lists the information which the Secretary will give to the Commissioner.

Subsection (2) ensures that, if for any reason, the information given to the Commissioner under this section is incorrect or has changed<sup>c</sup> the Secretary must notify the Commissioner of the correct information as soon as practicable.

Subsection (3) provides that the Commissioner can require written certificates to be provided detailing the information set out in subsections (1) and (2). It is intended that most, if not all information given to the Commissioner would be provided in electronic or magnetic format. The requirement to provide written certificates would generally only arise in the event of a disputed assessment involving the quantum or the existence of an FS debt.

#### Subdivision B - Voluntary discharge of indebtedness

##### New section 12ZJ - Voluntary payments in respect of FS debts

This section will enable a person to make voluntary payment to the Commissioner at any time in respect of an accumulated FS debt. Where a voluntary payment made prior to 1 June is applied against an accumulated FS debt, the amount of debt subject to indexation is correspondingly reduced (see notes on subsections 12ZF(3) and (4), above).

#### Subdivision C - Requirement to discharge indebtedness

##### Section 12ZK - Compulsory payments in respect of accumulated FS debt

Section 12ZK is one of the main operative provisions of Division 6. It defines a person's obligation to pay an FS assessment debt and establishes how FS assessment debts are to be calculated.

Subsections (1), (2), (3) and (4) are complementary measures imposing an obligation to pay an FS assessment debt on a person who has an accumulated FS debt at the 1 June preceding the time when the person is assessed for income tax. The obligation will only arise, however, if the person's taxable income exceeds the minimum prescribed amount determined in subsection (4).

Under subsections (1) and (2) a person's FS assessment debt will be 2%, 3% or 4% of his or her taxable income, depending whether his or her taxable income exceeds the minimum, intermediate or maximum prescribed amount. If the person's accumulated FS debt at 1 June is less than the amount determined by applying the relevant rate against the person's taxable income, the FS assessment debt will be limited to the amount of the accumulated FS debt. In fixing that upper limit, any variations made to the accumulated FS debt between 1 June and the date of the assessment (e.g. by voluntary payments or by an intervening assessment) would be taken into account.

Subsection (3) is a technical measure which makes it clear the relevant debt calculated under subsection (2) will reflect any amendments to FS assessments.

Subsection (4) will ensure that the prescribed amounts used to calculate the amount of the FS assessment debt will be identical to those used to calculate the amount of HEC assessment debts under section 68 of the Higher Education Funding Act 1988. The minimum, intermediate and maximum prescribed amounts that will apply for the year ending 30 June 1998 (the first year in which an FS assessment debt will be raised) will be identical to those used to calculate HEC assessment debts under section 68 of the Higher Education Funding Act 1988 for that year.

Broadly, the prescribed amounts included in paragraphs 4(a), (b) and (c) will be multiplied by the same indexation factor used in section 68 of the Higher Education Funding Act 1988 which is based on the capital cities weighted average of the All Groups Consumer Price Index. The factor is determined as at the date on which the Australian Statistician first publishes the index number for the March quarter immediately prior to the end of the relevant financial year.

The factor is calculated by dividing the total of the index numbers for each quarter of the 12 months ended on 31 March of that year by the total of the corresponding index numbers for each quarter of the previous 12 months. The factor will be rounded to 3 decimal places.

If after indexation, the taxable income bands consist of amounts comprising dollars and cents, the cents will be disregarded.

#### Example

The following example illustrates how a person's FS assessment debt is to be calculated:

#### *Facts assumed*

|                         |   |
|-------------------------|---|
| 1 June 2000             | Accumulated FS debt \$1 716                                 |
| Year ended 30 June 2000 | Taxable income \$30 000                                     |
| 21 August 2000          | Voluntary payment in discharge of accumulated FS debt \$800 |
| 25 October 2000         | Tax assessment is made                                      |

The prescribed amounts and the corresponding rates that apply for the year ended 30 June 2000 are as follows:

|                                |          | <u>Rate</u> |
|--------------------------------|----------|-------------|
| Minimum prescribed amount      | \$27 747 | 2%          |
| Intermediate prescribed amount | \$31 532 | 3%          |
| Maximum prescribed amount      | \$44 146 | 4%          |

***(It has been assumed in this example that the prescribed amounts applicable to the year ending 30 June 1993 will also apply for the year ending 30 June 2000. However, these amounts are used for illustrative purposes only. The actual prescribed amounts for that later year will be different as a result of indexation.)***

#### *Calculation of FS assessment debt at 25 October 2000*

Since the person's taxable income for the year ended 30 June 2000 is greater than the minimum prescribed amount but less than the intermediate prescribed amount, the rate to be applied is 2%.

Therefore, the FS assessment debt is;

$$2\% \times \$30\,000 = \underline{\$600}$$

[In this case, the upper limit calculated under subsection (2) is;

$$\$1\,716 - \$800 = \$916.$$

Since the amount calculated by applying the relevant rate to the person's taxable income does not exceed this upper limit, the FS assessment debt is \$600.

If, for instance, the person had made a voluntary payment of \$1 200 instead of \$800, the upper limit would be;

$\$1\ 716 - \$1\ 200 = \$516$ .

Since the amount calculated by applying the relevant rate to the person's taxable income exceeds this upper limit, the FS assessment debt would be restricted to \$516 (instead of \$600 as calculated above).]

#### Subdivision D - Returns and Assessments

##### Section 12ZL - Annual returns

Section 12ZL requires a person to set out in his or her annual income tax return the amount of any accumulated FS debt as at the 1 June immediately before the furnishing of the return. The person must also provide details of any voluntary payments in discharge of his or her indebtedness under this Division since that date.

##### Section 12ZM - Assessment

Section 12ZM formally authorises the Commissioner to make an assessment of a person's accumulated FS debt as at the 1 June before the making of the assessment and the amount of any FS assessment debt required to be paid as calculated under section 12ZK.

##### New section 12ZN - Application of the Income Tax Assessment Act

Section 12ZN facilitates the collection and recovery, by the Commissioner, of FS assessment debts assessed under section 12ZM. Those debt are to be treated as if they were income tax assessed under the Income Tax Assessment Act 1936.

Subsection (1) refers to Part IV and Division 1 of Part VI of the Income Tax Assessment Act 1936 and Part IVC of the Taxation Administration Act 1953. These provisions will extend the operation of the relevant returns and assessments, collection, recovery, objections and appeals provisions of the income tax law (as far as they are capable of being applied) to FS assessment debts.

Part IV of the Income Tax Assessment Act 1936 relates to income tax returns and assessments. Its application will mean that the rules applying to the lodgment of returns, making income tax assessments and requests for amendments will apply to FS assessment debts.

Division 1 of Part VI of the Income Tax Assessment Act 1936 contains rules for the collection and recovery of income tax. Its application will mean that the same collection and recovery rules will apply to FS assessment debts. The principal effects of these rules are as follows:

- an FS assessment debt will be due and payable on the date specified in the notice of assessment. Since notice of a person's FS assessment debt will be included in his or her income tax assessment notice (see section 12ZO), this will be the same date on which any income tax assessed is due and payable;
- the Commissioner may grant an extension of time for payment of an FS assessment debt if warranted by the circumstances;
- penalty and interest may be payable where an FS assessment debt remains unpaid after the date on which it becomes due and payable.
- an FS assessment debt is a debt due to the Commonwealth and may be sued for and recovered by the Commissioner in any Court of competent jurisdiction.

Part IVC of the Taxation Administration Act 1953 sets out the mechanisms and conditions for lodgment of objections and requests for reviews and appeals in relation to income tax assessments. Subsection (1) will extend these rights, which are available against income tax assessments, to FS assessments. This means that if a person is dissatisfied with an FS assessment, he or she may lodge with the Commissioner, an objection in writing against the assessment. Where the Commissioner has considered the objection and disallowed it, or partly disallowed it, the person may then either apply to the Administrative Appeals Tribunal for review of the objection decision or appeal to the Federal Court.

If an objection is made in respect of an income tax assessment which gives rise to an FS assessment, the objection will then be taken, as appropriate, to also be an objection against the FS assessment.

Subsection (2) will apply the income tax penalty arrangements to FS assessment debts as if those debts were income tax payable in respect of an income tax assessment. For example, a penalty may be applied when a person deliberately evades income tax. Similarly, those rules will apply in respect of FS assessment debts where, for instance, a taxpayer deliberately fails to disclose the existence of an accumulated FS debt when lodging an income tax return.

#### Section 12ZO - How notices of assessment may be served

Section 12ZO simplifies the administration of the financial supplement arrangements. Section 12ZO allows the Commissioner to include the details of an FS assessment debt assessed under section 12ZM in the person's income tax notice of assessment instead of issuing a separate notice of assessment in respect of that FS assessment debt.

#### Section 12ZP - Power of the Commissioner to defer assessment or reduce assessment to nil

Subsection (1) authorises the Commissioner to defer making an FS assessment where he considers, on written application, either that payment of that assessment would cause serious hardship or there are other special reasons why an assessment should not be made.

Under subsection (2), if an assessment has been made before the application is considered, the Commissioner may cancel the assessment on those grounds. Where an FS assessment debt is deferred or cancelled for those reasons, the amount will not be deducted from the person's accumulated FS debt. The amount will remain a liability for payment in future and subject to increase by indexation under section 12ZF.

Subsection (3) requires the Commissioner to consider such applications as soon as practicable and give written notice of the decision to the applicant.

#### Section 12ZQ - Review of decision of Commissioner

Section 12ZQ provides that a decision by the Commissioner not to defer or cancel an FS assessment debt on application made under section 12ZP will be subject to a right of review by the Administrative Appeals Tribunal.

Subsection (1) allows an applicant under new section 12ZP to apply to the Administrative Appeals Tribunal for a review of the decision of the Commissioner.

Subsection (2) requires a notice under subsection 12ZP(3) to include a statement informing the applicant that he or she may apply to the Administrative Appeals Tribunal for review of the decision if he or she is dissatisfied with it. The notice must also inform the applicant that he or she may ask for a statement of reasons under section 28 of the Administrative Appeals Tribunal Act 1975.

Subsection (3) provides that the validity of the notice or of the decision to which it relates are not affected by a failure to comply with subsection (2).

#### Subdivision E - Miscellaneous

##### Section 12ZR - Benefits to students under student financial supplement scheme not subject to taxation

Subsection (1) makes it clear that students will not be subject to Commonwealth taxation on payments or other benefits received under the student financial supplement scheme unless the relevant legislation intending to impose such tax expressly indicates that the student will be so liable.

Subsection (2) specifically excludes participating financial corporations from the application of that exemption.

##### Section 12ZS - Application of payments

Section 12ZS requires a payment by a person to the Commissioner in respect of financial supplement indebtedness to be applied as directed by that person. This provision also covers the situation where a person makes a payment but fails to specify or adequately specify how that payment is to be applied.

Where there is an unpaid FS assessment debt, any such payment will be applied first to that debt. If there is no FS assessment debt, or a balance of the payment remains after discharging an FS assessment debt, the payment or the balance of the payment will be applied to any accumulated FS debt of the person.

##### Section 12ZT - Indebtedness discharged by death

This provision operates to discharge a person's FS indebtedness under this Division upon the death of that person. However, a person's death does not discharge an FS assessment debt.

### Section 12ZU - Secrecy

Section 12ZU contains secrecy provisions consistent with those in Acts of which the Commissioner has the general administration. In recognition of the serious nature of any breach of this provision, subsection (4) provides for a fine not exceeding \$10,000 or gaol for a period of not exceeding 2 years, or both, on conviction of an offence.

Subsections (1) and (2) impose an obligation of secrecy on officers or former officers of the Commonwealth who, in the course of their duties related to the administration of this Division, have acquired information with respect to the affairs of another person.

Subsection (3) extends the definition of officer to include a person who, although not actually appointed or employed by the Commonwealth, performs services for the Commonwealth.

Subsections (4), (5) and (6) will prevent officers from making a record of or disclosing information obtained under this Division to any other person except in the course of their duties. The officer will generally not be compelled to give information relating to the affairs of any person to any court or tribunal, except when it is necessary to do so for the purpose of giving effect to the provisions of this Division.

Subsections (7) and (8) ensure that the Commissioner of Taxation, his officers and officers of the Department of Employment, Education and Training may, for the purposes of administering this Division, exchange information without breaching these secrecy provisions.

Subsection (9) reinforces the general secrecy prohibition by making it clear that it can be a breach of secrecy for an officer to disclose information to a Minister.

Subsection (10) provides that an officer may be required by the Commissioner to take an oath or make a declaration to maintain secrecy in conformity with the secrecy provisions.

Subsection (11) defines the terms 'Court' and 'disclose' which are used in this section.

### Division 7 - General

#### New section 12ZV - Explanation of Division

Division 7 deals with the application of the Bankruptcy Act 1966 in relation to the financial supplement, details what happens if a decision is set aside or varied, deals with notices to students when the students' obligations are assigned to the Commonwealth, and exempts certain transactions under this Part from State and Territory taxes.

#### New section 12ZW - Application of Bankruptcy Act

Subsection (1) indicates that this section applies if, following the completion of a financial supplement contract, a student becomes bankrupt or enters into a deed of assignment, a deed of arrangement or a composition under Part X of the Bankruptcy Act 1966.

Subsection (2) provides that a financial supplement debt is not a provable debt in the bankruptcy or for the purposes of the deed of assignment, deed of arrangement or composition.

Subsection (3) provides that the bankruptcy does not affect any right of the Commonwealth or of the corporation to bring an action or other proceeding against a student in respect of such a debt.

Subsection (4) provides that any payment to the Commonwealth or corporation in respect of such a debt cannot be recovered by the trustee of the estate of the bankrupt student or the trustee of the deed of assignment etc.

Subsection (5) defines the scope of the debts considered to be financial supplement debts for the purposes of this section.

New section 12ZX - What happens if decision of authorised person or prescribed officer is set aside or varied

This section provides that a decision which is set aside or varied is taken to have not been made, and that a decision substituted for it is to be taken to be the original decision.

New section 12ZY - Notices of assignment

This section requires the Secretary to arrange a written notice to a person if any right a participating corporation has to receive a payment from that person is assigned to the Commonwealth. The notice is to state that any further payments that would have been required by the corporation are to be made to the Commonwealth.

New section 12ZZ - Assignments etc not subject to State or Territory taxes

This section provides that an assignment to the Commonwealth of the rights under a financial supplement contract, or any other act or transaction under this Part, is not subject to taxation under a State or Territory law.

New Part 4B

New section 12ZZA - Maximum living allowances under the AUSTUDY Regulations to be indexed by reference to Consumer Price Index

Subsection 1 indicates that the AUSTUDY parameters to be indexed are the maximum living allowances set out in regulation 61 of the AUSTUDY Regulations.

Subsection (2) defines how indexation is to be carried out annually on 1 January, according to annual movements in the June quarter Consumer Price Index.

Subsection (3) specifies the method to be used to round the indexation factor to three decimal places.

Subsection (4) requires the amounts worked out under this section to be rounded to the nearest dollar.

New section 12ZZB - Other provisions relating to indexation

Subsections (1) provides that, where a published statistic is subsequently revised, the initial (unrevised) statistic is to be used for the indexation procedure in this Part.

Subsection (2) provides that, where the reference base for the Consumer Price Index (CPI) changes, the indexation procedures based upon the CPI are to use the index numbers published in terms of the new reference base.

Subsection (3) to (5) require the publication in the *Gazette* at appropriate times each year the indexation factors applying to various amounts in this Division.

Clause 7 - Interpretation

Subclause (1) amends Section 13 of the Principal Act by substituting a new definition of 'primary decision'. This section of the Principal Act relates to review of decisions. The new definition is broadened to include decisions relating to the financial supplement, and to include 'prescribed officers' with 'authorised persons' and 'senior prescribed officers' with 'senior authorised persons'. Under the Principal Act, an 'authorised person' means an officer of the Department who is required or permitted to perform all or some of the functions, or exercise some or all of the powers, of an authorised person under the Act or the regulations. This relates to the day to day operation of AUSTUDY. A 'prescribed officer' means an officer appointed under section 4 of the Principal Act to undertake actions in relation to overpayments.

Subclause (2) amends subsection 13(2) of the Principal Act by including 'prescribed officers' with 'authorised persons'.

Subclause (3) adds a new subsection 13(5) to the Principal Act. The new subsection defines a 'senior prescribed officer' as an officer at a higher Australian Public Service classification level than the 'prescribed officer' who initially made the decision in question.

Clause 8 - Request under Act on behalf of another person

Clause 8 amends section 14 of the Principal Act to entitle a person to who has been authorised to request consideration of a decision on behalf of another person to make such request of a senior prescribed officer, if the decision was made by a prescribed officer.

Clause 9 - Amendment of heading

Clause 9 adds "or Senior Prescribed Officer" to the heading to Division 3 of Part 5 of the Principal Act, which currently reads "Consideration by Senior Authorised Person".

Clause 10 - Consideration by senior authorised person or senior prescribed officer

Clause 10 amends Section 20 of the Principal Act to extend AUSTUDY review procedures to the financial supplement and to include prescribed officers with authorised persons for the purposes of the section.

Clause 11 - Request for review by Tribunal

Clause 11 amends section 21 of the Principal Act to include '(senior) prescribed officers' with '(senior) authorised persons' for the purposes of subsections (1) to (3) of the section.

Clause 12 - Interpretation

Clause 12 amends section 35 of the Principal Act to include 'prescribed officer' with 'authorised person'.

Clause 13 - Operation of Tribunal Act

Clause 13 amends section 37 of the Principal Act to include 'prescribed officer' with 'authorised person'.

Clause 14 - Recovery of certain overpayments from third parties etc

Clause 14 amends section 42 of the Principal Act by inserting a new subsection (2A) to widen the meaning of "another person" in subsection (2) to include the Commonwealth, a State or Territory, or any authority of the Commonwealth or a State or Territory. This corresponds to the approach in subsection 1233(8) of the Social Security Act 1947.

Clause 15: Provision of tax file numbers

Clause 15 amends section 44A of the Principal Act to extend tax file number provisions relating to AUSTUDY to the financial supplement.

Clause 16: Power to obtain information

Clause 16 amends section 45 of the Principal Act to extend the power of a prescribed officer to obtain information in relation to student assistance schemes to the financial supplement.

Clause 17: Obligation to notify happening of certain events

Clause 17 amends section 48 of the Principal Act to extend to the financial supplement the requirement that certain events affecting eligibility for student assistance be notified to the Department within seven days. Different events are required to be notified under the different schemes of student assistance.

Clause 18: Offences

Clause 18 extends the provisions of the Principal Act in relation to offences to cover the financial supplement.

Clause 19: Evidentiary certificates

Clause 19 adds a new subsection 51(2) to the Principal Act providing that a certificate provided by an authorised person or a prescribed officer in relation to a range of matters relevant to the financial supplement is *prima facie* evidence of the matters stated in the certificate.

Clause 20: Annual report

Clause 20 amends section 54 of the Principal Act to require inclusion of details of the operation of the financial supplement in the Minister's annual report on the operation of the Principal Act.

Clause 21: Appropriation

Clause 21 amends the Principal Act to require that payments to the participating corporation by the Commonwealth to be made from the Consolidated Revenue Fund, which is appropriated accordingly.

Clause 22: Disclosure of personal information

Clause 22 amends the Principal Act to extend to the financial supplement the conditions under which an officer cannot be required to produce documents in a court.

Clause 23: Regulations

Clause 23 amends the Principal Act to widen the scope of the AUSTUDY Regulations to include appropriate regulations for the operation of the financial supplement.

PART 3 - CONSEQUENTIAL AMENDMENTS OF OTHER ACTS***Division 1 - Amendments of the Data-matching Program (Assistance and Tax) Act 1990***Clause 24 - Principal Act

Clause 24 identifies, for the purposes of this Division, the Data-matching Program (Assistance and Tax) Act 1990 as the Principal Act.

Clause 25 - Interpretation

Clause 25 amends the Principal Act by including financial supplements under the Student Financial Supplement Scheme within the definition of "personal assistance". This amendment will allow income, personal identity information and the student's tax file number held by the Department of Employment, Education and Training to be used in the data matching program in accordance with the provisions of the Principal Act.

The amendment proposed by this clause, in conjunction with those amendments proposed by clause 15 (see clause notes above) and clause 29 (see clause notes below) allow the Department of Employment, Education and Training to use tax file numbers in the same way as tax file numbers may be used to administer the AUSTUDY Scheme. In addition, proposed new paragraph 12ZH will specifically authorise the Department of Employment, Education and Training to pass the student's tax file number to the Commissioner when advising the Commissioner of the student's FS debt.

***Division 2- Amendments of the Income Tax Assessment Act 1936***

**Clause 26 - Principal Act**

Clause 26 identifies, for the purposes of this Division, the Income Tax Assessment Act 1936 as the Principal Act.

**Clause 27 - Losses and outgoings**

Section 51(1) of the Principal Act is the general deduction provision that allows deductions for losses and outgoings to the extent to which they are incurred in gaining or producing assessable income or in carrying on a business for that purpose.

Subsection 51(6) currently denies income tax deductions for higher education contributions made by a student whether the payment is made directly to the educational institution or through the income tax system. Non deductibility extends to any other persons, including employers, who make payments on behalf of students or former students.

Clause 27 will insert new paragraph (c) into subsection 51(6) of the Principal Act to ensure that a repayments of debt to the Commonwealth or a participating corporation under the Financial Supplement Scheme will not be deductible for income tax purposes.

**Clause 28 - Deductions for expenses of self education**

This clause, which is complementary to the amendment of section 51 of the Principal Act proposed by clause 27 will amend section 82A of the Principal Act to exclude payments made to discharge or reduce debts under the new student financial supplement scheme from the definition of "expenses of self education".

Section 82A operates to deny deduction of the first \$250 of self education expenses which would otherwise be deductible under section 51 of the Principal Act.

**Clause 29 - Objects of this Part**

Clause 29 amends section 202 of the Principal Act in two ways. The first amendment, contained in subclause 29(a) is a technical amendment to correct a typographical error in Section 202 which results in two paragraphs (f) appearing in the Section. This amendment replaces the last paragraph (f) with (g) to correct the error.

Subclause 29(b) makes a more substantial amendment by inserting a new object into section 202 of the Principal Act.

Section 202 of the Principal Act sets out the objects of Part VA of the Principal Act which deals with tax file numbers. Those objects, among other things includes establishing a system of tax file numbers:

- . to increase the effectiveness and efficiency of the matching of information contained in reports given to the Commissioner of Taxation under the Principal Act or the Income Tax Regulations with information disclosed in income tax returns by taxpayers;
- . to prevent evasion of liability to income tax;
- . to assist in the administration of the Higher Education Contribution Scheme, the Training Guarantee legislation and the Superannuation Guarantee legislation;
- . to assist in the administration of provisions of Acts of Parliament which require a tax file number to be quoted as a condition to the receiving certain benefits which are referred to as "personal assistance" under the Data-matching Program (Assistance and Tax) Act 1990; and
- . to assist in the administration of the Data-matching Program (Assistance and Tax) Act 1990.

The new object, which needs to be read in combination with the proposed amendments to the Taxation Administration Act 1953 (see notes on clauses 31 to 33 below) is expressed broadly to authorise the use of tax file numbers to help administer new Division 6 of Part 4A of the Student Assistance Act 1973.

Clause 30 - Application of deductions in payment of HEC assessment debts and FS assessment debts

Section 221H of the Principal Act requires the Commissioner to apply PAYE credits evidenced by tax stamp sheets and group certificates against tax payable by the taxpayer on assessment. Sections 221YE and 221YHG similarly apply where there are credits for provisional tax and prescribed payments.

When making an income tax assessment in relation to which an HEC assessment debt is calculated, existing section 221ZY requires the Commissioner to first apply any PAYE, provisional tax or PPS credits against the HEC assessment debt. Any balance is then to be applied in accordance with the rules contained in sections 221H, 221YE and 221YHG.

Similar rules as those currently applying to HEC assessment debts are to apply to FS assessment debts.

Clause 30 repeals Division 7 of Part VI of the Principal Act and replaces it with a new Division 7. New Division 7 contains one section, section 221ZY which sets out the rules which are to apply where a student has either an HEC assessment debt or an FS assessment debt.

Subsection 221ZY(1) defines the term "relevant provision" in the same way as existing subsection 221ZY(1) but also includes section 221YHZL. Inclusion of section 221YHZL as a "relevant provision" ensures that the credit available to a taxpayer because a tax file number was not quoted for an investment will also be subject to the new Division 7.

New subsection 221ZY(2) will apply the credit available to a taxpayer under a "relevant provision" in the following order:

- . If there is an HEC assessment debt, the credit available will first be paid toward that debt;
- . If there is no HEC assessment debt or the credit available is more than that debt, then the remaining credit would be paid toward any FS assessment debt the taxpayer may have; or
- . If an amount remains after the above two steps, then the remaining credit will be credited, applied, paid or refunded in accordance with the rules set out in the "relevant provision".

Example

The following example illustrates how PAYE credits are to be applied against tax payable by a person on assessment.

*Facts assumed*

Details on a person's assessment for the year ended 30 June 2001:

|                     |          |
|---------------------|----------|
| Taxable income      | \$50 000 |
| PAYE credit         | \$25 000 |
| HEC assessment debt | \$2 000  |
| FS assessment debt  | \$2 000  |

*Application of credits*

The PAYE credit would first be applied to the person's HEC assessment debt. The remaining credit of \$23 000 would then be applied toward the person's FS assessment debt of \$2 000.

Finally, the remaining PAYE credit of \$21 000 would be applied to offset the person's income tax liabilities in respect of his or her taxable income of \$50 000.

**[Note: This example is illustrative only and is not intended to reflect actual debts or income thresholds which may arise in future years]**

Division 3 - Amendments of the Taxation Administration Act 1953

Clause 31 - Principal Act

Clause 31 identifies, for the purposes of this Division, the Taxation Administration Act 1953 as the Principal Act.

Clause 32 - Unauthorised requirement etc. that a tax file number be quoted

Section 8WA of the Principal Act creates an offence, punishable on conviction by a fine of \$10,000 and/or 2 years imprisonment, for a person to require or request the quotation of another person's tax file number for the purposes of establishing that person's identity or for any other purpose, unless the requirement or request is made under authorised circumstances.

Broadly, a requirement or request for the quotation of another person's tax file number is authorised in specified circumstances, such as for employment or investment, where a law relating to the Higher Education Contribution Scheme, Training Guarantee or Superannuation Guarantee authorises such a request. In addition, a person such as a tax agent acting on the person's behalf in conducting that person's affairs may request quotation of a tax file number.

Use of a tax file number as a condition to receiving certain Commonwealth benefits or in administering the Data-matching Program (Assistance and Tax) Act 1990 is also authorised.

The addition of a new object to section 202 of the Income Tax Assessment Act 1936 (see the earlier notes on clause 29) would extend the circumstances in which a tax file number may be required to be quoted.

Clause 32 proposes to amend paragraph 8WA(1)(b) to ensure that the use of the tax file number in administering Division 6 of new Part 4A of the Student Assistance Act 1973 would be authorised.

In addition to the above, clause 32 ensures that use of tax file numbers in the administration of the Superannuation Guarantee legislation is an authorised use of a tax file number. This amendment is necessary to rectify the typographical error in section 202 of the Income Tax Assessment Act 1936 (see the above notes on subclause 29(a)).

Clause 33 - Unauthorised recording etc. of tax file number

Section 8WB of the Principal Act creates an offence, punishable on conviction by a fine of \$10,000 and/or 2 years imprisonment, for the unauthorised recording, use or divulging of a person's tax file number except under authorised circumstances.

Broadly, the authorised circumstances are where a taxation law makes provision for a request of a tax file number in specified circumstances, such as employment or investment, where a law relating to the Higher Education Contribution Scheme, Training Guarantee or Superannuation Guarantee authorises such a request. In addition, a person who is requesting or requiring the tax file number to be quoted when acting on that person's behalf in conducting that person's affairs, such a tax agent or legal representative, is also authorised. The use of a tax file number as a condition to receiving certain Commonwealth benefits is also authorised.

The addition of a new object to section 202 of the Income Tax Assessment Act 1936 (see the earlier notes on clause 29) would extend the circumstances in which a tax file number may be recorded, used in a manner connecting it with a person's identity, or disclosed to another person.

Clause 33 proposes to amend paragraphs 8WB(1)(d) and (e) to authorise the recording, use and divulging of a person's tax file number to the extent required or reasonably necessary in order to comply an obligation imposed by, or in the performance of functions under, Division 6 of new Part 4A of the Student Assistance Act 1973.

In addition to the above, clause 33 ensures that use of tax file numbers in the administration of the Superannuation Guarantee legislation is an authorised use of a tax file number. This amendment is necessary to rectify the typographical error in section 202 of the Income Tax Assessment Act 1936 (see the above notes on subclause 29(a)).

*Division 4 - Amendment of the Taxation (Interest on Overpayments) Act 1983*

Clause 34 - Principal Act

Clause 34 identifies, for the purposes of this Division, the Taxation (Interest on Overpayments) Act 1983 as the Principal Act.

Clause 35 - Interpretation

The Principal Act provides for the payment of interest on certain refunds of tax made as a result of a successful objection or appeal by a taxpayer against an assessment or other specified decision of the Commissioner.

Clause 35 amends the definition of "relevant tax" in subsection 3(1) of the Principal Act to ensure that an FS assessment debt will be treated under that Act in the same way as an assessment of income tax. As a result, interest (currently at the rate of 10% per annum) will be payable in respect of a refund of all or part of an FS assessment debt made as a consequence of a successful objection or appeal.

---











