

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STUDENT ASSISTANCE LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Employment,  
Education and Training, the Hon J S Dawkins, MP)



## STUDENT ASSISTANCE LEGISLATION AMENDMENT BILL

### OUTLINE

1. The Student Assistance Act 1973 gives the statutory basis for AUSTUDY and the Post-graduate Awards Scheme. This Bill amends the Student Assistance Act to include a package of measures to facilitate the prevention of fraud and the recovery of overpayments under these schemes. The proposed measures are comparable to existing provisions of the Social Security Act 1947.
2. Specifically, the Bill amends the Student Assistance Act to:
  - . require individuals and organisations to provide information needed to verify entitlements and require debtors to disclose their financial situation (see new section 31D);
  - . make it an offence to give false information in relation to an application for assistance (see new section 31G). At present, this offence is dealt with in the Student Assistance Regulations;
  - . provide substantial penalties for offences under the Act and Regulations (see new section 31H and amendment to existing section 36);
  - . enable the Department to recover overpayments from money held for a debtor (see new section 31B);
  - . enable an overpayment to be written off or waived, or for agreement to be given to the overpayment being repaid by instalments (see new section 31C). At present, overpayments are written off or waived under the Audit Act.
3. The Act currently enables the Regulations to provide for offences with a maximum penalty of \$100. It is proposed that the maximum penalties should be:
  - for offences under the Act: a fine of \$2,000 and/or 12 months' imprisonment (or \$10,000 for corporations);
  - for offences under the Regulations: a fine of \$1,000 and/or 6 months' imprisonment.
4. The Bill also amends the Student Assistance Act 1973, the Seamen's War Pensions and Allowances Act 1940, the Social Security Act 1947, and the Veterans' Entitlements Act 1986, so that, where an overpayment has been incurred under one of these Acts or under a specified educational scheme, the overpayment may be recovered under one of the other Acts.

## FINANCIAL IMPACT STATEMENT

5. The measures in the Bill are expected to result in significant savings. It is not possible, however, to quantify these savings until compliance surveys have been undertaken to investigate further the extent of fraud under AUSTUDY.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Clause 1: Short title

6. This clause sets out the short title for the amending Act.

#### Clause 2: Commencement

7. The Bill will come into operation when it receives the Royal Assent.

### PART II - AMENDMENTS OF THE STUDENT ASSISTANCE ACT 1973

#### Clause 3: Principal Act

8. Part II of the Bill concerns proposed amendments to the Student Assistance Act 1973. That Act is accordingly referred to in Part II as the Principal Act.

#### Clause 4: Interpretation

9. Clause 4 amends section 5 of the Principal Act to insert definitions of expressions used in the Bill.

10. "Officer" is defined in subsection 5(1) to mean a Commonwealth public servant who assists in the administration of the Principal Act. Subsection 5(2) extends this definition to cover others, such as people on contract, who assist in the administration of the Act.

11. "Overpayment" is defined as an incorrect payment of student assistance benefits under the Act, ie an overpayment under AUSTUDY or a Post-graduate Award (see the existing definition of "student assistance" in section 5(1) of the Principal Act).

12. "Prescribed officer" is defined as an officer appointed under the proposed new section 7 of the Principal Act (see the following paragraph of this memorandum).

Clause 5: Appointment of prescribed officers

13. This clause enables the Minister to appoint officers as prescribed officers. A prescribed officer will be able to issue a notice under new sections 31B (recovery of an overpayment from moneys held for a debtor) and 31D (obtaining of information needed to verify a student's entitlement).

Clause 6

14. This clause repeals the existing section 31A of the Principal Act and inserts new sections 31A to 31K. The new section 31A includes similar provisions to the existing section 31A, which enables student assistance to be adjusted if there would otherwise be a duplication of Social Security benefit and student assistance.

New section 31A: Recovery of overpayments

15. Subsection (1) of new section 31A enables overpayments to be recovered from student assistance under the Act. This applies where the overpayment is incurred under the Act (paragraph 31A(1)(a)); the Social Security Act (paragraph 31A(1)(b)); the Veterans' Entitlements Act or the Seamen's War Pensions and Allowances Act (paragraph 31A(1)(c)); or a prescribed educational scheme (paragraph 31A(1)(d)). The new section is similar to subsection 181(2) of the Social Security Act (see also the amendment to subsection 181(2) in Part IV, clause 12, of the Bill).

16. A prescribed educational scheme will be defined in the Regulations as the Aboriginal Study Assistance Scheme, the Aboriginal Secondary Assistance Scheme, the Assistance for Isolated Children Scheme, the Adult Migrant Education Program Living Allowance Scheme and the Maintenance Allowance for Refugees Scheme.

17. Subsection (2) of new section 31A enables an overpayment incurred by a student to be recovered from the student's entitlement in cases where this is not paid directly to the student. (The Minister has made a determination under section 32 of the Act that AUSTUDY may be paid to a parent or guardian where the student is a secondary student under 18 years old.)

18. Subsection (3) of new section 31A provides that recovery action cannot proceed where an overpayment has been waived.

New section 31B: Action in relation to money owing

19. New section 31B enables an overpayment under the Act to be recovered from money held by a third party. The new section is similar to section 162 of the Social Security Act. The basic provision is contained in subsection (1) of the proposed new section.

20. Subsection (2) requires the Department to give a third party at least 14 days to comply with a notice under subsection (1). It also specifies that a subsection (1) notice may not require the third party to pay the money until he or she owes or holds money for the debtor.

21. Subsection (3) makes it an offence not to comply with a subsection (1) notice. (The penalty is set out in new section 31G.)

22. Subsection (4) ensures that a copy of a subsection (1) notice is sent to the recipient of the overpayment, from whose money the overpayment is to be recovered.

23. Subsection (5) protects the third party against possible legal action for having complied with the subsection (1) notice. It includes a reference to a person other than the recipient in order to cover the situation specified in subsection (1)(c).

24. Subsection (6) provides that, where part of an overpayment is repaid by someone else, there is a corresponding reduction in the amount to be paid in accordance with the subsection (1) notice.

25. Subsection (7) is an anti-avoidance provision. It prevents a debtor from avoiding subsection (1) by arranging for money to be paid on his or her fulfilling some condition.

26. Subsection (8) provides that third parties who do not comply with a subsection (1) notice are liable for the overpayment to the extent specified in the notice, allowing for any partial recovery of the overpayment.

27. Subsection (9) provides that an amount paid by a third party under subsection (8) is to reduce the original overpayment. Further, a debt under subsection (8) is to be reduced if the original overpayment is recovered by other means.

28. Subsection (10) extends the provisions of new section 31B to cover Commonwealth, State and Territory agencies.

New section 31C: Waiver etc.

29. New section 31C enables the Minister administering the Act to write off or waive overpayments under the Act or to approve a plan for repayment of an overpayment by instalment. It is in similar terms to section 186 of the Social Security Act. At present, student assistance overpayments are written off or waived under a delegation under the Audit Act. The basic provision is contained in subsection 31C(1).

30. Subsection (2) provides that an overpayment may be recovered up to six years after the overpayment was incurred. Subsection (3) provides, however, that where an overpayment arose because of false information or a failure to comply with a statutory requirement, the overpayment is recoverable up to six years from the day when the false information or non-compliance is detected by the Department.

31. Subsection (4) provides for the day on which a decision under subsection (1) should take effect. If the decision does not specify the day, it takes effect from the day on which it is made.

New section 31D: Power to obtain information etc.

32. New section 31D gives the Department, through prescribed officers, the power to obtain information relating to a student's entitlement to assistance under the Act. The Department may require individuals and organisations to provide information needed to verify entitlements and require debtors to disclose their financial situation. New section 31D is similar to section 164 of the Social Security Act.

33. Subsection (1) is the principal provision of the section. Subsection (2) clarifies that the Department may require information to be given as to a person's financial situation, any subsequent change in the person's address, or the whereabouts or financial situation of a person to whom an overpayment has been made.

34. Subsection (3) provides that a prescribed officer may require that information be supplied on oath or affirmation. Subsection (4) specifies the nature of the oath.

35. Subsection (5) provides that the proposed section 31D does apply to Commonwealth, State and Territory agencies.

36. Subsection (6) provides that the proposed section 31D would not override a contrary Commonwealth law.



New section 31E: Self-incrimination

37. New section 31E provides that self-incrimination is not a ground for refusing to comply with new section 31D. It also provides, however, that information given in these circumstances is not admissible evidence in criminal proceedings (other than proceedings for failing to give information if required under proposed section 31D). New section 31E is similar to section 165 of the Social Security Act.

New section 31F: Giving information etc.-State and Territory laws

38. New section 31F provides that new section 31D overrides any contrary State or Territory law. It is similar to section 166 of the Social Security Act.

New section 31G: Offences

39. New section 31G makes it an offence to provide false information or otherwise deceive an officer. This provision is similar to section 174 of the Social Security Act and will replace the existing regulation 91 of the Student Assistance Regulations.

40. New subsection 31G(2) enables a court convicting a person of an offence under subsection 31G(1) also to make an order for the recovery of any overpayment resulting from the offence having been committed.

41. New subsection 31G(3) enables the Department's assessment of the overpayment resulting from the offence to be accepted as prima facie evidence. The subsection would not prevent evidence being given against the Department's assessment.

New section 31H: Penalties

42. New section 31H deals with offences provided for in the Act. These offences would be summary offences. The maximum penalty is a fine of \$2,000 and/or 12 months' imprisonment for natural persons, and a fine of \$10,000 for corporations. (The amendment to section 36 of the Act sets the maximum penalty for an offence prescribed in the Regulations at a fine of \$1,000 and/or 6 months' imprisonment.)

New section 31J: Proceedings against corporations

43. New section 31J enables intentions and actions to be ascribed to a corporation. It is similar to section 176 of the Social Security Act.

44. Subsection 31J(1) deals with ascribing a state of mind to a corporation, and subsection 31J(2) deals with ascribing conduct. Subsection 31J(3) defines the expression "state of mind" used in subsection (1).

New section 31K: Evidentiary certificates

45. New section 31K provides that a Departmental certificate about the student assistance paid to a person should be accepted as prima facie evidence in legal proceedings. This provision is similar to section 183(2) of the Social Security Act.

Clause 7: Delegation

46. Clause 7 amends section 34A of the Principal Act, which enables the Minister to delegate his or her powers under the Act. The amendment enables delegation of the proposed new power to write off or waive overpayments and to allow payment of overpayments by instalments.

47. In keeping with the existing provisions of section 34A, the power to waive overpayments would be delegated only to the Secretary and Senior Executive Service officers. The power to write off or approve repayment by instalments may be delegated to less senior officers.

Clause 8: Regulations

48. Clause 8 amends section 36 of the Principal Act, which empowers the Governor-General to make regulations under the Act. The amendment raises the maximum penalty that the regulations may prescribe from a fine of \$100 to a fine of \$1,000 and/or imprisonment for 6 months (new section 31H sets the maximum penalty for an offence prescribed in the Act as a fine of \$2,000 and/or imprisonment for 12 months).

49. The offences provided for in the Student Assistance Regulations concern the failure of a beneficiary to advise the Department of changes in circumstances affecting his or her entitlement, and failure to comply with a summons issued by the Student Assistance Review Tribunal.

PART III - AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Clause 9: Principal Act

50. This clause provides that in this Part, the Seamen's War Pensions and Allowances Act 1940 is referred to as the Principal Act.

Clause 10: Recovery of overpayments

51. Section 55A of the Principal Act provides for the recovery of overpayments arising under that Act or its Regulations, the Veterans' Entitlements Act or the Social Security Act.

52. Subsection 55A(1) provides for recovery by proceedings in the courts, by deductions from continuing payments under the Principal Act or by a combination of both methods. The subsection provides that overpayments under the Social Security Act may be recovered under the Principal Act by means of deductions only.

53. The recovery mechanism provided by subsection 55A(1) in relation to overpayments under the Social Security Act is being extended to overpayments arising under a number of educational schemes. The relevant schemes would be prescribed in regulations.

54. Clauses 10(1)(a) and (b) amend subsection 55A(1) by inserting a new paragraph 55A(1)(aa) to provide that an amount paid under a prescribed educational scheme which was not lawfully payable under that scheme is an amount to which the subsection applies.

55. Clauses 10(1)(c) and (d) amend paragraphs 55A(1)(c) and (e) of the Principal Act by inserting references to the amount described in new paragraph 55A(1)(aa). These references will preclude recovery action by way of court proceedings in respect of that amount. The only remaining avenue for recovery of overpayments under a prescribed educational scheme would be by deductions from payments under the Principal Act or Regulations, as provided by subsection 55A(2).

56. Subsection 55A(2) of the Principal Act provides for the recovery of overpayments by deductions from payments to the person under that Act or the Regulations, from any amount payable on the person's death or, with another person's consent, from payments to that other person.

57. Clause 10(1)(e) amends subsection 55A(2) of the Principal Act by inserting a reference to an amount described in new paragraph 55A(1)(aa) to permit an educational scheme overpayment to be recovered by deductions in the same way as other overpayments.

58. By clause 2 the amendments made by clause 10(1) operate with effect from the date of Royal Assent.

59. Clause 10(2) provides that the new recovery provisions in relation to educational scheme overpayments apply to amounts overpaid both before and after the date of Royal Assent.

PART IV - AMENDMENT OF THE SOCIAL SECURITY ACT 1947

Clause 11: Principal Act

60. This clause provides that reference to the "Principal Act" in Part IV of the Bill means reference to the Social Security Act 1947.

Clause 12: Recovery of overpayments

61. Section 181 is the general provision in the Principal Act which deals with the recovery of overpayments. Subsection 181(2) enables recovery by the direct deduction of an overpayment from a continuing payment of a pension, benefit or allowance under the Principal Act.

62. Under current arrangements, paragraph 181(2)(c) enables the recovery by direct deduction of an overpayment of an education allowance from a continuing payment of a social security pension, benefit or allowance, but only where the education allowance and the social security payment were made during the same period.

63. Clause 12(1) recasts paragraph 181(2)(c) to extend the direct deduction mechanism to any overpayment of an education allowance. This means that such an overpayment can be recovered by direct deduction from a continuing social security payment.

64. Clause 12(2) provides that the new paragraph 181(2)(c) applies to an overpayment of an education allowance whether the overpayment arose before or after the Bill comes into operation.

PART V - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Clause 13: Principal Act

65. This clause provides that in this Part, the Veterans' Entitlements Act 1986 is referred to as the Principal Act.

Clause 14: Recovery of overpayments

66. Section 205 of the Principal Act provides for the recovery of overpayments arising under that Act or its Regulations, the Seamen's War Pensions and Allowances Act or the Social Security Act.

67. Subsection 205(1) provides for recovery by proceedings in the courts, by deductions from continuing payments under the Principal Act or by a combination of both methods. The subsection provides that overpayments under the Social Security Act may be recovered under the Principal Act by means of deductions only.

68. The recovery mechanism provided by subsection 205(1) in relation to overpayments under the Social Security Act is to be extended to overpayments arising under a number of educational schemes. The relevant schemes would be prescribed in regulations.

69. Clauses 14(1)(a) and (b) amend subsection 205(1) by inserting a new paragraph 205(1)(aa) to provide that an amount paid under a prescribed educational scheme which was not lawfully payable under that scheme is an amount to which the subsection applies.

70. Clauses 14(1)(c) and (d) amend paragraphs 205(1)(c) and (e) of the Principal Act by inserting references to the amount described in new paragraph 205(1)(aa). These references preclude recovery action by way of court proceedings in respect of that amount. The only remaining avenue for recovery of an overpayment under a prescribed educational scheme would be by deductions from payments under the Principal Act or Regulations, as provided by subsection 205(2).

71. Subsection 205(2) of the Principal Act provides for the recovery of overpayments by deductions from payments to the person under that Act or the Regulations, from any amount payable on the person's death or, with another person's consent, from payments to that other person.

72. Clause 14(1)(e) amends subsection 205(2) of the Principal Act by inserting a reference to an amount described in new paragraph 205(1)(aa) to permit an educational scheme overpayment to be recovered by deductions in the same way as other overpayments.

73. By clause 2 the amendments made by clause 14(1) operate with effect from the date of Royal Assent.

74. Clause 14(2) provides that the new recovery provisions in relation to student assistance overpayments apply to amounts overpaid both before and after the date of Royal Assent.

