

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**STUDENT ASSISTANCE (YOUTH TRAINING ALLOWANCE)  
AMENDMENT BILL 1994**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

(Amendments and new clauses to be moved on behalf of the Government)

(Circulated by authority of the Minister for Schools, Vocational Education and  
Training, the Honourable Ross Free, MP)



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## **GOVERNMENT AMENDMENTS TO THE STUDENT ASSISTANCE (YOUTH TRAINING ALLOWANCE) AMENDMENT BILL 1994**

(Amendments and clauses to be moved on behalf of the Government)

### **OUTLINE**

These amendments to the *Student Assistance (Youth Training Allowance) Bill 1994* would provide for the abolition of the Student Assistance Review Tribunal (SART) and the transfer of the members and the functions of this Tribunal to the Social Security Appeals Tribunal (SSAT). Under the current provisions external review of AUSTUDY decisions is by the SART and external review of Youth Training Allowance (YTA) decisions is proposed to be by the SSAT.

Other amendments to this Bill provide that decisions relating to the recovery of student assistance debts would be reviewable internally and by the SSAT and the Administrative Appeals Tribunal. Under current arrangements YTA debts would be reviewable but there is no power to review decisions on student assistance debts.

There are a number of other amendments to this Bill which would provide for the following:

- removal of primary decision making powers from 'authorised persons' and 'prescribed officers' and replacement with primary decision making and review powers for the Secretary with provision for the Secretary to delegate these powers;
- internal review by an authorised review officer;
- power for the Minister to make policy statements in relation to student assistance;
- an obligation for the Employment Secretary to have regard to decisions of review tribunals; and
- that in cases where a decision was made solely by an officer of DEET that the Secretary of that Department would be the responsible party to any proceedings in the AAT and in the case where the decision was made solely by an officer of DSS, that Secretary would be the responsible party before the AAT.

The amendments also make technical drafting changes to the Bill.

## **PURPOSE OF THE AMENDMENTS**

The purpose of the amendments which abolish the SART and transfer the members and functions to the SSAT is to ensure that there will be consistency in the review of student assistance decisions and youth training allowance decisions. The changes which would amend the primary decisions making powers so they become powers exercised by the Secretary and the introduction of the authorised review officer process for internal review of student assistance decisions would also provide consistency of decision making between the youth training allowance and student assistance programs.

Consistency is also the key to the amendments that would provide for review of student assistance debt recovery decisions. Under current arrangements decisions about whether to recover a student assistance debt rather than write-off or waive the debt are not reviewable. The decisions as they relate to youth training allowance are reviewable. These amendments would provide that student assistance debts are reviewable on a similar basis to that of youth training allowance.

## **FINANCIAL IMPACT**

The following running costs will be transferred from the Department of Employment, Education and Training to the Department of Social Security:

<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>	<b>1997-98</b>
\$239,800	\$495,200	\$480,700	\$480,700

In addition, a cost of \$60,000 to current revenue was identified and this is to be offset by the Department of Employment, Education and Training. There will be no impact on the running costs of student assistance programs or the Youth Training Initiative.

## NOTES ON CLAUSES

### Amendment Number 1

Subclause 5(1) would be amended to substitute the definition of 'officer' to provide that an officer for the purposes of youth training allowance and student assistance would refer to a person performing duties or exercising powers or functions under this legislation. For the purposes of the confidentiality provisions contained in Division 3 of Part 10, the definition would extend to all persons in the first category and persons who have been appointed or employed and who may have performed services for the Commonwealth and accessed information relating to people under this legislation.

Subclause 5(1) would be amended by omitting the definitions of 'authorised person' and 'prescribed officer'. Subclause 5(1) would be further amended by inserting the following definitions:

- 'protected information' which will encompass information held about a person in the records of the Department of Employment, Education and Training and the Department of Social Security;
- 'student assistance benefit' which defines a student assistance benefit to mean a payment under the AUSTUDY scheme, the Student Financial Supplement Scheme, or a current or former special educational scheme.

### Amendment Number 2

Clause 6 is amended to provide for the repeal of section 4 of the Principal Act which provides for the Minister to appoint officers as 'prescribed officers' for the purposes of the Principal Act.

### Amendment Number 3

The amendment omits the current clause 7 and substitutes a new clause 7 which provides that the Act binds the Crown in all its capacities except in relation to Parts 8, 9 and 10 where separate provision is made.

### Amendment Number 4

The note to Clause 8 is amended to provide that in administering the Act the Secretary is bound by the *Privacy Act 1988* and the confidentiality provisions contained in Division 3 of Part 10 of the Student Assistance (Youth Training Allowance) Amendment Bill.

### **Amendment Number 5**

Clause 8 is amended by inserting the following subclauses:

**8A. *Benefits under the AUSTUDY scheme***

This subclause would amend section 7 of the Principal Act by removing the reference to an authorised person and replacing it with a reference to the Secretary.

**8B. *Advances on account of benefit***

This subclause would amend section 11 of the Principal Act by removing the reference to an authorised person and replacing it with a reference to the Secretary. This amendment vests the primary decision making power in relation to advances on account of benefit with the Secretary.

**8C. *Secretary to give student notice of entitlement***

This subclause would amend section 12F of the Principal Act by removing references to an authorised person and replacing these with references to the Secretary.

**8D. *Payments to stop if student ceases to be eligible for financial supplement***

This subclause would amend section 12R of the Principal Act by removing references to an authorised person and replacing these with references to the Secretary.

**8E. *What happens if student fails to notify change in circumstances***

This subclause would amend section 12S of the Principal Act by removing references to prescribed officers and replacing these with references to the Secretary.

**8F. *Payments to stop if student is found never to have been eligible for financial supplement***

This subclause would amend section 12T of the Principal Act by removing references to an authorised person and replacing them with references to the Secretary.

**8G. *What happens if financial supplement was paid because of provision of false or misleading information***

This subclause would amend section 12U of the Principal Act by removing references to prescribed officers and replacing them with references to the Secretary.

**8H. *Death of student***

This subclause would amend section 12V of the Principal Act by removing the reference to an authorised person and replacing it with a reference to the Secretary.

*8J. Notice and a certificate to the Commissioner*

This subclause would amend section 12ZH of the Principal Act by omitting from subsection (3) 'arrange for a prescribed officer to'.

*8K. Explanation of Division*

This subclause would amend section 12ZV of the Principal Act by removing references to authorised officers and prescribed officers and replacing them with references to the Secretary.

*8L. What happens if a decision of Secretary is set aside or varied*

This subclause would amend section 12ZX of the Principal Act by removing the reference to an authorised person and prescribed officer and replacing it with a reference to the Secretary.

*8M. Repeal of Part 5*

This subclause would repeal Part 5 of the Principal Act which provides for review of decisions by senior authorised persons, senior prescribed officers and the Student Assistance Review Tribunal.

*8N. Recovery of certain overpayments by offsetting*

This subclause would amend section 38 of the Principal Act by removing references to a prescribed officer and replacing them with references to the Secretary.

*8P. Late payment charge and interest in relation to overpayment of a benefit*

This subclause would amend section 40 of the Principal Act by removing references to a prescribed officer and replacing them with references to the Secretary.

This subclause would further amend section 40 by removing the reference to paragraph 43(2)(c) and replacing with a reference to section 284 as applied under subsection 43(2). Section 284 would allow the Secretary to decide that a person may repay a debt by means of instalments.

*8Q. Determination that late payment interest is not payable in relation to certain periods*

This clause would amend section 41 of the Principal Act by removing references to the Minister or prescribed officer and replacing them with references to the Secretary.

*8R. Recovery of certain overpayments from third parties*

This subclause would amend section 42 of the Principal Act by removing references to a prescribed officer and replacing them with references to the Secretary.

### **Amendment Number 6**

Clause 9 would be amended by replacing the reference to 'subsection' with 'subsections' to refer to the subsections that would be added by Amendment Number 7.

### **Amendment Number 7**

Clause 9 would be amended to provide that the proposed section 284 (which provides that the Secretary may allow for payment of debts by instalments) and proposed Subdivision D of Division 15 of Part 8 (which provides for non-recovery of youth training allowance debts) would also cover student assistance debts.

Clause 9 would be further amended to provide that in applying Subdivision D of Division 15 of Part 8 to student assistance debts, the reference in subsection 289(5) to \$200 would be read as a reference to \$50. The effect of this amendment would be to provide that in the case of student assistance debts, the Secretary must waive debts where a debt is less than \$50 and it would not be cost effective to recover.

### **Amendment Number 8**

This amendment would insert a new clause 9A which would repeal section 44 of the Principal Act.

### **Amendment Number 9**

Clause 10 would be amended to provide for the repeal of sections 45 to 47 of the Principal Act.

### **Amendment Number 10**

Clause 12 would be amended to amend section 49 of the Principal Act to exclude the new Part 8 (inserted by clause 18) from the operation of the section. New Part 8 has its own offence provisions.

Clause 12 would also be amended to provide that the reference to a prescribed officer in section 49 of the Principal Act is removed and replaced by a reference to the Secretary.

### **Amendment Number 11**

Clause 14 would be amended to omit the existing clause and replace it with a new clause 14 which would remove references to an authorised person or a prescribed officer in section 51 of the Principal Act and replace them with references to the Secretary. The new clause 14 would also amend section 51 of the Principal Act to exclude the new Part 8 (inserted by clause 18) from the operation of the section. New Part 8 has its own provisions relating to evidentiary matters.

A new clause 14A would be inserted. This clause would repeal sections 52, 53 and 54 of the Principal Act.

### **Amendment Number 12**

This amendment would omit clause 15 which would repeal section 54 of the Principal Act. The repeal of section 54 would now be provided by clause 14A.

### **Amendment Number 13**

The amendment would amend new paragraph 55A(1B)(a) inserted by Clause 16 of the Bill so that payments of the Youth Training Supplement pursuant to new section 136 will not be made from the Consolidated Revenue Fund appropriated under that provision. Instead, these payments will come from the normal annual Departmental appropriation which covers Formal Training Assistance.

### **Amendment Number 14**

This amendment would insert a definition of "entry contribution" in new section 58 to be inserted by clause 18 of the Bill, stating that it has the same meaning as in section 1147 of the *Social Security Act 1991*. "Entry contribution" refers to the amount that a person pays to have the right to live in a retirement village or granny flat.

### **Amendment Number 15**

This amendment would replace the proposed clause 17 with a new clause 17. The new clause would repeal section 55B of the Principal Act. This amendment further provides for the insertion of clause 17A. This clause would provide that section 56 of the Principal Act is amended by removing subsection (c) which provides a power to make regulations regarding the operation of the Student Assistance Review Tribunal.

### **Amendment Number 16**

This amendment would omit 'Part' in clause 18 and replace it with 'Parts'. This would reflect the inclusion, as a result of these amendments, of Parts 9 and 10.

### **Amendment Number 17**

This amendment would amend clause 18 by omitting the proposed section 57 and substitute a new section 57. The new section would apply the provisions of Part 1.2 of the *Social Security Act 1991* for the purpose of the new Part 8 and Parts 9 and 10 as they apply to the Youth Training Allowance.

New subsection 57(3) would further provide that if a provision of the *Social Security Act 1991* applies only for the purpose of a particular provision or particular provisions of the Act, then in so far as the Social Security provision is not inconsistent with the new Part 8 and Parts 9 and 10 as far they apply (see new subsection 57(4)), it applies for the purposes of any provision in Part 8 and Parts 9 and 10 as far as they apply, that corresponds to the particular provisions of the *Social Security Act 1991* referred to above.



### **Amendment Number 18**

This amendment would omit the definition of 'officer' from clause 18. 'Officer' would now be defined in clause 5 as a result of these amendments.

### **Amendment Numbers 19 and 20**

These amendments would omit 'Part' in proposed section 62 and replace it with 'Act'.

### **Amendment Number 21**

The amendment would amend the note to new section 101(3) inserted by clause of the Bill, so that the reader is directed to the correct section of the *Social Security Act 1991* for the definition of "designated temporary entry permit".

### **Amendment Number 22**

The amendment would amend the note to new section 102(3) inserted by clause 18 of the Bill, so that the reader is directed to the correct section of the *Social Security Act 1991* for the definition of "designated temporary entry permit".

### **Amendment Number 23**

This amendment would correct a minor drafting point in the heading to new subsection 200(2) inserted by clause 18 of the Bill.

### **Amendment Number 24**

The amendment would amend the notes to proposed section 206 to be inserted by clause 18 of the Bill to include a reference to new section 58 in addition to the reference to section 1147 of the *Social Security Act 1991*. Amendment Number 14 amends new section 58 to include a definition of "entry contribution" which provides that these words have the same meaning as in section 1147 of the *Social Security Act 1991*.

### **Amendment Number 25**

The effect of this amendment would be that the proposed '*Division 16 - Review of decisions*' would become '**PART 9 - REVIEW OF DECISIONS**'. These amendments would apply the proposed provisions dealing with review of decisions for youth training allowance to review of student assistance decisions.

### **Amendment Number 26**

This amendment would provide that the proposed '*Subdivision A - Internal Review*' becomes '*Division 1 - Internal Review*'.

### **Amendment Number 27**

This amendment would insert a new section 291A. This new section would provide that the new Division 1 which provides for internal review would apply to:

- all decisions of an officer under the Principal Act relating to AUSTUDY;
- all decisions of an officer under the Principal Act relating to the Student Financial Supplement Scheme;
- all decisions of an officer under the Principal Act relating to the recovery of amounts paid under a current or former special education scheme; and
- all decisions of an officer under the Principal Act relating to the youth training allowance (including a decision under section 80 to the extent to which it relates to the terms of a Youth Training Activity Agreement that is in force).

### **Amendment Number 28**

This amendment would amend the proposed subsection 292(1) to provide that the Secretary could review decisions set out in proposed section 291A inserted by Amendment Number 27, if the Secretary is satisfied that there is sufficient reason for the decision to be reviewed.

### **Amendment Number 29**

This amendment would amend the note to the proposed subsection 292(1) to provide that if a payment made under Part 8 is stopped or the rate of payment is varied because of the operation of a computer program that there will still be a decision of an officer for review purposes.

### **Amendment Number 30**

This amendment would amend the proposed subsection 292(7) to remove 'Part' and replace it with 'Act'.

### **Amendment Number 31**

This amendment would amend the proposed subsection 293(1) to allow for a person affected by a decision to which Division 1 of Part 9 applies to apply to the Secretary for a review of that decision.

### **Amendment Number 32**

This amendment would omit the notes to the proposed subsection 293(1) and substitute a new note to provide that if a payment made under Part 8 is stopped or the rate of payment is varied because of the operation of a computer program that there will still be a decision of an officer for review purposes.

**Amendment Number 33**

This amendment would insert a new subsection 293(1A) which would provide that a person must apply for an internal review of reviewable student assistance decision within three months after the making of the decision, or within such longer period as the Secretary allows.

**Amendment Number 34**

This amendment would provide that a person who applies to the Social Security Appeals Tribunal for a review of a reviewable student assistance decision, but who has not applied to the Secretary for internal review of the decision, is taken to have applied to the Secretary on the day on which the person applies to the Social Security Appeals Tribunal provided that he or she has applied to the Social Security Appeals Tribunal within the 3 months time limit provided for by Amendment Number 33.

**Amendment Number 35**

This amendment would omit the proposed paragraph 294(1)(a) and substitute a new paragraph 294(1)(a) which replaces 'an adverse decision is made in relation to a youth training allowance' with 'a decision to which this Division applies is an adverse decision'. This would mean that if an adverse decision has been made to which this Division 1 of Part 9 applies, and it is based on the exercise of a discretion or a person's opinion, the Secretary may declare in writing that payments can continue pending the outcome of the internal review process.

**Amendment Number 36**

This amendment would amend the proposed subsection 294(1) to extend the payment pending review powers of the Secretary to AUSTUDY and Financial Supplement decisions as is currently provided for youth training allowance matters.

**Amendment Number 37**

This amendment would amend the proposed subsection 294(2) by omitting 'this Part (other than this Division)' and substituting 'this Act (other than this Part)'.

**Amendment Number 38**

This amendment would omit 'Part' from proposed subsection 294(4) and substitute 'Act'.

**Amendment Number 39**

This amendment would amend proposed subsection 294(5) by extending the definition of 'adverse decision' to cover decisions in relation to AUSTUDY and Financial Supplement as well as youth training allowance.

#### **Amendment Number 40**

This amendment would amend proposed subsection 295(3) by omitting 'Part' and substituting 'Act'. This would extend the provision for the Secretary to deem particular events to have occurred, if it is reasonable to do so, to the whole of the Principal Act.

#### **Amendment Number 41**

This amendment would amend the proposed paragraph 297(1)(a) to omit 'Part' and substitute 'Act'. Proposed subsection 297(1) requires that where a person gives an applicant a notice of a decision under subsection 295(2) that notice must include a statement to the effect that the applicant, may, apply to the Social Security Appeals Tribunal for review of the person's decision.

#### **Amendment Number 42**

This amendment would provide that the proposed '*Subdivision B - Review by Social Security Appeals Tribunal*' becomes '*Division 2 - Review by Social Security Appeals Tribunal*'.

#### **Amendment Number 43**

This amendment would replace the proposed section 298 with a new section 298 and note. The new section would provide that Division 2 would apply to:

- all decisions of an officer under this Act relating to AUSTUDY;
- all decisions of an officer under this Act relating to the Student Financial Supplement Scheme;
- all decisions of an officer under this Act relating to the recovery of debts relating to current or former special education scheme; and
- all decisions of an officer under this Act relating to the youth training allowance (including a decision under section 80 to the extent to which it relates to the terms of a Youth Training Activity Agreements that is in force).

The note would refer the reader to the definition of 'officer' as provided in Amendment Number 1.

#### **Amendment Number 44**

This amendment would amend the proposed section 299 to remove 'Part' and replace it with 'Act'.

### **Amendment Number 45**

This amendment would omit the note to proposed section 300 and insert a new note which would provide that if a payment made under Part 8 is stopped or the rate of payment is varied because of the operation of a computer program that there will still be a decision of an officer for review purposes.

### **Amendment Number 46**

This amendment would insert a new subsection (3) after the proposed subsection 300(2) which would provide that a person who wishes to apply to the Social Security Appeals Tribunal for a review of the decision of the Secretary or an authorised review officer to affirm, vary or set aside a decision must make an application for review within three months of the decision of the Secretary or authorised review officer, or within a longer period if permitted by the Secretary.

### **Amendment Number 47**

This amendment would insert a new paragraph (aa) in proposed section 302. The effect of this amendment is that the Social Security Appeals Tribunal cannot review a decision of the Secretary requesting information or evidence about a student's eligibility for a benefit under the AUSTUDY scheme.

### **Amendment Number 48**

This amendment would omit the proposed paragraph 303(1)(a) and substitute a new paragraph 303(1)(a) which replaces 'an adverse decision is made in relation to a youth training allowance' with 'a decision to which this Division applies is an adverse decision'. This would mean that if an adverse decision has been made to which this Division 1 of Part 9 applies, and it is based on the exercise of a discretion or a person's opinion, the Secretary may declare in writing that payments can continue pending the outcome of an application to the Social Security Appeals Tribunal.

### **Amendment Number 49**

This amendment would amend the proposed subsection 303(1) to provide that the Secretary may continue payment of AUSTUDY or Financial Supplement pending the outcome of review by the Social Security Appeals Tribunal, as is currently provided for youth training allowance matters.

### **Amendment Number 50**

This would amend subsection 303(3) by omitting 'this Part (other than this Division)' and substituting 'this Act (other than this Part)'.

### **Amendment Number 51**

This would amend subsection 303(5) by omitting 'Part' and substituting 'Act'.

### **Amendment Number 52**

This amendment would amend proposed subsection 303(6) by extending the definition of 'adverse decision' to cover decisions in relation to AUSTUDY and Financial Supplement, as well as youth training allowance.

### **Amendment Number 53**

This amendment would amend paragraph 304(2)(e) by omitting 'this Part (other than this Division)' and substituting 'this Act (other than this Part)'.

### **Amendment Number 54**

This amendment would insert a new subsection 305(1A) which would provide that where the Social Security Appeals Tribunal decides that a person is entitled to AUSTUDY or Financial Supplement the Tribunal is required to assess the rate payable or request the Secretary to do so.

### **Amendments Number 55 to 57 (inclusive)**

These amendments would amend the proposed subsections 305(3) and (4) by omitting references to 'Part' and substituting 'Act'.

### **Amendment Number 58**

This amendment would replace paragraph 305(4)(b) with a new paragraph 305(4)(b) and insert a new paragraph (ba). Subsection 305(4) limits the powers of the Secretary that can be exercised by the Social Security Appeals Tribunal (SSAT). The new paragraph 305(4)(b) provides that the SSAT cannot exercise powers dealing with the manner of payment of AUSTUDY, Financial Supplement or youth training allowance. Paragraph 305(4)(ba) provides that the SSAT cannot exercise powers in subsection 42(3) relating to issuing of notices requiring payment to the Commonwealth.

### **Amendment Number 59**

This amendment would amend section 305 to replace 'Subdivision' with 'Division'.

### **Amendment Number 60**

This amendment omits 'a decision under this Part' from proposed subsection 307(4) and substitutes 'a decision to which this Division applies that relates to youth training allowance'. This would provide that where a person applies to Social Security Appeals Tribunal for a review of a youth training allowance decision more than three months after the person was given notice of the decision, and the Tribunal decides that youth training allowance is payable or increased, then the decision has effect from the date of application for review.

### **Amendment Number 61**

This amendment would insert 'to which this Division applies' after 'decision' in subsection 309(1).

### **Amendment Number 62**

This amendment amends proposed subsection 309(1) to allow applications for review by the Social Security Appeals Tribunal to be delivered to an office of the Tribunal or the Department, or, in the case of a decision relating to youth training allowance, to the Department of Social Security.

### **Amendment Number 63**

This amendment omits 'to the Department of Social Security' from paragraph 311(1)(b) which means that the Employment Secretary is the party to proceedings before the Social Security Appeals Tribunal.

### **Amendment Number 64**

This amendment would insert subsection 1A in proposed section 311 which would provide that where an application for review relates solely to issues determined by an officer of the Department of Social Security, the party to proceedings before the Tribunal would be the Secretary to the Department of Social Security.

### **Amendment Number 65**

This amendment would omit the heading '*Subdivision C - Right to review by Administrative Appeals Tribunal*' and substitute '*Division 3 - Right to review by Administrative Appeals Tribunal*'.

### **Amendment Number 66**

This would replace the proposed section 312 with a new section 312 and note. The new section 312 would provide that Division 3 - Review by the Administrative Appeals Tribunal would apply to:

- all decisions of an officer under this Act relating to AUSTUDY;
- all decisions of an officer under this Act relating to the Student Financial Supplement Scheme;
- all decisions of an officer under this Act relating to the recovery of debts relating to current and former special education schemes; and
- all decisions of an officer under this Act relating to the Youth Training Allowance (including a decision under section 80 to the extent to which it relates to the terms of a Youth Training Activity Agreements that is in force).

The note would refer the reader to the definition of 'officer' as provided in Amendment Number 1.

#### **Amendment Number 67**

This amendment would amend subsection 313(4) to replace 'Subdivision' with 'Division'.

#### **Amendment Number 68**

This amendment would omit the heading '*Subdivision D - Modification of the Administrative Appeals Tribunal Act 1975*' and substitute '*Division 4 - Modification of the Administrative Appeals Tribunal Act 1975*'.

#### **Amendment Number 69**

This amendment would amend section 316 to replace 'Subdivision' with 'Division'.

#### **Amendment Number 70**

This amendment would replace the proposed subsection 320(1) with a new subsection 320(1) which would modify section 37 of the *Administrative Appeals Tribunal Act 1975* so that the Employment Secretary would be the person who is required to provide the AAT with the statement of reasons and documents pursuant to section 37 of that Act, except where the appeal relates solely to issues determined by officers of the Department of Social Security, in which case, the Secretary of the Department of Social Security would be required to provide the required documents to the AAT.

This amendment would further replace proposed subsection 320(2) with a new subsection 320(2) which would provide that the Secretary or the Secretary to the Department of Social Security would be taken to comply with his or her obligations under paragraph 37(1)(a) of the *Administrative Appeals Tribunal Act 1975* if he or she gives the AAT the prescribed numbers of copies of the statement provided by the Social Security Appeals Tribunal.

#### **Amendment Number 71**

Note 1 to the proposed section 320 is amended by inserting 'or Secretary to the Department of Social Security'. This amendment would mean that the papers required under subsection 37(1) of the *Administrative Appeals Tribunal Act 1975* would be provided by the appropriate Secretary.

#### **Amendment Number 72**

Note 1 to the proposed section 320 is amended to omit 'the Secretary to the Department of Social Security has possession of the statement and the relevant documents, the Secretary' and substitute 'the Secretary, or the Secretary to the Department of Social Security, as the case requires, has possession of the statement and relevant documents, he or she'.



### **Amendment Number 73**

This amendment would delete the reference to the Department of Social Security in proposed paragraph 322(2)(d) to make it consistent with proposed paragraph 313(2)(d).

### **Amendment Number 74**

This amendment would amend clause 323 which has the effect of modifying subsection 42A(2) of the *Administrative Appeals Tribunal Act 1975* so that the reference to the person who made the decision is a reference to the Secretary or the Secretary to the Department of Social Security, as the case requires.

### **Amendment Number 75**

This amendment would provide that '*Division 17 - Administration*' would become '**PART 10 - ADMINISTRATION**'.

### **Amendment Number 76**

This amendment would provide that '*Subdivision A - General administration*' would become '*Division 1 - General administration*'.

### **Amendments Number 77-79 (inclusive)**

These amendments would remove references to 'Part' in proposed section 324 and replace these with references to 'Act'.

### **Amendment Number 80**

This amendment is necessary to remove the reference to 'Division 16' in proposed section 325 and replace it with 'Part 9' which is the Part that would contain review provisions for the Act.

### **Amendment Number 81**

This amendment would omit the proposed section 326 and substitute a new section 326. This new section would provide that the Secretary and the Secretary to the Department of Social Security may agree on administrative arrangements to further the objectives of Part 8, and Parts 9 and 10 as far as they relate to Part 8, including arrangements under which officers of the Department of Social Security may perform duties or exercise powers or functions under or in relation to Part 8, or to Parts 9 and 10 as they relate to Part 8.

### **Amendment Number 82**

This amendment would modify proposed subsection 327(1) to remove the reference to 'Part' and replace it with a reference to 'Act'.

### **Amendment Number 83**

This amendment would modify Note 2 to proposed section 327 to remove the reference to the definition of officer in subsection 58(1) and replace it with a reference to the definition of officer in subsection 3(1) as provided in Amendment Number 1.

### **Amendments Number 84-86 (inclusive)**

These amendments would remove references to 'Part' in proposed sections 328 and 329 and replace these with references to 'Act'.

### **Amendment Number 87**

This amendment would replace the proposed subsection 330(1) with two new subsections. The new subsection 330(1) would provide that a notice under a Part of the Principal Act (other than Part 8) is taken to be given to a person, even if the Secretary is satisfied that person did not actually receive the notice, if the notice is:

- (a) delivered to a person personally; or
- (b) left at the address of the place of residence or business of the person last known to the Secretary; or
- (c) sent by pre-paid post to the address of the place of residence or business of the person last known to the Secretary.

The new subsection (1A) would provide that a notice under Part 8 of the Principal Act is taken to be given to a person, even if the even if the Secretary or the Secretary to the Department of Social Security, as the case requires, is satisfied that person did not actually receive the notice, if the notice is:

- (a) delivered to a person personally; or
- (b) left at the address of the place of residence or business of the person last known to the Secretary or the Secretary to the Department of Social Security; or
- (c) sent by pre-paid post to the address of the place of residence or business of the person last known to the Secretary or the Secretary to the Department of Social Security.

### **Amendments Numbers 88 and 89**

These amendments remove references to 'Part' in the proposed section 330 and replace these with references to 'Act'.

### **Amendment Number 90**

This amendment modifies the proposed subsection 330(4) to extend its operation to the whole of the Principal Act.

### **Amendment Number 91**

This amendment would provide that '*Subdivision B - Information gathering*' would become '*Division 2 - Information gathering*'.

### **Amendments Number 92-94 (inclusive)**

These amendments would remove references to 'Subdivision' in proposed section 331 and replace these with references to 'Division'.

### **Amendment Number 95**

This amendment would add a new subsection 331(4). The subsection would provide that none of the provisions relating to information gathering would affect the operation of section 12ZU. Section 12ZU of the Principal Act provides secrecy provisions for information gathering in relation to Financial Supplement.

### **Amendment Number 96**

This amendment would replace the proposed section 332 with two new subsections. The new subsection 332(1) would provide that in relation to student assistance, the Secretary may request a person to give information, or to produce a document which is in his or her control, to the Department. The Secretary may only make such a request if it is considered that the information or the document may be relevant to:

- (a) whether a person who has made a claim for a student assistance benefit is or was qualified for the benefit; or
- (b) whether a student assistance benefit under this Act is payable to the person receiving it; or
- (c) whether a student assistance benefit under this Act was payable to a person who received it; or
- (d) the rate of student assistance benefit that applies or applied to the person.

New subsection 332(2) would provide that in relation to youth training allowance, the Secretary may request a person to give information, or to produce a document which is in his or her control, to the Department or to the Department of Social Security.

The Secretary may only make such a request if it is considered that the information or the document may be relevant to:

- (a) whether a person who has made a claim for youth training allowance is or was qualified for the benefit;
- (b) whether youth training allowance is payable to the person receiving it; or
- (c) whether youth training allowance was payable to a person who received it; or
- (d) the rate of youth training allowance that applies or applied to the person.

#### **Amendment Number 97**

This amendment would omit the proposed subsection 333(1) and replace it with new subsections (1) and (1A).

New subsection 333(1) would allow the Secretary to request a person who owes a debt to the Commonwealth in relation to a student assistance benefit to:

- (a) give the Department information, or to produce documents which are in the person's custody or control, concerning the person's financial affairs; or
- (b) notify the Department of a change of address within 14 days of the change.

A note to section 333 would clarify that a requirement under this section may be sent to a company as well as to a natural person, and refer the reader to paragraph 22(1)(a) of the *Acts Interpretation Act 1901*.

New subsection 333(1A) would allow the Secretary to request a person who owes a debt to the Commonwealth in relation to youth training allowance to:

- (a) give the Department or the Department of Social Security information, or to produce documents which are in the person's custody or control, concerning the person's financial affairs; or
- (b) notify the Department or the Department of Social Security of a change of address within 14 days of the change.

#### **Amendment Number 98**

This amendment would omit proposed section 334 and replace it with two new subsections.

The new subsection 334(1) would deal with information or documents which would help the Department locate a person who owes a student assistance debt or which would be relevant to the debtor's financial situation. The Secretary may request a person who may have such information or documents to give the information or produce the documents to the Department.

The new subsection 334(2) would deal with information or documents which would help the Department locate a person who owes a youth training allowance debt or which would be relevant to the debtor's financial situation. The Secretary may request a person who may have such information or documents to give the information or produce the documents to the Department of Social Security.

A note to the new section 334 would clarify that a requirement under this section may be sent to a company as well as to a natural person, and refer the reader to paragraph 22(1)(a) of the *Acts Interpretation Act 1901*.

#### **Amendment Number 99**

This amendment would omit 'Part' from proposed section 337 and substitute 'Act'. This would apply the provisions of that section to the whole of the Principal Act. Section 337 would provide that nothing in any law of a State or Territory operates to prevent a person from giving information, producing documents or giving evidence as required under the Principal Act.

#### **Amendment Number 100**

This amendment would omit the heading '*Subdivision C - Confidentiality*' and substitute it with a new heading '*Division 3 - Confidentiality*'.

#### **Amendment Number 101**

This would insert a new section 338A before the proposed section 339. This new subsection would provide that none of the provisions relating to confidentiality in Division 3 of Part 10 would affect the operation of section 12ZU. Section 12ZU provides secrecy provisions for information gathering in relation to Financial Supplement.

#### **Amendment Number 102**

This amendment would omit 'Part' from proposed subsection 339(1) and substitute 'Act'. This would provide that proposed subsection 339(1) would apply to the whole of the Principal Act. Subsection 339(1) would provide for a person to obtain protected information if the information is obtained for the purposes of the Principal Act.

#### **Amendment Number 103**

This amendment would omit 'Division' from proposed subsection 339(3) and substitute 'Part'. This would reflect Amendment Number 25 which replace Division 16 with Part 9.

#### **Amendment Number 104**

The amendment would insert a reference to *Child Support (Assessment) Act 1989* in proposed subsection 339(3). This amendment would provide that the general 'bar' on disclosure which is applied by proposed section 339 would not apply to the *Child Support (Registration and Collection) Act 1989* or to the *Child Support (Assessment) Act 1989*.

#### **Amendment Number 105**

This amendment would omit 'Part' in proposed section 340 and substitute 'Act'. This would provide that proposed section 340 would apply to the whole of the Principal Act. The proposed section 340 would provide for a person to commit an offence if he or she intentionally obtains information and has no lawful authority to do so, and knows, or ought to reasonably know, that the information is protected.

#### **Amendment Number 106**

This amendment would omit Notes 2 and 3 from proposed section 340 and substitute new Notes 2 and 3. These notes would refer the reader to the relevant provisions for the definitions of 'protected information' and 'officer'.

#### **Amendment Number 107**

This amendment would omit 'Part' from proposed section 341 and substitute 'Act'. This would mean that proposed section 341 applies to the whole of the Principal Act. Proposed section 341 would provide that a person commits an offence if he or she intentionally make a record of, or discloses to any other person, or makes use of information and has no lawful authority to do so, and knows or ought to reasonably know that the information is protected.

#### **Amendment Number 108**

Note 2 to the proposed section 341 would be amended to omit 'Part' and substitute 'Act' to reflect the change made to proposed section 341 (see Amendment Number 107).

#### **Amendment Numbers 109 and 110**

These amendments omit the references to 'Part' in proposed section 342 and substitute 'Act'. These amendments would provide that the proposed section would be applicable to the whole of the Principal Act. Proposed section 342 would prevent an officer from having to respond to a request to divulge information collected as part of his or her duties where the request is made by a court, tribunal or person that has the power to request the production of documents or other information, unless the request is made the purposes of the Principal Act.

### **Amendment Number 111**

The amendment would omit 'Part' from section 343 and substitute 'Act'. This amendment would apply proposed section 343 to the whole of the Principal Act. Proposed section 343 would allow for the release of information in certain circumstances even though the release would normally be 'barred'. It would also provide for the issue of certificates by the Secretary to allow release where the Secretary thinks the release would be in the public interest.

### **Amendment Number 112**

This amendment would insert a new paragraph 343(1)(ba) after the proposed paragraph 343(1)(b). This paragraph would extend the Secretary's certificate power to allow information to be disclosed to a contracted case manager within the meaning of the *Employment Services Act 1994* for the purposes of that Act, in accordance with guidelines established under proposed section 344.

### **Amendment Number 113**

This amendment omits the note from proposed section 344.

### **Amendment Number 114**

This amendment would omit 'Subdivision' from proposed section 345 and substitute 'Division'. The amendment would reflect Amendment Number 100 which reconstitutes Subdivision C as Division 3 of Part 10.

### **Amendment Number 115**

This amendment would omit Note 2 and 3 to proposed section 345 and substitute new Notes 2 and 3. These Notes would refer the reader to the relevant provisions for the definition of 'protected information' and 'officer'.

### **Amendment Number 116**

This amendment would omit Note 2 and 3 to proposed section 346 and substitute new Notes 2 and 3. These Notes would refer the reader to the relevant provisions for the definition of 'protected information' and 'officer'.

### **Amendment Number 117**

This amendment would omit Note 2 from proposed section 347 and substitute a new Note 2. This Note would refer the reader to the relevant provisions for the definition of 'protected information'.

### **Amendment Number 118**

This amendment would omit 'Part' from proposed subsection 347(3) and substitute 'Act'. This would apply this provision to the whole the Principal Act. Proposed

subsection 347(3) would provide that a person who releases information in accordance with his or her duties, functions or powers under the Principal Act would not be guilty of an offence under section 347.

#### **Amendment Number 119**

This amendment would omit the Note from proposed subsection 347(3) and substitute a new Note which would refer the reader to the relevant provisions for the definition of 'officer'.

#### **Amendment Number 120**

This amendment would omit the Note from proposed section 348 and substitute a new Note which would refer the reader to the relevant provision for the definition of 'officer'.

#### **Amendment Number 121**

This amendment would omit 'Division' from proposed section 349 and substitute 'Part'. This amendment would reflect Amendment Number 75 which would provide for the reconstitution of Division 17 of Part 8 as Part 10 of the Principal Act.

#### **Amendment Number 122 to 126 (inclusive)**

These amendments would add explanatory notes, pointing out that the *Crimes Act* allows a fine to be imposed instead of, or as well as, imprisonment. The notes would also point out relevant provisions of the *Crimes Act 1914* dealing with offences by bodies corporate.

#### **Amendment Number 127**

This amendment would relocate the proposed **Division 18 - Miscellaneous** which would comprise of proposed sections 350-359 (inclusive) to a new **Division 15A - Miscellaneous**. This relocation would ensure that these provisions remain under **Part 8 - Youth Training Allowance**. The new sections would be renumbered as follows:

Current proposed section number      Proposed section number after relocation

350	291A
351	291B
352	291C
353	291D
354	291E
355	291F
356	291G
357	291H
358	291J
359	291K



### **Amendment Number 128**

The amendment would insert two new definitions into Schedule 1 inserted by clause 18 of the Bill. Schedule 1 sets out how to calculate the rate of youth training allowance and includes the income and assets test.

A definition of "accounting period", would be inserted to clarify that this is a period of 12 months. The expression "accounting period" is used in Schedule 1 as the period of parental income taken into account for the parental income test. See Module F, particularly points F4 to F7 which set out what accounting period is to be used.

A definition of "employer". The definition would be inserted so that for the purposes of the parental income test provisions (in Module F) this term has the same meaning as it has in Schedule 3 (which relates to parental fringe benefits).

### **Amendment Numbers 129 to 133 (inclusive)**

These amendments would make technical drafting changes. The words 'natural or adoptive' would be omitted, as they will be rendered unnecessary by the definition of 'parent' to be inserted in proposed section 58.

### **Amendment Number 134 and 135**

These amendments would insert notes after subclause 1(12) and subclause 3(3) in Schedule 1 referring to the definition of 'parent' in proposed section 58.

### **Amendment Number 136**

This amendment would make a minor technical drafting to change the reference in paragraph (b) in point E6 to 'a person'.

### **Amendment Number 137**

This amendment would modify the heading to Schedule 3 to omit the reference to section 58(1) which no longer has a definition of 'employer'.

### **Amendment Numbers 138 and 139**

At present, Part 2 of Schedule 3, in clause 3, contains a definition of 'associate'. These amendments would move the definition to clause 1 of the Schedule so that it will apply to all of Schedule 3, rather than to Part 2 only.

### **Amendment Numbers 140 to 143 (inclusive)**

Schedule 3, to be inserted by Clause 18 of the Bill, sets out the kinds of parental fringe benefits that are to be included in applying the parental income test in Module F of Schedule 1. The amendments would amend Schedule 3 to specify that the Schedule applies to benefits provided by a person's employer, either directly or through an associate of the employer.

## Amendment Number 144

### *Transitional Provisions*

This amendment would make transitional provisions relating to student assistance decisions, internal review of student assistance decisions and external review of student assistance decisions.

#### *New clause 19 - Acts and decisions of authorised persons and prescribed officers taken to be acts and decisions of Secretary*

New subclause 19(1) would provide that any application under the Principal Act being considered by an authorised person or prescribed officer is deemed to be an application to the Secretary from 1 January 1995.

New subclause 19(2) would deem a decision made by an authorised person or prescribed officer under the Principal Act before 1 January 1995 to be a decision made by that authorised person or prescribed office as a delegate of the Secretary.

New subclause 19(3) would deem anything done by an authorised person or prescribed officer before 1 January 1995 in relation to a student under the Principal Act to have effect as if that authorised person or prescribed officer was a delegate of the Secretary.

#### *New Clause 20 - Internal review of student assistance benefit decision*

New subclause 20(1) would provide that if a person has made a request to the Secretary for review of a student assistance decision by a senior authorised person or a senior prescribed officer but the consideration had not commenced as at 1 January 1995 then the request is deemed to be an application for review under the proposed section 293.

New subclause 20(2) would provide that if a person has made a request to the Secretary for a consideration of a student assistance decision by a senior authorised person or a senior prescribed officer and the consideration had commenced but not been completed as at 1 January 1995 then the senior authorised person or senior prescribed person may complete the consideration as if Part 5 of the Principal Act had not been repealed.

New subclause 20(3) would provide that a decision by a senior authorised person or a senior prescribed officer whether made before, or in accordance with subclause 20(2) on or after, 1 January 1995 would be deemed to be a decision of an authorised review officer.

#### *New Clause 21 - Review student assistance benefit decision not yet heard by SART*

New subclause 21(1) would provide that where a person had applied for a review of a student assistance decision by the Student Assistance Review Tribunal (SART) before 1 January 1995 and the matter had not been referred to a Convenor of the SART, or it had been referred but a hearing of the matter had not yet commenced then the matter is

to be treated as if it were an application for review by the Social Security Appeals Tribunal (SSAT) and is to be forwarded by the Secretary to the SSAT as soon as practicable.

New subclause 21(2) would provide that where such an application is forwarded to the SSAT the Secretary is taken to have complied with section 1261(1) of the *Social Security Act 1991*.

*New Clause 22 - Review of student assistance benefit decision part-heard by SART*

New clause 22 would provide that if, before 1 January 1995, a request for a review of a student assistance benefit decision had been referred to the SART and the review of the decision had been commenced but not completed then the following would apply:

- (a) the request for review is taken to be transferred to the SSAT;
- (b) the members of the SART constituting the panel for that review are to continue as a properly constituted panel of the SSAT;
- (c) for the purposes of section 1329 of the *Social Security Act 1991*, the hearing of the matter would be taken to commence when the SART review commenced; and
- (d) the functions and powers exercisable by these panels of the SSAT would be those exercisable by the SART had the Principal Act not been amended.

*New Clause 23 - Members of SART to become members of SSAT*

New subclause 23(1) would provide that a person who was a Convenor of the SART or member of the SART as at 1 January 1995 would be for the purposes of subsection 1324(1) of the *Social Security Act 1991* appointed as an ordinary member of the SSAT from 1 January 1995.

New subclause 23(2) would provide that a person who would be appointed to the SSAT in accordance with subsection (1) would enjoy the same terms and conditions which were applicable to his or her position on the SART until the expiry of his her term as a Convenor or member of the SART had the SART not been abolished.

New subclause 23(3) would provide that a Convenor of the SART who would be appointed to the SSAT in accordance with subsection (1) is to be paid remuneration as is determined by the Remuneration Tribunal and such allowances for a Chairperson of the SSAT regardless of whether he or she sits as a Chairperson or as an ordinary member.

New subclause 23(4) would provide that a member of the SART who would be appointed to the SSAT in accordance with subsection (1) is to be paid remuneration as is determined by the Remuneration Tribunal and such allowances for an ordinary member of the SSAT.









