

HOUSE OF REPRESENTATIVES

(As read a first time)

STUDENT ASSISTANCE AMENDMENT BILL 1992

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 7 October 1992

(Minister for Higher Education and Employment Services)

A BILL

FOR

**An Act relating to financial assistance for tertiary
students, and for connected purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Student Assistance Amendment Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

TMR

**PART 2—AMENDMENTS OF THE STUDENT ASSISTANCE
ACT 1973**

Principal Act

3. In this Part, “**Principal Act**” means the *Student Assistance Act 1973*¹.

5

Interpretation

4.(1) Section 3 of the Principal Act is amended by omitting from the definition of “officer” in subsection (1) “55A” and substituting “55B”.

(2) Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “student assistance overpayment” and substituting the following definition:

10

“‘**student assistance overpayment**’ means:

(a) an amount paid under the AUSTUDY scheme that should not have been paid; or

15

(b) a debt due by a person other than a financial corporation to the Commonwealth under paragraph 12S(2)(d) or 12U(2)(c);”.

(3) Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘**accumulated FS debt**’ has the meaning given by subsection 12ZF(2) or (3);

20

‘**actual repayments**’, in relation to financial supplement, at a particular time, means the sum of the amounts actually repaid in respect of the financial supplement before that time;

‘**adjusted parental income**’, for the purposes of Part 4A, has the meaning given by the regulations;

25

‘**amount notionally repaid**’, in relation to financial supplement, has the meaning given by subparagraph 12ZA(8)(b)(ii);

‘**amount outstanding**’, in relation to a financial supplement contract, has the meaning given by section 12X;

30

‘**Commissioner**’ means the Commissioner of Taxation;

‘**contract period**’, in relation to a financial supplement contract, means the period beginning when the contract was entered into and ending on 31 May in the year in which the last of the periods of 12 months referred to in paragraph 12X(2)(b) ends;

35

‘**discount**’, in relation to a repayment of an amount of financial supplement, has the meaning given by section 12ZA;

‘**eligible student**’, for the purposes of Part 4A, has the meaning given by section 12C;

‘**FS assessment debt**’ means an amount that is required to be paid in respect of an accumulated FS debt under section 12ZK and is included in a notice of an assessment made under section 12ZM;

40

'FS debt' has the meaning given by subsection 12ZF(1);

'financial corporation' means:

5 (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution whose sole or principal business activities in Australia are the borrowing of money and the provision of finance; or

(b) a financial corporation within the meaning of that paragraph; and includes a bank;

10 **'financial supplement'** means a loan made by a participating corporation under a financial supplement contract to the other party to the contract;

'financial supplement contract' means a contract in force as provided by subsection 12K(2);

15 **'Fund'** means the Students (Financial Supplement) Trust Fund established by section 12M;

'index number', in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

20 **'indexation amount'**, in relation to a financial supplement contract, has the meaning given by section 12Y;

'notional repayments', in relation to financial supplement, at a particular time, means the sum of the amounts notionally repaid in respect of the financial supplement before that time;

25 **'participating corporation'** has the meaning given by subsection 12D(2);

'prescribed benefit', for the purposes of Part 4A, in relation to the AUSTUDY scheme or the ABSTUDY scheme, means a benefit under the scheme concerned that is declared by the regulations to be a prescribed benefit for the purposes of that Part;

30 **'principal sum'**, in relation to a financial supplement contract, at a particular time, means the total of the amounts of financial supplement paid under the contract before that time by the relevant participating corporation to the other party to the contract;

'student', in Part 4A, has a meaning affected by subsection 12B(2);

35 **'Student Financial Supplement Scheme'** means the scheme constituted by Part 4A for the payment of financial supplement to students;

'subsidy' means subsidy under an agreement referred to in section 12D;

40 **'termination date'**, in relation to a financial supplement contract, means the last day of the contract period;

'year' means a calendar year.”

Benefits under the AUSTUDY scheme

5. Section 7 of the Principal Act is amended by adding at the end the following subsection:

“(8) A person who received a benefit under this Part during any period being: 5

(a) the part of a year beginning on 1 January and ending on 31 May; or

(b) the part of a year beginning on 1 July and ending on 30 September;

may, before the end of the period, repay to the Commonwealth the whole or any part of the benefit and, if an amount of benefit is so repaid, the amount is taken, for the purposes of this Act, never to have been paid to the person.”. 10

6. After Part 4 of the Principal Act the following Parts are inserted:

“PART 4A—FINANCIAL SUPPLEMENT FOR TERTIARY STUDENTS 15

“Division 1—Preliminary

Object and explanation of this Part

“12A.(1) The object of this Part is to enable a tertiary student who is, or except for the AUSTUDY parental income test or the ABSTUDY parental income test would be, eligible for certain benefits under the AUSTUDY scheme or the ABSTUDY scheme to obtain a repayable financial supplement by choosing to enter into a contract for that purpose with a financial corporation that participates in the Student Financial Supplement Scheme. 20 25

“(2) The payment of financial supplement will reduce certain other benefits payable to the student under the AUSTUDY scheme or ABSTUDY scheme. The amount of the supplement that the student is eligible to obtain depends on the total amount of those benefits that the student chooses to receive, and the student may choose to repay some of the benefits, or to receive lower benefits, in order to receive a higher supplement. 30

“(3) The student is not liable to pay interest to the financial corporation in respect of financial supplement obtained, but the Commonwealth will, without cost to the student, pay a subsidy to the financial corporation that includes an amount in lieu of interest. 35

“(4) However, the amount of the financial supplement that has to be repaid under a contract will be indexed on 1 June in the year next following the year in which the contract is entered into and on 1 June in each subsequent year. The amount by which supplement is increased by indexation is owed by the student to the Commonwealth 40

and not to the financial corporation. The student is entitled, but not required, to make early repayments above a certain amount in respect of the supplement during the period of the contract. There is a 15% discount for any repayments before the end of that period.

- 5 “(5) If financial supplement obtained by a student is not repaid in full before the end of the period of the contract, the obligation to repay the amount of the supplement that is still outstanding is assigned to the Commonwealth and the indexed amount is repayable
10 by the student to the Commonwealth through the taxation system when the student’s income reaches a certain level.

Interpretation

“12B.(1) In this Part, unless the contrary intention appears, expressions that are defined in the *Income Tax Assessment Act 1936* have the same meanings as in that Act.

- 15 “(2) For the purposes of the application of this Part in relation to a person at a time after the person entered or first entered into a financial supplement contract with a participating corporation, the person is called a ‘**student**’ even though the contract period or any
20 contract period may have ended or the person may have ceased to be a student.

Which students are eligible for financial supplement

“12C.(1) A person is an eligible student for the purposes of this Part in relation to a year or a part of a year if:

- 25 (a) the person is undertaking, or proposes to undertake, at an education institution in that year or that part of that year, a prescribed course of study or instruction; and
- (b) either of the following subparagraphs applies:
- 30 (i) the person qualifies, or apart from this Part would qualify, for a prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme in respect of that year or that part of that year;
- 35 (ii) the adjusted parental income in relation to the person in respect of that year or that part of that year is less than such amount as is prescribed by the regulations and, except for the parental income test applicable under the AUSTUDY scheme or ABSTUDY scheme, the person would have qualified for a prescribed benefit under that scheme in respect of that year or that part of that year.

- 40 “(2) Subsections 7(3) to (7) have effect for the purposes of paragraph (1)(a) of this section in the same way as they have effect for the purposes of paragraph 7(1)(c).

Agreements between Commonwealth and financial corporations

“12D.(1) An eligible student may apply for financial supplement only to a financial corporation that has entered into an agreement with the Commonwealth to pay financial supplement in accordance with this Act. 5

“(2) Subject to this section, if the Minister has, whether before or after the commencement of this Part, entered into, on behalf of the Commonwealth, an agreement with a financial corporation for the payment by the corporation, in the year beginning on 1 January 1993 or a subsequent year, of financial supplement to eligible students, the corporation is a participating corporation for the purposes of this Part in respect of that year. 10

“(3) Subsection (2) does not apply in relation to an agreement unless the agreement:

(a) is expressed to have effect subject to this Act; and 15

(b) provides for the payment by the Commonwealth to the financial corporation, in respect of each amount of financial supplement paid by the corporation to a student that has not been repaid, or in respect of which the rights of the corporation have been assigned to the Commonwealth, of a subsidy of such amount or amounts, or at such rate or rates, and in respect of such period or periods, as are stated in the agreement. 20

“(4) Subject to subsection (5), the parties to an agreement referred to in subsection (2) (or such an agreement as previously amended) may enter into an agreement amending or terminating the first-mentioned agreement (or that agreement as previously amended). 25

“(5) The amendment or termination of an agreement does not affect any financial supplement contract that was in force immediately before the amendment or termination took effect.

“(6) An agreement entered into between the Commonwealth and a financial corporation as mentioned in this section is not subject to any stamp duty or other tax under a law of a State or Territory. 30

“(7) An officer may disclose to a participating corporation any information about a student that is relevant to the exercise or performance by the corporation of any of its rights or obligations in respect of the student under this Part. 35

“Division 2—Applications for financial supplement

Explanation of Division

“12E. This Division sets out how an eligible student can, if he or she so chooses, obtain financial supplement, the amount of the financial supplement that can be obtained and the effect of payment of the 40

financial supplement on the student's entitlement to certain other benefits under the AUSTUDY scheme or the ABSTUDY scheme.

Authorised person to give student notice of entitlement

“12F.(1) An authorised person must:

- 5 (a) decide whether a person (“**the student**”) who seeks to obtain financial supplement in respect of a year or a part of a year is an eligible student in respect of that year or that part of that year; and
- 10 (b) give to the student written notice of the decision stating whether the student is an eligible student in respect of that year or that part of that year and, if so, stating:
 - 15 (i) the minimum and maximum amounts, as determined under the regulations, of the financial supplement that the student is eligible to obtain; and
 - (ii) such other information as is required by the regulations to be included in such a notice.

“(2) If the notice states that the student is an eligible student, an authorised person must give to the student a form of application for the financial supplement approved by the Secretary.

20 “(3) At any time, whether before or after the student has lodged an application for the financial supplement with a participating corporation under section 12G, an authorised person may review the decision and must, if the decision is revoked or varied, give to the student:

- 25 (a) a notice under paragraph (1)(b) stating that the decision has been revoked or varied and, if the decision has been varied, setting out particulars of the variation; and
- (b) if the decision has been varied before the student lodged an application for the financial supplement—a fresh form of application.

30 “(4) If a notice is given to the student as mentioned in subsection (3), any notice previously given to the student under paragraph (1)(b) before the decision was reviewed is taken to be revoked and the student is not entitled to use any previous notice in connection with an application for financial supplement under section 12G.

35 **Application for financial supplement**

40 “12G.(1) If a person receives a notice under section 12F stating that the person is an eligible student in respect of a year or a part of a year, the person may choose to apply for the whole or a part of the financial supplement that the person is eligible to obtain as stated in the notice by lodging the form of application for the financial supplement, duly completed, together with the notice, at any office of a participating corporation.

“(2) At any time after a person applies to a participating corporation for an amount of financial supplement, the person may:

- (a) if he or she has not received any payment of financial supplement in respect of the application—withdraw the application by written notice to the corporation lodged at any office of the corporation; or 5
- (b) otherwise—by written notice to the corporation lodged at any office of the corporation tell the corporation that the person requires:
 - (i) a specified lesser amount of financial supplement (not being an amount that is less than the total financial supplement already received); or 10
 - (ii) a specified greater amount of financial supplement (not being an amount that is greater than the maximum amount of financial supplement that the person is eligible to obtain). 15

Effect of financial supplement on certain other benefits

“12H.(1) The payment of financial supplement to a person will, as mentioned in subsection 12A(2), reduce the person’s entitlement to certain other benefits under the AUSTUDY scheme or the ABSTUDY scheme in accordance with subsection (2). 20

“(2) If:

- (a) apart from this section a person would be entitled to a prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme in respect of a year or a part of a year; and 25
- (b) an application by the person to a participating corporation for financial supplement in respect of that year or that part of that year is accepted by the corporation in accordance with section 12K;

the benefit referred to in paragraph (a) is reduced by an amount equal to one-half of the amount of the financial supplement paid to the person. 30

“(3) If, apart from this subsection, the amount by which a benefit would be reduced by subsection (2) is an amount of dollars and cents and the cents include a half of one cent, the amount is increased by a half of one cent. 35

“Division 3—Payment of financial supplement

Explanation of Division

“12J. This Division sets out the legal relationship between a person who applies for financial supplement and the financial corporation that pays the financial supplement. An application for financial supplement relates only to a year or a part of a year and a separate contract 40

between the person and the corporation therefore arises in respect of each year or part of a year for which an application for financial supplement is made.

Contract between applicant for financial supplement and participating corporation

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“12K.(1) If a person (**the student**) applies to a participating corporation in accordance with section 12G for the payment of financial supplement in respect of a year or a part of a year, the corporation must, as soon as practicable, accept the application by written notice to the student.

10

“(2) The acceptance of the application forms a binding contract in respect of that year or that part of that year between the corporation and the student for the making of a loan by the corporation to the student in accordance with this Division of such amount of financial supplement as the student from time to time requests but not exceeding the maximum amount of financial supplement that the student is from time to time eligible to obtain.

15

“(3) Subject to this Part, the validity of a financial supplement contract is not affected merely because the student was not an eligible student when the application was accepted or ceases at a later time to be an eligible student.

20

“(4) The validity of a financial supplement contract is not affected by any other law (whether written or unwritten) in force in a State or Territory.

25

“(5) Without limiting the generality of subsection (4), a financial supplement contract is not invalid merely because the student is an undischarged bankrupt when the contract is entered into, and any liability of the student to a participating corporation or the Commonwealth under or because of the contract is enforceable despite the bankruptcy.

30

Financial supplement contract exempt from certain laws and taxes

“12L.(1) A law of a State or Territory relating to the provision of credit or other financial assistance does not apply to a financial supplement contract.

35

“(2) A financial supplement contract, or an act or thing done or transaction entered into under such a contract, is not subject to taxation under any law of a State or Territory.

Students (Financial Supplement) Trust Fund

“12M.(1) For the purposes of this Part, a Students (Financial Supplement) Trust Fund is established.

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“(2) Money in the Fund is taken to be part of the Trust Fund established by the *Audit Act 1901*.

How payments of financial supplement are to be made

“12N.(1) A participating corporation that is liable to make a payment in respect of financial supplement to a student under a financial supplement contract must, unless the agreement between the corporation and the Commonwealth under section 12D otherwise provides, make the payment to the Commonwealth as its agent for the purpose of passing on the amount of the payment to the student in accordance with subsection (2). 5

“(2) Any amount paid by a participating corporation to the Commonwealth under subsection (1) in respect of a student is to be paid into the Fund and: 10

- (a) when it is paid into the Fund, an amount equal to that amount is to be paid out of the Fund to the student on behalf of the corporation; and
- (b) the amount so paid to the student is taken to be an amount paid to the student by the corporation in discharge of its liability under the contract to pay that amount to the student. 15

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

Explanation of Division 20

“12P. This Division provides for payments in respect of financial supplement to stop if the person in receipt of the financial supplement so requests, ceases to be, or is found never to have been, eligible for the financial supplement, or dies.

Payments to stop at request of student 25

“12Q.(1) A student who is a party to a financial supplement contract with a participating corporation may, by written notice to the corporation lodged at any office of the corporation, tell the corporation that he or she does not require any further payments under the contract after a day stated in the notice. 30

“(2) If notice is so given to the corporation:

- (a) as from the end of the day stated in the notice, the corporation is discharged from liability to make further payments to the student under the contract; but
- (b) if, despite paragraph (a), the corporation makes any payments to the student after that day, any amounts so paid after that day or the end of 4 weeks after the notice was given to the corporation, whichever is the later: 35
 - (i) are taken not to be payments of financial supplement made under the contract; and 40
 - (ii) are repayable by the student to the corporation; and

- (iii) may be recovered by the corporation as a debt due to it by the student.

Payments to stop if student ceases to be eligible for financial supplement

5 “12R.(1) If an authorised person decides that a student who is a party to a financial supplement contract with a participating corporation
10 ceased to be an eligible student during the year or the part of the year to which the contract relates, the authorised person must give written notice to the student and to the corporation stating that the student
15 ceased to be an eligible student and stating the date on which the student so ceased.

“2) If notice is so given to the corporation, then, unless the decision of the authorised person under subsection (1) is set aside or varied:

- 15 (a) as from the time when the notice was given to the corporation, the corporation is discharged from liability to make further payments to the student under the contract; but
- (b) if, despite paragraph (a), the corporation makes any payments to the student after that time, any amounts so paid after the end of 4 weeks after the notice was given to the corporation:
 - 20 (i) are taken not to be payments of financial supplement made under the contract; and
 - (ii) are repayable by the student to the corporation; and
 - (iii) may be recovered by the corporation as a debt due to it by the student.

25 “3) This section has effect subject to section 12ZX.

What happens if student fails to notify change in circumstances

“12S.(1) If a prescribed officer decides that the student to whom a notice is given under subsection 12R(1) failed to notify the Department
30 under section 48 that he or she had ceased to be an eligible student within 7 days after he or she so ceased, the prescribed officer may give written notice of the decision to the student and to the corporation.

“2) If notice is so given, then, unless the decision of the prescribed officer under subsection (1) is set aside or varied:

- 35 (a) the corporation’s rights in respect of the student under the contract that relate to financial supplement paid by the corporation to the student after the end of the date stated in the notice given by an authorised person to the student under subsection 12R(1) and before the end of the period of 4 weeks referred to in paragraph 12R(2)(b) (**wrongly paid financial supplement**) are assigned to the Commonwealth, by force of this paragraph, at the time when the notice was given to the corporation; and
- 40 (b) any actual repayments of financial supplement made by the

student before the notice was given to the student are taken to have been made:

- (i) first, in or towards repayment of the wrongly paid financial supplement; and
- (ii) secondly, to the extent (if any) to which the sum of those repayments exceeded the amount of the wrongly paid financial supplement, in or towards repayment of the remainder of the financial supplement paid to the student under the contract; and 5
- (c) the Commonwealth is liable to pay to the corporation in respect of the rights referred to in paragraph (a), the amount of any wrongly paid financial supplement that has not been repaid; and 10
- (d) the student is liable to pay to the Commonwealth an amount equal to the sum of: 15
 - (i) the amount that the Commonwealth is liable to pay to the corporation under paragraph (c); and
 - (ii) the part of the total subsidy paid by the Commonwealth to the corporation in respect of the financial supplement paid to the student under the contract that was paid in lieu of interest on the principal sum in respect of the period beginning at the end of the period of 7 days referred to in subsection (1) and ending at the end of the period of 4 weeks referred to in paragraph 12R(2)(b). 20
- “(3) Nothing in this section affects the operation of section 12R. 25

Payments to stop if student is found never to have been eligible for financial supplement

“12T.(1) If:

- (a) a student is a party to a financial supplement contract with a participating corporation; and 30
 - (b) an authorised person decides that the statement contained in the notice given to a student under paragraph 12F(1)(b) that the student was an eligible student in respect of the year or the part of the year to which the contract relates was incorrect;
- the authorised person must give written notice to the student and to the corporation stating that the student had never been eligible for financial supplement in respect of that year or that part of that year. 35

“(2) If notice is so given, then, unless the decision of the authorised person under subsection (1) is set aside or varied:

- (a) as from the time when the notice was given to the corporation, the corporation is discharged from liability to make further payments to the student under the contract; but 40
- (b) if, despite paragraph (a), the corporation makes any payments

to the student after that time, any amounts so paid after the end of 4 weeks after the notice was given to the corporation:

- (i) are taken not to be payments of financial supplement made under the contract; and
- 5 (ii) are repayable by the student to the corporation; and
- (iii) may be recovered by the corporation as a debt due to it by the student.

“(3) This section has effect subject to section 12ZX.

What happens if financial supplement was paid because of provision of false or misleading information

10 “12U.(1) If a prescribed officer decides that the incorrectness of the statement referred to in paragraph 12T(1)(b) resulted from false or misleading information provided to the Commonwealth in relation to the student, the prescribed officer may give written notice of the
15 decision to the student and to the corporation.

“(2) If notice is so given, then, unless the decision of the prescribed officer under subsection (1) is set aside or varied:

(a) the corporation’s rights in respect of the student under the contract that relate to financial supplement paid by the
20 corporation to the student at any time after the beginning of the contract period and before the end of the period of 4 weeks referred to in paragraph 12T(2)(b) are assigned to the Commonwealth, by force of this paragraph, at the time when the notice was given to the corporation; and

25 (b) the Commonwealth is liable to pay to the corporation in respect of those rights the amount worked out in relation to the contract, as at the time when the notice was given to the corporation, using the formula:

30 **principal sum – (actual repayments + notional repayments);**
and

(c) no amount is taken to be outstanding under the contract after the notice is given but the student is liable to pay to the Commonwealth the amount worked out in relation to the contract, as at the time when the notice was given to the
35 student, using the formula:

principal sum – actual repayments + interest subsidy.

“(3) In the formula in paragraph (2)(c):

40 **‘interest subsidy’** means the part of the total subsidy paid by the Commonwealth to the corporation in respect of the financial supplement paid to the student under the contract that was paid in lieu of interest on the principal sum.

“(4) Nothing in this section affects the operation of section 12T.

Death of student

“12V.(1) If a student who is a party to a financial supplement contract with a participating corporation dies during the contract period, an authorised person may give written notice to that effect to the corporation.

5

“(2) If notice is so given as a result of the death of a student:

(a) the corporation’s rights in respect of the student under the contract are assigned to the Commonwealth, by force of this paragraph, at the time when the notice was given; and

(b) the Commonwealth is liable to pay to the corporation in respect of those rights the amount worked out in relation to the contract, as at the time of the death, using the formula:

10

principal sum – (actual repayments + notional repayments);
and

(c) the indebtedness of the student to the Commonwealth under the contract as a result of the assignment is discharged by force of this paragraph.

15

“Division 5—Repayments of financial supplement during contract period**Explanation of Division**

“12W. This Division sets out how a student who is a party to a financial supplement contract (**‘the contract’**) with a participating corporation may make repayments of financial supplement before the end of 4 years beginning on 1 June in the year next following the year in which the contract was entered into. Section 12X explains how the amount outstanding at any time under the contract (including the amount attributable to indexation, which is identified by section 12Y) is calculated. Section 12ZA explains how the discount for early repayment is calculated and applied.

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Calculation of amount outstanding under financial supplement contract

“12X.(1) Subject to this section, **the amount outstanding** under the contract at any time after the contract was entered into and before 1 June in the year next following the year in respect of which the contract was entered into is the amount worked out in relation to the contract, as at that time, using the formula:

30

principal amount – (actual repayments + notional repayments).

35

“(2) Subject to the following provisions of this section, at any time during:

(a) the period of 12 months beginning on 1 June in the year next following the year in respect of which a financial supplement contract was entered into; or

40

(b) any of the following 3 periods of 12 months;

the amount outstanding under the contract is taken to be the amount worked out in relation to the period concerned using the formula:

$$\left[\begin{array}{l} \text{previous} \\ \text{amount} \\ \text{outstanding} \end{array} - \left(\begin{array}{l} \text{actual} \\ \text{repayments} \end{array} + \begin{array}{l} \text{notional} \\ \text{repayments} \end{array} \right) \right] \times \begin{array}{l} \text{indexation} \\ \text{factor.} \end{array}$$

5 “(3) For the purposes of the application of the formula in subsection (2) in relation to a period of 12 months beginning on 1 June (**‘the relevant 12 months’**):

‘previous amount outstanding’ means the amount that was outstanding under the contract immediately before the beginning of the relevant 12 months;

10 **‘actual repayments’** means the sum of the amounts actually repaid in respect of the financial supplement during the relevant 12 months;

‘notional repayments’ means the sum of the amounts notionally repaid in respect of the financial supplement during the relevant 12 months;

15 **‘indexation factor’** means the number worked out to 3 decimal places in relation to the relevant 12 months using the formula:

$$\frac{\begin{array}{l} \text{the sum of the index number for the March quarter in the later} \\ \text{reference period and the index numbers for the} \\ \text{3 immediately preceding quarters} \end{array}}{\text{divided by}}$$

$$\frac{\begin{array}{l} \text{the sum of the index number for the March quarter in the earlier} \\ \text{reference period and the index numbers for the} \\ \text{3 immediately preceding quarters;} \end{array}}$$

‘later reference period’ means the period of 12 months immediately before the relevant 12 months;

20 **‘earlier reference period’** means the period of 12 months immediately before the later reference period.

“(4) If an indexation factor worked out under subsection (3) would end with a number greater than 4 if it were worked out to 4 decimal places, the indexation factor is increased by 0.001.

25 “(5) If, apart from this subsection, an amount worked out under subsection (2) would be an amount of dollars and cents, the amount of the cents is to be disregarded.

30 “(6) In calculating the amount outstanding under the contract at any time, account is to be taken of any amount by which the amount outstanding under the contract at or before that time is or has been reduced under subsection 12ZA(8).

“(7) This section has effect subject to paragraph 12U(2)(c).

Indexation amount

“12Y. An indexation amount exists in relation to the contract at a particular time (**‘the relevant time’**) if:

35 (a) subsection 12X(2) applied for the purpose of working out the

amount outstanding under the contract at the relevant time;
and

- (b) the amount outstanding under the contract at the relevant time exceeds the amount that would have been the amount outstanding at that time if: 5

(i) each relevant indexation factor that was applicable in working out the amount outstanding under the contract at any previous time under subsection 12X(2) had been 1; and

(ii) there had been no amounts notionally repaid at any previous time in relation to the financial supplement; 10

and the amount of the excess constitutes the **indexation amount** in relation to the contract at the relevant time.

Notice to student of amount outstanding in respect of financial supplement 15

“12Z. If an amount is outstanding under the contract on 1 June in the year next following the year in respect of which the contract was entered into or on 1 June in any of the next 3 years, the Secretary must arrange for written notice to be given to the student stating the amount outstanding at that date. 20

Rights of student during contract period to make repayments in respect of financial supplement

“12ZA.(1) Subject to paragraphs 12S(2)(d) and 12U(2)(c), the student is not required during the contract period to make a repayment in respect of the amount outstanding under the contract. 25

“(2) Non-payment by the student of the amount outstanding under the contract does not constitute a default under the contract for the purposes of any law of the Commonwealth, of a State or of a Territory.

“(3) Subject to subsection (4), the student may make to the corporation a repayment in respect of the financial supplement at any time during the contract period. 30

“(4) The student is not entitled to make a repayment under subsection (3) that is less than an amount prescribed by the regulations unless the amount repaid is equal to the amount outstanding under the contract. 35

“(5) If the student makes a repayment as mentioned in subsection (3), the following provisions of this section have effect in relation to the amount of that repayment except:

(a) to the extent (if any) to which that repayment is taken to have been made in or towards repayment of any wrongly paid financial supplement referred to in subsection 12S(2); or 40

(b) in respect of a repayment made after the giving of a notice under section 12U.

“(6) The student is entitled for the purposes of this Part, in respect of the amount outstanding under the contract, to a discount (**‘the discount’**) of an amount worked out using the formula:

$$\left[\text{the amount repaid} \times \frac{100}{85} \right] - \text{the amount repaid.}$$

5 “(7) If, apart from this subsection, an amount worked out under subsection (6) would be an amount of dollars and cents, the amount is to be rounded to the nearest dollar (rounding 50 cents upwards).

“(8) If an indexation amount existed in relation to the contract immediately before the repayment is made:

- 10 (a) if the discount is equal to or less than the indexation amount—the amount outstanding under the contract is taken to be reduced by the amount of the discount; or
- (b) if the discount exceeds the indexation amount:
- 15 (i) the amount outstanding under the contract is taken to be reduced by the indexation amount; and
- (ii) the student is taken to have repaid to the corporation in respect of the financial supplement an amount (**‘the amount notionally repaid’**) equal to the excess.

20 “(9) The Commonwealth is liable to pay to the corporation an amount equal to whichever is the lesser of the following:

- (a) the amount notionally repaid (if any);
- (b) the amount (if any) by which the principal sum at the time immediately before the repayment was made exceeded the sum of the actual repayments and the notional repayments made before that time.
- 25

“(10) If the sum of the actual repayments and the notional repayments referred to in paragraph (9)(b) is equal to or exceeds the principal sum:

- 30 (a) the corporation’s rights in respect of the student under the contract are assigned to the Commonwealth by force of this paragraph; and
- (b) if the sum of the actual repayments and the notional repayments exceeds the principal sum—the corporation is liable to pay the excess to the Commonwealth.

35 **What happens at end of contract period**

“12ZB. At the end of the contract period:

- (a) if the corporation’s rights in respect of the student under the contract have not previously been assigned to the Commonwealth, those rights are assigned to the Commonwealth by force of this paragraph; and
- 40

- (b) if the principal sum exceeds the sum of the actual repayments and the notional repayments, the Commonwealth is liable to pay the excess to the corporation.

Notice to student

“12ZC.(1) The Secretary must, as soon as practicable after the termination date in relation to the contract, arrange for written notice to be given to the student: 5

- (a) stating that at the end of the contract period the student ceased to be indebted to the participating corporation under the contract and will not receive any discount for repayments made after that time; and 10
- (b) stating that on a date specified in the notice, being 1 June immediately following the termination date, the student incurred an FS debt or FS debts to the Commonwealth and setting out the amount of that debt or the amounts of those debts; and 15
- (c) stating that the student is entitled at any time to make a repayment in respect of that debt or those debts and that so much of that debt or those debts as is not voluntarily repaid by the student will be recovered under the taxation system in accordance with this Part. 20

“(2) If, after a notice was given to the student under subsection (1) or this subsection, the Secretary or an officer of the Department is satisfied that a material particular in the notice was not, or has ceased to be, correct, the Secretary must arrange for a further written notice to be given to the student setting out the correct particular. 25

“(3) A notice given to the student under this section is given for the purpose only of providing information to the student, and an FS debt of the student to the Commonwealth is not affected by a failure to give such a notice or by any incorrect statement in such a notice.

Requests for correction of notices 30

“12ZD.(1) If the student considers that the notice given to the student under section 12ZC was not, or has ceased to be, correct in a material particular, the student may, within 14 days after the date on which the notice was given, or within such further period as the Secretary or an officer of the Department allows, give to the Secretary a written request for the notice to be corrected in respect of that particular. 35

“(2) A request must set out the particular that is considered to be incorrect and the grounds on which the student considers that particular to be incorrect. 40

“(3) The making of a request does not affect an FS debt of the student to the Commonwealth.

“(4) If a request is received by the Secretary, the Secretary must arrange, as soon as practicable, for the matter to which the request relates to be considered and for written notice to be given to the student of the decision on the request and, if it is decided as a result of that consideration that a material particular in the notice under section 12ZC was not, or has ceased to be, correct, for a further notice to be given to the student under subsection 12ZC(2).

“Division 6—Indebtedness existing after termination date

“Subdivision A—Introductory

10 **Explanation of Division**

“12ZE. This Division provides for the recovery through the taxation system of a student’s outstanding indebtedness in respect of financial supplement paid to the student and not repaid before the end of 4 years beginning on 1 June in the year next following the year in which the relevant financial supplement contract was entered into. The Division uses certain technical expressions to define:

- 15 (a) a student’s indebtedness in respect of a contract under which the student received financial supplement for a year or a part of a year, which is called an FS debt; and
- 20 (b) a student’s total indebtedness under such contracts, which is called accumulated FS debt; and
- 25 (c) the amount that a student is assessed by the Commissioner of Taxation to be liable to pay in a particular year of income in respect of that total indebtedness, which is called an FS assessment debt.

FS debt and accumulated FS debt

“12ZF.(1) If, at the end of the contract period in relation to a financial supplement contract between a participating corporation and another person, there was an amount outstanding under the contract, the person incurs on 1 June immediately following the end of that period a debt (‘FS debt’) to the Commonwealth worked out using the formula:

$$\text{amount outstanding} \times \text{indexation factor}$$

where:

- 35 ‘**amount outstanding**’ means the amount outstanding under the contract at the end of the contract period;
- ‘**indexation factor**’ means the factor calculated under subsection (6).

“(2) If an FS debt or FS debts of a person that existed on 1 June in a year (‘**the relevant date**’) are not, or do not include, an FS debt that existed on 1 June in the immediately preceding year, the person incurs on the relevant date an **accumulated FS debt** to the Commonwealth equal to that FS debt or the total of those FS debts.

“(3) If an FS debt or FS debts of a person that existed on 1 June in a year (**‘the later date’**) are, or include, an FS debt or FS debts that existed on 1 June in the immediately preceding year (**‘the earlier date’**), the person incurs on the later date an **accumulated FS debt** to the Commonwealth worked out using the formula:

5

(adjusted accumulated FS debt × indexation factor) + later FS debts

where:

‘adjusted accumulated FS debt’ means the adjusted accumulated FS debt at the earlier date;

‘indexation factor’ means the factor calculated under subsection (6);

10

‘later FS debts’ means any FS debt, or the total of any FS debts, of the person that did not exist on the earlier date.

“(4) The reference in subsection (3) to the adjusted accumulated FS debt of a person at the earlier date is a reference to the amount worked out using the formula:

15

accumulated FS debt

minus

[FSA debts + repayments + increases in FSA debts – reductions in FSA debts]

where:

‘accumulated FS debt’ means the accumulated FS debt of the person at the earlier date;

‘FSA debts’ means the sum of:

20

(a) any FS assessment debt or FS assessment debts of the person assessed on or after the earlier date and before the later date excluding any such FS assessment debt assessed as a result of a return furnished before the earlier date; and

(b) any FS assessment debt or FS assessment debts of the person assessed on or after the later date as a result of a return furnished before the later date;

25

‘repayments’ means any amount, or the sum of any amounts, paid, except in discharge of an FS assessment debt, on or after the earlier date and before the later date in reduction of the accumulated FS debt of the person at the earlier date;

30

‘increases in FSA debts’ means any amount, or the sum of any amounts, by which any FS assessment debt of the person is increased by an amendment of the relevant assessment (whether as a result of an increase in the person’s taxable income or otherwise), being an amendment made on or after the earlier date and before the later date;

35

‘reductions in FSA debts’ means any amount, or the sum of any amounts, by which any FS assessment debt of the person is reduced by an amendment of the relevant assessment (whether as a result of a reduction in the person’s taxable income or otherwise), being an amendment made on or after the earlier date and before the later date.

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“(5) For the purposes of subsection (4), an assessment or an amendment of an assessment is taken to have been made on the date specified in the notice of assessment or notice of amended assessment, as the case may be, as the date of that notice.

5 “(6) The factor to be calculated for the purposes of the definition of ‘indexation factor’ in subsection (1) or (3) in determining an FS debt or the accumulated FS debt of a person at 1 June in a year (**‘the relevant year’**) is the number worked out to 3 decimal places using the formula:

10 **the sum of the index number for the March quarter in the relevant year and the index numbers for the 3 immediately preceding quarters**
divided by
the sum of the index number for the March quarter in the year immediately before the relevant year and the index numbers for the 3 immediately preceding quarters.

“(7) If an indexation factor calculated in accordance with subsection (6) would end with a number greater than 4 if it were worked out to 4 decimal places, the indexation factor is increased by 0.001.

15 “(8) If, apart from this subsection, the amount of an FS debt or accumulated FS debt worked out under this section would be an amount of dollars and cents, the amount of the cents is to be disregarded.

Accumulated FS debt discharges earlier debts

20 “12ZG.(1) Subject to subsection (2), an accumulated FS debt that a person incurs on 1 June in a year (**‘the relevant date’**):

(a) discharges, or discharges the unpaid part of:

(i) any accumulated FS debt of the person that the person incurred on the immediately preceding 1 June; and

25 (ii) any FS debt that was incurred by the person on the relevant date; and

(b) discharges the liability of the person to pay the amount outstanding immediately before the relevant date under the financial supplement contract in relation to which any FS debt referred to in subparagraph (a)(ii) was incurred.

30 “(2) For the purpose of applying section 12ZF, subsection (1) of this section is to be disregarded.

Notice and certificate to Commissioner

35 “12ZH.(1) The Secretary must, as soon as practicable after the termination date in relation to a financial supplement contract between a participating corporation and a student, arrange for notice to be given to the Commissioner stating such of the following information as is in the possession of the Secretary:

(a) the name of the student;

- (b) the student number of the student;
- (c) the student's last known address;
- (d) the student's tax file number;
- (e) the amount of the FS debt or the amounts of the FS debts that the student incurred to the Commonwealth on 1 June immediately following the termination date; 5
- (f) any other information relating to the student that is reasonably required by the Commissioner for the purpose of administering this Division.

“(2) If, after a notice is given to the Commissioner under subsection (1) or this subsection, the Secretary or an officer of the Department is satisfied that a material particular in the notice was not, or has ceased to be, correct, the Secretary must arrange for a further notice to be given to the Commissioner setting out the correct particular. 10

“(3) The Secretary must, if required by the Commissioner to do so, arrange for a prescribed officer to give a written certificate to the Commissioner setting out a matter specified by the Commissioner that was, or was required to be, set out in a notice under subsection (1) or (2). 15

“Subdivision B—Voluntary discharge of indebtedness 20

Voluntary payments in respect of FS debts

“12ZJ.(1) If a person is indebted to the Commonwealth under this Division, the person may at any time make a payment in respect of that indebtedness.

“(2) A payment under subsection (1) is to be made to the Commissioner. 25

“Subdivision C—Requirement to discharge indebtedness

Compulsory payments in respect of accumulated FS debt

“12ZK.(1) If:

- (a) the taxable income of a person in respect of a year of income is greater than the minimum prescribed amount in relation to that year of income; and 30
- (b) the person had an accumulated FS debt on 1 June immediately before the making of an assessment in respect of the person's income of that year of income; 35

the person is liable to pay in accordance with this Division to the Commonwealth in reduction of the relevant debt an amount equal to so much of the relevant debt as does not exceed:

- (c) if that taxable income is not greater than the intermediate prescribed amount in relation to that year of income—2% of that taxable income; or 40

(d) if that taxable income is greater than the intermediate prescribed amount in relation to that year of income but is not greater than the maximum prescribed amount in relation to that year of income—3% of that taxable income; or

5 (e) if that taxable income is greater than the maximum prescribed amount in relation to that year of income—4% of that taxable income.

“(2) In subsection (1):

‘relevant debt’ means:

10 (a) subject to paragraph (b) of this subsection, the person’s accumulated FS debt referred to in paragraph (1)(b); or

(b) if an amount or amounts have been paid in reduction of that debt or an amount or amounts have been assessed under section 12ZM to be payable in respect of that debt—the amount
15 (if any) remaining after deducting from that debt the amount or the sum of the amounts so paid or assessed to be payable.

“(3) A reference in paragraph (2)(b) to an amount assessed under section 12ZM to be payable in respect of a person’s accumulated FS debt is, if the amount has been increased or reduced by an amendment
20 of the relevant assessment, taken to be a reference to the increased or reduced amount, as the case may be.

“(4) For the purposes of subsection (1):

(a) **the minimum prescribed amount** in relation to a year of income (**‘the relevant year of income’**) is \$27,747 (being the amount applicable under subparagraph 68(4)(a)(ii) of the *Higher Education Funding Act 1988* in relation to the year of income ending on 30 June 1993) as subsequently varied and applicable in relation to the relevant year of income in accordance with the indexation procedure set out in section 68 of that Act; and

30 (b) **the intermediate prescribed amount** in relation to a year of income (**‘the relevant year of income’**) is \$31,532 (being the amount applicable under subparagraph 68(4)(b)(ii) of the *Higher Education Funding Act 1988* in relation to the year of income ending on 30 June 1993) as subsequently varied and applicable in relation to the relevant year of income in accordance with that indexation procedure; and

35 (c) **the maximum prescribed amount** in relation to a year of income (**‘the relevant year of income’**) is \$44,146 (being the amount applicable under subparagraph 68(4)(c)(ii) of the *Higher Education Funding Act 1988* in relation to the year of income ending on 30 June 1993) as subsequently varied and applicable in relation to the relevant year of income in accordance with that indexation procedure.
40

“Subdivision D—Returns and assessments**Annual returns**

“12ZL. If a person is required under section 161 of the *Income Tax Assessment Act 1936* to furnish to the Commissioner a return in respect of income of the year of income ending on 30 June 1998 or in respect of income of a later year of income, the person must, if the person had an accumulated FS debt at 1 June immediately before the furnishing of the return, set out in the return the amount of that debt and any payments made since that date in respect of the person’s indebtedness to the Commonwealth under this Division. 5 10

Assessment

“12ZM. The Commissioner may, from any information in the Commissioner’s possession, whether from a return or otherwise, make an assessment of:

- (a) the amount of the accumulated FS debt of a person at 1 June immediately before the making of the assessment; and 15
- (b) the amount required to be paid in respect of that accumulated FS debt under section 12ZK.

Application of the Income Tax Assessment Act

“12ZN.(1) Part IV and Division 1 of Part VI of the *Income Tax Assessment Act 1936* and Part IVC of the *Taxation Administration Act 1953* apply, so far as they are capable of application and subject to this Division, in relation to an FS assessment debt of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*. 20 25

“(2) Sections 222A to 222F, 222 and 226G to 226ZB of the *Income Tax Assessment Act 1936* have effect as if any FS assessment debt of a person were income tax payable by the person in respect of the year of income in respect of which the assessment of that debt was made.

How notices of assessment may be served 30

“12ZO. If:

- (a) the Commissioner is required to serve on a person a notice of assessment in respect of the person’s income of a year of income under section 174 of the *Income Tax Assessment Act 1936*; and 35
- (b) an assessment (**‘the relevant assessment’**) has been made in respect of the person of the amounts referred to in section 12ZM of this Act but notice of the relevant assessment has not been served on the person;

notice of the relevant assessment may be served by setting out the amounts concerned in the notice referred to in paragraph (a). 40

Power of Commissioner to defer assessment or reduce assessment to nil

5 “12ZP.(1) The Commissioner may, on written application by a person, defer, for such period as the Commissioner considers appropriate, the making of an assessment in relation to the person under section 12ZM if the Commissioner considers that, were the assessment to be made, payment of the assessed amount would cause serious hardship to the person or considers that there are other special reasons that make it fair and reasonable to defer the making of the assessment.

10 “(2) The Commissioner may, on written application by a person, amend an assessment made in relation to the person under section 12ZM so that no amount is payable under the assessment if the Commissioner considers that payment of the assessed amount has caused or would cause serious hardship to the person or considers that
15 there are other special reasons that make it fair and reasonable to make the amendment.

20 “(3) If an application referred to in subsection (1) or (2) is made, the Commissioner must as soon as practicable consider the matter to which the application relates and give to the applicant written notice of the Commissioner’s decision on the application.

Review of decision of Commissioner

25 “12ZQ.(1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner on an application referred to in subsection 12ZP(1) or a decision by the Commissioner refusing to amend an assessment pursuant to an application referred to in subsection 12ZP(2).

“(2) A notice under subsection 12ZP(3) must:

30 (a) include a statement to the effect that, if the person is dissatisfied with the decision of the Commissioner on the application under section 12ZP, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision; and

35 (b) except if subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

“(3) A failure to comply with subsection (2) in relation to a notice does not affect the validity of the notice or of the decision to which the notice relates.

“Subdivision E—Miscellaneous**Benefits to students under student financial supplement scheme not subject to taxation**

“12ZR.(1) Any amount paid or other benefit given to a person under the Student Financial Supplement Scheme is not subject to taxation under any law of the Commonwealth unless a provision of such a law expressly provides to the contrary. 5

“(2) Subsection (1) does not affect any liability to taxation of a participating corporation in respect of any subsidy or other amount paid to the corporation under the Student Financial Supplement Scheme. 10

Application of payments

“12ZS. An amount paid by a person in respect of the person’s indebtedness to the Commonwealth under this Division is to be applied in accordance with the direction of the person or, in the absence of such a direction or to the extent that the direction does not adequately deal with the matter: 15

- (a) first, in discharge or reduction of any FS assessment debts of the person; and
- (b) secondly, in discharge or reduction of any accumulated FS debt of the person. 20

Indebtedness discharged by death

“12ZT. Upon the death of a person who has an indebtedness to the Commonwealth under this Division, other than an indebtedness in respect of an FS assessment debt, the indebtedness is discharged by force of this section. 25

Secrecy

“12ZU.(1) In this section:

‘**Commissioner**’ includes a Second Commissioner of Taxation and a Deputy Commissioner of Taxation;

‘**officer**’ means a person: 30

- (a) who is or has been appointed or employed by the Commonwealth and, because of the appointment or employment or in the course of the performance of the duties of the appointment or in the course of the employment, may acquire or has acquired confidential information; or 35
- (b) to whom powers or functions have been delegated by the Commissioner and who, because of, or in the course of the exercise of powers or the performance of functions under, the delegation, may acquire or has acquired confidential information. 40

“(2) A reference in this section to the acquisition by a person of confidential information is a reference to the acquisition of information

in relation to the affairs of another person disclosed or obtained under or for the purposes of this Division.

5 “(3) For the purposes of this section, a person who performs services for the Commonwealth, although not appointed or employed by the Commonwealth, is taken to be employed by the Commonwealth.

“(4) A person who is or has been an officer must not, except for the purposes of this Division, or in the performance of the person’s duties as an officer, directly or indirectly:

- 10 (a) make a record of any information in relation to the affairs of a second person; or
- (b) disclose to a second person any information in relation to the affairs of a third person;

being information disclosed or obtained under or for the purposes of this Division and acquired by the person:

- 15 (c) because of the person’s appointment or employment by the Commonwealth or in the course of such employment; or
- (d) because of the delegation to the person of powers or functions by the Commissioner or in the course of the exercise of such powers or performance of such functions.

20 Penalty: \$10,000 or imprisonment for 2 years, or both.

“(5) Except when it is necessary to do so for the purpose of carrying into effect the provisions of this Division, an officer cannot be required:

- (a) to produce to a court any document made or given under or for the purposes of this Division; or
- 25 (b) to disclose to a court a matter or thing in relation to information disclosed or obtained under or for the purposes of this Division;

being a document or information acquired by the officer:

- (c) because of the officer’s appointment or employment by the Commonwealth or in the course of such employment; or
- 30 (d) because of the delegation to the officer of powers or functions by the Commissioner or in the course of the exercise of such powers or the performance of such functions.

35 “(6) Subsection (4) does not prohibit the Commissioner, or a person authorised by the Commissioner, from disclosing any information to the Administrative Appeals Tribunal in connection with proceedings under this Act or any Act of which the Commissioner of Taxation has the general administration.

40 “(7) No Act of which the Commissioner of Taxation has the general administration prohibits the Commissioner, or a person authorised by the Commissioner, from disclosing any information to a person performing, as an officer, duties arising under this Division for the purpose of enabling the person to perform those duties.

“(8) Subsection (4) does not prohibit an officer (**“the relevant officer”**) from disclosing any information to an officer of the Department for the purpose of assisting the relevant officer in the performance of duties arising under this Division.

“(9) For the purposes of subsection (4), an officer is taken to have disclosed information to another person in contravention of that subsection if the officer discloses the information to a Minister. 5

“(10) An officer must, if and when required by the Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in accordance with the provisions of this section. 10

“(11) In this section:
‘court’ includes a tribunal, authority or person having power to require the production of documents or the answering of questions;
‘disclose’, in relation to information, means give, reveal or communicate in any way. 15

“Division 7—General

Explanation of Division

“12ZV. This Division deals with:

- (a) the application of the *Bankruptcy Act 1966* in relation to rights and liabilities arising under or out of a financial supplement contract; and 20
- (b) the effect of decisions reviewing decisions by authorised persons or prescribed officers under this Part; and
- (c) the giving of notice to a student when the student’s obligations to a participating corporation have been assigned to the Commonwealth; and 25
- (d) the exemption from State and Territory taxes of assignments and other acts and transactions under this Part.

Application of the Bankruptcy Act 30

“12ZW.(1) This section applies if, at any time after a financial supplement contract (**“the contract”**) is entered into between a participating corporation (**“the corporation”**) and a student, including a time after the end of the contract period:

- (a) the student becomes bankrupt; or 35
- (b) the student enters into a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966*.

“(2) A debt arising under or out of the contract is not a provable debt in the bankruptcy or for the purposes of the deed of assignment, deed of arrangement or composition. 40

“(3) Any right of the Commonwealth or of the corporation to bring an action or other proceeding against the student in respect of such a debt is not affected by the bankruptcy, deed of assignment, deed of arrangement or composition.

5 “(4) The trustee of the estate of the bankrupt student or the trustee of the deed of assignment, deed of arrangement or composition, as the case may be, is not entitled to recover under the *Bankruptcy Act 1966* any payment made by the student to the Commonwealth or to the corporation in respect of such a debt.

10 “(5) A reference in this section to a debt arising under or out of the contract includes a reference to:

(a) the amount outstanding at any time under the contract; and

(b) an amount that the student is liable to pay under paragraph 12S(2)(d) or 12U(2)(c); and

15 (c) any accumulated FS debt that discharges, or discharges the unpaid part of, an FS debt;

but does not include a reference to:

(d) a debt constituted by an obligation to repay the amount of a payment that, because of subparagraph 12Q(2)(b)(i), 12R(2)(b)(i) or 12T(2)(b)(i), is not a payment of financial supplement made under the contract; or

(e) an FS assessment debt that is required to be paid in respect of an accumulated FS debt.

25 **What happens if decision of authorised person or prescribed officer is set aside or varied**

“12ZX. If a decision of an authorised person or a prescribed officer under this Part is set aside or varied:

30 (a) if the decision is set aside—subject to paragraph (b), this Part has effect, and is taken to have always had effect, as if the decision had not been made; or

(b) if the decision is set aside and another decision is substituted for the original decision—this Part has effect, and is taken to have always had effect, as if the substituted decision had been the original decision; or

35 (c) if the decision is varied—this Part has effect, and is taken to have always had effect, as if the decision as varied had been the original decision.

Notices of assignment

40 “12ZY. If any right of a participating corporation to receive a payment from a person under this Part is assigned to the Commonwealth, the Secretary must as soon as practicable arrange for written notice to be given to the person stating that the right has been so assigned and identifying any future payments by the person that,

because of the assignment, are required to be made to the Commonwealth.

Assignments etc. not subject to State or Territory taxes

“12ZZ. An assignment to the Commonwealth under this Part of rights of a corporation under a financial supplement contract, or any other act or thing done or transaction entered into under this Part, is not subject to taxation under any law of a State or Territory. 5

“PART 4B—OTHER INDEXATION PROVISIONS

Maximum living allowances under AUSTUDY Regulations to be indexed by reference to Consumer Price Index 10

“12ZZA.(1) In this section:

‘**indexable amount**’, at any time, means:

- (a) subject to paragraph (b)—an amount set out at that time in regulation 61 of the AUSTUDY Regulations; or
- (b) if an amount set out at that time has previously been taken under this section to be altered by substituting another amount—the substituted amount or the last substituted amount. 15

“(2) On 1 January in each year (**‘the relevant year’**) each indexable amount is taken to be altered by substituting an amount worked out using the formula: 20

previous indexable amount × indexation factor

where:

‘**previous indexable amount**’ means the indexable amount immediately before 1 January in the relevant year;

‘**indexation factor**’ means the number worked out to three decimal places for the relevant year using the formula: 25

the index number for the June quarter in the later reference period
divided by

the index number for the June quarter in the earlier reference period;

‘**later reference period**’ means the year that immediately preceded the relevant year;

‘**earlier reference period**’ means the year that immediately preceded the later reference period. 30

“(3) If an indexation factor worked out under subsection (2) would end with a number greater than 4 if it were worked out to 4 decimal places, the indexation factor is increased by 0.001.

“(4) If, apart from this subsection, an amount worked out under subsection (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest dollar (rounding fifty cents upwards). 35

Other provisions relating to indexation

5 “12ZZB.(1) Subject to subsection (2), if at any time, whether before or after the commencement of this Part, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this Part.

10 “(2) If at any time, whether before or after the commencement of this Part, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard is to be had only to the index numbers published in terms of the new reference base.

15 “(3) The Minister must cause to be published in the *Gazette* before each 1 June the indexation factor worked out under subsection 12X(3) (as affected by subsection 12X(4)) in relation to the period of 12 months beginning on that day.

20 “(4) The Commissioner must cause to be published in the *Gazette* before 1 June 1998, and before each later 1 June, the indexation factor worked out under subsection 12ZF(6) (as affected by subsection 12ZF(7)) that is applicable in working out FS debts and accumulated FS debts incurred on the 1 June concerned.

25 “(5) The Minister must cause to be published in the *Gazette* before each 1 January the indexation factor worked out under subsection 12ZZA(2) (as affected by subsection 12ZZA(3)) in relation to the year beginning on that day.”.

Interpretation

30 7. (1) Section 13 of the Principal Act is amended by omitting from subsection (1) the definition of “primary decision” and substituting the following definition:

“ ‘primary decision’ means:

- 35 (a) a decision made by an authorised person or prescribed officer that has been affirmed by a senior authorised person or senior prescribed officer under subsection 20(3) or (3A), as the case may be; or
- (b) a decision made by an authorised person or prescribed officer as varied by a senior authorised person or senior prescribed officer under subsection 20(3) or (3A), as the case may be; or
- 40 (c) a decision made by a senior authorised person or senior prescribed officer under subsection 20(3) or (3A), as the case may be, in substitution for a decision of an authorised person or prescribed officer that has been considered and set aside under that subsection; or

(d) a decision made by an authorised person or prescribed officer (other than a decision referred to in paragraph (a), (b) or (c)) in respect of which a request has been made under subsection 21(2);”.

(2) Section 13 of the Principal Act is amended by inserting in subsection (2) “or a prescribed officer” after “authorised person” (wherever occurring). 5

(3) Section 13 of the Principal Act is amended by adding at the end the following subsection:

“(5) A reference in this Part to a senior prescribed officer, in relation to a decision made by a person who was, when the decision was made, a prescribed officer because he or she performed the duties of an office in the Australian Public Service, is a reference to another person who is a prescribed officer because he or she performs the duties of an office in the Australian Public Service the classification of which is higher than the classification of the first-mentioned office.”. 10 15

Request under Act on behalf of another person

8. Section 14 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) a consideration by a senior prescribed officer of a decision of a prescribed officer; or”. 20

Amendment of heading

9. The heading to Division 3 of Part 5 of the Principal Act is amended by adding at the end “*or Senior Prescribed Officer*”.

Consideration by senior authorised person or senior prescribed officer 25

10.(1) Section 20 of the Principal Act is amended by inserting after paragraph (1)(b) the following word and paragraph:

“or (c) a person is dissatisfied with a decision of an authorised person under section 12F or subsection 12R(1) or 12T(1);”.

(2) Section 20 of the Principal Act is amended by inserting after subsection (1) the following subsection: 30

“(1A) If a person (other than a participating corporation) who is a party to a financial supplement contract is dissatisfied with a decision of a prescribed officer under subsection 12S(1) or 12U(1), the person may, by written notice given to the Secretary not later than 30 days after the day on which written notice of the decision was given to the person, or within such further period as a prescribed officer approves, request the Secretary to arrange for a senior prescribed officer to consider the decision.”. 35

(3) Section 20 of the Principal Act is amended by inserting after subsection (3) the following subsection: 40

5 “(3A) If the Secretary receives a request under subsection (1A), the Secretary must, as soon as practicable, arrange for a senior prescribed officer to consider the decision and the senior prescribed officer must, as soon as practicable but in any case within 60 days after receipt of the request by the Secretary, consider the decision and:

- (a) affirm it; or
- (b) vary it; or
- (c) set it aside and make a decision in substitution for it.”.

10 (4) Section 20 of the Principal Act is amended by inserting after subsection (4) the following subsection:

15 “(4A) A decision of a prescribed officer as varied by a senior prescribed officer, or a decision made by a senior prescribed officer in substitution for a decision of a prescribed officer, is taken, unless the senior prescribed officer otherwise directs, to have had effect on and from the day on which the decision of the prescribed officer had effect.”.

20 (5) Section 20 of the Principal Act is amended by inserting in subsection (5) “or a senior prescribed officer who considers a decision of a prescribed officer pursuant to a request made under subsection (1A)” after “subsection (1)”.

(6) Section 20 of the Principal Act is amended by adding at the end the following subsection:

25 “(6) Nothing in this section applies to a decision made in relation to a person if the person is or was, or claims or claimed to be, an eligible student for the purposes of Part 4A on the ground that:

- (a) the person qualified, or, apart from that Part, would have qualified, for a benefit under the ABSTUDY scheme; or
 - (b) the person would have qualified for a benefit under the ABSTUDY scheme except for the parental income test applicable under that scheme.”.
- 30

Request for review by Tribunal

11. Section 21 of the Principal Act is amended by inserting after subsection (3) the following subsection:

35 “(3A) In addition to the operation that subsections (1) to (3) have apart from this subsection, those subsections have effect as if:

- (a) references to an authorised person were references to a prescribed officer; and
- (b) references to a senior authorised person were references to a senior prescribed officer.”.

Interpretation

12. Section 35 of the Principal Act is amended by inserting "or a prescribed officer" after "authorised person" in the definition of "section 20 notice".

Operation of Tribunal Act

5

13. Section 37 of the Principal Act is amended by inserting in subsection (9) "or of a prescribed officer, as the case may be," after "authorised person".

Recovery of certain overpayments from third parties etc.

14. Section 42 of the Principal Act is amended by inserting after subsection (2) the following subsection: 10

"(2A) The first reference in paragraph (2)(b) to another person includes a reference to:

(a) the Commonwealth; and

(b) a State; and 15

(c) a Territory; and

(d) any authority of the Commonwealth or of a State or Territory."

Provision of tax file numbers

15. Section 44A of the Principal Act is amended:

(a) by inserting before "unless" in subsection (1) ", or financial supplement is not to be paid to a person (in this section also called the 'applicant') under the Student Financial Supplement Scheme,"; 20

(b) by inserting in subsection (4) "or financial supplement" after "benefit". 25

Power to obtain information

16. Section 45 of the Principal Act is amended by omitting from subsection (1) "or a former special educational assistance scheme" and substituting "a former special educational assistance scheme or the Student Financial Supplement Scheme." 30

Obligation to notify happening of certain events

17. Section 48 of the Principal Act is amended by inserting "(including an amount under a financial supplement contract)" after "Act".

Offences

35

18. Section 49 of the Principal Act is amended:

(a) by inserting after subparagraph (1)(a)(iii) the following subparagraph:

"(iv) to affect the amount of financial supplement that may be paid to the person under Part 4A;" 40

(b) by adding at the end the following subsection:

5 “(4) A reference in this section to payment of an amount under this Act or to an amount paid under this Act includes a reference to payment of an amount or to an amount paid, as the case may be, under a financial supplement contract.”.

Evidentiary certificates

19. Section 51 of the Principal Act is amended by adding the following subsections:

“(2) A certificate given by a prescribed officer stating:

- 10 (a) that a specified amount was the principal sum at a particular time under a specified financial supplement contract; or
- 15 (b) that a specified amount was the sum of the actual repayments, or the sum of the notional repayments, made before a particular time or during a particular period in respect of a specified financial supplement contract; or
- 20 (c) that a specified amount was the amount, or the total of the amounts, of subsidy paid by the Commonwealth to a specified participating corporation in respect of a specified financial supplement contract in lieu of interest on the principal sum or in lieu of interest on the principal sum in relation to a specified period; or
- 25 (d) that a specified amount was, at a particular time, the amount outstanding under a specified financial supplement contract; or
- (e) that a specified amount was, at a particular time, the indexation amount in relation to a specified financial supplement contract; or
- 30 (f) that the rights, or specified rights, of a specified participating corporation in respect of a specified person under a specified financial supplement contract were assigned by the corporation to the Commonwealth on a specified date; or
- (g) that, on a specified day, a person had an FS debt or FS debts to the Commonwealth of a specified amount or specified amounts; or
- 35 (h) that, on a specified day, a notice, to a specified effect, under a provision of Part 4A was given to a specified person by an authorised person or a prescribed officer;

is *prima facie* evidence of the matters stated in the certificate.

40 “(3) In any proceeding, a document purporting to be a certificate by a prescribed officer under this section is taken, unless the contrary is established, to be such a certificate and to have been duly given.”.

Annual report

20. Section 54 of the Principal Act is amended by inserting in subsection (1) “, and the operation of the Student Financial Supplement Scheme,” after “granted”.

Appropriation

21. Section 55A of the Principal Act (first occurring) is amended by inserting after subsection (1) the following subsection:

“(1A) The following payments, namely:

(a) payments of subsidy to a participating corporation under an agreement entered into under section 12D;

(b) payments to a participating corporation under paragraph 12S(2)(c), 12U(2)(b) or 12V(2)(b), subsection 12ZA(9) or paragraph 12ZB(b);

are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.”.

Disclosure of personal information

22.(1) Section 55A (second occurring) of the Principal Act, being the section so numbered that was inserted by section 9 of the *Student Assistance Amendment Act (No. 2) 1991*, is renumbered as section 55B and, as so renumbered, is amended:

(a) by omitting from paragraph (b) of the definition of “officer” in subsection (1) “Act.” and substituting “Act;”;

(b) by adding at the end of that definition (but not as part of paragraph (b)) “but does not include a person employed by a participating corporation”;

(c) by omitting from subsection (2) “or a former special educational assistance scheme” and substituting “, a former special educational assistance scheme or the Student Financial Supplement Scheme”.

(2) A reference to the section 55A of the Principal Act that was inserted by section 9 of the *Student Assistance Amendment Act (No. 2) 1991* in an instrument that was in force under a provision of the Principal Act immediately before the commencement of this section is, on and after that commencement, taken to be a reference to section 55B of the Principal Act as in force on and after that commencement.

Regulations

23. Section 56 of the Principal Act is amended:

(a) by inserting after paragraph (a) the following paragraph:

“(aa) making provision in relation to the furnishing of information by applicants under the Student Financial

Supplement Scheme or by persons who are parties to financial supplement contracts; and”;

(b) by inserting after paragraph (ab) the following paragraph:

5 “(ac) making provision in relation to the furnishing of information relating to persons whose income or assets are required to be taken into account for the purpose of determining the eligibility of a person to obtain financial supplement; and”;

(c) by adding at the end the following word and paragraph:

10 “; and (f) making provision in relation to:

(i) the times at which; and

(ii) the manner in which;

payments are to be made to persons out of the Fund.”.

PART 3—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

15 *Division 1—Amendment of the Data-matching Program
(Assistance and Tax) Act 1990*

Principal Act

24. In this Division, “Principal Act” means the *Data-matching Program (Assistance and Tax) Act 1990*².

20 **Interpretation**

25. Section 3 of the Principal Act is amended by inserting after subparagraph (b)(ii) of the definition of “personal assistance” the following subparagraph:

25 “(iiA) financial supplement under the Student Financial Supplement Scheme;”.

Division 2—Amendments of the Income Tax Assessment Act 1936

Principal Act

26. In this Division, “Principal Act” means the *Income Tax Assessment Act 1936*³.

30 **Losses and outgoings**

27. Section 51 of the Principal Act is amended by adding at the end of subsection (6) the following word and paragraph:

35 “; or (c) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth or to a participating corporation under Part 4A of the *Student Assistance Act 1973*.”.

Deductions for expenses of self-education

28. Section 82A of the Principal Act is amended by adding at the end of the definition of "expenses of self-education" in subsection (2) the following word and paragraph:

“; or (c) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth or to a participating corporation under Part 4A of the *Student Assistance Act 1973*.”. 5

Objects of this Part

29. Section 202 of the Principal Act is amended: 10

(a) by omitting “(f)” at the beginning of the last paragraph and substituting “(g)”;

(b) by adding at the end the following word and paragraph:

“; and (h) to facilitate the administration of Division 6 of Part 4A of the *Student Assistance Act 1973*.”. 15

30. Division 7 of Part VI of the Principal Act is repealed and the following Division substituted:

“Division 7—Higher education contribution and student financial supplement assessment debts

Application of deductions in payment of HEC assessment debts and FS assessment debts 20

“22IZY.(1) In this section:

‘**HEC assessment debt**’ has the same meaning as in Chapter 4 of the *Higher Education Funding Act 1988*;

‘**FS assessment debt**’ has the same meaning as in the *Student Assistance Act 1973*; 25

‘**relevant provision**’ means section 221H, 221YE, 221YHG or 221YHZL.

“(2) If:

(a) apart from this section, the Commissioner would be required by a relevant provision to credit, apply, pay or refund an amount or sum for the benefit of a person in a manner stated in that provision; and 30

(b) the person has an HEC assessment debt or an FS assessment debt, or both;

the Commissioner must, despite that provision: 35

(c) if the person has an HEC assessment debt, apply that amount or sum in payment or part payment of the HEC assessment debt; and

(d) if there is no HEC assessment debt or that amount or sum exceeds the HEC assessment debt, and there is an FS assessment 40

debt, apply that amount or sum or the excess, as the case may be, in payment or part payment of the FS assessment debt; and

- (e) if there is any part of that amount or sum that has not been applied in accordance with paragraph (c) or (d), credit, apply, pay or refund that part of that amount or sum in accordance with the relevant provision.”.

Division 3—Amendments of the Taxation Administration Act 1953

Principal Act

31. In this Division, “Principal Act” means the *Taxation Administration Act 1983*⁴.

Unauthorised requirement etc. that tax file number be quoted

32. Section 8WA of the Principal Act is amended by omitting from paragraph (1)(b) “or (f)” and substituting “, (g) or (h)”.

Unauthorised recording etc. of tax file number

33. Section 8WB of the Principal Act is amended by omitting from paragraphs (1)(d) and (e) “or (f)” and substituting “, (g) or (h)”.

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

Principal Act

34. In this Division, “Principal Act” means the *Taxation (Interest on Overpayments) Act 1983*⁵.

Interpretation

35. Section 3 of the Principal Act is amended by inserting in paragraph (a) of the definition of “relevant tax” in subsection (1) “or subsection 12ZN(1) of the *Student Assistance Act 1973*” after “1988”.

NOTES

1. No. 155, 1973; as amended. For previous amendments, see No. 37, 1976; No. 26, 1982; Nos. 63, 72 and 120, 1984; No. 137, 1985; No. 114, 1986; Nos. 125, 130 and 141, 1987; No. 35, 1988; Nos. 76 and 171, 1989; and Nos. 70, 95 and 147, 1991.
2. No. 20, 1991, as amended. For previous amendments, see Nos. 115, 175 and 194, 1991.
3. No. 27, 1936; as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953;

NOTES—continued

- No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 12, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); Nos. 20, 35, 45, 57, 58, 60, 61, 87, 119 and 135, 1990; and Nos. 4, 5, 6, 48, 55, 100 and 216, 1991; and Nos. 3, 35, 80, 98, 101 and ###, 1992.
4. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); Nos. 95 and 97, 1988; Nos. 97, 105, 107, 124, 163 and 167, 1989; Nos. 20, 60, 61, 110, 119 and 136, 1990; Nos. 5, 6, 48, 100, 122 and 216, 1991; and Nos. 47, 94, 98 and 101, 1992.
5. No. 12, 1983, as amended. For previous amendments, see No. 123, 1984; Nos. 4, 47, 49 and 123, 1985; Nos. 41, 46, 48 and 154, 1986; Nos. 58, 61, 62 and 145, 1987; No. 97, 1988; No. 2, 1989; No. 60, 1990; and No. 216, 1991.