

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 18 November 1987

(Minister for Employment, Education and Training)

A BILL

FOR

**An Act to amend the *Student Assistance Act 1973*, the
Seamen's War Pensions and Allowances Act 1940, the
Social Security Act 1947 and the *Veterans' Entitlements
Act 1986*, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Student Assistance Legislation Amendment Act 1987*.

Commencement

- 2.** This Act shall come into operation on the day on which it receives the Royal Assent.

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

Principal Act

3. In this Part, “Principal Act” means the *Student Assistance Act 1973*. 5

Interpretation

4. Section 5 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“‘officer’ means a person who is an officer or employee within the meaning of the *Public Service Act 1922* and performs duties, or exercises powers or functions, under or in relation to this Act or the regulations; 10

‘overpayment’ means payment of an amount to a person by way of benefit under student assistance, being a payment that:

(a) would not have been made but for a false or misleading statement or representation, or a failure or omission to comply with this Act or the regulations; 15
or

(b) for any other reason, should not have been made;

‘prescribed officer’ means an officer appointed under section 7;” 20

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

“(3) For the purposes of the definition of ‘officer’ in subsection (1), a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.”. 25

5. After section 6 of the Principal Act the following section is inserted:

Appointment of prescribed officers

“7. The Minister may, by notice in writing published in the *Gazette*, appoint officers to be prescribed officers for the purposes of this Act.”.

6. Section 31A of the Principal Act is repealed and the following sections are substituted: 30

Recovery of overpayments

“31A. (1) Subject to subsection (3) but in spite of any other provisions of this Act, where, whether before or after the commencement of this section: 35

(a) an overpayment of an amount has been made to, or in respect of, a person;

(b) an amount has been paid by way of pension, benefit or allowance under the *Social Security Act 1947* that should not have been paid or that has been paid solely because of a decision under subsection 136 (2A) of that Act; 40

(c) an amount has been paid by way of pension or allowance under the *Veterans' Entitlements Act 1986* or the *Seamen's War Pensions and Allowances Act 1940* that should not have been paid; or

(d) an amount has been paid to, or in respect of, a person under a prescribed educational scheme that should not have been paid;

and the person to or in respect of whom that amount was paid is receiving, or is entitled to receive, benefit payable under student assistance, that amount (and any amount payable by the person under subsection (4)) may be deducted from that benefit by reducing each payment of that benefit by a proportion determined by a prescribed officer in each case until the sum of the amounts by which the payments are reduced equals that amount or those amounts.

“(2) For the purposes of subsection (1), a person in relation to whom a grant of Education Assistance has been approved under Part III shall be deemed to be receiving, or to be entitled to receive, as the case requires, benefit payable under student assistance even if a determination under section 32 directs that that benefit be paid to another person.

“(3) Subsection (1) does not apply in relation to an amount if recovery of that amount is waived under paragraph 31C (1) (b) of this Act or under paragraph 186 (1) (b) of the *Social Security Act 1947*, paragraph 206 (1) (b) of the *Veterans' Entitlements Act 1986* or paragraph 55B (1) (b) of the *Seamen's War Pensions and Allowances Act 1940*, as the case may be.

“(4) Where:

(a) on or after the commencement of this section, a person has been paid an amount by way of benefit under student assistance that would not have been paid but for a false or misleading statement or representation, or a failure or omission to comply with this Act or the regulations;

(b) the amount so paid exceeds \$50; and

(c) the amount is not recovered within 3 months after the person has been given a notice under this subsection advising the person of the amount of the overpayment;

the person is liable to pay to the Commonwealth an additional amount (not exceeding \$515) calculated by adding \$15 and 10% of so much of the amount as remains due at the end of that period of 3 months.

Action in relation to money owing to recipients

“31B. (1) Where an overpayment has been made to a person (in this section called the ‘recipient’), a prescribed officer may, by notice in writing given to a person:

(a) by whom any money is due or accruing, or may become due, to the recipient;

(b) who holds, or may subsequently hold, money for or on account of the recipient;

(c) who holds, or may subsequently hold, money on account of some other person for payment to the recipient; or

(d) who has authority from some other person to pay money to the recipient;

require the person to whom the notice is given to pay to the Commonwealth:

(e) the amount specified in the notice, not exceeding the amount of the overpayment made to the recipient or the amount of the money referred to in whichever of the preceding paragraphs is applicable; or

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(f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the recipient until the total of such amounts equals the amount of the overpayment.

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“(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before:

(a) the money concerned becomes due or is held; or

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(b) the end of the period of 14 days after the notice is given.

“(3) A person who fails to comply with a notice under subsection (1) to the extent that the person is capable of complying is guilty of an offence.

“(4) Where a prescribed officer gives a notice to a person under subsection (1), the prescribed officer shall give a copy of the notice to the recipient.

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“(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) shall be deemed to have made the payment under the authority of the recipient and of any other person concerned.

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“(6) Where:

(a) a notice is given to a person under subsection (1) in respect of an overpayment made to a recipient; and

(b) an amount is paid by another person in reduction or in satisfaction of the overpayment;

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a prescribed officer shall notify the first-mentioned person of that payment, and the amount specified in the notice shall be deemed to be reduced by the amount so paid.

“(7) Where, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money shall be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, notwithstanding that the condition has not been fulfilled.

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“(8) Where:

(a) a notice is given to a person under subsection (1); and

(b) the person fails to comply with the notice to the extent that the person is capable of complying;

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an amount equal to:

(c) so much of the amount required by the notice to be paid by the person as the person was able to pay but did not pay; or

- (d) so much of the amount of the overpayment made to the recipient at the time when the notice was given as remains unrecovered from time to time;

whichever is the lesser, is a debt due by the person to the Commonwealth.

5 “(9) Where:

- (a) a person is indebted to the Commonwealth under subsection (8) in respect of an overpayment made to a recipient; and
- (b) the Commonwealth recovers:

10 (i) the whole or a part of the debt due by the person under subsection (8); or

(ii) the whole or a part of the overpayment made to the recipient; the debt due by the person and the amount of the overpayment are reduced by the amount so recovered and the amount specified in the notice under subsection (1) shall be deemed to be reduced by the amount so recovered.

15 “(10) A reference in this section to a person includes a reference to the Commonwealth, a State, a Territory and any authority of the Commonwealth or of a State or Territory.

Waiver etc.

20 “31C. (1) The Minister may, on behalf of the Commonwealth, by instrument in writing:

- (a) write off the amount of any overpayment made to a person;
- (b) waive the right of the Commonwealth to recover from a person the whole or a part of the amount of an overpayment made to the person; or
- 25 (c) allow a person to repay to the Commonwealth by instalments the amount of any overpayment made to the person.

30 “(2) Subject to subsection (3), proceedings for the recovery from a person of the amount of an overpayment shall not be commenced after the end of the period of 6 years commencing on the day on which that amount became payable.

“(3) Where an amount is paid under this Act because of:

- (a) a false or misleading statement or representation made by any person; or
- 35 (b) a failure or omission by any person to comply with this Act or the regulations;

proceedings for the recovery of that amount may be commenced at any time within the period of 6 years commencing on the day on which an officer becomes aware that the statement or representation was false or misleading or that the person had not complied with this Act or the regulations, as the case may be.

40 “(4) A decision under subsection (1) takes effect:

- (a) on the day specified in the instrument, being the day on which the decision was made or any other day before or after that day; or

- (b) if no day is so specified, on the day on which the decision was made.

Power to obtain information etc.

“31D. (1) A prescribed officer may, for the purposes of this Act, by notice in writing given to a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, or of a State or Territory, or by any authority of the Commonwealth or of a State or Territory), require the person: 5

(a) to:

- (i) give the Department, or an officer specified in the notice, such information as the prescribed officer requires; or 10

- (ii) produce to the Department, or to an officer so specified, such documents in the custody or under the control of the person as the prescribed officer requires;

within the period (being not less than 14 days after the notice is given) and in the manner specified in the notice; or 15

- (b) to appear before an officer specified in the notice at such reasonable time (being a time not earlier than 14 days after the notice is given) and place as are specified in the notice to answer questions.

“(2) Without limiting the generality of subsection (1), a prescribed officer may: 20

- (a) by notice in writing given to a person to whom an overpayment has been made, require the person:

- (i) to provide the Department, or an officer specified in the notice, within the period specified in the notice (being not less than 14 days after the notice is given), with such information concerning the person’s financial situation as is required by the notice or to produce to the Department or to an officer so specified, within that period, such documents concerning that situation as are so specified; and 25 30

- (ii) if the person’s address changes, to notify the Department or an officer so specified, within 14 days of the change, of the new address; or

- (b) by notice in writing given to a person who the prescribed officer believes may have information concerning the whereabouts of a person to whom an overpayment has been made or the financial situation of such a person, require the person to give, or produce to, the Department, or an officer specified in the notice, within the period specified in the notice (being not less than 14 days after the notice is given), such information or documents concerning those matters as are specified in the notice. 35 40

“(3) A prescribed officer may require that information or answers to questions under this section be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose an officer

to whom information or answers are verified or given may administer an oath or affirmation.

5 “(4) The oath to be taken or affirmation to be made for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.

“(5) A person shall not:

- 10 (a) refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with it; or
(b) in purported compliance with such a notice, knowingly or recklessly give information or evidence that is false or misleading in a material particular.

“(6) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

15 “(7) This section does not require a person to give information, produce a document or answer questions to the extent that in doing so he or she would contravene a law of the Commonwealth.

Self-incrimination

20 “31E. A person is not excused from giving information, producing a document or answering a question that the person is required to give, produce or answer under section 31D on the ground that the information or answer, or the production of the document, may tend to incriminate the person, but any information or answer so given, or any document so produced, is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against that section.

25 Giving information etc.—State and Territory laws

“31F. Nothing in any law of a State or Territory prevents a person from giving information, producing a document or answering a question under section 31D.

Offences

30 “31G. (1) A person shall not:

- (a) knowingly or recklessly make, whether orally or in writing, a false or misleading statement:
- 35 (i) in connection with a request under section 22 or 23 or an application or claim, whether made on behalf of that person or of any other person;
- (ii) to deceive an officer in the performance of the officer’s functions or duties under, or in relation to, this Act or the regulations; or
- (iii) to affect the rate of a benefit payable under student assistance;
- 40 (b) knowingly obtain payment of a benefit under this Act, or of an instalment of such a benefit, the whole or a part of which is not payable;

(c) obtain payment of a benefit under this Act, or of an instalment of such a benefit, by means of a false or misleading statement that is knowingly or recklessly made or by means of impersonation or fraud; or

(d) knowingly or recklessly make or present to an officer a statement or document that is false or misleading in a material particular. 5

“(2) Where a person is convicted of an offence against subsection (1), the court may, in addition to imposing a penalty, order the person to pay to the Commonwealth an amount equal to any amount paid by way of a benefit under this Act as a result of the act, failure or omission in respect of which the person was convicted. 10

“(3) For the purposes of subsection (2), a certificate by a prescribed officer stating that a specified amount is the amount paid to a specified person by way of a benefit under this Act as a result of a specified act, failure or omission is *prima facie* evidence of the matters stated in the certificate. 15

Penalties

“31H. A person who contravenes subsection 31B (3), 31D (5) or 31G (1) is guilty of a summary offence punishable on conviction:

(a) in the case of a natural person—by a fine not exceeding \$2,000 or imprisonment for 12 months, or both; or 20

(b) in the case of a corporation—by a fine not exceeding \$10,000.

Proceedings against corporations

“31J. (1) Where, in proceedings for an offence against this Act or the regulations in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent who engaged in the conduct within the scope of his or her actual or apparent authority, had the state of mind. 25

“(2) Any conduct engaged in on behalf of a corporation: 30

(a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent; 35

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in by the corporation.

“(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose. 40

Evidentiary certificates

5 “31K. A certificate by a prescribed officer stating that a specified person is or was on a specified day in receipt of a benefit under this Act at a specified rate is, in all legal proceedings, *prima facie* evidence of the matters stated in the certificate.”.

Delegation

10 7. Section 34A of the Principal Act is amended by omitting from subsection (1) “32 (1) or 34 (2) or the regulations” and substituting “31C (1), 32 (1) or 34 (2) or the regulations and to any person who is an officer the powers of the Minister under paragraphs 31C (1) (a) and (c) of this Act”.

Regulations

8. Section 36 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

15 “(c) prescribing penalties, not exceeding a fine of \$1,000 or imprisonment for 6 months, or both, for offences against the regulations.”.

PART III—AMENDMENTS OF THE SEAMEN’S WAR PENSIONS AND ALLOWANCES ACT 1940

Principal Act

20 9. In this Part, “Principal Act” means the *Seamen’s War Pensions and Allowances Act 1940*².

Recovery of overpayments

10. (1) Section 55A of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “or” (last occurring);
- 25 (b) by inserting after paragraph (1) (a) the following paragraph:

“(aa) an amount has been paid to a person under a prescribed educational scheme that was not lawfully so payable; or”;
- (c) by inserting in paragraph (1) (c) “referred to in paragraph (aa) or an amount” after “of an amount”;
- 30 (d) by inserting in paragraph (1) (e) “an amount referred to in paragraph (aa) or” after “case of”;
- (e) by inserting in subsection (2) “, (aa)” after “paragraph (1) (a)”.

(2) The amendments made by subsection (1) apply in relation to amounts paid before or after the commencement of this Act.

PART IV—AMENDMENT OF THE SOCIAL SECURITY ACT 1947

35 **Principal Act**

11. In this Part, “Principal Act” means the *Social Security Act 1947*³.

Recovery of overpayments

12. (1) Section 181 of the Principal Act is amended by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) an amount has been paid to a person under a prescribed educational scheme that should not have been paid;”.

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(2) The amendment made by subsection (1) applies in relation to amounts paid before or after the commencement of this Act.

PART V—AMENDMENTS OF THE VETERANS’ ENTITLEMENTS ACT 1986

Principal Act

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13. In this Part, “Principal Act” means the *Veterans’ Entitlements Act 1986*⁴.

Recovery of overpayments

14. (1) Section 205 of the Principal Act is amended:

(a) by omitting from paragraph (1) (a) “or” (last occurring);

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(b) by inserting after paragraph (1) (a) the following paragraph:

“(aa) an amount has been paid to a person under a prescribed educational scheme that was not lawfully so payable; or”;

(c) by inserting in paragraph (1) (c) “referred to in paragraph (aa) or an amount” after “of an amount”;

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(d) by inserting in paragraph (1) (e) “an amount referred to in paragraph (aa) or” after “case of”;

(e) by inserting in subsection (2) “, (aa)” after “paragraph (1) (a)”.

(2) The amendments made by subsection (1) apply in relation to amounts paid before or after the commencement of this Act.

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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; and No. 1987.
2. No. 60, 1940, as amended. For previous amendments, see No. 77, 1946; No. 80, 1950; Nos. 17 and 75, 1952; No. 70, 1953; No. 32, 1954; No. 40, 1955; No. 45, 1957; No. 48, 1958; No. 59, 1959; No. 46, 1960; No. 47, 1961; Nos. 64 and 113, 1964; No. 65, 1965; No. 43, 1966; No. 102, 1967; No. 67, 1968; No. 96, 1969; No. 61, 1970; Nos. 18 and 69, 1971; Nos. 16 and 83, 1972; Nos. 6 and 106, 1973; Nos. 4, 25 and 90, 1974; Nos. 35 and 111, 1975; Nos. 27, 37, 91 and 112, 1976; No. 56, 1977; No. 129, 1978; Nos. 18 and 124, 1979; No. 129, 1980; No. 160, 1981; Nos. 80 and 100, 1982; No. 70, 1983; Nos. 93 and 97, 1984; Nos. 90, 95 and 137, 1985; Nos. 28, 29 and 106, 1986; and Nos. 78 and 88, 1987.
3. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44,

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1958; No. 57, 1959; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48, 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; Nos. 24, 52, 95, 127 and 169, 1985; Nos. 5, 28, 33, 106, 130 and 152, 1986; and No. 77, 1987.

4. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; and No. 78, 1987.

