

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STUDENT ASSISTANCE AMENDMENT BILL (No. 2) 1989

EXPLANATORY MEMORANDUM

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

Student Assistance Amendment Bill (No. 2) 1989

Outline

The Student Assistance Amendment Bill (No.2) 1989 will amend the Student Assistance Act 1973, which provides the legislative basis for the AUSTUDY scheme and the Postgraduate Awards Scheme. (However, Postgraduate Research Awards are ceasing to be administered under the Student Assistance Act because the Government is restructuring the research component of the Postgraduate Awards Scheme by devolving the administration of research awards to individual institutions.)

Extension of existing anti-fraud and recovery provisions

The Bill will extend the application of existing provisions of the Student Assistance Act relating to the prevention of fraud and the recovery of overpayments. The provisions will be extended to apply to the non-legislated student assistance schemes, namely the Assistance for Isolated Children, ABSTUDY and Aboriginal Overseas Study Awards Schemes.

The existing provisions provide for the following matters in relation to overpayments under AUSTUDY and Postgraduate Awards: a charge for late repayment of up to \$515 reflecting the partial recovery of debt recovery costs, garnishee action to recover overpayments, waiver and write off of debts authorised under the Student Assistance Act, rather than under the Audit Act, Departmental authority to acquire information needed in relation to student assistance matters, penalty provisions for providing false information. In addition, the provisions referring to the failure to advise changes likely to affect a beneficiary's entitlement are to be moved from the Student Assistance Regulations to the Act and are to be extended to apply to the non-legislated schemes.

Charging of interest

The Bill will also enable interest to be charged on outstanding student assistance debts. The rate charged will be comparable to the prevailing commercial rate.

Interest will commence on the balance remaining unpaid three months after the debtor has been advised of the debt, unless an extension has been approved. Extensions will be approved in cases of financial hardship or where the debtor has arranged to repay the debt by instalments.

Provision for Ministerial guidelines

The Bill will enable the Minister to set guidelines giving guidance in the exercise of various administrative powers under the Student Assistance Act. Action will be taken as soon as possible to set guidelines relating to the waiver, writing off and recovery by instalments of overpayments, and to the approval of interest-free periods. In view of the proposed guidelines, the Bill seeks to extend the range of officers to whom Ministerial powers may be delegated under the Student Assistance Act.

Renumbering of provisions

The Student Assistance Act will have been amended by twelve amending Acts (including the present amendments) in the sixteen years since it was enacted. Hence the Bill will renumber the provisions of the Student Assistance Act so that they are all numbered sequentially.

Financial impact statement

It is estimated that the Bill will result in increased debt recovery of approximately \$5m over the two years 1990-91 and 1991-92. The effect may then lessen, reflecting the resolution of existing debts and the introduction of more effective fraud control.

The significance of the interest provision is essentially as a deterrent. When the necessary administrative systems are in place, the actual amount to be collected by way of interest on outstanding debts is estimated to be of the order of \$100,000 a year.

NOTES ON CLAUSES

Clause 1

1. Clause 1(1) states the short title for the amending Act.
2. Clause 1(2) designates the Student Assistance Act 1973 as the "Principal Act".

Clause 2: Commencement

3. Clause 2(1) provides that the Bill will come into effect on the later of two dates: Royal Assent and the day after the Principal Act is amended by the Student Assistance Amendment Act 1989. This is because the amendments to the Principal Act contained in the present Bill have been drafted to take into account the amendments in the Student Assistance Amendment Act 1989. (That Act will come into effect on 1 January 1990, unless previously proclaimed.)
4. Clause 2(2) provides that the formal provisions of the Bill (dealing with the short title and the commencing dates) come into effect when the Bill receives the Royal Assent.
5. Clause 2(3) provides that clause 17 is to come into effect immediately after the other provisions of the Bill. (Clause 17 will renumber the provisions of the Principal Act.)

Clause 3: Title

6. Clause 3 broadens the long title of the Principal Act by adding ", and for other purposes". This reflects the present Bill's extension of the ambit of the Principal Act to cover some fraud and debt recovery aspects of non-legislated student assistance schemes.

Clause 4: Repeal of sections 3 and 4

7. Clause 4 repeals two unnecessary provisions of the Principal Act, sections 3 and 4.
8. Section 3 of the Principal Act repeals previous Acts and is now spent. (Section 7 of the Acts Interpretation Act operates to prevent the repealed Acts from reviving.)
9. Section 4 of the Principal Act sets out the object of the Principal Act. The object of the Principal Act is, however, quite plain from the other provisions of the Act, and the description in section 4 is not useful.

Clause 5: Interpretation

10. Clause 5 amends section 5 of the Principal Act, which defines expressions used in the Principal Act.
11. Paragraph 5(a) omits the existing definition of "overpayment". This term refers only to overpayments of student assistance, ie of assistance under the Principal Act (see the definition of "student assistance" in section 5). It is replaced by the expression "student assistance overpayment", inserted by paragraph 5(b).
12. Paragraph 5(b) inserts a number of new definitions.
13. "Current special educational assistance scheme" is defined to refer to several non-legislated student assistance schemes that are currently in operation. These are distinguished from the schemes established under the Principal Act (see the definition of "student assistance") and from non-legislated schemes that are no longer in operation (referred to as "former special educational assistance scheme").
14. "Former special educational assistance scheme" is defined to refer to several non-legislated student assistance schemes that are no longer in operation. The Bill provides for the recovery and waiver/write off of overpayments incurred under these schemes.
15. "Late payment charge" is defined to refer to an amount that a person owes in addition to, and arising from, a basic overpayment (but does not include on-going interest on a debt). This may be an amount incurred under new section 30C of the Principal Act, or under comparable provisions of the Social Security Act or the Veterans' legislation.
16. "Prescribed educational scheme overpayment" is defined to refer to an overpayment under a prescribed educational scheme. Educational schemes are prescribed in the regulations for the purposes of proposed new section 30B. This replaces existing sections 31A(1) to (3), which enable the recovery of overpayments under prescribed educational schemes by offsetting against entitlement under the Principal Act.
17. The following educational schemes are currently prescribed in regulation 6 of the Student Assistance Regulations: the Aboriginal Study Assistance Scheme, the Aboriginal Secondary Assistance Scheme, the Assistance for Isolated Children Scheme, the Adult Migrant Education Program Living Allowance Scheme, the Maintenance Allowance for Refugees Scheme, and the Living Allowances for English as a Second Language Scheme.
18. The first three of these schemes will no longer need to be prescribed because they come within the definition of "current special educational assistance scheme" or "former special educational assistance scheme".

19. "Social Security or Veterans' legislation overpayment" is defined as an overpayment under the Social Security Act or one of the Veterans' Acts. It also includes amounts that are paid under section 136(2A) of the Social Security Act; that section enables unemployment, sickness and special benefit to be paid for a period although a person will become entitled to student assistance for the period.

20. "Special educational assistance scheme overpayment" is defined to as an overpayment under a current or former special educational assistance scheme.

21. "Student assistance overpayment" is defined as an overpayment under student assistance (see the existing definition of "student assistance" in section 5(1)). This replaces the definition of "overpayment" in section 5(1).

Clause 6

22. This clause inserts new section 8.

New section 8: Act to bind Crown

23. Subsection 8(1) provides that the Principal Act is to apply to government agencies, whether Commonwealth, State or Territory. The Principal Act will apply to territories such as Christmas Island by virtue of the Crown in right of the Commonwealth.

24. Subsection 8(2) provides that government agencies cannot be prosecuted under the Principal Act. This does not give immunity to individual public servants who contravene the Act.

Clause 7

25. Clause 7 inserts a new Part IVA, dealing with the payment, suspension and termination of benefits under the Principal Act. The clause relocates existing provisions of the Act in a more appropriate area of the Act.

New section 16: Payment of benefits

26. Section 16 deals with the authority for paying benefits under the Principal Act. It replaces the former section 32(1). Section 16 uses the expression "student assistance"; this phrase is defined in section 5(1).

27. Subsection 16(1) clarifies that separate appropriating legislation is required, so that the Principal Act cannot be regarded as containing an implicit appropriation.

28. Subsection 16(2) enables the Minister to determine the way in which benefits are to be paid. The amendments clarify that the Minister is not obliged to make such determinations. Paragraph 16(2)(c) enables a determination that students' benefits should be paid to their parents in certain cases.

29. Subsection 16(3) ensures that section 16 applies to an advance paid on account of a benefit to become payable later.

New section 16A: Advances on account of benefits

30. Section 16A provides that student assistance under the Act may be paid by way of advance. This is necessary because in many cases a student's precise entitlement cannot be finally ascertained until the end of the year, when the duration of the student's full-time studies in the year and his or her income for the year can be determined. This section replaces the former section 31.

31. "Student assistance" and "authorised person" are defined in section 5(1) of the Act. (For "authorised person", see also sections 10 and 14.)

New section 16B: Suspension and termination of benefits

32. Section 16B provides that the regulations may provide for the circumstances in which student assistance is suspended or terminated. This replaces the former section 33. ("Student assistance" is defined in section 5(1).)

Clause 8

33. This clause inserts a new Part VA, which contains the provisions relating to the recovery of overpayments, the consequences of delayed repayments, and the waiver and write off of overpayments. The new Part contains new sections 30B to 30G, which replace existing sections 31A to 31C (these are repealed by clause 9).

New section 30B: Recovery of certain overpayments by offsetting

34. This section authorises the Department to recover overpayments from student assistance entitlements. It replaces existing sections 31A(1) to (3), but is extended to apply also to overpayments under the non-legislated assistance schemes.

35. Subsection 30B(1) refers to advances to be paid on account of benefits expected to become payable. This enables offsetting against such advances.

36. Subsection 30B(2) provides that the Department can withhold from current entitlement under the Principal Act to recover a debt in relation to an overpayment under the Principal Act, a special educational scheme, the Social Security Act, or Veterans' legislation. The amount to be recovered, identified in paragraph (2)(b), may be the basic overpayment amount or an associated amount such as court costs. (Subsection 30B(6) provides that it may include a late payment charge under new section 30C or interest under the new section 30D.)

37. Subsection 30B(3) provides that, where payments are reduced by offsetting, the full amount normally payable is deemed to have been paid. Further, the overpayment is taken to be reduced by the amount recovered by offsetting against current entitlement.

38. Subsection 30B(4) enables the Department to treat several overpayments as one overpayment for offsetting purposes. This provision is needed to avoid separate notices to cover a series of overpayments made on successive paydays.

39. Subsection 30B(5) requires that Departmental directions about offsetting are to be in writing.

40. Subsection 30B(6) ensures that the amount to be recovered, referred to in subsections (2)(a) and (4), may include a late payment charge under new section 30C or interest under the new section 30D.

New section 30C: Late payment charge for student assistance overpayments and special educational assistance scheme overpayments

41. New section 30C provides for a charge for the late repayment of student assistance overpayments, reflecting the administrative costs of recovering overpayments. This replaces existing section 31A(4), but is extended to apply also to overpayments under the non-legislated assistance schemes.

42. Subsection 30C(1) provides that a prescribed officer may give a notice under this section where a person has been overpaid more than \$50 under student assistance arising from false/misleading information or some other contravention of the conditions of the relevant scheme. Giving a notice is the first step towards the imposition of the charge for late repayment.

43. Under subsection 30C(2), a person is liable to a charge of up to \$515 if he or she does not repay an overpayment within three months of receiving a notice under subsection 30C(1). The charge is calculated on the basis of 10% of the balance unpaid after the three months have elapsed, plus \$15. This is a one-off payment, incurred at the end of the three months.

44. Subsection 30C(3) provides that, where a person pays back an amount in relation to a debt, the money is first to be applied towards the late charge under section 30C. This and new section 30D(4) ensure that a debtor does not seek to repay the principal before paying the associated charges and interest.

45. Subsection 30C(4) enables the Department to treat several overpayments as one overpayment for offsetting purposes. The provision avoids the need for separate notices to cover several overpayments made on successive paydays and picks up the case where the individual overpayments did not come to \$50.

46. Subsection 30C(5) provides that the Department is not to give a notice relating to the late repayment charge if the person:

- . has already paid a late payment charge for the overpayment (paragraph (5)(a)); or
- . is currently liable to pay a late payment charge for the overpayment (paragraph (5)(b)).

47. A new notice may be given if another notice was previously given but was cancelled without the charge having been paid.

New section 30D: Late payment interest on student assistance and special educational assistance scheme overpayments

48. This section provides that interest may be charged where a debtors does not repay an overpayment within three months of being advised of the overpayment. It is to be read with new section 30E, which enables the interest provisions to be suspended.

49. Subsection 30D(1) provides that a prescribed officer (defined in section 5(1)) may initiate the operation of the interest provisions by sending a notice to that effect to the debtor. A notice may be sent if there is an unrecovered overpayment under the Principal Act ("a student assistance overpayment") or under a non-legislated scheme ("a special educational assistance scheme overpayment").

50. Subsection 30D(2) provides that interest will accrue on the balance of the overpayment still owing three months after a notice has been sent under subsection 30D(1).

51. The rate of interest will be specified in the regulations. A formula will be specified that will give a rate comparable to commercial rates.

52. Interest will be simple interest, being payable only on the balance of the overpayment. It will accrue on a daily basis.

53. Subsection 30D(3) deals with the situation where a court has awarded judgement in favour of the Department and the judgement debt carries interest. In this case, interest will continue to apply under section 30D(2), but the interest payable is reduced by the interest payable under the judgement debt.

54. Section 30D(3)(d)(ii) deals with the situation where the court has awarded judgement for both the student assistance debt and another debt also. In this case, the interest payable under the Principal Act is reduced by a proportion of the interest paid under judgement debt.

55. Subsection 30D(4), in conjunction with new section 30C(3), prevents a person from directing payments towards paying off the principal of the debt before paying off the interest, so as to lessen the amount of interest that would otherwise be payable.

56. Subsection 30D(5) provides that interest is not payable for a period during which the debtor has been allowed to repay the overpayment by instalments. This exemption ceases if the approved repayments are not met.

57. Subsection 30D(6) enables the Department to treat several overpayments as one overpayment for offsetting purposes. This provision is needed to avoid separate notices to cover a series of overpayments made on successive paydays, and to cover the situation where the successive overpayments did not individually come to \$50.

New section 30E: Determination that late payment interest not to be payable in relation to particular periods

58. Subsection 30E(1) enables the approval of a period during which interest is not incurred on an overpayment. The approval may be made by the Minister (in view of his authority to determine repayments by instalments: new section 30G(2)(c)), or by "prescribed officers" (Departmental officers who can institute the charging of interest: see new section 30D(1)).

59. Subsection 30E(2) clarifies that an interest-free period can be approved retrospectively.

60. Subsection 30E(3) enables an interest-free period to be approved subject to certain conditions being met. (Subsection 30E(6) deals with the effect of the debtor breaking the conditions of the approval.)

61. Subsection 30E(4) requires that the debtor is to be given a copy of a notice under this section as soon as practicable. (See also new subsection (5).)

62. Subsection 30E(5) provides that the requirement in subsection (4) is directory only, rather than mandatory.

63. Subsection 30E(6) deals with the situation where an interest-free period has been approved subject to certain conditions and those conditions are broken. The determination will automatically cease when the conditions are broken.

64. Subsection 30E(7) clarifies that an approval for an interest-free period can be withdrawn at any stage (though this could only be done prospectively).

New section 30F: Recovery of certain overpayments from third parties etc.

65. New section 30F deals with the Department's power to take garnishee action to recover overpayments. It replaces existing section 31B, and also extends it to apply to overpayments incurred under the non-legislated student assistance schemes.

66. Subsection 30F(1) defines the scope of the garnishee power by defining "recoverable amount". The scope of the existing garnishee provision, section 31B, is widened to include recovery of:

- . overpayments under non-legislated schemes (paragraph (b));
- . debts to the Commonwealth arising from a student assistance overpayment, such as interest on the overpayment or court costs (paragraph (c)).

67. Subsection 30F(2) describes the conditions necessary for the garnishee power to be invoked. A person must owe a recoverable amount (paragraph (a)) and a third party should owe money to the debtor (paragraph (b)). This provision partially replaces existing section 31B(1).

68. Subsection 30F(3) enables a "prescribed officer" (defined in section 5(1) of the Principal Act) to give a garnishee notice to a third party in order to recover a student assistance debt. This provision partially replaces existing section 31B(1).

69. Subsection 30F(4) requires the third party to be given at least 14 days' notice before complying with a garnishee notice. This provision replaces existing section 31B(2).

70. Subsection 30F(5) makes it an offence not to comply with a garnishee order. The maximum penalty for this offence is one year's imprisonment. This provision replaces existing section 31B(3) (and section 31H as regards the maximum penalty).

71. Subsection 30F(6) provides that a garnishee notice must be given to the original debtor (although see new subsection (7)). Subsection (6) replaces existing section 31B(4).

72. Subsection 30F(7) provides that the requirement in subsection (6) is directory only, rather than mandatory.

73. Subsection 30F(8) protects the third party against possible legal action for having complied with a garnishee notice. It includes a reference to a person other than the recipient in order to cover the situation specified in new subsection 30F(2)(b)(iii). This subsection replaces existing section 31B(5).

74. Subsection 30F(9) deals with cases where a part or the whole of the debt is recovered by some means other than the third party having paid the amount. It replaces existing section 31B(6).

75. Paragraph 30F(9)(a) provides that the third party, who was served with the garnishee notice, is to be advised of the recovery.

76. Paragraphs 30F(9)(b) and (c) provide that the amount to be recovered under the garnishee order is to be reduced to take into account the amount already recovered by other means. Paragraph (b) deals with the situation where the third party is to pay a lump sum and paragraph (c) deals with the situation where the garnishee order requires continuing payments.

77. Subsection 30F(10) provides that, where a third party deliberately refuses to comply with a garnishee notice, he or she owes the Commonwealth the amount specified in the garnishee order, allowing for any partial recovery of the debt. This provision replaces existing section 31B(8).

78. Subsection 30F(11) provides that an overpayment is to be reduced by payments recovered under the garnishee procedure. This provision corresponds to existing section 31B(9).

79. Subsection 30F(12) is an anti-avoidance provision. It prevents the debtor from avoiding the impact of a garnishee notice by arranging for money to be paid by the third party on condition that the debtor fulfils some condition. This provision replaces existing section 31B(7).

80. Subsection 30F(13) deals with the situation where a person has several debts. It is a new provision.

81. Paragraph 30F(13)(a) enables the Department to issue a single garnishee notice in respect of several debts. This would be used where a person has been overpaid on several student assistance paydays, so that several distinct overpayments resulted from the one application.

82. Paragraph 30F(13)(b) enables the Department to decide in which order a debtor is to be taken to have repaid his or her debts. This could be invoked, for example, where a person has debts under both the AUSTUDY and AIC schemes, and makes a partial repayment of the overall debt.

83. Subsection 30F(14) concerns decisions under new subsection 30F(13)(b), concerning the order in which various debts are to be taken to have been repaid. Subsection (14) requires such a decision to be recorded in writing.

New section 30G: Write off and waiver of certain overpayments etc.

84. Section 30G concerns the power to dispose of student assistance debts by waiver, write off, and approving repayment by instalment. This provision replaces existing section 31C.

85. Subsection 30G(1) sets out the scope of the section. It defines "recoverable amount" as an overpayment under the Principal Act (paragraph (1)(a)) or as an overpayment under a non-legislated scheme (paragraph (1)(b)). It also includes a debt arising in relation to such overpayments, such as interest on a debt or court costs (paragraph (1)(c)).

86. Subsection 30G(2) enables the Minister, or a prescribed officer, to dispose of a debt by waiving it or writing it off, or to approve repayment by instalment. This replaces existing section 31C(1). (The Minister can delegate this power: see amendment to existing section 34A.)

87. Subsection 30G(3) specifies the day on which a decision under subsection 30G(1) is to take effect. It replaces existing section 31C(4).

88. Subsection 30G(4) provides a "statute of limitations" for student assistance debts. Court action to recover such debts cannot be commenced more than 6 years after the debt was incurred, subject to the special case in subsection 30G(4). This replaces existing section 31C(2).

89. Subsection 30G(5) modifies the "statute of limitations" where debts arose because the debtor made a false statement or breached the student assistance legislation. For these cases, court action to recover such debts needs to be commenced within 6 years of the debt being discovered by the Department. This replaces existing section 31C(3).

90. Subsection 30G(6) clarifies that the "statute of limitations" in new subsections 30G(4) and (5) is limited to preventing legal proceedings in a court.

New section 30H: Ministerial guidelines

91. Section 30H is a new provision and enables the Minister to set guidelines for the exercise of powers relating to the processing of overpayments.

92. Subsection 30H(1) gives the Minister the power to issue the guidelines. These may apply to the exercise of powers under the new Part VA of the Act, which relates to overpayments. The guidelines bind all decision-makers, whether the Minister or Departmental officers.

93. Under subsection 30H(2), guidelines issued by the Minister are to be tabled in both Houses of Parliament and may be disallowed by either House.

Clause 9: Repeal of sections 31, 31A, 31B and 31C

94. Subclause 9(1) repeals existing sections 31, 31A, 31B and 31C, which are replaced by new sections 16A, 30B, 30C, 30F and 30G. This is subject to a number of savings provisions (subclauses 9(2) to (7)).

95. Subclause 9(2) preserves authorisations made under existing section 31 of the Principal Act. Section 31 enables authorised persons (Departmental assessors) to authorise the payment of an advance on account of student assistance that is to become payable. (Section 31 is being replaced by new section 16A.)

96. Subclause 9(3) preserves current determinations made under existing section 31A(1) of the Principal Act. This section enables a prescribed officer to determine that part of a student's entitlement under the Principal Act is to be withheld, so as to recover an overpayment. (Section 31(1) is being replaced by new section 30B(2).)

97. Subclause 9(4) preserves current determinations made under existing section 31A(4) of the Principal Act. This section enables prescribed officers to determine that a charge is to be payable for late repayment of a student assistance overpayment. (Section 31A(4) is being replaced by new section 30C.)

98. Subclause 9(5) provides that references to charges under the new section 30C are to include references to the charge for late repayment incurred under existing section 31A(4). This will enable, for example, the new waiver and write off provision (new section 30G) to apply to charges incurred under existing section 31A(4).

99. Subclause 9(6) preserves the effect of garnishee notices issued under existing section 31B(1). These continue to apply, and to attract the provisions of existing section 31H (which sets the penalty for not complying with a garnishee order). It is also specified that new section 30F, the new garnishee provision, does not apply to existing garnishee notices.

100. Subclause 9(7) preserves the effect of waiver, write off, and approval of repayments by instalments which were made under existing section 31C(1), and specifies that these should be taken to have been made under the new section 30G(2). (New section 30G(2) replaces existing section 31C(1).)

101. Subclause 9(8) defines expressions used in clause 9.

Clause 10: Power to obtain information etc.

102. Clause 10 amends existing section 31D of the Principal Act, which deals with the Department's authority to acquire information needed in relation to processing student assistance applications, recovering student assistance debts etc.

103. Paragraph 10(a) amends section 31D by specifying that the information gathering power can be used in relation to a person who has an overpayment under a non-legislated student assistance scheme.

104. Paragraph 10(b) inserts the penalty provision for refusing to comply with a notice under section 31D. This amendment is consequential on the repeal of existing section 31H, which currently sets out the penalty for non-compliance.

105. Paragraph 10(c) repeals section 31D(6) of the Principal Act. Section 31D(6) is unnecessary in view of new section 8 ("Act to bind Crown").

106. Paragraph 10(d) clarifies that section 31D of the Principal Act extends to all overpayments, whenever incurred.

Clause 11New section 31FA: Obligation to notify happening of certain events

107. Clause 11 inserts a new provision, section 31FA, requiring beneficiaries to advise the Department of new circumstances likely to affect their entitlement.

108. Regulations 85 and 86 of the Student Assistance Regulations currently impose this obligation in respect of beneficiaries under the Principal Act. New section 31FA widens the application of these regulations so that the obligation will include beneficiaries under the non-legislated schemes.

109. The new provision is placed in the Act, rather than an amendment made to the regulation-making power extending it to beneficiaries of non-legislated schemes, as it is considered appropriate that a provision creating offences be contained in an Act rather than in regulations.

110. The notifiable events and the method for advising the Department of a notifiable event will be specified in the regulations. Different events can be specified for the various benefits or schemes under which students are assisted.

Clause 12: Offences

111. Clause 12 amends existing section 31G of the Principal Act, which provides for various offences under the Act.
112. Subparagraph 12(a) amends subsection 31G(1), which deals with offences such as giving false or misleading information. It extends the application of the provision to apply also in relation to non-legislated student assistance schemes.
113. Paragraph 12(b) inserts a reference to the offence of contravening new section 31AF, which deals with a beneficiary's obligation to advise the Department of relevant changes in his or her situation.
114. Paragraph 12(c) inserts the maximum penalty for offences under section 31G. This is necessary in view of the repeal of existing section 31H of the Principal Act.
115. Paragraph 12(d) amends existing subsection 31G(2) and (3) by extending their application to apply also to non-legislated student assistance schemes. (Section 31G(2) enables a court convicting a person of an offence under subsection 31G(1) also to make an order for the recovery of any overpayment resulting from the offence. Section 31G(3) provides that a statement by a prescribed officer about the amount paid because of false information etc is prima facie evidence of the size of the amount.)

Clause 13: Repeal of section 31H

116. Clause 13 repeals existing section 31H of the Principal Act, which sets out the maximum penalty for offences under the Act. In line with current drafting practice, the maximum penalty is set out immediately following each specific provision creating an offence.
117. Section 31H prescribes a maximum penalty of \$2,000 and 12 months' imprisonment for natural persons, and \$10,000 for corporations. This has been replaced by a maximum penalty of imprisonment for 1 year. Under section 4A of the Crimes Act 1914, an offence which has a maximum penalty of 1 year's imprisonment may lead instead to a fine of up to \$3,000 (or \$15,000 for a corporation).

Clause 14

118. Clause 14 inserts a new section 31K in place of existing section 31K of the Principal Act, which deals with evidentiary certificates. The new section extends the ambit of the former provision by providing for evidentiary certificates in relation to the non-legislated student assistance schemes and in relation to the new interest provision (section 30D).

New section 31K: Evidentiary certificates

119. Section 31K provides that a statements by a prescribed officer may constitute prima facie evidence of a statement; evidence may be given against such a statement. The word "specified" in section 31K means specified in the officer's statement.

Clause 15: Repeal of sections 32 and 33

120. Clause 15(1) repeals sections 32 and 33 of the Principal Act. Section 32 deals with the payment of benefits under the Act, and section 33 enables regulations to be made suspending or terminating student assistance under the Act. In effect, sections 32 and 33 have been relocated elsewhere in the Act, being replaced by new sections 16 and 16B respectively.

121. Subclause 15(2) preserves the force of a determination made under existing section 32(1), ie a determination specifying the manner of paying student assistance.

122. Subclause 15(3) defines expressions used in subclauses 15(1) and (2).

Clause 16: Delegation

123. Clause 16 repeals existing section 34A of the Principal Act and inserts a new section 34A in its place. Existing section 34A enables the Minister to delegate certain powers to Departmental officers.

124. The new provision replaces references to existing sections 31C(1) and 32(1) with references to their respective replacements, new sections 30G(2) and 16(2), and adds a reference to new section 30E(1). (The new section 34A does not retain a reference to existing section 17(4), as this provision is being repealed: Student Assistance Amendment Act 1989, No. 76 of 1989. Nor does it retain a reference to delegations under the regulations, as the regulations can confer the power to delegate.)

125. The new section 34A will enable the Minister to delegate waiver and write off powers to officers who are not in the Senior Executive Service; this is not possible under existing section 34A. The restriction to SES officers has proved an onerous restriction in practice and is not needed in view of the new provision for Ministerial guidelines (see new section 30H).

126. The new section does not repeat the provisions of existing section 34A(3), that a delegation by the Minister does not prevent the Minister from exercising a power. Such a provision is not needed to ensure the Minister's powers are not affected.

Clause 17: Renumbering and re-lettering
of Student Assistance Act

127. Clause 17 renumbers the Principal Act, so that all the provisions of the Act will be numbered sequentially. With the present amendments, the Student Assistance Act will have been amended by 12 amending Acts in the 16 years since it was enacted. It is appropriate therefore that the Act be now renumbered.
128. Subclause 17(1) defines the terms used in clause 17.
129. Subclauses 17(2) to 17(7) renumber, or re-letter, the Parts, Divisions, sections, subsections, paragraphs and subparagraphs respectively.
130. Subclause 17(8) amends provisions in the Principal Act, by adjusting cross references to take account of the renumbering.
131. Subclause 17(9) provides that other legislation referring to provisions of the Principal Act are to be read so as to take account of the renumbering.









