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1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

STUDENT ASSISTANCE AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved
on behalf of the Government

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



STUDENT ASSISTANCE AMENDMENT BILL 1992

The amendments moved by the Government will:

- . make corrections to existing provisions in the Bill (Amendments (2) to (27))
- . take account of the impact of the AUSTUDY/ABSTUDY Supplement on Social Security payments (Amendment (28)).

Amendment (1)

Amendment (1) is a drafting change and is consequential on Amendment (2).

Amendment (2)

Amendment (2) provides that Division 2A of Part 3 of the Bill will commence on 1 January 1993. (This Division amends the Social Security Act: see Amendment (28).)

Amendment (3)

Amendment (3) provides that "office" is to be defined in the regulations. This will enable "office" to be defined to avoid students lodging applications at a corporation's head office. It will also give flexibility to deal with other situations, such as agencies.

Amendment (4)

Amendment (4) provides that a participating corporation can give the Commonwealth information relevant to the Supplement Scheme. This removes any doubt that might arise, for example from the confidentiality requirements of banker-client relationships.

Amendment (4) parallel proposed section 12D(7), which enables the Commonwealth to give relevant information to the corporation.

The new section 12D(8) refers to officers, as well as to the Commonwealth. This is because the Bill assigns some functions to specified Commonwealth officers, rather than to the Commonwealth in general. ("Officer" is defined in section 3(1) of the Student Assistance Act.)

Amendment (5)

Amendment (5) amends proposed section 12K(1). (Section 12K(1) provides that a participating corporation must accept a properly lodged application for the Supplement.)

Amendment (5) modifies section 12K(1) so that it applies only to a student who is entitled to apply for the Supplement. (Amendment (7) will deal with the situation where the corporation approves an application by a student who is not entitled to the Supplement.)

Amendment (6)

Under Amendment (6), the contract between the student and the participating corporation will deal with repayments under Division 5, ie during the "contract period", as well as with the payment of the Supplement. ("Contract period" is defined in clause 4(3) of the Bill).

The effect of Amendment (6) is to clarify that repayments made during the contract period are to be made to the participating corporation.

Amendment (7)

Amendment (7) provides that a contract between the student and the participating corporation is valid where the corporation relies on information which is supplied by the Commonwealth but which is incorrect. (This will normally be a notice issued under proposed section 12R(1) and given to the corporation by the student with the application for the Supplement.)

Amendment (7) adds three new provisions:

- Section 12K(2A) applies to payments based on incorrect advice from the Commonwealth. Such payments are taken to have been properly made.
- Section 12K(2B) provides that new section 12K(2A) does not override proposed Division 4, which sets out procedures where the Commonwealth finds that payments have been incorrectly made.
- Section 12K(2C) provides that the corporation is entitled to rely on advice from the Commonwealth. This protects the corporation against an action by the student where the information proves incorrect.

Amendment (8)

Amendment (8) replaces the proposed section 12K(4), which protects the validity of the contract between the student and the participating corporation from the operation of other laws applying in a State or Territory, whether Commonwealth, State or Territory laws.

Section 12K(4) is primarily concerned to ensure the validity of contracts made with a person who is under 18. As some jurisdictions would regard such a contract as valid but voidable at the young person's option, the revised section 12K(4) protects the contract against being rendered void, as well as against being held invalid outright.

Amendment (9)

Amendment (9) modifies proposed section 12L(2), which provides that the financial supplement contract between the student and the participating corporation is not subject to State or Territory taxation.

Amendment (9) extends the proposed section to provide that the student's application for the supplement is similarly not subject to State or Territory taxation. The amendment is needed as some State legislation is expressed to apply to loan applications, rather than to the actual loan contract.

Amendment (10)

Amendment (10) amends proposed section 12N, which provides that the participating corporation is to pay the supplement into a Commonwealth Trust Fund and that the Commonwealth will pay students as the corporation's agent. (This is a default arrangement and applies only if no alternative is specified in the agreement between the Commonwealth and the participating corporation.)

Amendment (10) adds a new provision, section 12N(3), to remove any doubt that the money must be paid back to the corporation if the Commonwealth cannot pay it to the student.

Amendments (11), (12)

Amendments (11) and (12) amend proposed section 12U, which deals with situations where a Commonwealth officer considers Supplement payments were made because of false or misleading information.

In such cases, the officer has a discretion to issue a notice under section 12U(1). Issuing the notice means:

- . the Supplement debt is assigned to the Commonwealth: para 12U(2)(a); and
- . the Commonwealth reimburses the corporation: para 12U(2)(b); and
- . the student owes the Commonwealth the payments made by Commonwealth to the corporation: para 12U(2)(c).

The corporation has four weeks to act on a notice from the Commonwealth to stop Supplement payments (proposed section 12T). Accordingly, proposed section 12U(2)(a) assigns the Supplement debt as at four weeks after the relevant notice is issued.

Amendments (11) and (12) amend paras 12U(2)(b) and (c) to provide they also apply four weeks after the notice to stop payments.

Amendment (13)

Amendment (13) makes a drafting change to proposed section 12X(1), which sets out the amount owed by a student for period before the debt is indexed (section 12X(2) applies to the period after indexation).

Amendment (13) changes "principal amount" to "principal sum", to be consistent with other provisions in the Bill.

Amendment (14)

Amendment (14) is consequential on Amendment (13) and inserts a definition of "discounts" for the purpose of section 12X(1).

Amendment (15)

Amendment (15) inserts a corrected formula to be used in calculating the amount owed by the student during the period after the debt is indexed. (Section 12X(1) applies to the period before indexation.)

Amendment (15) makes two changes:

- . the indexation factor is applied only to the debt as at the previous 30 May, not to the debt less repayments made to date during the current twelve month period
- . the phrase "notional repayments" is replaced by the expression "discounts". This is because "notional repayments" are only part of the discounts available to a student. (This amendment removes the need for section 12X(6): see Amendment (19).)

Amendment (16)

Amendment (16) makes a drafting change, consequential on Amendments (17) and (18).

It inserts a definition into proposed section 12X(3), defining "the relevant time" as the time at which the student's debt is to be calculated.

Amendment (17)

Amendment (17) provides that, in calculating the amount owing by a student, account is taken only of actual repayments made before the relevant time. (A definition of "actual repayments" is inserted by Amendment (16).)

Amendment (18)

Amendment (18) amends proposed section 12X(3) by inserting a definition of "discounts". This enables the expression "discounts" to be used in Amendment (15).

Amendment (19)

Amendment (19) removes the proposed section 12X(6), consequential on Amendment (15).

Amendment (20)

Amendment (20) amends proposed section 12Y(b), which defines the indexation amount that a student owes under the finance supplement contract. The amendment substitutes a simpler approach for the rather complex approach initially adopted in section 12Y(b).

Amendment (21)

Amendment (21) makes a drafting change, to make the wording in proposed section 12ZA(3) consistent with the wording used elsewhere in proposed section 12ZA.

Amendment (22)

Amendment (22) inserts a new subsection (4A) into proposed section 12ZA, which deals with voluntary repayments by students in the contract period.
(Clause 4(3) of the Bill defines "contract period".)

The new section 12ZA(4) provides that a student can only repay the amount needed to extinguish his or her loan. This provision enables a simpler, more precise drafting approach to be adopted in section 12ZA.

Amendment (23)

Amendment (23) makes a purely drafting change. It inserts a definition of "the amount repaid" into proposed section 12ZA(5), reflecting the fact that this expression is used elsewhere in proposed section 12ZA.

Amendment (24)

Section 12ZA deals with voluntary repayments made by the student during the contract period. ("Contract period" is defined in clause 4(3) of the Bill.)

The Bill already includes proposed section 12ZA(8), which deals with the discount received by the student for such payments where the student's debt has been indexed. Amendment (24) inserts a new section (7A), which deals with the discount where the debt has not been indexed.

Amendment (25)

Amendment (25) amends proposed section 12ZA(9), which deals with the amount that the Commonwealth pays a participating corporation to cover the discount that a student receives for early repayments.

The amendment adopts a simpler approach in defining the amount to be paid to the participating corporation; this approach is consequential on Amendment (22).

Amendments (26), (27)

Section 12ZA provides that, where a student repays the part of the debt that is attributable to the participating corporation:

- . the corporation's rights are assigned to the Commonwealth: para 12ZA(10)(a)
- . the corporation passes on to the Commonwealth any part of the indexation amount that has been paid by the student: para 12ZA(10)(b).

Amendment (26) makes a minor drafting change, clarifying that proposed section 12ZA(10) applies when the student makes a repayment.

Amendment (27) deletes a reference to proposed section 12ZA(9)(b); this is consequential on the deletion of that section by Amendment (25).

Amendment (28)

Amendment (28) modifies the Bill to amend the Social Security Act 1991 to take account of the effect of introducing the Supplement. As the Supplement is essentially linked to the AUSTUDY and ABSTUDY schemes, receiving the Supplement has the same effect on Social Security programs as receiving AUSTUDY or ABSTUDY.

The amendments to the Social Security Act take effect from 1 January 1993, when the Supplement will be first available: see Amendment (2).

Clause 30A indicates that the amendments are being made to the Social Security Act.

Clause 30B modifies the index of definitions in the Social Security Act to include a reference to the Student Financial Supplement Scheme (see also clause 30E).

Clause 30C modifies the definition of "prescribed education scheme" to include the Student Financial Supplement Scheme. This means that students receiving the Supplement will be treated in the same way as students who receive AUSTUDY and ABSTUDY. For example, they will not be able to receive job search allowance.

Clause 30D modifies section 8(8)(zf) of the Social Security Act by changing "education supplement" to "pensioner education supplement". This reflects a change that is to be made to the AUSTUDY Regulations.

Clause 30E inserts a definition of "the Student Financial Supplement Scheme", to give a cross-reference from the Social Security Act to the Student Assistance Act.

Clauses 30F, 30G, 30H and 30I amend sections 665A, 665E, 665I, and 665M of the Social Security Act. These provisions provide an education entry payment for students who qualify for the education supplement under the AUSTUDY scheme (to be called the pensioner education supplement from 1 January 1993).

The amendments mean that the education entry payment will be provided to students who would have qualified for the AUSTUDY pensioner education supplement but for the fact that they are receiving the AUSTUDY Supplement.

(Sections 665E, 665I and 665M are to be inserted into the Social Security Act by the Social Security Legislation Amendment Bill (No. 3) 1992, which is to be introduced into the Parliament shortly.)

Clauses 30K and 30L amend sections 1067 and 1068 of the Social Security Act, which provide the method of calculating the rate of job search allowance and sickness payment. (Section 1067 provides for the under 18 rate and section 1068 provides for the over 18 rate.)

Points 1067-C2 and 1068-C3 provide that a person does not qualify for the higher married rate of Social Security payment if the person's partner receives AUSTUDY or ABSTUDY. Under clauses 30K(1) and 30L(1) of the Bill, this also applies if the partner receives the Supplement.

Points 1067-H2 and G2 provide that the income test does not include a partner's AUSTUDY or ABSTUDY allowances. Under clauses 30K(2) and 30L(2) of the Bill, this also applies to a partner's Supplement payments.

Clause 30M amends section 1069 of the Social Security Act, which contains the Family Payment Rate Calculator.

A person does not qualify for additional family payment if their taxable income is unknown (point 1069-D9). Under point 1069-H5, a person with no taxable income is regarded as having unknown taxable income. Point 1069-D10 provides that this exclusion from additional family payment does not apply to a person receiving student assistance payments.

Clause 30M amends point 1069-D10 to add a reference to a person who receives the Supplement.

(The new section 1069 of the Social Security Act will be inserted, with effect from 1 January 1993, by the Social Security Act (Family Payment) Amendment Act 1992 (No. 69 of 1992).)

Clause 30N amends section 1228 of the Social Security Act, which enables overpayments under various income support schemes to be recovered by withholding from Social Security entitlements.

Clause 30N enables section 1228 to be used to recover debts referred to in proposed paragraph (b) of the definition of "student assistance overpayment" in s3(1) of the Student Assistance Act (to be inserted by clause 4(2) of the Bill). These are Supplement debts that were wrongly paid and have been assigned to the Commonwealth under proposed section 12S(2)(d) or 12U(2)(c) of the Student Assistance Act.



