1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRAINING GUARANTEE (ADMINISTRATION) AMENDMENT BILL 1993

SUPPLEMENTARY
EXPLANATORY MEMORANDUM

Amendments and new clauses to be moved on behalf of the Government during consideration in committee of amendments made by the Senate

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

53537 Cat. No. 94 4252 4

TRAINING GUARANTEE (ADMINISTRATION) AMENDMENT BILL 1993

GENERAL OUTLINE

The Training Guarantee (Administration) Amendment Bill 1993 amends the Training Guarantee (Administration) Act 1990 to give effect to undertakings made by the Government in the context of the 1993 election. Among other things, it provides for the carry forward of excess expenditure to the next year and for an employer to make up a training guarantee shortfall in the year following the shortfall.

The Bill provides for employers who declare a shortfall the option of either paying the shortfall by 30 September or electing to make it up through additional eligible training expenditure in the following year. If, at the end of the following year, any part of the previous year's postponed shortfall has not been made up, then the employer will be liable to pay training guarantee charge on the outstanding amount as if it had been due on 30 September in the year following the year in which the shortfall arose.

Amendments passed by the Senate extended the one extra year to two for shortfalls only, prevented employers from electing to carry forward a shortfall in the fourth year; and extended the provision to groups but without addressing the "ownership" problems.

Although the extension for the excesses does not appear in the list of the Senate amendments, it is clear from Senator Teague's statements during the committee stages, that his amendments were intended to extend the carry-forward period for both excess and shortfall to a total of three years.

The Senate amendments do not effectively address the issues arising from the extension of carry forward and grouping. During the committee stages, Senator McMullan made it clear that the amendments would not work and indicated that the Government would propose amendments to the Bill which would put Senator Teague's intentions into effect.

It is proposed that the Senate's amendments be disagreed to and be replaced by the amendments I have to put before the House. These amendments give practical expression to the principles of the Senate's amendments.

They extend the carry forward period for both shortfalls and excesses to two extra years.

They expand the rules governing the effect of an election to postpone a shortfall, the application of excess and the provision of statements to overcome the deficiencies of the Senate amendments to cover all the situations which may arise.

Further provisions have been drafted to allow groups access to the carry forward provisions. The Rules covering these provisions prescribe the "ownership" of excesses and shortfalls so that employers which join or leave groups take their shortfalls or excesses with them. The carry forward provisions would then be applied year by year just as for individual employers.

THE CARRY FORWARD PROVISIONS:

The carry forward provisions provide for training guarantee excesses arising in a year to be set off against any shortfalls postponed in the previous two years. The excesses are to be applied first to the earliest arising shortfall.

The employers may then carry any residual excess forward for the next two years. During those next two years, the excess may be used to offset shortfalls which arise.

The provisions also allow employers who have made training guarantee shortfalls in a year to elect to postpone payment of those shortfalls for the next two years. Any excesses arising in those next two years will be set off against the shortfall first arising.

Any residual shortfall existing at 30 September in the year following the second of the two years after the relevant election to postpone will then become due and payable as if the election had not been made.

Late payment penalties will then become payable at the rate of 20% per annum calculated from the 30 September in the year following the year in which the shortfall first arose, ie the time at which the relevant election to postpone was made.

THE GROUPING PROVISIONS:

The amendments to the grouping provisions set out the rules for ownership of excesses and responsibility for shortfalls made by a group.

These rules are necessary for the application of the carry forward provisions but will not affect the current position for groups unless members leave or new members join.

The carry forward provisions apply in the same way as they do for any individual employer.

Simply stated the rules prescribe that when an excess or shortfall is made by a group, the excess or shortfall owned by each of the members will be determined by apportioning the excess or shortfall to each company on the basis of their annual national payroll.

If a company leaves a group, it will simply take that portion with it.

An excess or shortfall belonging to a company which is part of a group which elects to group in a year will be aggregated with the excesses or shortfalls of the rest of the group.

FINANCIAL IMPACT STATEMENT

It is not expected that any additional funds will be required as a result of these amendments to the Training Guarantee (Administration) Act, nor that any additional demands will be made on the Training Guarantee Fund.

NOTES ON CLAUSES

<u>Clause 3 - Interpretation</u>

This clause is amended to include a new definition of "training guarantee shortfall" which takes account of the changes and to define an "employer group" as two or more entities which are treated as a single employer as a consequence of their making an election to group.

<u>Clause 6 - Election by members of an employer group</u>

This clause is amended by deleting paragraph (d) which made grouping and carry forward mutually exclusive.

<u>Clause 7 - Training guarantee excess</u>

This clause is amended by adding a further subsection 14a(2) which provides for the apportionment of a group's training guarantee excess between its members on the basis of their separate annual national payrolls.

<u>Clause 8 - Application of training guarantee excess</u>
<u>Employer may elect to postpone training guarantee shortfall for two extra years</u>
<u>Effect of election</u>

The new sections inserted by Clause 8 of the original amendment Bill are replaced by the new sections 15A, 15B, 15BA and 15C.

New <u>section 15A</u> allows employers who have made a training guarantee excess to carry it over for two extra years and to set it off against shortfall which may arise in those two extra years. Grouped employers individually carry forward their proportion of the group's excess.

New subsection 15A(1), in conjunction with subsections 15A(3) and (4) applies where an employer has an excess in year 1 and a shortfall in year 2.

New subsection 15A(2), in conjunction with subsections 15A(3) and 15A(4) applies where an employer has an excess in year 1 and a shortfall in year 3.

New <u>section 15B</u> allows an employer to make an election to postpone a training guarantee shortfall.

The deletion of subsection 15B(4) eliminates the limitation on postponing a shortfall two years in a row.

New section 15BA allocates a group shortfall to the members of the group in proportion to each of their annual national payrolls.

Subsection 15BA(3) deems each member of the group to have elected to postpone the shortfall.

New section 15C prescribes how a shortfall postponed under section 15B will be set off against excesses in the following two years, or paid in the third year.

Subsection 15C(1) allows the non-payment of a shortfall in a year in which an election to postpone is made and in the next year and that in the third year, it will be paid in accordance with subsections 15C(3), 15C(4), 15C(5) and 15C(6). Grouped employers individually carry forward their shortfall.

Subsection 15C(2) provides that where an excess in the second year is greater than the postponed shortfall, the excess will be reduced by the amount of the shortfall and the shortfall reduced to NIL.

Subsection 15C(3) provides that where an excess in the second year is less than the postponed shortfall, the shortfall will be reduced by the excess and the balance carried over to the third year. If there is an excess in the third year subsections 15C(5) and 15C(6) apply.

However, if there is no excess in the third year, ie. there is a shortfall or the employer just satisfies the training guarantee obligation, the residue of the shortfall becomes due and payable.

Subsection 15C(4) provides that where there is no excess in the second year, ie. there is a shortfall or the employer just satisfies the training guarantee obligation, and there is then an excess in the third year, subsections 15C(5) and 15C(6) apply.

However, if the employer does not have an excess in the third year, the residue of the shortfall becomes due and payable.

Subsection 15C(5) provides that if the excess in the third year is equal to or greater than the residual shortfall carried forward from the second year, the residual shortfall is reduced to NIL.

Subsection 15C(6) provides that if the excess in the third year is less than the residual shortfall carried over from the second year, training guarantee charge equal to the remaining shortfall amount is payable.

Subsection 15C(7) provides that any residual shortfall at the end of the two extra years becomes due and payable as if the election had not been made. This sub-section makes employers liable to penalties calculated from the original due date on that part of the shortfall that is not eliminated by training guarantee excesses in year 2 or year 3. This prevents employers from gaining an advantage by postponing a shortfall with no intention of making it up.

Subsection 15C(8) provides that employers who have a shortfall in one year but are exempt in the next have an excess in the second year equal to their net eligible training expenditure.

Subsection 15C(9) has the effect that an employer who makes a shortfall in any year has to lodge a training guarantee statement for that year

New clause 14A - Lodgement of training guarantee statements

The clause amends section 40 in the principal ACT to require the lodgement of training guarantee statements whenever a shortfall arises.

Clause 15 - requirements for training guarantee statements

This clause is amended to increase the details required on training guarantee statements by section 42 in the principal Act to include a shortfall made in any year and any excess from either of the two previous years set off against a shortfall in the current year.

Clause 16 - Further training guarantee statements about postponed training guarantee shortfalls

This clause is amended to further increase the details required by new section 42A on further training guarantee statements about a postponed shortfall, to include excesses in the second or third years which are set off against a shortfall in the first year.

Clause 18 - Failure to provide statements or information

This clause is amended to include in the details an employer is required to keep by subsection 84(2) in the Principal Act, the amount of a training guarantee shortfall, and the amount of any excess, whether arising from either of the two years before the postponed shortfall or in the next two years, which is set off against a shortfall.

Printed by Authority by the Commonwealth Government Printer

9 780644 311113