

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Employment, Education and Training)

A BILL

FOR

**An Act to amend the *Student Assistance Act 1973* and the
Student Assistance Amendment Act 1992, and for
related purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Student Assistance Amendment Act 1994*.

5 Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Section 5 is taken to have commenced immediately before the commencement of section 22 of the *Student Assistance Amendment Act 1992*.

(3) Subsection 3(4) and items 20, 21, 35, 36, 37, 38, 39, 40, 43, 48, 49, 51, 52, 55, 57, 58 and 64 of the Schedule commence on 1 July 1994. 5

(4) Items 1, 3, 5, 13, 44, 46, 60 and 62 of the Schedule commence on 1 January 1995.

(5) Subsection 3(3) and items 2, 4, 6, 9, 14, 15, 16, 34, 45, 47, 61 and 63 of the Schedule commence on 1 January 1996.

Application and savings

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3 (1) The amendment made by item 10 of the Schedule applies only in relation to an amount:

(a) that becomes a debt due to the Commonwealth because of subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990* after the commencement of that amendment; or 15

(b) in relation to which an order made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*, or a similar order made by a court, ceases to apply after that commencement.

(2) Despite its omission by item 12 of the Schedule, subsection 7(8) of the *Student Assistance Act 1973* is taken to continue to have effect in relation to repayments made before the commencement of that item. 20

(3) Despite its omission by item 34 of the Schedule, subsection 20(6) of the *Student Assistance Act 1973* is taken to continue to have effect in relation to decisions made before the commencement of that item.

(4) A determination in force under subsection 38(2) of the *Student Assistance Act 1973* immediately before the commencement of item 38 of the Schedule continues to have effect after that commencement as if it were made under subsection 38(2) as in force after that commencement. 25

PART 2—THE AMENDMENTS

Amendments of the *Student Assistance Act 1973*

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4. The Schedule makes amendments of the *Student Assistance Act 1973*¹.

Amendment of the *Student Assistance Amendment Act 1992*

5. Section 22 of the *Student Assistance Amendment Act 1992*² is amended by omitting from subsections (1) and (2) “section 9 of the *Student Assistance Amendment Act (No. 2) 1991*” and substituting “section 21 of the *Student Assistance Amendment Act 1991*”. 35

SCHEDULE

Section 4

AMENDMENTS OF THE STUDENT ASSISTANCE ACT 1973

- 1. Subsection 3(1) (definition of “current special educational assistance scheme”):**
 - (a) Omit paragraph (a).
 - (b) Add at the end:
 - “or (d) the Aboriginal Student Support and Parent Awareness Program; or
 - (e) the Aboriginal Tutorial Assistance Scheme; or
 - (f) the Vocational and Educational Guidance for Aboriginals Scheme;”.
- 2. Subsection 3(1) (paragraph (b) of the definition of “current special educational assistance scheme”):**

Omit the paragraph.
- 3. Subsection 3(1) (definition of “student assistance”):**

Omit “under the AUSTUDY scheme;”, substitute “under:

 - (a) the AUSTUDY scheme; or
 - (b) the Assistance for Isolated Children Scheme;”.
- 4. Subsection 3(1) (definition of “student assistance”):**

Add at the end:

“or (c) the ABSTUDY scheme;”.
- 5. Subsection 3(1) (paragraph (a) of the definition of “student assistance overpayment”):**

Omit the paragraph, substitute:

“(a) an amount paid under:

 - (i) the AUSTUDY scheme; or
 - (ii) the Assistance for Isolated Children Scheme;

that should not have been paid; or”.
- 6. Subsection 3(1) (subparagraph (a)(ii) of the definition of “student assistance overpayment”):**

After the subparagraph, insert:

“or (iii) the ABSTUDY scheme;”.
- 7. Subsection 3(1) (paragraph (b) of the definition of “student assistance overpayment”):**

Omit “or 12U(2)(c)”, substitute “, 12U(2)(c) or 12VD(3)(d)”.

SCHEDULE—continued

8. Subsection 3(1) (definition of “prescribed officer”):

Omit the definition, substitute:

“ ‘prescribed officer’ has the meaning given by subsection 4(3);”.

9. Subsection 3(1):

Insert:

“ ‘Aboriginal person’ means a person of the Aboriginal race of Australia; ‘Torres Strait Islander’ means a descendant of an indigenous inhabitant of the Torres Strait Islands;”.

10. After subsection 3(2):

Insert:

“(2A) For the purposes of the definitions of ‘prescribed educational scheme overpayment’, ‘Social Security or Veterans’ legislation overpayment’, ‘special educational assistance scheme overpayment’ and ‘student assistance overpayment’ in subsection (1), a reference to an amount paid to a person under a scheme or an Act that should not have been paid includes a reference to an amount paid to the person in relation to the scheme or Act:

- (a) to which the person was not entitled under the terms of the scheme or provisions of the Act; and
- (b) in relation to which one of the following subparagraphs is satisfied:
 - (i) the amount was only paid because of the operation of subsection 11(1) of the *Data-matching Program (Assistance and Tax) Act 1990* and that amount has become a debt due to the Commonwealth because of subsection 11(6) of that Act;
 - (ii) the amount was only paid because of an order made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*, or a similar order made by a court, and the order has ceased to be in force in relation to the amount.”.

11. Section 4:

(a) Omit “for the purposes of this Act”.

(b) Add at the end:

“(2) An appointment of a person as a prescribed officer may be made either generally for the purposes of this Act or may be limited by reference to:

- (a) the provisions of this Act for the purposes of which the person is a prescribed officer; or
- (b) the powers the person may exercise as a prescribed officer.

SCHEDULE—continued

“(3) A person appointed under this section is a **prescribed officer** for the purposes of a provision of this Act, or of exercising a power under a provision of this Act, if:

- (a) the person is appointed under this section as a prescribed officer; and
- (b) the provision, or the exercise of the power, is within the limits (if any) that apply to the person’s appointment.”.

12 Subsection 7(8):

Omit the subsection.

13 After Part 2:

Insert:

“PART 3—ASSISTANCE FOR ISOLATED CHILDREN SCHEME

Assistance for Isolated Children Scheme

“8. The scheme for the provision of benefits under this Part is referred to as the Assistance for Isolated Children Scheme.

Benefits under the Assistance for Isolated Children Scheme

“9.(1) Subject to the regulations, an authorised person may, in respect of a year or a part of a year, grant a benefit under this Part in relation to a person if:

- (a) the person is an Australian citizen or a permanent resident of Australia; and
- (b) the person is undertaking, or proposes to undertake, in that year or that part of that year:
 - (i) a course of study or instruction that the Minister has determined in writing to be a course for the purposes of this subparagraph; or
 - (ii) a part of a course of study or instruction, being a part that the Minister has determined in writing to be a part of a course for the purposes of this subparagraph.

“(2) Without limiting the generality of matters that may be dealt with by the regulations, they may:

- (a) specify the benefits that may be granted under this Part; and
- (b) specify circumstances in which benefits are not payable under this Part.

“(3) A determination under subparagraph (1)(b)(i) or (ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

SCHEDULE—continued**14. After Part 3:**

Insert:

“PART 3A—ABSTUDY SCHEME**ABSTUDY scheme**

“10. The scheme for the provision of benefits under this Part is referred to as the ABSTUDY scheme.

Benefits under the ABSTUDY scheme

“10A.(1) Subject to the regulations, an authorised person may, in respect of a year, or a part of a year, grant a benefit under this Part to or in relation to an Aboriginal person or a Torres Strait Islander who:

- (a) is an Australian citizen or a permanent resident of Australia; and
- (b) is undertaking, or proposes to undertake, in that year or that part of that year:
 - (i) a course of study or instruction that the Minister has determined in writing to be a course for the purposes of this subparagraph; or
 - (ii) a part of a course of study or instruction, being a part that the Minister has determined in writing to be a part of a course for the purpose of this subparagraph.

“(2) Without limiting the generality of matters that may be dealt with by the regulations, they may:

- (a) specify the benefits that may be granted under this Part; and
- (b) specify circumstances in which benefits are not payable under this Part.

“(3) A determination under subparagraph (1)(b)(i) or (ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

15. Paragraph 12C(1)(a):

Omit the paragraph, substitute:

- “(a) the person:
- (i) in relation to the application of this section to the AUSTUDY scheme—is undertaking, or proposes to undertake, at an education institution in that year or that part of that year, a course of study or instruction prescribed for the purposes of this subparagraph; or

SCHEDULE—continued

- (ii) in relation to the application of this section to the ABSTUDY scheme— is undertaking, or proposes to undertake, in that year or that part of that year, a course of study or instruction prescribed for the purposes of this subparagraph; and”.

16. Subsection 12C(2):

Omit “paragraph (1)(a)”, substitute subparagraph (1)(a)(i)”.

17. Paragraph 12F(1)(a):

Omit “seeks to obtain financial supplement”, substitute “applies for student assistance under the AUSTUDY scheme or the ABSTUDY scheme”.

18. After subsection 12G(1):

Insert:

“(1A) A person must not, under subsection (1), knowingly or recklessly lodge a notice given under section 12F in respect of a year or a part of a year other than the most recent notice received by the person under that section in respect of that year or that part of that year.

Penalty: Imprisonment for 1 year.”.

19. After section 12H:

Insert in Division 2 of Part 4A:

Effect of repayment of certain benefits on financial supplement

“12HA.(1) Subject to subsections (5) and (6), a person who has received a payment of a prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme:

- (a) otherwise than in respect of a short course, within the meaning of the regulations; and
- (b) during a period:

- (i) beginning on 1 January and ending on 31 May in a year; or

- (ii) beginning on 1 July and ending on 30 September in a year;

may, before the end of the period, repay to the Commonwealth the whole or any part of the amount of the payment.

“(2) An amount so repaid is taken, for the purpose of determining the maximum amount of financial supplement that the person is eligible to obtain in respect of a year or a part of a year that includes or consists of the period, never to have been paid to the person.

SCHEDULE—continued

“(3) Subject to subsections (5) and (6), a person who:

- (a) has received a notice under paragraph 12F(1)(b) stating that the person is an eligible student in respect of a year or a part of a year; and
- (b) has, before the end of the 4 weeks after receipt of the notice, received a payment of a prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme in respect of a short course, within the meaning of the regulations;

may, before the end of that period, repay to the Commonwealth the whole or any part of the amount of the payment.

“(4) An amount so repaid is taken, for the purpose of determining the maximum amount of financial supplement that the person is eligible to obtain in respect of that year or that part of that year, never to have been paid to the person.

“(5) Subject to subsection (6), an authorised person may extend the period within which a person (the ‘**student**’) may make a repayment under subsection (1) or (3) if the authorised person is satisfied that the extension is reasonably required because of circumstances beyond the student’s control.

“(6) An authorised person must not, in relation to a person, extend a period under subsection (5) beyond:

- (a) if subsection (1) applies—31 December in the year mentioned in that subsection; or
- (b) if subsection (3) applies—the last day of the period in respect of which the prescribed benefit in respect of the short course is payable to the person.”.

20. Subsection 12S(1):

Omit “7 days”, substitute “14 days”.

21 Subparagraph 12S(2)(d)(ii):

Omit “7 days”, substitute “14 days”.

22 After Division 4 of Part 4A:

Insert:

“Division 4A—Reduction of financial supplement in certain circumstances

Explanation of Division

“12VA. This Division provides for the reduction of the total amount of financial supplement payable to a student under a financial supplement contract in respect of a year or a part of a year as a result of:

SCHEDULE—continued

- (a) a request by the student; or
- (b) an authorised person's decision.

Reduction at student's request

"12VB.(1) This section applies if a student who is a party to a financial supplement contract with a participating corporation lodges a notice under subparagraph 12G(2)(b)(i) to tell the corporation that the student requires a specified lesser amount of financial supplement (not being an amount less than the total amount of financial supplement already received).

"(2) As from the time when the notice is lodged with the corporation, the corporation is discharged from liability to make any further payments of financial supplement to the student that would result in the student receiving a total amount of financial supplement that exceeds the specified lesser amount.

"(3) If:

- (a) the corporation makes payments under the contract of any amounts to the student after the end of 4 weeks after the notice was lodged; and
- (b) the sum of those payments and the payments made under the contract before the end of the 4 week period exceeds the specified lesser amount;

the payments referred to in paragraph (a), to the extent of the recoverable amount worked out under subsection (4):

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

"(4) For the purposes of subsection (3), the recoverable amount is the lesser of:

- (a) the sum of the amounts referred to in paragraph (3)(a); and
- (b) the excess referred to in paragraph (3)(b).

Reduction because of authorised person's decision

"12VC.(1) This section applies in respect of a student who is a party to a financial supplement contract with a participating corporation in respect of a year or a part of a year if:

- (a) pursuant to subsection 12F(3), an authorised person gives a notice to the student specifying a lesser amount as the maximum amount of financial supplement that the student is eligible to obtain in respect of that year or that part of that year; and

SCHEDULE—continued

- (b) the specified lesser amount is less than the amount of financial supplement that the student would otherwise receive under the contract in respect of that year or that part of that year (whether or not the specified lesser amount is less than the financial supplement already received).

“(2) At the same time as the notice is given, or as close to that time as is practicable, the authorised person must also give a written notice to the corporation stating that the student is entitled to be paid under the contract an amount of financial supplement not exceeding the specified lesser amount.

“(3) Unless the decision under subsection 12F(3) that relates to the notice referred to in paragraph (1)(a) is set aside or varied, the following provisions have effect:

- (a) as from the time when the notice is given to the corporation, the corporation is discharged from liability to make any further payments of financial supplement to the student that would result in the student receiving a total amount of financial supplement that exceeds the specified lesser amount; but

(b) if:

- (i) the corporation makes payments under the contract of any amounts to the student after the end of 4 weeks after the notice is given to the corporation; and
- (ii) the sum of those payments and the payments made under the contract before the end of the 4 week period exceeds the specified lesser amount;

the payments referred to in subparagraph (i), to the extent of the recoverable amount worked out under subsection (4):

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

“(4) For the purposes of paragraph (3)(b), the recoverable amount is the lesser of:

- (a) the sum of the amounts referred to in subparagraph (3)(b)(i); and
- (b) the excess referred to in subparagraph (3)(b)(ii).

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

SCHEDULE—continued

Reduction where section 12VC applies and student has contravened section 48 or provided false or misleading information

“12VD.(1) This section applies if:

- (a) a student who is a party to a financial supplement contract with a participating corporation has been given a notice pursuant to subsection 12F(3) and section 12VC applies in respect of the student; and
- (b) one of the following subparagraphs applies:
 - (i) the notice was given because the student’s circumstances changed as a result of the happening of an event of a kind prescribed under section 48, and a prescribed officer decides (the ‘**decision**’) that the student has failed to comply with the obligation under section 48 to notify the Department of the happening of the event within 14 days;
 - (ii) the notice was given because a previous notice under paragraph 12F(1)(b) specified an incorrect maximum amount of financial supplement and a prescribed officer decides (the ‘**decision**’) that the incorrect amount was arrived at because of false or misleading information provided in relation to the student.

“(2) The prescribed officer must give written notice of the decision to the student and the corporation.

“(3) Unless the decision is set aside or varied, the following provisions have effect:

- (a) the corporation’s rights in respect of the student under the contract that relate to financial supplement (**‘wrongly paid financial supplement’**):
 - (i) paid by the corporation before the end of the 4 weeks referred to in subparagraph 12VC(3)(b)(i); and
 - (ii) that is in excess of the lesser amount specified in the notice under subsection 12VC(2);are assigned to the Commonwealth by force of this paragraph at the time when that notice was given to the corporation; and
- (b) any actual repayments of financial supplement made by the student before the prescribed officer’s 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

SCHEDULE—continued

- (ii) secondly, to the extent (if any) to which the sum of those repayments exceeds 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
- (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
- (d) the student is liable to pay to the Commonwealth an amount equal to the sum of:
 - (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 lieu of interest on the wrongly paid financial supplement, being interest in respect of the period worked out under subsection (4).

“(4) For the purposes of subparagraph (3)(d)(ii), the period is:

- (a) if subparagraph (1)(b)(i) applies—the period beginning on the day after the 14 days referred to in that subparagraph, or on the day on which an amount of wrongly paid financial supplement was first paid to the student, whichever is the later, and ending at the end of the period of 4 weeks referred to in subparagraph 12VC(3)(b)(i); or
- (b) if subparagraph (1)(b)(ii) applies—the period beginning on the day on which an amount of wrongly paid financial supplement was first paid to the student and ending at the end of the period of 4 weeks referred to in subparagraph 12VC(3)(b)(i).

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

23 Subsection 12ZA(1):

Omit “and 12U(2)(c)”, substitute “, 12U(2)(c) and 12VD(3)(d)”.

24. Paragraph 12ZA(6)(a):

After “12S(2)” insert “or 12VD(3)”.

25 Paragraph 12ZK(4)(a):

- (a) Omit “\$27,747”, substitute “\$26,402”.
- (b) Omit “subparagraph 68(4)(a)(ii)”, substitute “subparagraph 106Q(4)(a)(i)”.
- (c) Omit “30 June 1993”, substitute “30 June 1994”.
- (d) Omit “the indexation procedure set out in section 68”, substitute “subparagraph 106Q(4)(a)(ii)”.

SCHEDULE—continued

26. Paragraph 12ZK(4)(b):

- (a) Omit “\$31,532”, substitute “\$30,004”.
- (b) Omit “subparagraph 68(4)(b)(ii)”, substitute “subparagraph 106Q(4)(b)(i)”.
- (c) Omit “30 June 1993”, substitute “30 June 1994”.
- (d) Omit “that indexation procedure”, substitute “subparagraph 106Q(4)(b)(ii) of that Act”.

27. Paragraph 12ZK(4)(c):

- (a) Omit “\$44,146”, substitute “\$42,005”.
- (b) Omit “subparagraph 68(4)(c)(ii)”, substitute “subparagraph 106Q(4)(c)(i)”.
- (c) Omit “30 June 1993”, substitute “30 June 1994”.
- (d) Omit “that indexation procedure”, substitute “subparagraph 106Q(4)(c)(ii) of that Act”.

28. Before paragraph 12ZV(a):

Insert:

- “(aa) the making of guidelines in relation to the exercise of powers by prescribed officers under sections 12S, 12U and 12VD; and”.

29. After section 12ZV:

Insert:

Ministerial guidelines

“12ZVA.(1) The Minister may, in writing, determine guidelines to be complied with by prescribed officers in the exercise of powers under sections 12S, 12U and 12VD.

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

30. Paragraph 12ZW(5)(b):

Omit “or 12U(2)(c)”, substitute “, 12U(2)(c) or 12VD(3)(d)”.

31. Paragraph 12ZW(5)(d):

Omit “or 12T(2)(b)(i)”, substitute “, 12T(2)(b)(i) or 12VC(3)(b)(iii), or paragraph 12VB(3)(c)”.

32. Subsection 12ZZA(1) (paragraph (a) of the definition of “indexable amount”):

After “regulation 61” insert “or subregulation 64(1)”.

SCHEDULE—continued**33. Subsection 20(1A):**

Omit “or 12U(1)”, substitute “, 12U(1) or 12VD(1)”.

34. Subsection 20(6):

Omit the subsection.

35 After section 32:

Insert:

Tribunal’s powers to take evidence, summon witnesses etc.

“32A.(1) The Tribunal may take evidence on oath or affirmation, and for that purpose a Convenor or another member of the Tribunal may administer an oath or affirmation.

“(2) A Convenor may summon a person to appear before the Tribunal and to produce such documents (if any) as are referred to in the summons.

“(3) A summons must be in the form prescribed by the regulations.

“(4) A summons must be served in the way prescribed by the regulations.

“(5) A person who has been served a summons under this section, or under the regulations as in force before the commencement of this section, must not, without reasonable excuse, refuse or fail to comply with the summons.

Penalty: 10 penalty units or imprisonment for 3 months.

“(6) The Tribunal may direct a witness before the Tribunal (whether the witness has been summoned under this section or not) to:

- (a) make an oath or affirmation; or
- (b) answer a question; or
- (c) produce a document or article.

“(7) A witness must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (6).

Penalty: 10 penalty units or imprisonment for 3 months.”.

36. Subsection 34(3):

Omit “penalties provided by the regulations”, substitute “offences against this Act”.

37 Heading to Part 6:

After “OVERPAYMENTS” insert “ETC.”.

SCHEDULE—continued

38 Subsection 38(2):

Omit the subsection, substitute:

“(2) If:

(a) either of the following subparagraphs applies:

(i) whether before or after the commencement of this Part, an amount that is:

(A) a student assistance overpayment; or

(B) a special educational assistance scheme overpayment;
or

(C) a prescribed educational scheme overpayment; or

(D) a Social Security or Veterans’ legislation overpayment;
has been paid to or in relation to a person, and there is an unsatisfied liability to the Commonwealth in relation to that amount;

(ii) a person incurs a liability in relation to an amount of penalty under section 48 and that liability is unsatisfied; and

(b) the person is receiving, or entitled to receive, benefit payable under student assistance (whether the benefit is being paid, or to be paid, to the person or to another person);

each payment of the benefit is to be reduced by such proportion or amount (if any) as is determined by a prescribed officer until the liability is satisfied.”.

39. Subsection 38(6):

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(a)(i)”.

40. Subsection 42(1)(definition of “recoverable amount”):

Add at the end:

“; (d) an amount of penalty incurred by a person under section 48.”.

41. Section 42:

Add at the end:

“(15) This section applies to money referred to in paragraph (2)(b) in spite of any law of a State or Territory (however expressed) under which the money is inalienable.”.

42. Subsection 43(1) (paragraph (c) of the definition of “recoverable amount”):

After “section 40” insert “, or an amount of debt incurred by a third party under subsection 42(10)”.

SCHEDULE—continued**43. Subsection 43(1) (definition of “recoverable amount”):**

Add at the end:

“; (d) an amount of penalty incurred by a person under section 48.”.

44 Subsection 44A(1):

After “AUSTUDY scheme” insert “, the Assistance for Isolated Children Scheme”.

45 Subsection 44A(1):

After “the Assistance for Isolated Children Scheme” insert “, the ABSTUDY scheme”.

46 Subsection 45(1):

After “AUSTUDY scheme,” insert “the Assistance for Isolated Children Scheme,”.

47 Subsection 45(1):

After “the Assistance for Isolated Children Scheme,” insert “the ABSTUDY scheme,”.

48. Section 48:

(a) Omit “7 days”, substitute “14 days”.

(b) Add at the end:

“(2) A person who contravenes subsection (1) is not guilty of an offence, but is, subject to subsection (4), liable to pay to the Commonwealth a penalty of \$10 in respect of each week or part of a week while the contravention continues.

“(3) For the purposes of subsection (2), the contravention of subsection (1) continues until the person notifies the Department of the happening of the event.

“(4) The maximum total liability that the person may incur in respect of the contravention is \$1,000.”.

49. After section 48:

Insert:

Determination that penalty not to be payable

“48A.(1) The Minister or a prescribed officer may, in writing, determine that an amount of penalty incurred, or that may be incurred, by a person under section 48 is not payable.

SCHEDULE—continued

“(2) The determination has effect accordingly.

“(3) The Minister or the prescribed officer must give a copy of the determination to the person as soon as practicable after making the determination.

“(4) A contravention of subsection (3) does not invalidate the determination.

“(5) If:

(a) the determination is expressed to be subject to the person complying with specified conditions; and

(b) the person contravenes a condition;

the determination ceases to have effect.

“(6) Without limiting the operation of subsection 52(2), a determination of the Minister or a prescribed officer may, at any time, be cancelled or varied by the Minister by written notice to the person.”.

50. After paragraph 49(1)(b):

Insert:

“(ba) subject to subsection (1A), receive payment of an amount under this Act, or a current special educational assistance scheme, that is not payable (whether in whole or part); or”.

51. Paragraph 49(1)(d):

Omit “or” (last occurring).

52. Paragraph 49(1)(e):

Omit the paragraph.

53. After subsection 49(1):

Insert:

“(1A) In a prosecution of a person for an offence against subsection (1) covered by paragraph (1)(ba), it is a defence if:

(a) if the payment concerned was not payable because of the happening of an event prescribed under section 48—the person proves that he or she has notified the Department of the happening of that event in accordance with subsection (1) of that section; or

(b) in any case—the person proves that he or she has made a reasonable and timely effort to notify the Department of the receipt of the payment concerned and of the fact that the payment was not or may not have been payable; or

SCHEDULE—continued

- (c) in any case—the person proves that, because of circumstances beyond the person’s control, he or she has been unable to make a reasonable and timely effort to notify the Department as mentioned in paragraph (b).”.

54. After subsection 49(3):

Insert:

“(3A) If:

- (a) a court makes an order under subsection (2) for the payment to the Commonwealth of an amount of money; and
- (b) the clerk or other appropriate officer of the court signs a certificate specifying:
 - (i) the amount ordered to be paid to the Commonwealth; and
 - (ii) the person by whom the amount is to be paid; and
- (c) the certificate is filed in a court (which may be the court that made the order or another court) that has civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgement of the court in which the certificate is filed.”.

55 Subsection 50(1):

Omit “or the regulations”.

56 After subsection 51(2):

Insert:

“(2A) A certificate given by a prescribed officer stating that, on a specified day, a notice under subsection 42(3) or (9), or 45(1), to a specified effect, was given to a specified person by a prescribed officer is *prima facie* evidence of the matters stated in the certificate.”.

57. Section 53:

After “41” insert “or 48A”.

58 Section 55:

Repeal the section.

59. Paragraph 55A(1A)(b):

Omit “or 12V(2)(b)”, substitute “, 12V(2)(b) or 12VD(3)(c)”.

60 Subsection 55B(2):

After “AUSTUDY scheme,” insert “the Assistance for Isolated Children Scheme,”.

SCHEDULE—continued

61. Subsection 55B(2):

After “the Assistance for Isolated Children Scheme,” insert “the ABSTUDY scheme,”.

62. Paragraphs 56(a) and (ab):

After “AUSTUDY scheme” insert “, the Assistance for Isolated Children Scheme”.

63. Paragraphs 56(a) and (ab):

After “the Assistance for Isolated Children Scheme” insert “, the ABSTUDY scheme”.

64. Paragraph 56(d):

Omit the paragraph.

NOTES

1. No. 155, 1973, as amended. For previous amendments, see No. 26, 1982; Nos. 63, 72, 120 and 165, 1984; No. 137, 1985; No. 114, 1986; Nos. 125, 130 and 141, 1987; No. 35, 1988; Nos. 76 and 171, 1989; Nos. 70, 95 and 147, 1991; and No. 138, 1992.
2. No. 138, 1992.

NOTES ABOUT SECTION HEADINGS

1. On the day section 38 of the *Student Assistance Act 1973* is amended by item 38 of the Schedule to this Act, the heading to that section is altered by inserting “**and other amounts**” after “**overpayments**”.
2. On the day section 42 of the *Student Assistance Act 1973* is amended by item 40 of the Schedule to this Act, the heading to that section is altered by inserting “**and other amounts**” after “**overpayments**”.

