

## Appendix 2

### Answers to questions on notice from DEST

**1. Can DEST clarify the purposes and intentions of the relevant sections of the SALA Bill 2005 as discussed in this paper?**

The purpose of the Bill is to amend Part 4A of the *Student Assistance Act 1973* and Chapter 2B of the *Social Security Act 1991* to make it clear that a student cannot apply for assistance under the Student Financial Supplement Scheme under either Act after the commencement of the Bill.

The Bill also amends both Acts to provide for the alignment of the Student Financial Supplement Scheme repayment thresholds and indexation with the Higher Education Loan Programme (HELP) under the *Higher Education Support Act 2003* and applies the definition of taxable income used under the HELP arrangements to the Student Financial Supplement Scheme.

The Student Financial Supplement Scheme has been closed under administrative arrangements since 1 January 2004 as there was no longer a participating financial institution. This Bill was introduced to statutorily close the scheme.

The Bill will also insert a provision permitting the incorporation of an instrument “as in force or existing from time to time” for the purposes of section 14 of the *Legislative Instruments Act 2003*.

**2. Can DEST provide to the committee the legal opinions on which the elements of the proposed bill, as discussed in this paper, have been based?**

DEST sought informal legal opinions from the Office of Parliamentary Council (OPC) and these opinions were agreed to by DEST’s Chief Lawyer. In relation to Part 2 of Schedule 2 to the Act, informal advice was also provided by the Office of Legislative Drafting in the Attorney-General’s Department while they were drafting the Student Assistance Regulations 2003.

**3. Can DEST explain why the so-called ‘broad view’ regarding the possible interpretation of this bill does not prevail?**

The department understood that the drafting of proposed subsection 48(2) was in accordance with normal drafting for this type of provision by the Office of Parliamentary Counsel (i.e. where an express provision for exemption from section 14 of the *Legislative Instruments Act 2003* is required).

A similarly worded provision seeking exemption from section 49A of the *Acts Interpretation Act 1901* was included in the Student Assistance Amendment Bill 2003, which lapsed when Parliament was prorogued for the 2004 Election.

The original Student Assistance Regulations 2003 identified prescribed events which must be notified for the purposes of section 48 of the Act and in doing so made reference to the “ABSTUDY Policy Manual”, the “AIC Policy Manual” and the “Guide to Commonwealth Government Payments”. The two policy manuals were referred to by date solely for the purposes of relying on defined terms which they contained.

The Guide to Commonwealth Government Payments (the Guide) was merely referred to in notes to the Regulations. The notes to current regulations 122, 206 and 305 read as follows: “*Note* The Guide to Commonwealth Government Payments explains concepts used in this Part”. The Guide is a Centrelink publication which describes the rates and thresholds of all Australian Government payments that are delivered through Centrelink.

It is not, and was never, the Government’s intention that these extrinsic publications would prescribe events for the purposes of section 48. In fact when it became clear that the Student Assistance Amendment Bill 2003 would not become law the Minister sought an amendment to the Student Assistance Regulations 2003 to reproduce in the regulations the references (defined terms) which relied on the policy manuals. Now only the references to the Guide to Commonwealth Government Payments in the notes mentioned above remain in the regulations. As the Guide is updated quarterly, proposed subsection 48(2) is still required to allow references in the regulations to the Guide “as amended from time to time”.

Consequently the department has only ever operated on the presumption that the “narrow view” of the provision described in the Bills Digest would apply. The Department does not agree that this amendment will reduce Parliamentary scrutiny as any regulations made relying on the power are subject to disallowance by either House of Parliament.

**4. Can DEST advise why an amendment to the Bill in the terms as set out in the Concluding Comments would not be reasonable or desirable in the interests of avoiding potential or actual legal ambiguity and/or uncertainty.**

The recent removal from the Regulations of references to the ABSTUDY and Assistance for Isolated Children Scheme Policy Manuals means that the reference to ‘guidelines’ in the explanation of proposed subsection 48(2) in the Explanatory Memorandum to the Bill is misleading.

If it will assist the Committee with their deliberations, the Department will recommend to the Minister that he correct the explanation and include an express statement that, to remove doubt the power in proposed subsection 48(2) is not intended to permit the determination of prescribed events in extrinsic materials and that prescribed events may only be determined expressly in the Regulations.

**5. When will the Government respond to the committee's report on Student Income Support, tabled on 23 June 2005.**

The Government is examining the recommendations of the Committee's report on Student Income Support tabled on 23 June 2005 and will respond in due course.

