

The Senate

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Employment, Workplace Relations  
and Education Legislation Committee

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Provisions of the Student Assistance Legislation  
Amendment Bill 2005

October 2005

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# Chapter 1

## Majority Report

1.1 The Student Assistance Amendment Bill 2005 was referred to the committee by the Senate on 14 September 2005, following the adoption by the Senate of the Selection of Bills Committee Report No.10 of 2005.

1.2 The bill amends the *Student Assistance Act 1973* and 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 this bill is commenced. The Scheme has been closed as a consequence of increasing levels of bad or doubtful debt and reduced take-up of loans. The committee notes that the bill may be described broadly as 'machinery legislation', in that it tidies up the statute books to the extent of formally ending a program which ceased to be operational from 1 January 2004. The bill also aligns repayment thresholds and indexation under the Scheme with the HELP program under the Higher Education Support Act.

1.3 Even though the bill deals with technical matters, the committee received nine submissions to the inquiry, all of which, with the exception of the submission from the Department of Education, Science and Training (DEST), addressed issues of policy in relation to financial assistance to students, and made proposals of various kinds in regard to rent assistance and income support measures. The submissions closely parallel those made to the references committee to its inquiry into student income support, reported on in June 2005. None of these issues were of immediate concern to the committee.

### Concerns of the committee

1.4 Concern about two aspects of the bill were prompted by commentary in the *Bills Digest*<sup>1</sup>. These included a concern that amendments in the bill may remove Parliament's scrutiny of regulations made under the Student Assistance Act. A second concern was also raised about a point of statutory interpretation relating to the status of instruments or documents referred to in regulations.

1.5 The committee agreed not to proceed to a hearing on this reference, agreeing instead to place a number of questions on notice with DEST. Questions and answers are included in an appendix to this report. The response from DEST clarified the purposes of the legislation. An explanation was provided in regard to notes to current regulations, and an assurance given that extrinsic publications would not prescribe matters in proposed new sub-section 48(2) of the Student Assistance Act. The committee accepts these assurances.

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1 *Bills Digest*, Student Assistance Legislation Amendment Bill 2005, 28 September 2005, no.51

1.6 The committee notes that the issue of the incorporation of extrinsic material in proposed new subsection 48(2) was also taken up by the Scrutiny of Bills Committee. That committee sought the Minister's advice in relation to this matter and accepted his explanation that the new subsection was subject to appropriate parliamentary oversight, 'as the parent section - section 48 – can only impose an obligation on a person to notify an event where the event is prescribed by regulations which either House of Parliament may disallow'.<sup>2</sup>

1.7 DEST informed the committee that the recent removal from the regulations of references to ABSTUDY and Assistance for Isolated Children Scheme Policy Manuals means that references to 'guidelines' in the Explanatory Memorandum relating to subsection 48(2) of the bill are misleading. The committee is pleased to accept the offer from DEST that it will recommend to the Minister that this error be corrected.

### **Recommendation**

**The committee majority recommends that the bill be passed without amendment.**

**Senator Judith Troeth**  
**Chair**



## **Chapter 2**

### **Opposition Senators' Report**

2.1 Opposition senators make a supplementary report on this inquiry, first in order to relate this 'machinery legislation' to the absence of sensible government policy on student income support, as exposed by the reference committee's June 2005 report. This bill formally closes the Student Financial Supplement Scheme, which administratively ceased at the end of 2004, and no replacement appears likely.

2.2 A second point in this report acknowledges that the Opposition proposes to move in the House of Representatives an amendment relating to the scope of extrinsic materials referred to in Regulations, and also reflect the undertaking given by DEST in response to questions addressed on notice to DEST by the committee. DEST has also agreed to recommend to the Minister that the Explanatory Memorandum be amended to correct a misleading reference to ABSTUDY and the Assistance for Isolated Children Scheme Policy Manuals in relation to subsection 48(2) of the bill.

#### **Closure of the Student Financial Supplement Scheme**

2.3 Last year, the Government decided to administratively close down this Scheme because they could not get support in the Senate to close it by legislation. The Government then refused to make a new contract with a financial institution.

2.4 In 2002, the last year of the Scheme's operation, just under 40,000 students applied for and accepted loans. Of these students, 15.6 per cent were indigenous, 15.2 per cent were recorded as single parenting payment recipients, 12.2 per cent were not born in Australia and 54.7 per cent were women. These figures reinforce 2003 data provided by the Government that disclosed that the largest beneficiaries of these loans were low income earners (single parents, disabled and indigenous students) with no access to support from other sources, such as their parents, or who were without jobs.

2.5 The SFSS assisted the most financially vulnerable students, without which continuation of their studies was put at grave risk. For this reason, Opposition senators remain very concerned that closure of this financial support scheme has been undertaken without any replacement. Opposition senators again draw the Senate's attention to the June 2005 report of the references committee on student income support. This exposed the severe shortcomings of the Government in this area of public policy.

2.6 The preface to the report records that:

Over the last decade the student income support system has operated in a policy vacuum. It is now showing the signs of this neglect. The Government's preoccupation with program efficiency over policy effectiveness and continuing problems with Centrelink's delivery of payments have taken their toll on students. The current level of income

support does not come close to providing students with a decent living wage to cover the cost of accommodation, food, bills and transport. The level of income support has been falling steadily behind the rising cost of living. This has resulted in many students experiencing severe financial hardship and poverty.

2.7 Under the heading of 'Policy Neglect', the report states that:

...the student income support system has operated in a policy vacuum for too long, and is showing clear signs of policy neglect and poor service delivery. Many witnesses conveyed a strong view that the drift in student income support policy is not only unacceptable but has become an important factor contributing to the financial hardship of many students... One of the consequences of this neglect is that the increasing financial hardship among the student population is not included on the national policy agenda.

2.8 The evidence presented to the references committee about the effects of the increasingly long hours that many students are being required to work, compelled an unusually blunt warning in the following terms:

There is general agreement among students and academic experts that Government measures are needed to arrest the deteriorating state of student finances. Without Government intervention, a combined weekly total of 60 hours of full-time study and part-time work will soon become the norm for a majority of students. The committee believes this is an unacceptable scenario for students to have to face.

2.9 Finally, the committee emphasised in its report that:

Supplementing income support payments with paid employment is no longer an added extra for many students. Part-time work has become a necessity for students just to make ends meet. They are working longer hours than before to the detriment of their studies and their overall experience of university. The committee believes the financial situation of many students under the policies of the Howard Government is grim, and that the evidence presented to the committee during the inquiry shows that it has deteriorated even further over the past few years.

2.10 In the face of this detailed and comprehensive report into the need for effective income support programs for disadvantaged and low-income students, Opposition senators deplore the Howard Government's only action in this policy area: to close down the SFSS, without an alternative policy or program in to replace it.

### **Scrutiny of Regulations**

2.11 This bill also contains a clause unrelated to the closure of the SFSS but potentially and significantly important in relation to two further income support schemes.

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2.12 In Schedule 2, Part 2 of the bill, Item 10 adds proposed subsection 48(2) to the Student Assistance Act. That clause would remove the need to make new regulations each time the guidelines for student assistance schemes are altered. Such a provision is described by the Government as 'a minor technical amendment' but advice from the Parliamentary Library indicates otherwise, and may have major consequences for parliamentary oversight of important elements of these two schemes.

2.13 One of the proper roles for any legislature is to ensure appropriate scrutiny of the proposals and actions of the executive. Such accountability requirements occur in relation to all instruments of legislative authority. This is particularly the case for non statutory programs such as ABSTUDY.

2.14 In written answers to questions from the committee, the Department of Education, Science and Training (DEST) informed the committee that references to ABSTUDY and the Assistance for Isolated Children Scheme Policy Manuals have recently been removed from the Regulations. The Department proposed that they recommend to the Minister that the Explanatory Memorandum be amended to correct this misleading reference.

2.15 DEST also referred to concerns expressed in the Parliamentary Library Research Service *Bills Digest* regarding this bill: concerns which are shared by Opposition senators. DEST proposed recommending to the Minister that he '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'.

2.16 While it is unclear whether the Minister has agreed to take this action, or how he would make such an express statement, Opposition senators welcome this approach from the Department. The committee awaits with interest the Minister's statements on this matter during debate in the House of Representatives, and in particular, if there is continuing need for a clarifying amendment to the bill.

**Senator Gavin Marshall**  
**Deputy Chair**



## Chapter 3

### Australian Democrat Senators' Report

3.1 Democrat senators generally support much of what is stated in the Opposition senators' report, particularly in relation to the Government's decision to administratively close the Student Financial Supplement Scheme (SFSS). It should be noted, however, that the Australian Democrats opposed the establishment of the Student Financial Supplement Scheme when it was introduced by the former Labor Government in 1993 on the grounds of the inequitable nature of the Scheme. It required recipients to trade in \$1 of student income support for every \$2 loan.

3.2 Although the Australian Democrats opposed the SFSS at its inception, for the reasons given above, they oppose the legislation that formally terminates the Scheme without protection for existing students. The apparent contradiction in this stance was amply clarified during the second reading debate on the Student Assistance Amendment Bill 2003, which the Australian Democrats also opposed, and which failed to pass the Senate:

We opposed the introduction of this scheme on the basis that it was not the most equitable way to provide student financial assistance and that it was quite punitive in some of its repayment rates and processes. However, the scheme is now in place and there are thousands of students who rely upon this scheme. The Australian Democrats have thought long and hard about how we would respond to the prospect of the closure of this scheme. We made offers to the government. I spoke to the minister, particularly the advisers in the minister's office, about the possibility of a sunset clause. Many desperate students have been contacting all of our offices—and I am sure that all political offices have received many emails, faxes, phone calls and visits about this scheme. A sunset clause seemed an effective compromise. But the government would not hear of it, not even discuss it and not even contemplate it. We were told very clearly by an adviser, not a minister, that the government were going to deal with it in their own way.

Given that situation, the Democrats will oppose the legislation before us. We recognise that the closure of this scheme, without any sunset clause or assistance to those students, would further disadvantage those students who are already struggling to survive on the government's punitive income support measures. The decision was not made lightly. We weighed up our concerns about the inequitable nature of the scheme, to which I have referred, against the fact that many students receiving support under the scheme have indicated that it is the only way they can complete their studies."

3.3 Democrat senators made the point then, as they do now, that it was an abuse of process to shut down the Scheme without allowing the Senate to amend or even vote on the Scheme's closure. This abuse of process meant the Australian Democrats were unable to move amendment to 'grandfather' existing Student Financial

Supplement Scheme recipients - around 40,000 students each year – to protect those students who were already relying on the scheme.

3.4 It is a matter of considerable regret that student poverty has not registered as a significant national policy issue, despite efforts by the Australian Democrats, including the initiation of a Senate inquiry into student income support. This attitude is consistent with an apparent indifference to the fact that Australia is the only OECD country which is experiencing real decline in educational expenditure. The essential connection between an investment in the maintenance of students and an investment in education infrastructure and human resources has yet to be understood by policy makers who see learning and research as commodities for purchase, rather than as investments in human capital and national growth.

3.5 The bill before the committee, regarded by the major parties as 'machinery' legislation, is a reminder of a past recognition that an income loans support scheme was once considered by some to be worthwhile in principle, even with its inequity and its flawed implementation. The formal repeal of the SFSS therefore carries unfortunate symbolism.

**Senator Natasha Stott Despoja**

# Appendix 1

## List of submissions

<b>Sub No.</b>	<b>From:</b>
1	University of Melbourne Postgraduate Association Inc
2	Deakin University Student Association
3	Newcastle University Students' Association
4	James Cook University Student Association
5	UWA Student Guild
6	National Union of Students, WA Branch
7	National Union of Students
8	Department of Education, Science and Training
9	The Students' Representative Council of the University of Sydney





## 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.

