

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the Student Assistance Legislation Amendment Bill 2005**

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**SUBMISSION TO THE SENATE EMPLOYMENT WORKPLACE RELATIONS AND  
EDUCATION COMMITTEE**

**PROVISIONS OF THE STUDENT ASSISTANCE LEGISLATION AMENDMENT BILL 2005**

**September 2005**

**FURTHER INFORMATION ON SECTION 48 OR THE STUDENT ASSISTANCE  
LEGISLATION AMENDMENT BILL 2005**

**Summary**

The proposed changes to section 48 of the Student Assistance Act will not alter current levels of Parliamentary scrutiny. It will not be possible to change the prescribed events for the ABSTUDY and AIC schemes in any way other than by an amendment to the Student Assistance Regulations. Any such amendment would be subject to disallowance by either House of Parliament in the usual way. Any document incorporated or referred to in the Student Assistance Regulations will not be able to effect a change to the prescribed events.

**Key Points**

1. Item 10 of Schedule 2 to the *Student Assistance Legislation Amendment Bill 2005* (the Bill) will amend section 48 of the *Student Assistance Act 1973* (the Student Assistance Act) to provide that despite section 14 of the *Legislative Instruments Act 2003*, regulations relating to notifying the Department may apply, adopt or incorporate any matter contained in any instrument as in force from time to time.
2. Currently, section 48 of the Student Assistance Act states:

*If a prescribed event happens in relation to a person who is receiving, or entitled to receive, an amount under a financial supplement contract or a current special educational assistance scheme, the person must notify the Department, in accordance with the regulations, of the happening of the event within 14 days.*
3. Section 48 will become subsection 48(1) and a new subsection 48(2) will be inserted after it to read:

*Despite section 14 of the Legislative Instruments Act 2003, regulations for the purposes of subsection (1) relating to notifying the Department may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.*
4. The *Student Assistance Regulations 2003* (the Student Assistance Regulations) set out the prescribed events referred to in section 48 of the Student Assistance Act for recipients of assistance under the ABSTUDY and Assistance for Isolated Children (AIC) schemes.
5. Any changes to the prescribed events for ABSTUDY and AIC recipients will require an amendment to the Student Assistance Regulations, which must then be tabled in Parliament and is subject to disallowance. Changes to the prescribed events cannot be made any other way.
6. Currently, there is no reference in the Student Assistance Regulations to AIC or ABSTUDY policy manuals (guidelines). Further, these guidelines are not 'made' under the regulations – ie, the authority to make the guidelines does not come from the regulations. The guidelines are made in the exercise of the Government's executive power, not in the exercise of its legislative power. The AIC and ABSTUDY Policy Manuals have never been

subject to parliamentary scrutiny for that reason. These Policy Manuals are, however, public documents and are published on the Department's website.

7. The Student Assistance Regulations do refer to the 'Guide to Australian Government payments' as in force on 20 September 2004.
8. The Guide to Australian Government payments is a guide to benefits paid by the Department of Education, Science and Training, the Department of Employment and Workplace Relations, and the Department of Family and Community Services, published by Centrelink. It is updated each quarter. It sets out provisions relevant to payments made under a number of Commonwealth schemes, including Youth Allowance, Austudy, ABSTUDY and AIC. It contains details of conditions of eligibility for various payments, residential requirements, assets tests, rates of payments and so on.
9. The Payment Guide is an information booklet prepared by Centrelink, and is intended as a helpful guide to payments only. It does not determine the law or have any legal force of itself.
10. The references to the Guide to Australian Government Payments in the Student Assistance Regulations are only intended to allow people to more fully understand their obligations as set out in the Regulations.
11. The Student Assistance Regulations, referring to the version of the Guide as in force on 20 September 2004, are deficient to the extent that they refer to a guide which is now out of date and no longer applied. The current Guide dates from 20 September 2005. The fact of the regulation referring to the out of date Guide does not render the regulation or the current Guide inapplicable, or ineffective.
12. The proposed amendment to section 48 of the Student Assistance Act will ensure that the legislation reflects practice: that is that the applicable Guide is amended from time to time. The amendment will ensure that the Student Assistance Regulations always refer to the most up to date version of the Guide. The amendment does not make the Guide any more or less subject to parliamentary scrutiny than it already is.
13. If the Student Assistance Regulations were amended to refer to a new updated version of the Guide, and those amended regulations were disallowed, the amendment to the Regulations would not take effect. The Regulations would refer to a previous version of the Guide which would have been superseded. This disallowance would not affect the validity of the Guide, which can and will remain able to be re-made at any time, without the need to make new regulations.