Trade Support Loans Amendment (Improving Administration) Bill 2019

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Date introduced: 28 November 2019
House: House of Representatives
Portfolio: Employment, Skills, Small and Family Business
Commencement: Sections 1–3 on Royal Assent; Schedule 1 the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at December 2019.
Purpose of the Bill

The purpose of the Trade Support Loans Amendment (Improving Administration) Bill 2019 (the Bill) is to amend the Trade Support Loans Act 2014 (TSL Act) to make administrative changes to how overpayments are dealt with in the Trade Support Loans (TSL) program.\(^1\)

The Bill also proposes minor changes to certain notice periods under the TSL Act. These are not dealt with in this Bills Digest.

Background: Trade Support Loans

TSL is an income contingent loans program which commenced in 2015 with the aim of providing assistance to Australian Apprentices to meet the day-to-day costs of undertaking an apprenticeship.\(^2\)

Apprentices apply for a loan through their Australian Apprenticeship Support Network provider.\(^3\)

Only apprentices studying a qualification specified according to the Trade Support Loans Priority List (the List) are eligible for a loan:

- under clause 5 of the List, occupations for which skilled persons are a priority are specified in the National Skills Needs List\(^4\)

- under clause 6 of the List, eligible qualifications leading to occupations for which skilled persons are a priority are identified in the TSL Qualifications List.\(^5\)

According to the Trade Support Loans Guidelines (the Guidelines), at 1 July 2019, up to $21,078 can be provided over the course of an apprenticeship.\(^6\) This amount is indexed annually on 1 July.\(^7\)

Loans are structured to provide more support during the early stages of the apprenticeship, when costs are likely to be higher, as follows:

- first year: $8,431
- second year: $6,324
- third year: $4,216 and
- fourth year: $2,108.\(^8\)

Payments are made in monthly instalments in arrears, and apprentices must opt in every six months to continue receiving payments.\(^9\)

Since 2015, when the program commenced, 108,371 apprentices have been approved for a loan, and approximately $815 million in payments have been made (to 30 June 2019).\(^10\) In 2018–19, nearly 56,000 Australian apprentices received a TSL payment.\(^11\)

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5. DESSFB, TSL Qualifications List, DESSFB, [Canberra], n.d.
7. Ibid.
Loans are repaid through the Australian Taxation Office (ATO) once a person’s income reaches a minimum repayment threshold, which is $45,881 with a repayment rate of one per cent for the 2019–20 financial year. The repayment rate increases according to the taxpayer’s income, to a maximum of ten per cent on incomes of over $134,573.

### Committee consideration

**Senate Selection of Bills Committee**

At its meeting of 4 December 2019, the Senate Selection of Bills Committee determined that the Bill not be referred to committee for inquiry and report.

**Senate Standing Committee for the Scrutiny of Bills**

Item 6 of Schedule 1 to the Bill will allow the rules (that is delegated legislation) to set out circumstances where the Secretary must determine that an amount of TSL that has been paid to a person in error may be recovered from later instalments of TSL. The Senate Standing Committee for the Scrutiny of Bills was concerned that significant matters, such as the circumstances in which the amounts of later TSL instalments may be reduced, should be set out in primary, rather than delegated legislation, unless a sound justification is provided. The Committee noted that ‘[t]he explanatory memorandum provides no explanation as to why it is necessary to prescribe such circumstances in delegated legislation’.

The Committee sought the Minister’s advice on why it is considered necessary and appropriate to deal with this matter in delegated legislation and whether it would be appropriate for the Bill to be amended ‘to set out at least high level guidance regarding the relevant circumstances on the face of the primary legislation’.

At the time of writing, the Minister’s response had not been provided to the Committee.

### Policy position of non-government parties/independents

At the time of writing, no non-government parties/independents have commented on the measures proposed in the Bill.

### Position of major interest groups

At the time of writing, no major interest groups have commented on the measures proposed in the Bill.

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11. Ibid.
13. ATO, ‘Study and training loan repayment thresholds and rates’, op. cit.
17. Ibid., p. 27.
Financial implications
The Explanatory Memorandum to the Bill states that the changes are not expected to have any financial impact.19

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.20

Parliamentary Joint Committee on Human Rights
At the time of writing, the Parliamentary Joint Committee on Human Rights had not considered the Bill.21

Key issues and provisions: TSL overpayments

Current law

Overpayment debts
Currently, under section 90 of the TSL Act, if a person receives a TSL payment that they were not, for any reason, entitled to, the amount of the payment becomes an overpayment debt which is recoverable by the Commonwealth. In that case the TSL Act sets out a range of options including:

• the Secretary, on behalf of the Commonwealth, enters into an arrangement to recover the outstanding amount22 or

• the outstanding amount is recovered through the courts23 or

• the Secretary, on behalf of the Commonwealth, decides to write off the outstanding amount (subject to future recovery), if:
  – the debt is irrecoverable at law
  – the debtor has no capacity to repay
  – the debtor’s whereabouts are unknown after all reasonable efforts have been made to locate them or
  – it is not cost effective to take action to recover the debt24 or

• the Secretary, on behalf of the Commonwealth, waives the outstanding amount, if:
  – the debt is attributable to an administrative error made by the Commonwealth, an authority of the Commonwealth, or an organisation that performs services for the Commonwealth or
  – the debt is less than, or likely to be less than, $200 and it is not cost effective for the Commonwealth to recover the debt.25

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20. The Statement of Compatibility with Human Rights can be found at page 3 of the Explanatory Memorandum to the Bill.
21. Parliamentary Joint Committee on Human Rights, Index of Bills and instruments considered by the committee, as at 5 December 2019.
22. TSL Act, section 92.
23. TSL Act, section 93.
24. TSL Act, section 94.
25. TSL Act, sections 95, 96 and 97.
**TSL debts**

This is distinct from a TSL payment to which the person was entitled, which is referred to as a *TSL debt*, and repaid through the ATO as described above.\(^{26}\)

The *TSL Act* contains a ‘special case qualification and payability’ provision at section 11, to deal with cases where just one additional TSL payment is made after a person is no longer entitled to the payment. If the Secretary determines that section 11 applies to a person, then the additional payment is taken to have been an instalment of TSL, which means it can be recovered through the ATO as a TSL debt.

Subsection 11(2) states that the rules (currently the *Trade Support Loan Rules 2014*) may prescribe circumstances in which the Secretary is to determine that this section is, or is not, to apply to a person. Currently, section 11 of the rules states:

Subsection 11(1) of the Act is taken to apply to a person where:

(a) before the end of the final instalment period specified in a determination made for the person under section 16 of the Act, the person has notified the Secretary of a change of circumstances which would affect payability of trade support loan, but payments of trade support loan have continued to be made to the person for that period; or

(b) the person has successfully completed a qualifying apprenticeship but the Secretary has not received notice from the designated State/Territory training authority, or from the person, of this completion and the person has continued to receive instalments of trade support loan.

**What the Bill does**

The Bill proposes to amend section 11 of the *TSL Act* to expand the circumstances under which the ‘special case qualification and payability’ provision could apply, reducing the department’s use of the *overpayment debt* provisions in favour of using ATO repayment arrangements and the TSL program itself, to deal with TSL overpayments.

**Items 1 to 5** remove references to the *final instalment period* from section 11 and make consequential amendments, with the effect that payments dealt with under section 11 would no longer be limited to only one additional payment after an eligible payment. The role of the *Trade Support Loan Rules 2014* in setting circumstances in which the Secretary can apply these arrangements is retained.

**Item 6** adds proposed subsection 11(3), to provide that an additional payment that the Secretary determines under subsection 11(1) is to be treated as an instalment of TSL, can be recovered by reducing subsequent TSL payments, if the person is paid such payments. The proposed subsection would allow the Secretary to determine if this option is taken. Proposed subsection 11(4) would allow the rules to prescribe circumstances in which the Secretary is to make this determination.

According to the Guidelines, this kind of offsetting arrangement is already in use by the department when the Secretary enters into an arrangement to recover an *overpayment debt* under section 92 of the *TSL Act*.\(^{27}\) Therefore, the effect of this change is to allow that if the Secretary determines that an overpayment falls under section 11, but the person subsequently receives additional TSL payments, the debt could still be offset against these payments rather than

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having to be recovered through the ATO once the person’s income reaches the minimum repayment threshold.

The application provision at item 11 means that these changes will not apply to an amount paid before the commencement of the amendments.