THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE SUPPORT LOANS AMENDMENT
( IMPROVING ADMINISTRATION) BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Skills, Small and Family Business, Senator the Hon Michaelia Cash)
TRADE SUPPORT LOANS AMENDMENT (IMPROVING ADMINISTRATION) BILL 2019

OUTLINE


The amendments improve the administration of the Trade Support Loans Program by:

- Empowering the Secretary to provide for ‘offsetting’ arrangements where an amount is wrongly paid as an instalment of trade support loan (TSL). As an alternative to the department recovering the amount as an overpayment debt, the Secretary will be able to make determinations that:
  - the amount is taken to be a TSL payment; and
  - a later payable instalment of TSL is to be reduced.

- Providing the Secretary with a discretion to extend the period for notifying a change of address.

- Aligning the minimum periods for TSL recipients to notify the Secretary of information under the Act.

FINANCIAL IMPACT STATEMENT

The proposed administrative amendments are not expected to have any financial impact.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

TRADE SUPPORT LOANS AMENDMENT (IMPROVING ADMINISTRATION) BILL 2019

The Trade Support Loans Amendment (Improving Administration) Bill 2019 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the amendments

The purpose of the Bill is to amend the Trade Support Loans Act 2014 (the Act).

The amendments improve the administration of the Trade Support Loans Program by:

- Empowering the Secretary to provide for ‘offsetting’ arrangements where an amount is wrongly paid as an instalment of trade support loan (TSL). As an alternative to the department recovering the amount as an overpayment debt, the Secretary will be able to make determinations that:
  - the amount is taken to be a TSL payment; and
  - a later payable instalment of TSL is to be reduced.

- Providing the Secretary with a discretion to extend the period for notifying a change of address.

- Aligning the minimum periods for TSL recipients to notify the Secretary of information under the Act.

Human rights implications

This Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In particular, Article 13(2)(b) states that secondary education, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.

The Act promotes an individual’s right to education by providing access to financial assistance, in the form of a trade support loan (TSL), during a qualifying apprenticeship. In order to be undertaking a qualifying apprenticeship, the TSL legislation requires an individual to be enrolled in vocational education at certain prescribed levels.
The amendments made by the Bill, empowering the Secretary to provide for ‘offsetting’ arrangements where an amount is wrongly paid as an instalment of TSL, might be seen as limiting an individual’s access to education insofar as the Secretary’s exercise of this power will reduce future amounts of TSL available to an apprentice.

However, this measure will reduce the instances in which the Department of Employment, Skills, Small and Family Business (the department) will need to pursue apprentices for an overpayment debt whilst the Commonwealth continues to concurrently pay the apprentice further TSL instalments. An offsetting arrangement is preferred to the overpayment debt recovery process as it reduces the administrative burden for apprentices and the department, and increases the likelihood of successful debt recovery.

Further, offsetting a wrongly paid amount against a future TSL payment, rather than pursuing the amount as overpayment debt due in full to the Commonwealth, will reduce the immediate financial burden imposed on an apprentice, during the period of their vocational education. As such, this measure has the potential to assist more apprentices to complete their study and is therefore compatible with the right to education.

The Bill is compatible with human rights. To the extent the Bill may have limited impact on a person’s access to education, the limitation is reasonable, proportionate to the policy objective and for legitimate reasons.

The Minister for Employment, Skills, Small and Family Business, Senator the Hon Michaelia Cash
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Act</td>
<td><em>Trade Support Loans Act 2014</em></td>
</tr>
<tr>
<td>department</td>
<td>Department of Employment, Skills, Small and Family Business</td>
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<tr>
<td>subsection 11(1) determination</td>
<td>A determination made pursuant to the Secretary’s power in subsection 11(1) of the Act</td>
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<tr>
<td>TSL</td>
<td>Trade Support Loan</td>
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<tr>
<td>TSL Rules (or rules)</td>
<td><em>Trade Support Loan Rules 2014</em></td>
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Chapter 1 - Short title

Should this Bill be enacted, clause 1 provides for the short title of the resulting Act to be the *Trade Support Loans Amendment (Improving Administration) Act 2019*.

**Clause 2 - Commencement**

The table in clause 2 provides for the commencement of the provisions in the Bill, should it enacted. Clauses 1 to 3 of the Bill commence on the day the Bill receives the Royal Assent. Schedule 1, which makes amendments to the Act, commences on the day after the Bill receives the Royal Assent.

**Clause 3 - Schedules**

Clause 3 provides that any legislation that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.
Summary

A TSL is an income-contingent loan. A person who receives TSL must repay the loan through the Australian tax system in accordance with Part 3.2 of the Act, after the person’s income reaches the minimum repayment income threshold.

TSL is payable to a person if the person meets the qualification requirements in section 8 of the Act, including undertaking a qualifying apprenticeship, and the person meets the other payability requirements in section 10 of the Act.

In situations where an instalment of TSL is wrongly paid to a person who was not entitled to the payment, the amount becomes a debt to the Commonwealth under Part 4.3 of the Act and is referred to as an overpayment debt. Overpayment debts can be recovered as a judgment debt through the courts, or under an arrangement the Commonwealth might enter into with the person.

In certain circumstances where an amount is wrongly paid as an instalment of TSL, the Secretary is empowered under subsection 11(1) of the Act to make a determination (hereafter referred to as a ‘subsection 11(1) determination’) that the recipient is taken to have been qualified for TSL and TSL is taken to have been payable to the person. In such circumstances, the amount will not be an overpayment debt and will instead give rise to a ‘TSL debt’, recoverable through the Australian tax system.

Schedule 1 to the Bill makes amendments to the Act to broaden the circumstances in which the Secretary may make a subsection 11(1) determination. The amendments also insert additional provisions in section 11, empowering the Secretary to offset an amount that is subject to a subsection 11(1) determination, against subsequent instalments of TSL.

Finally, Schedule 1 also makes minor amendments to the Act to improve the administration of notices.

Detailed explanation of amendments

Items 1 to 6 and items 10 and 11 - Sections 11 and 90

Items 1 to 6, 10 and 11 make amendments to the Secretary’s powers in section 11 of the Act, to broaden the circumstances in which a person may be able to repay an overpayment of TSL through the tax system once their income reaches a minimum repayment income threshold. The amendments also provide for the Secretary to be able to offset the amount against future instalments of TSL.

Prior to these amendments, subsection 11(1) of the Act provides that if:
an amount is paid to a person as an instalment of TSL in relation to an instalment period of the person (defined for the purposes of the section as ‘the final instalment period’); and

TSL was payable to the person in relation to the instalment period ending before the final instalment period, but (apart from section 11), is not payable to the person in relation to the final instalment period; and

the Secretary determines that the section is to apply to the person;

then:

the amount that was paid to the person is taken to have been an instalment of TSL; and

the person is taken to have been qualified for TSL and TSL is taken to have been payable to the person, in relation to the final instalment period.

Subsection 11(2) provides the rules made by the Minister, by legislative instrument under section 106 of the Act, may prescribe circumstances in which the Secretary is to determine that section 11 does or does not apply to a person. An example of one circumstance currently prescribed in the TSL rules is where 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 their completion and the person has continued to receive instalments of TSL whilst being ineligible.

A key consequence of the Secretary making a determination under section 11 is that the amount in question, which would otherwise be an overpayment debt under section 90 of the Act, will instead give rise to a ‘TSL debt’ that is to be repaid through the Australian tax system under Part 3.2 of the Act.

Items 1 to 6 of the Bill make amendments to section 11 to broaden the circumstances in which the Secretary may make a subsection 11(1) determination.

Items 1, 3, 4 and 5 make amendments to section 11, which are consequential to the amendments made by items 2 and 6 described below.

Item 2 repeals and substitutes paragraph (1)(b), to remove the requirement that TSL was payable to the person in relation to the instalment period ending before the instalment period in which the instalment of TSL was wrongly paid. The removal of this limitation will allow the Secretary to make a subsection 11(1) determination in a broader range of circumstances. However, the Secretary’s power to make a determination will still be subject to any constraints imposed by the TSL rules pursuant to subsection 11(2) of the Act.

Item 6 adds new subsections (3) and (4) to section 11, which will allow the Secretary to offset the amount that was subject to the subsection 11(1) determination against subsequent instalments of TSL. New subsection 11(3) provides that if:
• an amount paid to a person is taken under subsection (1) to have been an instalment of TSL in relation to an instalment period; and

• an instalment of TSL is payable to the person in relation to a later instalment period;

the Secretary may determine that the amount of the later instalment is to be reduced (including reduced to nil). Subsection (3) goes on to provide that the sum of the reductions must not exceed that amount subject to the Secretary’s subsection 11(1) determination.

New subsection 11(4) provides that the rules may prescribe circumstances in which the Secretary is to determine under subsection (3) that amounts of later instalments of TSL are to be reduced.

The expansion of the Secretary’s powers under section 11 is intended to reduce the instances in which the department will need to pursue apprentices for an overpayment debt. Where an overpaid amount is recovered through the tax system, the amendments also are intended to allow future payments to be reduced, up to that same amount, to establish an effective offsetting arrangement. Together these measures are intended to reduce the administrative burden for apprentices and the Commonwealth and to increase the likelihood of successful debt recovery.

Item 10 makes a related amendment to section 90 of the Act. Subsection 90(1) of the Act provides that if a payment of TSL is made to a person, and a person who obtains the benefit of the payment was not entitled to obtain that benefit, the amount of the payment is an overpayment debt due to the Commonwealth. Item 10 inserts a new subsection (4A), which provides that subsection 90(1) does not apply to a payment to the extent that it is covered by a subsection 11(1) determination. This amendment is intended to clarify that a person that has received an amount that is subject to a subsection 11(1) determination (for which they must repay a TSL debt through the tax system) does not also have an overpayment debt under section 90 of the Act.

Item 11 provides that the amendments made by Schedule 1 to section 11 of the TSL Act do not apply in relation to amounts paid before the commencement of the Schedule.

**Items 7 and 8 - Paragraph 60(b) and subsection 62(2)**

Section 60 of the Act lists information and documents that the Secretary may, in accordance with section 62, obtain from a person who owes an overpayment debt to the Commonwealth. Paragraph 60(b) provides that if the person’s address changes the Secretary may require them to inform the Secretary of the new address within 14 days after the change.

Subsection 62(1) provides that a requirement under section 60 must be made by written notice given to the person of whom the requirement is made. Subsection 62(2) specifies how a notice is to be given and the requirements of the notice.
Item 7 makes a change to paragraph 60(b) that is consequential to the amendment made by item 8 (which adds a new paragraph (c) to subsection 62(2)). Relevantly, item 7 amends paragraph 60(b) so that if a person’s address changes, the Secretary may require them to inform the Secretary of the new address within 14 days, or within such longer period as is specified under paragraph 62(2)(c), after the change.

Item 8 adds a new paragraph (c) to subsection 62(2), providing that the Secretary’s notice may specify a period, longer than 14 days, for informing the Secretary of a change of the person’s address.

This amendment will allow the Secretary, or delegate, to specify a longer notice period, which will reduce the amount of administrative pressure placed on apprentices, and on Australian Apprenticeship Support Network providers that issue such notices under the Secretary’s delegation.

**Item 9 - Subsection 72(4)**

Section 71 of the Act lists when the Secretary may, in accordance with section 72, require a person to inform them of any event or change of circumstances that occurs or is likely to occur, and that causes or would be likely to cause:

- the person to cease to be qualified for trade support loan; or
- trade support loan to cease to be payable to the person.

Subsection 72(1) provides that a requirement under section 71 must be made by written notice given to the person of whom the requirement is made. Subsection 72(2) specifies how a notice is to be given and the requirements of the notice. Amongst other matters, the notice must specify the period within which the person is to give the information. Subsection 72(4) provides that the period specified must not end earlier than 7 days after the day on which an event or change of circumstance covered by the notice occurs, or the person first becomes aware that such an event or change of circumstance is likely to occur.

Item 9 would amend subsection 72(4) to increase the period from 7 to 14 days, so that the change of circumstances notice requirements are consistent with the notice requirements for the Secretary’s general information-gathering powers under Division 2 of the Act.