



# **Trade Support Loans Act 2014**

**No. 81, 2014**

**An Act to provide for trade support loans for  
certain apprentices, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Trade Support Loans Act 2014

No. 81, 2014

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**An Act to provide for trade support loans for  
certain apprentices, and for related purposes**

*[Assented to 17 July 2014]*

The Parliament of Australia enacts:

Section 1

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## Chapter 1—Introduction

### Part 1.1—Preliminary

#### 1 Short title

This Act may be cited as the *Trade Support Loans Act 2014*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 July 2014
2. Sections 3 to 106	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2014.	18 July 2014 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Section 3

### 3 Simplified outline of this Act

Trade support loan is an income-contingent loan. A person who receives trade support loan must repay it, through the tax system, after the person's income reaches a certain threshold.

Broadly, trade support loan is available to apprentices undertaking certain kinds of apprenticeships. If a person makes an application and meets all the requirements, payments will be made regularly to the person.

When the person's income reaches the minimum repayment income under the *Higher Education Support Act 2003*, and the person has finished repaying any debt under that Act, the person must start repaying trade support loan debt.

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## Part 1.2—Interpretation

### 4 Simplified outline of this Part

All of the defined terms used in this Act are listed in section 5. In many cases the definition itself is also in that section. Sometimes the section refers to another provision of this Act or another Act where the definition can be found.

### 5 Definitions

In this Act:

***accumulated HELP debt*** has the same meaning as in the *Higher Education Support Act 2003*.

***accumulated TSL debt*** has the meaning given by section 35.

***annual indexation factor*** has the meaning given by subsection 99(4).

***approved form*** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

***Australian resident*** means a person who:

- (a) resides in Australia; and
- (b) is one of the following:
  - (i) an Australian citizen;
  - (ii) the holder of a permanent visa.

***authorised review officer*** means a person authorised under section 79.

***Commissioner*** means the Commissioner of Taxation.

***completion discount*** has the meaning given by section 40.

***compulsory TSL repayment amount*** means an amount that:

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- (a) is required to be paid in respect of an accumulated TSL debt under section 46; and
- (b) is included in a notice of assessment made under section 48.

**designated State/Territory training authority** has the meaning given by subsection 40(3).

**former accumulated TSL debt** has the meaning given by section 31.

**holder** has the same meaning as in the *Migration Act 1958*.

**income tax** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**income tax law** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**income year** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**index number** has the meaning given by section 33.

**instalment period** has the meaning given by subsection 10(2).

**lifetime limit** means \$20,000.

Note: The lifetime limit is indexed on 1 July 2017 and each later 1 July in line with increases in the consumer price index (see section 99).

**Medicare levy** means the Medicare levy imposed by the *Medicare Levy Act 1986*.

**minimum repayment income** has the same meaning as in the *Higher Education Support Act 2003*.

**officer** means a person engaged (whether as an employee or otherwise) by any of the following:

- (a) an Agency (within the meaning of the *Public Service Act 1999*);
- (b) another authority of the Commonwealth;
- (c) a person or organisation that performs services for the Commonwealth.

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**overpayment debt** has the meaning given by section 90.

**permanent visa** has the same meaning as in the *Migration Act 1958*.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**qualifying apprenticeship** has the meaning given by subsection 8(2).

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

**relevant instalment period** has the meaning given by paragraph 16(1)(b).

**repayable TSL debt** has the meaning given by section 47.

**repayment income** has the same meaning as in the *Higher Education Support Act 2003*.

**return** means an income tax return within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**reviewable Commissioner decision** has the meaning given by subsection 77(1).

**reviewable decision** has the meaning given by subsection 77(3).

**reviewable Secretary decision** has the meaning given by subsection 77(2).

**reviewer** has the meaning given by section 78.

**rules** means rules made under section 106.

**Secretary** means the Secretary of the Department.

**taxable income** has the meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

**trade support loan** means trade support loan for which a person qualifies under Part 2.1.

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***TSL debt*** means a debt incurred under section 27.

***TSL debt indexation factor*** has the meaning given by section 32.

***TSL Priority List*** has the meaning given by section 105.

***undertaking***, in relation to a qualifying apprenticeship, has a meaning affected by subsection 8(3).

***voluntary TSL repayment*** means a payment made to the Commissioner in discharge of an accumulated TSL debt or a TSL debt. It does not include a payment made in discharge of a compulsory TSL repayment amount.

***yearly rate*** has the meaning given by subsection 24(1).

## **6 When trade support loan is being paid to a person**

A reference in this Act to a person to whom trade support loan is being paid is a reference to a person for whom there is in effect a determination granting the person's application for trade support loan.

## Chapter 2—Loan payments

### Part 2.1—Qualification and payability

#### 7 Simplified outline of this Part

Trade support loan is an income-contingent loan. A person who receives trade support loan must repay it, through the tax system, after the person's income reaches a certain threshold.

Broadly, the requirements to receive trade support loan may be met by a person who is undertaking a qualifying apprenticeship. The person must meet the requirements at the end of each instalment period for the person.

There is a lifetime limit on the total trade support loan a person can receive.

#### 8 Qualification

##### *Qualification for trade support loan*

- (1) A person is qualified for trade support loan if:
- (a) the person is an Australian resident; and
  - (b) the person is undertaking a qualifying apprenticeship; and
  - (c) the person has notified the Secretary of the person's tax file number; and
  - (d) the person meets any other conditions prescribed by the rules.

##### *When a person is undertaking a qualifying apprenticeship*

- (2) A **qualifying apprenticeship** is an apprenticeship:
- (a) through which a person is undertaking a qualification:
    - (i) at a level prescribed by the rules; and
    - (ii) leading to an occupation or a qualification specified on the TSL Priority List; and



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- (b) which meets any other requirements prescribed by the rules.
- (3) The rules may prescribe circumstances in which a person is, or is not, taken to be ***undertaking*** a qualifying apprenticeship.
- (4) Without limiting the circumstances that may be prescribed for the purposes of subsection (3), the rules may prescribe, as circumstances in which a person is taken to be undertaking a qualifying apprenticeship, the period between:
  - (a) the time a person successfully completes a qualifying apprenticeship; and
  - (b) the time a designated State/Territory training authority notifies the Secretary that the person has done so.

### 9 Lifetime limit

If, on a day, the sum of the instalments of trade support loan:

- (a) that have been paid to the person; and
- (b) that are to be paid to the person in relation to an instalment period of the person in accordance with section 23;

totals the lifetime limit, then:

- (c) the person ceases to be qualified for trade support loan immediately after that day; and
- (d) the person cannot again qualify for trade support loan (even if the lifetime limit is increased after that day).

### 10 Payability

- (1) Trade support loan is payable to a person, in relation to an instalment period of the person, if:
  - (a) the person is qualified for trade support loan on the final day of the instalment period; and
  - (b) the person was undertaking a qualifying apprenticeship for the whole of the instalment period; and
  - (c) the person made an application for trade support loan on or before that final day.
- (2) An ***instalment period*** of a person is a period:

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- (a) starting or ending on a day determined for the person in accordance with the rules; and
  - (b) of the duration prescribed by the rules.
- (3) The duration prescribed by the rules for the purposes of paragraph (2)(b) must be a duration specified in column 1 of the table. For the purposes of working out the amount of an instalment of trade support loan for an instalment period under section 23, the divisor for each duration is specified in column 2.

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Duration of prescribed instalment periods		
Item	Column 1 The duration may be...	Column 2 The divisor for that duration is...
1	a week	52
2	a fortnight	26
3	a month	12
4	3 months	4
5	6 months	2
6	a year	1

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## 11 Special case qualification and payability

- (1) If:
- (a) an amount is paid to a person as an instalment of trade support loan in relation to an instalment period (the ***final instalment period***) of the person; and
  - (b) trade support loan was payable to the person in relation to the instalment period ending before the final instalment period but, apart from this section, is not payable to the person in relation to the final instalment period; and
  - (c) the Secretary determines that this section is to apply to the person;
- then:
- (d) the amount that was paid to the person is taken to have been an instalment of trade support loan; and

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- (e) the person is taken to have been qualified for trade support loan, and trade support loan is taken to have been payable to the person, in relation to the final instalment period.
- (2) The rules may prescribe circumstances in which the Secretary is to determine that this section is, or is not, to apply to a person.

## **Part 2.2—Machinery provisions for payments**

### **Division 1—Simplified outline of this Part**

#### **12 Simplified outline of this Part**

A person who wants to be paid trade support loan must make an application. The Secretary will determine the application and, if satisfied the person meets or will meet all the requirements, will also determine the rate at which trade support loan is to be paid.

A determination granting a person's application for trade support loan will cease to have effect after a certain period (unless the person's trade support loan is cancelled before then), and the person must reapply to continue to receive trade support loan.

Trade support loan can be cancelled, or the rate of trade support loan increased or reduced, if the person's circumstances change.

Trade support loan can also be cancelled on the person's request.

Trade support loan is paid in regular instalments into the person's bank account.

## **Division 2—Applications**

### **13 Application**

- (1) A person who wants to be paid trade support loan must make an application for trade support loan in accordance with this section.
- (2) The application must be:
  - (a) in a form approved by the Secretary; and
  - (b) lodged in a manner prescribed by the rules.
- (3) A form approved for the purposes of paragraph (2)(a) must provide for a parent or guardian (if any) of an applicant who is aged under 18 at the time the applicant makes the application to acknowledge that the applicant is fully aware of the commitment into which the applicant is entering.

### **14 Withdrawal of application**

- (1) A person may withdraw an application for trade support loan that has not been determined.
- (2) An application that is withdrawn is taken not to have been made.

## Division 3—Determinations

### 15 Determination of application

If a person makes an application for trade support loan, the Secretary must make a determination either granting or refusing the application.

### 16 Grant of application

- (1) The Secretary must make a determination granting an application for trade support loan if the Secretary is satisfied that:
  - (a) the applicant is qualified for trade support loan; and
  - (b) trade support loan is expected to be payable to the applicant in relation to one or more instalment periods (a ***relevant instalment period***) ending before the end of the period specified for the purposes of subsection (2).
- (2) The determination must specify the period at the end of which the determination ceases to have effect.
- (3) The rules may prescribe the periods that are to be specified in determinations for the purposes of subsection (2).
- (4) If the Secretary makes a determination granting an application for trade support loan, the Secretary must also make a determination of the applicant's yearly rate of trade support loan for each relevant instalment period.

### 17 Deemed refusal of application

If the Secretary does not determine an application before the end of 13 weeks after the day the application was lodged, the Secretary is taken to have made, at the end of that period, a determination refusing the application.

## **18 Variation of rate**

If the Secretary is satisfied that the rate at which trade support loan is being paid to the person in relation to a relevant instalment period of the person is more or less than the rate provided for by this Act, the Secretary must make a determination that the rate is varied accordingly.

## **19 Cancellation**

- (1) The Secretary must make a determination cancelling trade support loan that is being paid to a person if the Secretary is satisfied that:
  - (a) the person is not qualified for trade support loan; or
  - (b) trade support loan was not or will not be payable to the person in relation to a relevant instalment period of the person; or
  - (c) the person has requested that the person's trade support loan be cancelled.
- (2) The Secretary may make a determination cancelling trade support loan that is being paid to a person if:
  - (a) the person has been given:
    - (i) a notice under section 59; or
    - (ii) a notice under section 71 that requires the person to inform the Secretary of an event or change of circumstance; and
  - (b) the person does not comply with the notice.

## **20 Date of effect of determinations**

- (1) A determination takes effect from the date of effect specified in the determination, which may be earlier or later than the date the determination is made.
- (2) A determination that the Secretary is taken to have made because of subsection 102(3) (use of a computer program to make decisions) takes effect from the date the relevant decision was made by operation of the computer program, unless the Secretary subsequently determines otherwise.

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- (3) Without limiting subsection (1) or (2), a determination cancelling trade support loan that is being paid to a person, or reducing the person's rate of trade support loan, because of an event or change of circumstance that occurred before the day the determination was made, may be specified to take effect:
  - (a) on the day the event or change of circumstance occurred, if the person was required to inform the Secretary of it and did not do so as required; or
  - (b) on a later day, if:
    - (i) the person was required to inform the Secretary of it and did so as required; or
    - (ii) was not required to inform the Secretary of it.
- (4) Subsection (3) does not limit when a determination of the kind referred to in that subsection may be specified to take effect.

### **21 When determination ceases to be in effect**

- (1) A determination granting a person's application for trade support loan continues in effect until the earliest of:
  - (a) the end of the day immediately before the day a determination under section 19 takes effect cancelling trade support loan that is being paid to the person; or
  - (b) the end of the period specified in the determination for the purposes of subsection 16(2) (expiry); or
  - (c) the end of the day immediately before the day on which the person dies.
- (2) A determination of a person's rate of trade support loan continues in effect until the end of the day immediately before the day a determination under section 18 takes effect varying the person's rate of trade support loan.



## **Division 4—Payment**

### **22 Payment by instalments**

- (1) Trade support loan is to be paid by instalments.
- (2) The Secretary must pay an instalment of trade support loan to a person, in relation to an instalment period of the person, if:
  - (a) a determination is in effect granting the person's application for trade support loan; and
  - (b) the Secretary is satisfied that trade support loan is payable to the person in relation to the instalment period.
- (3) The instalment is to be paid to the person on the day after the end of the instalment period that is determined by the Secretary to be the earliest day on which it is reasonably practicable to make the payment.

### **23 Amount of instalment**

- (1) The amount of an instalment of trade support loan that is to be paid in relation to an instalment period of a person is worked out by dividing:
  - (a) the yearly rate determined under subsection 16(4) for the instalment period; by
  - (b) the divisor specified in the table in subsection 10(3) for the instalment period duration.

Note: For example, if instalment periods are a month, the divisor is 12.

- (2) The amount of an instalment worked out under subsection (1) is reduced as necessary to ensure that trade support loan totalling more than the lifetime limit is not to be paid to a person.
- (3) If the amount of an instalment would be:
  - (a) one or more whole dollars and a part of a cent; or
  - (b) one or more whole dollars and cents and a part of a cent;the amount is to be increased or decreased (increased, in the case of half a cent) to the nearest whole cent.

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- (4) If, apart from this subsection, the amount of an instalment would be less than \$1.00, the amount is to be increased to \$1.00.

**24 Yearly rate of trade support loan**

- (1) A person's *yearly rate* of trade support loan is:
- (a) if the person is undertaking the first year of an apprenticeship on the final day of an instalment period—\$8,000; and
  - (b) if the person is undertaking the second year of an apprenticeship on the final day of an instalment period—\$6,000; and
  - (c) if the person is undertaking the third year of an apprenticeship on the final day of an instalment period—\$4,000; and
  - (d) if the person is undertaking the fourth (or later) year of an apprenticeship on the final day of an instalment period—\$2,000.

Note: The yearly rates are indexed on 1 July 2017 and each later 1 July in line with increases in the consumer price index (see section 99).

- (2) The rules may prescribe one or more ways of determining, or criteria to be considered in determining, the year of an apprenticeship a person is undertaking on any particular day.

**25 Payment into bank account**

- (1) An instalment of trade support loan that is to be paid to a person is to be paid to the credit of a bank account nominated and maintained by the person.
- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.

## **Chapter 3—Loan repayments**

### **Part 3.1—Incurring debts**

#### **Division 1—Simplified outline of this Part**

##### **26 Simplified outline of this Part**

Trade support loan that is paid to a person must be repaid by the person through the tax system, after the person's income reaches a certain threshold.

Each time a person receives an instalment of trade support loan, the person incurs a debt called a TSL debt (except in certain circumstances when the loan is recoverable as an overpayment debt under Part 4.3 of this Act).

Each TSL debt is incorporated into the person's accumulated TSL debt. This accumulated TSL debt forms the basis for working out the amounts the person is obliged to repay.

## **Division 2—TSL debts**

### **27 TSL debts**

- (1) If an instalment of trade support loan is paid to a person, the person incurs, on the day the instalment is paid, a TSL debt to the Commonwealth of an amount equal to the amount of the instalment.
- (2) Subsection (1) does not apply to an instalment or part of an instalment if the amount of the instalment or part is an overpayment debt.

### **28 TSL debt discharged by death**

Upon the death of a person who owes a TSL debt to the Commonwealth, the debt is taken to have been paid.

Note: TSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

### **29 Notice to Commissioner**

- (1) If a person incurs a TSL debt, the Secretary must give the Commissioner a notice specifying the amount of the debt incurred by the person.
- (2) The Secretary may include in the notice any other details the Commissioner requests for the purpose of ensuring the Commissioner has the information needed to exercise powers or perform functions of the Commissioner under this Act.

## **Division 3—Accumulated TSL debts**

### **30 Simplified outline of this Division**

There are 2 stages to working out a person's accumulated TSL debt for a financial year.

In stage 1, the person's former accumulated TSL debt is worked out by adjusting the preceding financial year's accumulated TSL debt to take account of:

- (a) indexation using the TSL debt indexation factor; and
- (b) the debts that the person incurs during the last 6 months of the preceding financial year; and
- (c) any completion discount for the person; and
- (d) voluntary TSL repayments of the debt; and
- (e) compulsory TSL repayment amounts in respect of the debt.

In stage 2, the person's accumulated TSL debt is worked out from:

- (a) the person's former accumulated TSL debt; and
- (b) the TSL debts that the person incurs during the first 6 months of the financial year; and
- (c) any completion discount for the person; and
- (d) voluntary TSL repayments of the debt.

### **31 Stage 1—working out a former accumulated TSL debt**

- (1) A person's *former accumulated TSL debt*, in relation to the person's accumulated TSL debt for a financial year, is worked out by multiplying:
  - (a) the amount worked out using the following method statement; by
  - (b) the TSL debt indexation factor for 1 June in that financial year.

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*Method statement*

- Step 1. Take the person's accumulated TSL debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated TSL debt for that financial year.)
- Step 2. Add the sum of all of the TSL debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.
- Step 3. Subtract the amount of the completion discount for the person, if the Secretary notified the Commissioner of a completion discount for the person under section 40 during the period:
- (a) starting on 1 June in the immediately preceding financial year; and
  - (b) ending immediately before the next 1 June.
- Step 4. Subtract the sum of the amounts by which the person's debts referred to in steps 1 and 2 are reduced because of any voluntary TSL repayments that have been made during the period:
- (a) starting on 1 June in the immediately preceding financial year; and
  - (b) ending immediately before the next 1 June.
- Step 5. Subtract the sum of all of the person's compulsory TSL repayment amounts that:
- (a) were assessed during that period (excluding any assessed as a result of a return given before that period); or

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- (b) were assessed after the end of that period as a result of a return given before the end of that period.

Step 6. Subtract the sum of the amounts by which any compulsory TSL repayment amount of the person is increased (whether as a result of an increase in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

Step 7. Add the sum of the amounts by which any compulsory TSL repayment amount of the person is reduced (whether as a result of a reduction in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

- (2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.

### 32 TSL debt indexation factor

- (1) The ***TSL debt indexation factor*** for 1 June in a financial year is the number (rounded to 3 decimal places) worked out as follows:

*Method statement*

Step 1. Add:

- (a) the index number for the quarter ending on 31 March in that financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 2. Add:

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- (a) the index number for the quarter ending on 31 March in the immediately preceding financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 3. The ***TSL debt indexation factor*** for 1 June in the financial year is the result of step 1 divided by the result of step 2.

- (2) For the purposes of rounding a TSL debt indexation factor, the third decimal place is rounded up if, apart from the rounding:
  - (a) the factor would have 4 or more decimal places; and
  - (b) the fourth decimal place would be a number greater than 4.

**33 Index numbers**

- (1) The ***index number*** for a quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this Act:
  - (a) the Australian Statistician has published or publishes an index number in respect of a quarter; and
  - (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;disregard the publication of the later index number for the purposes of this section.
- (3) If, at any time before or after the commencement of this Act, the Australian Statistician has changed or changes the index reference period for the All Groups Consumer Price Index, then, in applying this section after the change took place or takes place, have regard only to index numbers published in terms of the new index reference period.



### 34 Publishing TSL debt indexation factors

The Commissioner must cause to be published before 1 June in each financial year the TSL debt indexation factor for that 1 June.

### 35 Stage 2—working out an accumulated TSL debt

- (1) A person's **accumulated TSL debt**, for a financial year, is worked out as follows:

$$\begin{array}{ccccccc} \text{Former accumulated} & + & \text{TSL debts} & - & \text{Completion} & - & \text{TSL debt} \\ \text{TSL debt} & & \text{incurred} & & \text{discount} & & \text{repayments} \end{array}$$

where:

**completion discount** means any completion discount for the person notified by the Secretary to the Commissioner under section 40 on or after 1 July in the financial year and before 1 June in that year.

**former accumulated TSL debt** is the person's former accumulated TSL debt in relation to that accumulated TSL debt.

**TSL debt repayments** is the sum of all of the voluntary TSL repayments (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the TSL debts incurred in that year.

**TSL debts incurred** is the sum of the amounts of all of the TSL debts (if any) that the person incurred during the first 6 months of the financial year.

- (2) The person incurs the accumulated TSL debt on 1 June in the financial year.

### 36 Rounding of amounts

- (1) If, apart from this section, a person's accumulated TSL debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.
- (2) If, apart from this section, a person's accumulated TSL debt would be an amount of less than \$1.00, the person's accumulated TSL debt is taken to be zero.

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**37 Accumulated TSL debt discharges earlier debts**

- (1) The accumulated TSL debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:
  - (a) any TSL debt that the person incurred during the calendar year immediately preceding that day; and
  - (b) any accumulated TSL debt that the person incurred on the immediately preceding 1 June.
- (2) Nothing in subsection (1) affects the application of Division 2 or sections 31 and 35.

**38 Accumulated TSL debt discharged by death**

- (1) Upon the death of a person who has an accumulated TSL debt, the accumulated TSL debt is taken to be discharged.
- (2) To avoid doubt, this section does not affect any compulsory TSL repayment amounts required to be paid in respect of the accumulated TSL debt, whether or not those amounts were assessed before the person's death.

Note: Accumulated TSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

## **Part 3.2—Discharging debts**

### **Division 1—Simplified outline of this Part**

#### **39 Simplified outline of this Part**

Trade support loan that is paid to a person must be repaid. Compulsory repayments start once the person's income reaches the minimum repayment income under the *Higher Education Support Act 2003* and the person has finished repaying any accumulated HELP debt under that Act.

If the person successfully completes a qualifying apprenticeship, the person's debts will be partially discharged by an amount called the completion discount. The completion discount is 20% of the total amount of instalments of trade support loan that were paid to the person.

As well as the completion discount, the person's debt is discharged by:

- (a) any repayments the person chooses to make at any time (voluntary repayments); and
- (b) repayments the person must make after the person's income reaches the minimum repayment income (compulsory repayments).

The Commissioner makes assessments of compulsory repayments, which are collected in the same way as amounts of income tax and compulsory repayments of accumulated HELP debts.

## Division 2—Completion discount

### 40 Completion discount

- (1) If a designated State/Territory training authority notifies the Secretary that a person has successfully completed a qualifying apprenticeship, the Secretary must give the Commissioner a notice specifying the discount (the **completion discount**) determined for the person in accordance with subsection (2).
- (2) The person's completion discount is the amount equal to 20% of the total amount of instalments of trade support loan that were paid to the person in relation to instalment periods that ended:
  - (a) before the person ceased to be undertaking the qualifying apprenticeship; and
  - (b) if a notice under subsection (1) has previously been given in respect of an earlier qualifying apprenticeship undertaken by the person—after the person completed the earlier qualifying apprenticeship.
- (3) The rules may prescribe any of the following as a **designated State/Territory training authority**:
  - (a) a State;
  - (b) a Territory;
  - (c) an authority of a State or Territory.

### 41 Application of completion discount

If the Secretary notifies the Commissioner of a completion discount for a person under section 40, the amount of the completion discount is to be applied as follows:

- (a) first, in discharge or reduction of any accumulated TSL debt of the person;
- (b) second, in discharge or reduction of:
  - (i) any TSL debt of the person; or
  - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

## **42 Refunding of payments**

If a person's completion discount exceeds the sum of:

- (a) the amount required to discharge the total TSL debts and accumulated TSL debt that the person owed to the Commonwealth; and
- (b) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

## **Division 3—Voluntary discharge**

### **43 Voluntary TSL repayments in respect of debts**

- (1) A person may at any time make a payment in respect of a TSL debt or an accumulated TSL debt that the person owes to the Commonwealth.
- (2) The payment must be made to the Commissioner.

### **44 Application of voluntary TSL repayments**

- (1) Any money a person pays under this Division to meet the person's debts is to be applied in payment of those debts as the person directs at the time of the payment.
- (2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:
  - (a) first, in discharge or reduction of any accumulated TSL debt of the person;
  - (b) second, in discharge or reduction of:
    - (i) any TSL debt of the person; or
    - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

### **45 Refunding of payments**

If:

- (a) a person pays an amount to the Commonwealth under this Division; and
- (b) the amount exceeds the sum of:
  - (i) the amount required to discharge the total TSL debts and accumulated TSL debt that the person owed to the Commonwealth; and
  - (ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

## Division 4—Compulsory discharge

### Subdivision A—Liability to repay amounts

#### 46 Liability to repay amounts

- (1) If:
- (a) a person's repayment income for an income year exceeds the minimum repayment income for the income year; and
  - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an accumulated TSL debt;

the person is liable to pay to the Commonwealth, in accordance with this Division, so much of the person's repayable TSL debt for the income year as does not exceed the amount worked out by the formula:

Applicable percentage of repayment income – HELP liability

where:

***applicable percentage of repayment income*** means the amount that is the percentage of the person's repayment income applicable under the table in section 154-20 of the *Higher Education Support Act 2003*.

***HELP liability*** means any amount the person is liable to pay under section 154-1 of the *Higher Education Support Act 2003* for the income year in respect of an accumulated HELP debt.

- (2) A person is not liable under this section to pay an amount for an income year if the amount worked out under subsection (1) is zero or less.
- (3) A person is not liable under this section to pay an amount for an income year if, under section 8 of the *Medicare Levy Act 1986*:
- (a) no Medicare levy is payable by the person on the person's taxable income for the income year; or
  - (b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.



#### **47 Repayable TSL debt for an income year**

- (1) A person's *repayable TSL debt* for an income year is:
  - (a) the person's accumulated TSL debt referred to in paragraph 46(1)(b) in relation to that income year; or
  - (b) if any or all of the following apply:
    - (i) that debt has been reduced by the amount of a completion discount for the person;
    - (ii) one or more amounts have been paid in reduction of that debt;
    - (iii) one or more amounts have been assessed under section 48 to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt any amounts referred to in subparagraphs (i), (ii) and (iii).
- (2) A reference in paragraph (1)(b) of this section to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

#### **Subdivision B—Assessments**

#### **48 Commissioner may make assessments**

The Commissioner may, from any information in the Commissioner's possession, whether from a return or otherwise, make an assessment of:

- (a) the person's accumulated TSL debt on 1 June immediately before the making of the assessment; and
- (b) the amount required to be paid in respect of the person's repayable TSL debt under section 46.

#### **49 Notification of notices of assessment of tax**

If:

- (a) the Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an income year under section 174 of the *Income Tax Assessment Act 1936*; and

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- (b) the Commissioner has made, in respect of the person, an assessment under paragraph 48(b) of this Act of the amounts referred to in that paragraph; and
  - (c) notice of the assessment under that paragraph has not been served on the person;
- notice of the assessment under that paragraph may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

**50 Commissioner may defer making assessments**

- (1) A person may apply in the approved form to the Commissioner for deferral of the making of an assessment in respect of the person under section 48.
- (2) The application must specify:
  - (a) the income year for which the deferral is being sought; and
  - (b) the reasons for seeking the deferral.
- (3) The income year specified in the application must be:
  - (a) the income year in which the person makes the application; or
  - (b) the immediately preceding income year; or
  - (c) the immediately succeeding income year.
- (4) The Commissioner may, on application by a person under this section, defer making an assessment in respect of the person under section 48 if the Commissioner is of the opinion that:
  - (a) if the assessment were made, payment of the assessed amount would cause serious hardship to the person; or
  - (b) there are other special reasons that make it fair and reasonable to defer making the assessment.
- (5) The Commissioner may defer making the assessment for any period that he or she thinks appropriate.
- (6) The Commissioner must, as soon as practicable after an application is made under this section:
  - (a) consider the matter to which the application relates; and

- (b) notify the applicant of the Commissioner's decision on the application.

Note: Deferrals of making assessments, or refusals of applications, are reviewable under Part 4.2.

## **51 Commissioner may amend assessments**

- (1) A person may apply in the approved form to the Commissioner for an amendment of an assessment made in respect of the person under section 48 so that:
  - (a) the amount payable under the assessment is reduced; or
  - (b) no amount is payable under the assessment.
- (2) The application:
  - (a) must be made within 2 years after the day on which the Commissioner gives notice of the assessment to the person; or
  - (b) must specify the reasons justifying a later application.
- (3) The Commissioner may, on application by a person under this section, amend an assessment made in respect of the person under section 48 so that:
  - (a) the amount payable under the assessment is reduced; or
  - (b) no amount is payable under the assessment;if the Commissioner is of the opinion that:
  - (c) payment of the assessed amount has caused or would cause serious hardship to the person; or
  - (d) there are other special reasons that make it fair and reasonable to make the amendment.
- (4) The Commissioner must, as soon as practicable after an application is made under this section:
  - (a) consider the matter to which the application relates; and
  - (b) notify the applicant of the Commissioner's decision on the application.

Note: Amendments of assessments, or refusals of applications, are reviewable under Part 4.2.

## Part 3.3—Application of tax legislation

### 52 Simplified outline of this Part

The Commissioner is responsible for the recovery of TSL debts and accumulated TSL debts, and for matters relating to tax file numbers. So that the Commissioner has the appropriate powers to fulfil those responsibilities, the relationship between trade support loan matters and parts of the taxation law is dealt with here.

### 53 Returns, assessments, collection and recovery

Subject to Part 3.2 and this Part:

- (a) Part IV of the *Income Tax Assessment Act 1936*; and
- (b) Division 5 of the *Income Tax Assessment Act 1997*; and
- (c) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*;

apply, so far as they are capable of application, in relation to a compulsory TSL repayment amount of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

### 54 Charges and civil penalties for failing to meet obligations

- (1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:
  - (a) any compulsory TSL repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made; and
  - (b) this Chapter, paragraph 8(1)(c) and Division 3 of Part 4.1, were income tax laws.
- (2) Subsection (1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.

### **55 Pay as you go (PAYG) withholding**

Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of amounts of a compulsory TSL repayment amount of a person as if the compulsory TSL repayment amount were income tax.

### **56 Pay as you go (PAYG) instalments**

Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of a compulsory TSL repayment amount of a person as if the compulsory TSL repayment amount were income tax.

### **57 Extent of Commissioner's general administration of this Act**

The Commissioner has the general administration of this Act to the following extent:

- (a) this Chapter;
- (b) paragraph 8(1)(c);
- (c) Division 3 of Part 4.1;
- (d) Part 4.2, so far as it relates to reviewable Commissioner decisions.

Note: One effect of this is that these provisions are taxation laws for the purposes of the *Taxation Administration Act 1953*.

## **Chapter 4—Administration**

### **Part 4.1—Information management**

#### **Division 1—Simplified outline of this Part**

##### **58 Simplified outline of this Part**

The Secretary may require a person to give information for the purposes of the Act.

The Secretary can require a person who has applied for, or is being paid, trade support loan, to inform the Secretary of events or changes of circumstance that might affect whether trade support loan is payable to the person.

The Commissioner and the Secretary are permitted to exchange tax file number information for the purposes of administering this Act.

Personal information can be obtained, recorded, used and disclosed for the purposes of this Act and in certain other cases.

## **Division 2—General information-gathering powers**

### **59 General power to obtain information**

The Secretary may, in accordance with section 62, require a person to give information, or produce a document that is in the person's custody or under the person's control, to the Secretary if the Secretary considers that the information or document may be relevant to one or more of the following matters:

- (a) whether a person who has applied for trade support loan is or was qualified for trade support loan;
- (b) whether trade support loan is payable to a person for whom a determination is in effect granting the person's application for trade support loan;
- (c) whether trade support loan was payable to a person to whom trade support loan has been paid;
- (d) the rate of trade support loan that is being or has been paid to a person.

### **60 Power to obtain information from a person who owes a debt to the Commonwealth**

The Secretary may, in accordance with section 62, require a person who owes an overpayment debt to the Commonwealth:

- (a) either to:
  - (i) give to the Secretary information that is relevant to the person's financial situation; or
  - (ii) produce to the Secretary a document that is in the person's custody or under the person's control and is relevant to the person's financial situation; and
- (b) if the person's address changes—to inform the Secretary of the new address within 14 days after the change.

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**61 Obtaining information about a person who owes a debt to the Commonwealth**

If the Secretary believes that a person may have information or a document:

- (a) that would help the Secretary locate another person (the *debtor*) who owes an overpayment debt to the Commonwealth; or
  - (b) that is relevant to the debtor's financial situation;
- the Secretary may, in accordance with section 62, require the person to give the information, or produce the document, to the Secretary.

**62 Written notice**

- (1) A requirement under section 59, 60 or 61 must be made by written notice given to the person of whom the requirement is made.
- (2) The notice:
  - (a) may be given personally or by post or in any other manner approved by the Secretary; and
  - (b) must specify:
    - (i) how the person is to give the information or produce the document to which the requirement relates; and
    - (ii) the period within which the person is to give the information or produce the document to the Secretary; and
    - (iii) the officer or class of officer (if any) to whom the information is to be given or the document is to be produced; and
    - (iv) that the notice is given under this section.
- (3) A notice is not invalid merely because it does not comply with subparagraph (2)(b)(i) or (iv).
- (4) The period specified under subparagraph (2)(b)(ii) must not end earlier than 14 days after the notice is given.



- (5) The notice may require the person to give the information by appearing before a specified officer to answer questions.
- (6) If the notice requires the person to appear before an officer, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the notice is given.

### **63 Offence**

- (1) A person commits an offence if:
  - (a) the person is required under section 59, 60 or 61 to give information or produce a document; and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **64 Obligations not affected by State or Territory laws**

Nothing in a law of a State or Territory operates to prevent a person from complying with a requirement made under this Act to give information or produce a document to the Secretary.

## **Division 3—Powers in relation to tax file numbers**

### **65 Request for tax file number**

The Secretary may request, but not require, a person who wishes to make an application for trade support loan to give the Secretary, or a specified officer or officer of a specified class, a written statement of the person's tax file number.

**Note:** A person who does not notify a tax file number to the Secretary cannot qualify for trade support loan (see paragraph 8(1)(c)).

### **66 Verification of tax file numbers**

- (1) The Secretary may provide to the Commissioner a tax file number that a person has notified to the Secretary for the purposes of paragraph 8(1)(c), for the purpose of verifying that the number is the person's tax file number.
- (2) If the Commissioner is satisfied that the number is the person's tax file number, the Commissioner may give the Secretary a written notice informing the Secretary accordingly.

### **67 When person with tax file number incorrectly notifies number**

- (1) If the Commissioner is satisfied:
  - (a) that the tax file number that a person has notified to the Secretary for the purposes of paragraph 8(1)(c):
    - (i) has been cancelled or withdrawn since the notification was given; or
    - (ii) is otherwise wrong; and
  - (b) that the person has a tax file number;the Commissioner may give to the Secretary written notice of the incorrect notification and of the person's tax file number.
- (2) That number is taken to be the number that the person notified to the Secretary.

## **68 When person without tax file number incorrectly notifies number**

- (1) If:
- (a) the Commissioner is satisfied that the tax file number that a person notified to the Secretary for the purposes of paragraph 8(1)(c):
    - (i) has been cancelled since the notification was given; or
    - (ii) is for any other reason not the person's tax file number;  
and
  - (b) the Commissioner is not satisfied that the person has a tax file number;
- the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

- (2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable (see section 202F of the *Income Tax Assessment Act 1936*).

## **69 When tax file numbers are altered**

- (1) If the Commissioner issues, to a person who has notified a tax file number to the Secretary for the purposes of paragraph 8(1)(c), a new tax file number in place of a tax file number that has been withdrawn, the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.
- (2) That new number is taken to be the number that the person notified to the Secretary.

## **70 When tax file numbers are cancelled**

- (1) If the Commissioner cancels a tax file number issued to a person who has notified the tax file number to the Secretary for the purposes of paragraph 8(1)(c), the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

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**Part 4.1** Information management

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- (2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable (see section 202F of the *Income Tax Assessment Act 1936*).

## **Division 4—Obligation to notify change of circumstance etc.**

### **71 Notice requiring information or statements**

- (1) The Secretary may, in accordance with section 72, require a person referred to in subsection (2) to inform the Secretary of any event or change of circumstance that occurs or is likely to occur, and that causes or would be likely to cause:
  - (a) the person to cease to be qualified for trade support loan; or
  - (b) trade support loan to cease to be payable to the person.
- (2) The notice may be given to any of the following:
  - (a) a person who has made an application for trade support loan that has not yet been determined;
  - (b) a person for whom a determination is in effect granting the person's application for trade support loan.

### **72 Written notice**

- (1) A requirement under section 71 must be made by written notice given to the person of whom the requirement is made.
- (2) The notice:
  - (a) may be given personally or by post or in any other manner approved by the Secretary; and
  - (b) must specify:
    - (i) how the person is to give the information; and
    - (ii) the period within which the person is to give the information; and
    - (iii) the officer or class of officer (if any) to whom the information is to be given; and
    - (iv) that the notice is an information notice given under this Act.
- (3) A notice is not invalid merely because it does not comply with subparagraph (2)(b)(i) or (iv).

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- (4) The period specified for the purposes of subparagraph (2)(b)(ii) 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.

**73 Offence**

- (1) A person commits an offence if:
- (a) the person is given a notice under section 71; and
  - (b) the person refuses or fails to comply with the notice.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## **Division 5—Use etc. of personal information**

### **74 Use etc. of personal information**

- (1) A person may obtain personal information for the purposes of this Act.
- (2) A person may:
  - (a) make a record of personal information; or
  - (b) disclose such information to another person; or
  - (c) otherwise use such information;if the record, disclosure or use made of the information is made:
  - (d) for the purposes of this Act; or
  - (e) with the express or implied authorisation of the person to whom the information relates.
- (3) A person may:
  - (a) obtain personal information; or
  - (b) make a record of such information; or
  - (c) disclose such information to another person; or
  - (d) otherwise use such information;if the Secretary reasonably believes that the obtaining, recording, disclosure or use that is proposed to be made of the information is reasonably necessary for one or more of the following purposes:
  - (e) research into matters of relevance to the Department;
  - (f) statistical analysis of matters of relevance to the Department;
  - (g) policy development.

### **75 Officer's declaration**

- (1) An officer must, if and when required by the Secretary or the Commissioner to do so, make an oath or affirmation to protect information in accordance with this Division.
- (2) The Secretary may determine in writing:
  - (a) the form of the oath or affirmation that the Secretary will require; and

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- (b) the manner in which the oath or affirmation must be made.
- (3) The Commissioner may determine in writing:
  - (a) the form of the oath or affirmation that the Commissioner will require; and
  - (b) the manner in which the oath or affirmation must be made.



## Part 4.2—Review of decisions

### Division 1—Introduction

#### 76 Simplified outline of this Part

The Secretary can review most decisions made under this Act. The Commissioner can review certain Commissioner decisions. The Secretary or Commissioner can review decisions on his or her own initiative, or if a person asks for a review.

A decision on review can be further reviewed by application to the Administrative Appeals Tribunal.

#### 77 Reviewable decisions

- (1) A decision under section 50 or 51 is a ***reviewable Commissioner decision***.
- (2) A decision under this Act that is not:
  - (a) a reviewable Commissioner decision; or
  - (b) referred to in section 202F of the *Income Tax Assessment Act 1936*; or
  - (c) a decision under section 88;is a ***reviewable Secretary decision***.
- (3) A decision that is a reviewable Commissioner decision or a reviewable Secretary decision is a ***reviewable decision***.

#### 78 Reviewer of decisions

- (1) The ***reviewer*** of a reviewable Secretary decision is:
  - (a) the Secretary; or
  - (b) an authorised review officer.
- (2) The ***reviewer*** of a reviewable Commissioner decision is:
  - (a) the Commissioner; or

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(b) a delegate of the Commissioner.

**79 Authorised review officers**

- (1) The Secretary may, in writing, authorise an officer to perform duties as an authorised review officer for the purposes of this Part.
- (2) If a decision that was made by a delegate of the Secretary or the Commissioner is to be reviewed by an authorised review officer or a delegate of the Commissioner, the authorised review officer or delegate must be a person who:
  - (a) was not involved in making the decision; and
  - (b) occupies a position that is senior to that occupied by any person involved in making the decision.

**80 Notice of reasons for decision**

A person who makes a reviewable decision, or a decision on review of a reviewable decision, must include reasons for the decision in the notice of the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notice of a decision and review rights to be given to persons whose interests are affected by the decision.

## Division 2—Internal review

### 81 Internal review

- (1) The reviewer of a reviewable decision may review the decision if satisfied that there is sufficient reason to do so.
  - (2) The reviewer may review the decision:
    - (a) whether or not any person has applied for review of the decision; and
    - (b) even if an application has been made to the Administrative Appeals Tribunal for review of the decision.
  - (3) After reviewing the decision, the reviewer must:
    - (a) affirm the decision; or
    - (b) vary the decision; or
    - (c) set the decision aside and substitute a new decision.
- Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notice of a decision and review rights to be given to persons whose interests are affected by the decision. Section 80 of this Act requires reasons for the decision to be included.
- (4) The reviewer's decision (the ***decision on review***) to affirm, vary or set aside the decision takes effect:
    - (a) on the day specified in the decision on review; or
    - (b) if a day is not specified—on the day on which the decision on review was made.

### 82 Notice to AAT Registrar

If:

- (a) a reviewer makes a decision under subsection 81(3); and
- (b) at the time of the reviewer's decision, a person has applied to the Administrative Appeals Tribunal for review of the decision reviewed by the reviewer;

the reviewer must give the Registrar of the Administrative Appeals Tribunal written notice of the reviewer's decision under subsection 81(3).

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**83 Application for review**

- (1) A person whose interests are affected by a reviewable Secretary decision may apply to the Secretary for review of the decision, by written notice given to the Secretary within 28 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision.
- (2) A person whose interests are affected by a reviewable Commissioner decision may apply to the Commissioner for review of the decision, by written notice given to the Commissioner within 28 days, or such longer period as the Commissioner allows, after the day on which the person first received notice of the decision.
- (3) The person's notice must set out the reasons for the application.

**84 Withdrawal of application**

- (1) A person who has applied for review of a decision may withdraw the application at any time before the review has been completed.
- (2) If an application for review of a decision is withdrawn, the application is taken never to have been made.
- (3) An application may be withdrawn orally or in writing or in any other manner approved by:
  - (a) the Secretary, for an application in relation to a reviewable Secretary decision; or
  - (b) the Commissioner, for an application in relation to a reviewable Commissioner decision.

**85 Review of decisions following application under section 83**

- (1) If a person applies under section 83 for review of a decision, the reviewer must:
  - (a) review the decision; and
  - (b) do one of the following:
    - (i) affirm the decision;
    - (ii) vary the decision;
    - (iii) set the decision aside and substitute a new decision.

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Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notice of a decision and review rights to be given to persons whose interests are affected by the decision. Section 80 of this Act requires reasons for the decision to be included.

- (2) The reviewer's decision (the ***decision on review***) to affirm, vary or set aside the decision takes effect:
  - (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day on which the decision on review was made.
- (3) The reviewer is taken, for the purposes of this Part, to have affirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's application.

## **Division 3—Administrative Appeals Tribunal review of decisions**

### **86 Review by AAT**

Applications may be made to the Administrative Appeals Tribunal for review of decisions of a reviewer under subsection 81(3) or 85(1).

### **87 Decision changed before AAT review completed**

#### *Decision varied*

- (1) If a reviewer varies a decision after an application has been made to the Administrative Appeals Tribunal for review of that decision but before the determination of the application, the application is taken to be an application for review of the decision as varied.

#### *Decision set aside and a new decision substituted*

- (2) If a reviewer sets a decision aside and substitutes a new decision after an application has been made to the Administrative Appeals Tribunal for review of that decision but before the determination of the application, the application is taken to be an application for review of the new decision.

### **88 Settlement of proceedings before the AAT**

- (1) The Secretary may agree with other parties to proceedings before the Administrative Appeals Tribunal that relate to the recovery of an overpayment debt that the proceedings be settled. The agreement must be in writing.
- (2) If proceedings are settled and the Secretary gives the Administrative Appeals Tribunal a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

## Part 4.3—Overpayment debts

### 89 Simplified outline of this Part

Usually, trade support loan that is paid to a person must be repaid through the tax system in accordance with Part 3.2, after the person's income reaches a certain threshold. However, in certain situations where trade support loan is wrongly paid to a person, the amount becomes a debt under this Part called an overpayment debt.

Overpayment debts can be recovered through the courts, or under an arrangement the Commonwealth might enter into with the person.

### 90 Overpayment debt

- (1) If:
  - (a) a payment of trade support loan is made to a person; and
  - (b) a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit;the amount of the payment is a debt (an *overpayment debt*) due to the Commonwealth by the person and the debt is taken to have arisen when the person obtained the benefit of the payment.
- (2) Without limiting subsection (1), a person is taken not to have been entitled to obtain the benefit of the payment if the payment should not have been made for any of the following reasons:
  - (a) the payment was made to the person by mistake as a result of a computer error or an administrative error;
  - (b) the person for whose benefit the payment was intended to be made was not qualified to receive the payment;
  - (c) the payment was not payable;
  - (d) the payment was made as a result of a contravention of this Act, a false statement or a misrepresentation;
  - (e) the payment was made in purported compliance with a direction or authority given by the person who was entitled to obtain the benefit of the payment but the direction or

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authority had been revoked or withdrawn before the payment was made;

- (f) the payment was intended to be made for the benefit of someone else who died before the payment was made.
- (3) Without limiting subsection (1), a person is taken not to have been entitled to obtain the benefit of so much of any payment made to the person for an instalment period in accordance with a determination under subsection 16(4) as exceeds the amount of the instalment that was payable to the person for that instalment period having regard to section 24 (yearly rate).
- (4) If the payment is made to, or as directed or authorised by, the person who is entitled to obtain the benefit of the payment, subsection (1) does not apply to any other person who afterwards obtains the benefit of the payment unless the other person obtained the benefit because of a mistake made by the first person in connection with the giving of the direction or authorisation.
- (5) Subsection (1) applies in relation to a payment made to a person whether or not the payment was made under a determination that had effect at the time when the payment was made.
- (6) A reference in this section to a payment of trade support loan includes a reference to part of a payment of trade support loan.

### **91 Overseas application**

Section 90 extends to:

- (a) acts, omissions, matters and things outside Australia, whether in a foreign country or not; and
- (b) all persons irrespective of nationality or citizenship.

### **92 Recovery of overpayment debt—payment arrangement**

- (1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person under which the person is to pay an overpayment debt owed by the person to the Commonwealth, or the outstanding amount of such a debt, in a way set out in the arrangement.



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- (2) The arrangement has effect from the date of effect specified in the arrangement, which may be earlier or later than the day on which the arrangement was entered into.
- (3) The Secretary may vary or terminate the arrangement:
  - (a) at the debtor's request; or
  - (b) after giving the debtor 28 days' notice of the proposed variation or termination; or
  - (c) if the Secretary is satisfied that the debtor has failed to disclose material information about the debtor's true capacity to repay the debt—without notice.

**93 Recovery of overpayment debt—legal proceedings**

An overpayment debt is recoverable by the Commonwealth in a court of competent jurisdiction.

**94 Secretary may write off overpayment debt**

- (1) Subject to subsection (2), the Secretary may, on behalf of the Commonwealth, decide to write off an overpayment debt, for a stated period or otherwise.
- (2) The Secretary may decide to write off an overpayment debt under subsection (1) if, and only if:
  - (a) the debt is irrecoverable at law; or
  - (b) the debtor has no capacity to repay the debt; or
  - (c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or
  - (d) it is not cost effective to take action to recover the debt.
- (3) For the purposes of paragraph (2)(a), an overpayment debt is irrecoverable at law if, and only if:
  - (a) the debt cannot be recovered by means of legal proceedings because the period during which such proceedings may be brought has ended; or
  - (b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

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- (c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or
  - (d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.
- (4) A decision made under subsection (1) takes effect on the date of effect specified in the decision (which may be earlier or later than the day the decision is made).
- (5) Nothing in this section prevents anything being done at any time to recover a debt that has been written off under this section.

### **95 Secretary's power to waive overpayment debt**

- (1) The Secretary may, on behalf of the Commonwealth, waive the Commonwealth's right to recover the whole or part of an overpayment debt from a debtor only in the circumstances described in section 96 or 97.
- (2) A waiver takes effect on the date of effect specified in the waiver (which may be earlier or later than the day the decision to waive is made).

**Note:** If the Secretary waives the Commonwealth's right to recover all or part of a debt, this is a permanent bar to recovery of the debt or part of the debt—the debt or part of the debt effectively ceases to exist.

### **96 Waiver of overpayment debt arising from error**

- (1) If subsection (2) applies in relation to an overpayment debt, the Secretary must waive the right to recover so much of the debt as is attributable solely to an administrative error made by:
  - (a) the Commonwealth; or
  - (b) an authority of the Commonwealth; or
  - (c) an organisation that performs services for the Commonwealth.
- (2) This subsection applies in relation to an overpayment debt if the debt is raised after the end of whichever of the following periods ends later:

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- (a) the period of 6 weeks from the first payment that caused the debt;
- (b) if the debt arose because a person has complied with a notification obligation—the period of 6 weeks from the end of the notification period.

**97 Waiver of small overpayment debt**

The Secretary must waive the right to recover an overpayment debt if:

- (a) the debt is, or is likely to be, less than \$200; and
- (b) it is not cost effective for the Commonwealth to take action to recover the debt.

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## Chapter 5—Miscellaneous

### Part 5.1—Miscellaneous

#### 98 Simplified outline of this Part

This Part deals with miscellaneous matters.
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#### 99 Indexation of lifetime limit and yearly rate

- (1) Each of the following amounts:
  - (a) the lifetime limit;
  - (b) a yearly rate;is to be indexed, on 1 July 2017 and each later 1 July (each such 1 July is an ***indexation day***), in accordance with this section.
- (2) If an amount is to be indexed on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.
- (3) This is how to work out the indexed amount for an amount that is to be indexed on an indexation day:

*Method statement*

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| <p>Step 1. Use subsection (4) to work out the annual indexation factor for the amount on the indexation day.</p> <p>Step 2. Multiply the amount that is to be indexed by the annual indexation factor.</p> <p>Step 3. If the result of step 2 is an amount of whole dollars, the result is the <b><i>indexed amount</i></b>. If the result of step 2 is an amount of whole dollars and cents, round the amount up or down (up in the case of 50 cents) to the nearest dollar. The result is the <b><i>indexed amount</i></b>.</p> |
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- (4) Subject to subsections (5) and (6), the **annual indexation factor** for an amount that is to be indexed under this section on an indexation day is:

$$\frac{\text{index number for most recent March quarter before the indexation day}}{\text{index number for highest March quarter before the indexation day}}$$

rounded to 3 decimal places.

- (5) For the purposes of subsection (4):
- (a) in identifying the highest March quarter, disregard any March quarter that is earlier than the 2014 March quarter; and
  - (b) the third decimal place is rounded up if, apart from the rounding:
    - (i) the factor would have 4 or more decimal places; and
    - (ii) the fourth decimal place would be a number greater than 4.

Note: See section 33 for the definition of **index number**.

- (6) If an annual indexation factor worked out under subsections (4) and (5) would be less than 1, the indexation factor is to be increased to 1.

## 100 Application to under-18s

- (1) Each of the following applies to a person aged under 18 in the same way that it applies to a person aged 18 or older:
- (a) this Act (other than subsection 13(3));
  - (b) a provision of a taxation law (within the meaning of the *Income Tax Assessment Act 1997*) to the extent to which it relates to this Act.
- (2) Subsection (1) does not by implication limit the application of other provisions of taxation law in relation to persons aged under 18.

## 101 Delegation by Secretary

- (1) The Secretary may, in writing, delegate to an officer all or any of the powers and functions of the Secretary under this Act.

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- (2) In exercising powers or performing functions under a delegation, the delegate must comply with any written directions of the Secretary.

### **102 Use of computer program to make decisions**

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may make decisions under this Act.
- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.
- (3) If, because of subsection (2), the Secretary is taken to have made a decision that the Secretary is to make by determination, the Secretary is taken to have made a determination to that effect.

### **103 Annual report**

- (1) As soon as practicable after 30 June in each year, the Secretary must give to the Minister a written report on the administrative operation of this Act during the financial year that ended on that 30 June.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

### **104 Appropriation**

The following amounts are payable out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) amounts that are to be paid to a person under Division 4 of Part 2.2;
- (b) any other amounts payable by the Commonwealth under this Act.

### **105 TSL Priority List**

- (1) The Minister must, by legislative instrument, establish and maintain a list (the ***TSL Priority List***) specifying:
  - (a) occupations for which; or
  - (b) qualifications leading to occupations for which;in the opinion of the Minister, skilled persons are a priority.
- (2) The TSL Priority List may do any or all of the following:
  - (a) specify occupations or qualifications by applying, adopting or incorporating, with or without modification, material in another instrument (whether or not a legislative instrument), including another instrument as in force or existing from time to time;
  - (b) include, for a specified occupation or qualification, a final date.
- (3) If the TSL Priority List includes a final date for a specified occupation or qualification, then, for the purposes of subparagraph 8(2)(a)(ii), that occupation or qualification is taken to be specified on the TSL Priority List, but only in relation to apprenticeships started before the final date.
- (4) The TSL Priority List may, in addition to including a final date for a specified occupation or qualification, make provision for matters of an application or transitional nature in relation to the addition, removal or modification of specified occupations or qualifications.
- (5) The TSL Priority List must be published:
  - (a) on the website of the Department; and
  - (b) in any other way the Minister considers appropriate.

### **106 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
    - (a) required or permitted by this Act to be prescribed by the rules; or
    - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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- (2) Without limiting subsection (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of changes to the rules or changes to the administration of trade support loan.

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*[Minister's second reading speech made in—  
House of Representatives on 4 June 2014  
Senate on 26 June 2014]*

(73/14)

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