





# **Student Assistance Legislation Amendment Act 2006**

**No. 47, 2006**

**An Act to amend legislation relating to assistance  
for students, and for related purposes**

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



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# **Student Assistance Legislation Amendment Act 2006**

**No. 47, 2006**

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## **An Act to amend legislation relating to assistance for students, and for related purposes**

[Assented to 22 May 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Student Assistance Legislation  
Amendment Act 2006*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 May 2006
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	22 May 2006
3. Schedule 1, Part 2	1 July 2006.	1 July 2006
4. Schedule 2, Parts 1 and 2	The day on which this Act receives the Royal Assent.	22 May 2006
5. Schedule 2, Part 3	1 July 2006.	1 July 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to the Social Security Act 1991**

### **Part 1—Amendments concerning closure of Student Financial Supplement Scheme**

#### *Social Security Act 1991*

#### **1 Subsection 5(1) (at the end of paragraph (ca) of the definition of *prescribed educational scheme*)**

Add:

Note: An application under the Student Financial Supplement Scheme cannot be made in respect of a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent (see subsection 1061ZY(2)).

#### **2 Section 1061ZY**

Before “A person”, insert “(1)”.

#### **3 Section 1061ZY**

Omit “A person”, substitute “Subject to subsection (2), a person”.

#### **4 At the end of section 1061ZY**

Add:

- (2) A person is not eligible to obtain financial supplement for an eligibility period that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

#### **5 At the end of section 1061ZZAC**

Add:

- (4) This section does not apply in relation to a period that is the whole or part of a year if the year begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

## **Part 2—Amendments concerning repayment of accumulated FS debt**

### **Division 1—Main amendments**

#### *Social Security Act 1991*

##### **6 Subsection 19AB(2)**

Insert:

*compulsory repayment amount* means an amount that:

- (a) is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ; and
- (b) is included in a notice of an assessment made under section 1061ZZFH.

##### **7 Subsection 19AB(2)**

Insert:

*exempt foreign income* has the meaning given by subsection 1061ZZFA(4).

##### **8 Subsection 19AB(2)**

Insert:

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

##### **9 Subsection 19AB(2)**

Insert:

*income tax law* has the meaning given by section 14ZAAA of the *Taxation Administration Act 1953*.

##### **10 Subsection 19AB(2)**

Insert:

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

**11 Subsection 19AB(2) (definition of *intermediate prescribed amount*)**

Repeal the definition.

**12 Subsection 19AB(2) (definition of *maximum prescribed amount*)**

Repeal the definition.

**13 Subsection 19AB(2)**

Insert:

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

**14 Subsection 19AB(2) (definition of *minimum prescribed amount*)**

Repeal the definition.

**15 Subsection 19AB(2)**

Insert:

*minimum repayment income* has the meaning given by section 1061ZZFB.

**16 Subsection 19AB(2) (definition of *relevant debt*)**

Repeal the definition.

**17 Subsection 19AB(2)**

Insert:

*rental property loss* has the meaning given by subsection 1061ZZFA(2).

**18 Subsection 19AB(2)**

Insert:

*repayable debt*, for an income year, has the meaning given by section 1061ZZFC.

**19 Subsection 19AB(2)**

Insert:

*repayment income* has the meaning given by section 1061ZZFA.

## **20 Subsection 19AB(2)**

Insert:

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

## **21 At the end of Division 4 of Part 2B.3**

Add:

### **1061ZZEYA 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 debt that the person owed to the Commonwealth under this Part; 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.

Note: Interest is payable if the Commonwealth is late in paying requested refunds: see Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

## **22 Division 5 of Part 2B.3**

Repeal the Division, substitute:

### **Division 5—Compulsory repayments in respect of accumulated FS debt**

#### **1061ZZEZ Compulsory payments in respect of accumulated FS debt**

(1) If:

- (a) a person's repayment income for the income year 2006-07 or a subsequent income year exceeds the minimum repayment income for that income year; and
  - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income for that income year, the person had an accumulated FS debt;
- the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 1061ZZFD in reduction of the person's repayable debt.
- (2) 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.

### **1061ZZFA Repayment income**

- (1) A person's **repayment income** for an income year is an amount equal to the sum of:
  - (a) the person's taxable income for the income year; and
  - (b) if a person has a rental property loss for the income year—the amount of that rental property loss; and
  - (c) if the person:
    - (i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and
    - (ii) has a reportable fringe benefits total (within the meaning of that Act) for the income year;the reportable fringe benefits total for the income year; and
  - (d) if the person has exempt foreign income for the income year—the amount of that exempt foreign income.
- (2) The person's **rental property loss** is the amount (if any) by which the amount of the person's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property in Australia exceeds the person's gross rental property income.
- (3) For the purposes of subsection (2), disregard any rental property income that the person derives as a member of a partnership.

- (4) The person's *exempt foreign income* is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.
- (5) For the purposes of subsection (4), disregard any capital losses and outgoings.

#### **1061ZZFB Minimum repayment income**

The *minimum repayment income* for the 2006-07 income year or for a later income year is the amount worked out under paragraph 154-10(b) of the *Higher Education Support Act 2003* in respect of that income year.

#### **1061ZZFC Repayable debt for an income year**

- (1) A person's *repayable debt* for an income year is:
  - (a) the person's accumulated FS debt referred to in paragraph 1061ZZEZ(1)(b) in relation to that income year; or
  - (b) if one or more amounts:
    - (i) have been paid in reduction of that debt; or
    - (ii) have been assessed under section 1061ZZFH to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.
- (2) A reference in paragraph (1)(b) 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.

#### **1061ZZFD Amounts payable to the Commonwealth**

The amount that a person is liable to pay under section 1061ZZEZ, in respect of an income year, is an amount equal to so much of the person's repayable debt for the income year as does not exceed the percentage of the person's repayment income that is applicable under the following table:

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**Applicable percentages**

<b>Item</b>	<b>If the person's repayment income for the 2006-07 income year or a later income year is:</b>	<b>The percentage applicable is:</b>
1	More than the minimum repayment income, but less than the amount determined as set out in column 2 of item 2 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	2%
2	More than the amount under item 1, but less than the amount determined as set out in column 2 of item 7 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	3%
3	More than the amount under item 2.	4%

**1061ZZFE Publishing indexed amounts**

- (1) The Minister must cause to be published in the *Gazette*, before the start of the 2007-08 income year or a later income year, a notice setting out:
  - (a) the minimum repayment income; and
  - (b) the amounts determined as referred to in the second column of items 1 and 2 of the table in section 1061ZZFD; for that income year.
- (2) A notice under subsection (1) is not a legislative instrument.

**23 After section 1061ZZFG**

Insert:

**1061ZZFGA Charges and administrative 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 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 Part were an income tax law.

- (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.

**1061ZZFGB 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 repayment amount of a person as if the compulsory repayment amount were income tax.

**1061ZZFGC Provisional tax**

Division 3 of Part VI of the *Income Tax Assessment Act 1936* applies, so far as it is capable of application, in relation to the collection of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

**1061ZZFGD 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 repayment amount of a person as if the compulsory repayment amount were income tax.

***Taxation Administration Act 1953***

**24 Paragraph 15-30(da) in Schedule 1**

Repeal the paragraph, substitute:

- (da) the percentages specified in section 1061ZZFD (about repayments of accumulated FS debts) of the *Social Security Act 1991* for any financial year starting on or after 1 July 2006;

**Division 2—Saving provision**

**25 Preservation of existing repayment rules**

If, at any time before the commencement of the amendments of the *Social Security Act 1991* made by items 6 to 24 of this Schedule:

- (a) a person had an accumulated FS debt; and

- (b) the person was, by virtue of the application of the provisions of that Act as in force at that time, under an obligation to make a payment in reduction of that debt in respect of an income year before the income year 2006-07;

the provisions of that Act as so in force continue to apply in respect of the payments required to be made in reduction of that debt in respect of that income year as if those items had never been enacted.

## **Schedule 2—Amendments relating to the Student Assistance Act 1973**

### **Part 1—Amendments concerning closure of Student Financial Supplement Scheme**

#### *Student Assistance Act 1973*

#### **1 Subsection 3(1) (at the end of the definition of *eligible student*)**

Add:

Note: A person cannot be an eligible student for the whole or a part of a year that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent (see subsection 12C(1A)).

#### **2 Subsection 3(1) (at the end of the definition of *Student Financial Supplement Scheme*)**

Add:

Note: An application under the Student Financial Supplement Scheme cannot be made in respect of a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent (see subsection 12C(1A)).

#### **3 Subsection 12C(1)**

Omit “A person”, substitute “Subject to subsection (1A), a person”.

#### **4 After subsection 12C(1)**

Insert:

(1A) A person is not an eligible student in relation to a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

#### **5 After subsection 12F(1)**

Insert:

(1A) Subsection (1) does not apply in relation to a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

**6 Subsection 12F(2)**

After “notice”, insert “under subsection (1)”.

## **Part 2—Amendments concerning extension of regulation-making power relating to notifications**

### ***Student Assistance Act 1973***

#### **7 Subsection 12QB(1)**

Omit “section 48”, substitute “subsection 48(1)”.

#### **8 Subsection 12S(1)**

Omit “section 48”, substitute “subsection 48(1)”.

#### **9 Section 48**

Before “If”, insert “(1)”.

#### **10 At the end of section 48**

Add:

- (2) Despite section 14 of the *Legislative Instruments Act 2003*, regulations for the purposes of subsection (1) relating to notifying the Department may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

#### **11 Subsection 49(1)**

Omit “section 48”, substitute “subsection 48(1)”.

## **Part 3—Amendments concerning repayment of accumulated FS debt**

### **Division 1—Main amendments**

#### *Student Assistance Act 1973*

#### **12 Subsection 3(1)**

Insert:

*compulsory repayment amount* means an amount that:

- (a) is required to be paid in respect of an accumulated FS debt under section 12ZK; and
- (b) is included in a notice of an assessment made under section 12ZM.

#### **13 Subsection 3(1)**

Insert:

*exempt foreign income* has the meaning given by subsection 12ZL(4).

#### **14 Subsection 3(1)**

Insert:

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

#### **15 Subsection 3(1)**

Insert:

*income tax law* has the meaning given by section 14ZAAA of the *Taxation Administration Act 1953*.

#### **16 Subsection 3(1)**

Insert:

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

**17 Subsection 3(1)**

Insert:

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

**18 Subsection 3(1)**

Insert:

*minimum repayment income* has the meaning given by section 12ZLA.

**19 Subsection 3(1)**

Insert:

*rental property loss* has the meaning given by subsection 12ZL(2).

**20 Subsection 3(1)**

Insert:

*repayable debt*, for an income year, has the meaning given by section 12ZLB.

**21 Subsection 3(1)**

Insert:

*repayment income* has the meaning given by section 12ZL.

**22 Subsection 3(1)**

Insert:

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

**23 At the end of Subdivision B of Division 6 of Part 4A**

Add:

**12ZJA Refunding of payments**

If:

- (a) a person pays an amount to the Commonwealth under this Subdivision; and
- (b) the amount exceeds the sum of:
  - (i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Part; 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.

Note: Interest is payable if the Commonwealth is late in paying requested refunds: see Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

## **24 Subdivision C of Division 6 of Part 4A**

Repeal the Subdivision, substitute:

### **Subdivision C—Requirement to discharge indebtedness**

#### **12ZK Compulsory payments in respect of accumulated FS debt**

- (1) If:
  - (a) a person's repayment income for the income year 2006-07 or a subsequent income year exceeds the minimum repayment income for that income year; and
  - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income for that income year, the person had an accumulated FS debt;the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 12ZLC in reduction of the person's repayable debt.
- (2) 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.

## 12ZL Repayment income

- (1) A person's *repayment income* for an income year is an amount equal to the sum of:
  - (a) the person's taxable income for the income year; and
  - (b) if a person has a rental property loss for the income year—the amount of that rental property loss; and
  - (c) if the person:
    - (i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and
    - (ii) has a reportable fringe benefits total (within the meaning of that Act) for the income year; the reportable fringe benefits total for the income year; and
  - (d) if the person has exempt foreign income for the income year—the amount of that exempt foreign income.
- (2) The person's *rental property loss* is the amount (if any) by which the amount of the person's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property in Australia exceeds the person's gross rental property income.
- (3) For the purposes of subsection (2), disregard any rental property income that the person derives as a member of a partnership.
- (4) The person's *exempt foreign income* is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.
- (5) For the purposes of subsection (4), disregard any capital losses and outgoings.

## 12ZLA Minimum repayment income

The *minimum repayment income* for the 2006-07 income year or for a later income year is the amount worked out under paragraph 154-10(b) of the *Higher Education Support Act 2003* in respect of that income year.

### **12ZLB Repayable debt for an income year**

- (1) A person's *repayable debt* for an income year is:
- (a) the person's accumulated FS debt referred to in paragraph 12ZK(1)(b) in relation to that income year; or
  - (b) if one or more amounts:
    - (i) have been paid in reduction of that debt; or
    - (ii) have been assessed under section 12ZM to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.
- (2) A reference in paragraph (1)(b) 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.

### **12ZLC Amounts payable to the Commonwealth**

The amount that a person is liable to pay under section 12ZK, in respect of an income year, is an amount equal to so much of the person's repayable debt for the income year as does not exceed the percentage of the person's repayment income that is applicable under the following table:

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<b>Applicable percentages</b>		
<b>Item</b>	<b>If the person's repayment income for the 2006-07 income year or a later income year is:</b>	<b>The percentage applicable is:</b>
1	More than the minimum repayment income, but less than the amount determined as set out in column 2 of item 2 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	2%
2	More than the amount under item 1, but less than the amount determined as set out in column 2 of item 7 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	3%
3	More than the amount under item 2.	4%

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### **12ZLD Publishing indexed amounts**

- (1) The Minister must cause to be published in the *Gazette*, before the start of the 2007-08 income year or a later income year, a notice setting out:
  - (a) the minimum repayment income; and
  - (b) the amounts determined as referred to in the second column of items 1 and 2 of the table in section 12ZLC;  
for that income year.
- (2) A notice under subsection (1) is not a legislative instrument.

### **25 After section 12ZN**

Insert:

### **12ZNA Charges and administrative 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 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 Part were an income tax law.
- (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.

### **12ZNB 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 repayment amount of a person as if the compulsory repayment amount were income tax.

### **12ZNC Provisional tax**

Division 3 of Part VI of the *Income Tax Assessment Act 1936* applies, so far as it is capable of application, in relation to the

collection of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

### **12ZND 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 repayment amount of a person as if the compulsory repayment amount were income tax.

## ***Taxation Administration Act 1953***

### **26 Paragraph 15-30(db) in Schedule 1**

Repeal the paragraph, substitute:

- (db) the percentages specified in section 12ZLC (about repayments of accumulated FS debts) of the *Student Assistance Act 1973* for any financial year starting on or after 1 July 2006;

## **Division 2—Saving provision**

### **27 Preservation of existing repayment rules**

If, at any time before the commencement of the amendments of the *Student Assistance Act 1973* made by items 12 to 26 of this Schedule:

- (a) a person had an accumulated FS debt; and
- (b) the person was, by virtue of the application of the provisions of that Act as in force at that time, under an obligation to make a payment in reduction of that debt in respect of an income year before the income year 2006-07;

the provisions of that Act as so in force continue to apply in respect of the payments required to be made in reduction of that debt in respect of that income year as if those items had never been enacted.

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*[Minister's second reading speech made in—  
House of Representatives on 7 September 2005  
Senate on 27 February 2006]*

(144/05)

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