

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 17 October 1990

*(Minister for Employment, Education and Training)*

## A BILL

FOR

**An Act to facilitate the refunding of payments made by overseas students unable to undertake or complete courses of study in Australia, and for other purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### Short title

5 . 1. This Act may be cited as the *Overseas Students (Refunds) Act 1990*.

### Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**Interpretation**

3. In this Act, unless the contrary intention appears:

“assigned debt” means a debt that:

- (a) was owed by an educational institution to an overseas student; and
- (b) has been assigned to the Commonwealth;

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“educational institution” has the meaning given in section 4;

“officer” has the same meaning as in the *Public Service Act 1922*;

“overseas student” means a person who has made payments to an educational institution in connection with a course of study at the institution and is not:

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- (a) an Australian citizen, a New Zealand citizen or a permanent resident of Australia; or
- (b) a dependant of such a person;

“permanent resident” means a person who has been granted, or who is included in, an entry permit under the *Migration Act 1958* that is in force, other than a temporary entry permit within the meaning of that Act;

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“proceedings to which this Act applies” means proceedings taken by the Commonwealth in connection with the recovery of an assigned debt, being proceedings that take place at a time when the overseas student who assigned the debt is not in Australia.

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**Educational institutions**

4. (1) An institution is an educational institution for the purposes of this Act if:

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- (a) the institution is in Australia; and
- (b) the institution:
  - (i) is a higher education institution within the meaning of the *Employment, Education and Training Act 1988*; or
  - (ii) is a technical and further education institution within the meaning of that Act; or
  - (iii) is a school within the meaning of that Act (other than a primary school); or
  - (iv) is, or has been, engaged in the provision of education, and is determined in writing by the Minister to be an educational institution for the purposes of this Act.

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(2) The Minister must inform an institution that is the subject of a determination under subparagraph (1) (b) (iv) that the determination has been made.

(3) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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**Power to obtain information and documents**

5 **5. (1)** The Secretary of the Department, or an officer of the Department authorised in writing by the Secretary to issue notices under this section, may, by a notice in writing, require an educational institution, or an agent of an educational institution, to supply, within 14 days or such longer period specified in the notice:

- (a) the particulars of overseas students who are, or have been, enrolled at the institution, or from whom the institution has received money; or
- 10 (b) the originals or certified copies of specified documents or records relating to such students or to any persons acting on behalf of such students;

to the extent that the particulars, documents or other records are in the possession or control of the institution or agent.

15 **(2)** An educational institution, or an agent of an educational institution, that receives such a notice and fails to comply with it is guilty of an offence.

Penalty: \$3,000.

20 **(3)** An educational institution, or an agent of an educational institution, that, in purported compliance with such a notice, knowingly furnishes information that is false or misleading in a material particular is guilty of an offence.

Penalty: Imprisonment for 12 months.

Note: If an offence is only expressed to be punishable by imprisonment, subsections 4B (2) and (3) of the *Crimes Act 1914* allow a court to substitute an appropriate fine.

25 **(4)** A reference in subsections (2) and (3) to an educational institution includes a reference to:

- (a) if the institution is a body corporate:
  - (i) a liquidator or official manager of the institution; and
  - (ii) a receiver, or receiver and manager, of property of the institution; and
- 30 (b) if the institution is not a body corporate—a person who has the executive responsibility for the operation of the institution and:
  - (i) if that person is a natural person—a person appointed as the trustee in bankruptcy of that person; or
  - 35 (ii) if that person is a body corporate:
    - (A) a liquidator or official manager of that person; or
    - (B) a receiver, or receiver and manager, of property of that person.

### Procedure for establishing identity of assignors

6. (1) The regulations may prescribe procedures for establishing the identity of an overseas student from whom it is proposed that the Commonwealth accept the assignment of a debt owed by an educational institution. 5

(2) The procedures may be specified to relate to a particular country or class of countries.

### Evidence of identity

7. (1) If, in proceedings to which this Act applies, it is established that the procedures prescribed for the purposes of section 6 were followed, the assignor's identity is taken, for the purposes of the proceedings, to have been established accordingly unless the contrary is proved. 10

(2) In such proceedings, a certificate, signed by a person referred to in subsection (3) and stating that the procedures were followed, is *prima facie* evidence of that fact. 15

(3) For the purposes of subsection (2), the certificate may be signed by a person who:

(a) is within a class of persons determined in writing by the Minister for the purposes of this section; and 20

(b) acted on the Commonwealth's behalf in the assignment of the debt concerned.

(4) If:

(a) the Commonwealth gives, to another party to proceedings to which this Act applies, reasonable notice that the Commonwealth proposes to rely on such a certificate; and 25

(b) the notice is given together with a copy of the certificate;

the other party must not, in the proceedings, call into question the certificate unless that party has given the Commonwealth reasonable notice of its intention to do so. 30

### Admission of statutory declarations in evidence

8. (1) In proceedings to which this Act applies, a statutory declaration, by the overseas student who assigned the debt, that complies with the requirements of the *Statutory Declarations Act 1959* is *prima facie* evidence of the facts stated in the declaration. 35

(2) For the purposes of this section, a declaration that is made before an Australian citizen, or a permanent resident, who is:

(a) a member of the staff of an Australian embassy or consulate; and

(b) a person of a kind specified in the regulations; 40

is taken to have been made before a person of a kind referred to in section 8 of the *Statutory Declarations Act 1959*.

(3) If:

5 (a) the Commonwealth gives, to another party to proceedings to which this Act applies, reasonable notice that the Commonwealth proposes to rely on a statutory declaration of a kind referred to in subsection (1); and

(b) the notice is given together with a copy of the declaration;

10 the other party must not require the person who made the declaration to be available for cross-examination on the declaration in the proceedings unless that party has given the Commonwealth reasonable notice of its intention to do so.

### **Conduct by directors, servants and agents**

15 **9. (1)** Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate acting within the scope of his or her office, employment or engagement; and

20 (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate acting within the scope of his or her office, employment or engagement is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate.

25 (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

30 (a) that the conduct was engaged in by a servant or agent of the person acting within the scope of his or her office, employment or engagement; and

(b) that the servant or agent had the state of mind.

35 (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person acting within the scope of his or her office, employment or engagement is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person.

40 (5) A reference in this section to a person acting within the scope of his or her office, employment or engagement in relation to a body corporate or another person does not include conduct by the first-

mentioned person engaged in with the intention of doing harm, or concealing harm done by him or her or another, to the body corporate or other person.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to: 5

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory. 10

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914* that relates to this Act. 15

### Delegation

10. The Minister may, in writing, delegate to:

- (a) the Secretary of the Department; or 20
- (b) a person who holds, or performs the duties of, a Senior Executive Service office within the Department;

all or any of the Minister's powers under this Act.

### Regulations

11. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act. 25



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