

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1^o, 11 September 1985)

(THE MINISTER FOR EDUCATION, SENATOR RYAN)

A BILL

FOR

An Act to amend the *Student Assistance Act 1973*, and for related purposes

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

Short title, &c.

5 **1. (1)** This Act may be cited as the *Student Assistance Amendment Act 1985*.

(2) The *Student Assistance Act 1973*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2. (1)** Sections 1, 2, 3, 11, 12 and 14 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sections 4, 5, 6, 7, 8, 9, 10, 15 and 16 shall come into operation on a day to be fixed by Proclamation.

(3) Section 13 shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

Interpretation

3. (1) Section 5 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “technical college” and substituting the following definition: 5

“‘technical and further education institution’ means an educational institution in Australia that, under the regulations, is to be treated as a technical and further education institution for the purposes of this Act;”;

(b) by omitting paragraph (c) of the definition of “tertiary education institution” in sub-section (1) and substituting the following paragraph: 10

“(c) a technical and further education institution;”;

(c) by omitting from sub-section (2) “‘technical college’” and substituting “‘technical and further education institution’”. 15

(2) Where, immediately before the commencement of this section, an educational institution was, under the regulations, to be treated as a technical college for the purposes of the Principal Act, that institution shall, unless and until the regulations otherwise provide, be deemed to be a technical and further education institution for the purposes of the Principal Act as amended and in force after the commencement of this section. 20

4 Section 18 of the Principal Act is repealed and the following section is substituted:

Student Assistance Review Tribunal

“18. (1) There is established by this Act a Student Assistance Review Tribunal. 25

“(2) The Tribunal shall consist of—

(a) such number of Convenors of the Tribunal as the Minister thinks fit; and 30

(b) such number of other members as the Minister thinks fit.

“(3) The members of the Tribunal shall be appointed by the Minister by instrument in writing signed by the Minister.

“(4) The instrument of appointment of a member of the Tribunal shall specify whether the member is a Convenor or a member other than a Convenor. 35

“(5) A member of the Tribunal shall be appointed as a part-time member.

“(6) Subject to this Act, a member of the Tribunal holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment of the member, but is eligible for re-appointment.”. 40

5. After section 21 of the Principal Act the following section is inserted in Division 2 of Part V:

Acting Convenor

5 “21A. (1) The Minister may, by instrument in writing signed by the Minister, appoint a member of the Tribunal who is not a Convenor to act as a Convenor—

(a) during any period, not exceeding 12 months, specified in the instrument of appointment; or

10 (b) during all periods when a Convenor specified in the instrument of appointment is absent from duty or from Australia, or is, for any other reason, unable to perform the duties of the office of Convenor.

“(2) While a member is acting as a Convenor, the member has and may exercise all the powers, and shall perform all the functions, of a Convenor.

15 “(3) An appointment of a member under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(4) The Minister may—

(a) determine the remuneration and allowances of a member acting as a Convenor; and

20 (b) terminate such an appointment for inefficiency, misbehaviour or physical or mental incapacity.

“(5) The appointment of a member to act as a Convenor ceases to have effect if the member—

25 (a) resigns that appointment by writing signed by the member and delivered to the Minister; or

(b) ceases to be a member.

30 “(6) The validity of anything done by a member purporting to act under this section shall not be called in question on the ground that the occasion for the member’s appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the member to act had not arisen or had ceased.”.

6. After section 24 of the Principal Act the following section is inserted:

Referral of request

35 “24A. (1) Where, under sub-section 24 (1) or (2), a Convenor receives a request from an authorised person, that Convenor may, if another Convenor agrees to receive the request, refer that request to that other Convenor.

40 “(2) Where, under sub-section (1), a Convenor refers a request to another Convenor, that request shall, for the purposes of this Act, other than section 24 and this section, be deemed to have been received by that other Convenor.”.

Convenor to arrange for review of decisions, &c.

7. Section 25 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “and” (last occurring);
- (b) by inserting after paragraph (1) (a) the following paragraph:

“(aa) not less than 14 days before the day fixed for the review, cause notice of that day fixed to be given to the parties to the proceedings in relation to the review, other than a party to the proceedings who has waived his or her right to receive notice under this paragraph; and”;

- (c) by omitting from sub-paragraph (1) (b) (i) “sub-section (2)” and substituting “sub-section 29B (2)”;
- (d) by omitting sub-section (2) and substituting the following sub-section:

“(2) If—

- (a) a Convenor presiding at proceedings before the Tribunal in relation to the review of a primary decision or of a procedural decision and a primary decision becomes satisfied that a notice in relation to the primary decision required to be given under paragraph (1) (aa) to a party to the proceedings has not been received by that party; and
- (b) that party requests that Convenor to take action under this sub-section in relation to those proceedings, that Convenor shall—
- (c) set aside those proceedings; and
- (d) again take action under sub-section (1) in relation to the request for a review of the decision or decisions.”.

8 Section 25A of the Principal Act is repealed and the following section is substituted:

Constitution of Tribunal

“25A. (1) Subject to this section, the Tribunal shall, for the purposes of the exercise of its power to review a decision under this Act, be constituted by—

- (a) the Convenor who, in accordance with sub-section 25 (1), arranged for the review of that decision; and
- (b) 2 members of the Tribunal (other than Convenors) chosen by that Convenor.

“(2) At the hearing of proceedings before the Tribunal, the Convenor who is one of the members constituting the Tribunal for the purposes of the proceedings shall preside.

“(3) Where—

- (a) a Convenor has arranged for a decision under this Act to be reviewed by the Tribunal;

(b) before the Tribunal has made a decision on the review, a member of the Tribunal as constituted for the purposes of the proceedings relating to the review, other than the Convenor—

(i) is, under section 25B, prohibited from taking part or continuing to take part in the proceedings;

(ii) is directed by the Convenor in accordance with section 25B not to take part, or not to continue to take part, in the proceedings; or

(iii) is, for any other reason, unable to take part or continue to take part in the proceedings; and

(c) there is lodged with the Convenor, as prescribed, a notice, signed by the person who requested the review, stating that the person consents to the decision being reviewed, or to the review of the decision being continued and completed, by the Tribunal constituted by the Convenor and the remaining member of the Tribunal as constituted for the purposes of the proceedings,

the Tribunal shall be constituted for the purposes of the review by the Convenor and that remaining member.”.

Review of primary decision

9. Section 26 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to sub-section 27 (5), where the Tribunal reviews a primary decision, the Tribunal shall, after due consideration of the matter, give a decision—

(a) affirming the primary decision;

(b) varying the primary decision; or

(c) setting aside the primary decision and—

(i) making a decision in substitution for the decision so set aside; or

(ii) remitting the matter for re-consideration, in accordance with any directions or recommendations of the Tribunal, by the authorised person to whom the request under sub-section 22 (1) in respect of the matter was made.”.

10. After section 29A of the Principal Act the following section is inserted:

Non-disclosure of certain information

“29B. (1) A Convenor or the Tribunal shall not (whether in the course of proceedings before the Tribunal or otherwise) give, or cause to be given, to a person a document or a part of a document, if—

(a) the document, or that part of the document, contains information that—

(i) is of the kind referred to in the definition of ‘officer’ in sub-section 16 (1) of the *Income Tax Assessment Act 1936*;

- (ii) was disclosed or obtained as mentioned in that sub-section; and
- (iii) is information respecting the affairs of another person, not being a person who has given the Convenor or the Tribunal, as the case may be, his or her consent, in writing, to the disclosure of that information to the first-mentioned person; 5
- (b) the document, or that part of the document, contains information relating to the income of another person, not being a person who has given the Convenor or the Tribunal, as the case may be, his or her consent, in writing, to the disclosure of the information to the first-mentioned person; or 10
- (c) the Convenor or the Tribunal, as the case may be, is satisfied by reason of the confidential nature of a matter contained in the document or that part of the document, or, for any other reason, that it is not desirable to give the document or that part of the document to the first-mentioned person. 15

“(2) Where Convenors and the Tribunal are prohibited by sub-section (1) from giving a document, or part of a document, to a person, a Convenor or the Tribunal shall not (whether in the course of proceedings before the Tribunal or otherwise)— 20

- (a) give, or cause to be given, to that person a copy of that document or of that part of a document; or
- (b) disclose to that person the contents of that document or of that part of a document.”.

Approvals, directions and determinations 25

11. Section 34 of the Principal Act is amended by inserting in sub-section (2) “by the Minister or a delegate of the Minister” after “Act”.

12. After section 34 of the Principal Act the following section is inserted:

Delegation

“34A. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to— 30

- (a) the person holding or performing the duties of the office of Secretary to the Department; or
- (b) a person holding or performing the duties of a Senior Executive Service office within the meaning of the *Public Service Act 1922*, being an office in the Department, 35

all or any of the powers of the Minister under section 6, sub-section 17 (4), 32 (1) or 34 (2) or the regulations.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Minister. 40

“(3) A delegation under this section does not prevent the exercise of a power by the Minister.”.

13. (1) After section 35 of the Principal Act the following section is inserted:

5 **Time for instituting criminal proceedings**

“35A. Notwithstanding anything in any other law, proceedings for an offence against the regulations may be instituted within the period of 2 years after the commission of the offence.”.

10 (2) The amendment made by sub-section (1) applies in relation to an offence committed after the commencement of this section.

Regulations

14. Section 36 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

15 “(aa) making provision for and in relation to the giving of notices and other documents under this Act;”.

Consequential amendments

15. The Principal Act is amended as set out in the Schedule.

Transitional

16. (1) Where—

20 (a) a Chairperson of a Student Assistance Review Tribunal received, in accordance with section 24 of the Principal Act, as in force before the commencement of this section, a request for a review by the Tribunal; but

25 (b) the Chairperson did not comply with section 25 of the Principal Act, as so in force, in respect of the request before the commencement of this section,

then—

30 (c) where the Chairperson becomes a Convenor within 2 weeks after the commencement of this section—the request and all records and other papers received with the request shall be deemed to have been received by him or her as a Convenor in accordance with section 24 of the Principal Act, as in force at the time the Chairperson became a Convenor; or

(d) in any other case—

35 (i) the person or persons holding the request and the records and other papers received with the request shall, as soon as practicable, forward the request and those papers to a Convenor; and

40 (ii) the request and papers shall be taken to have been received by the Convenor in accordance with section 24 of the Principal Act, as in force at the time the Convenor received the request and papers.

(2) Notwithstanding any amendment of the Principal Act made by this Act, where—

(a) in accordance with the Principal Act, as in force before the commencement of this section, a Chairperson of a Student Assistance Review Tribunal arranged for that Tribunal to review a decision or decisions; and

(b) that Tribunal had not completed the review of the decision or decisions before the commencement of this section,

that Tribunal shall continue in existence, and the Principal Act, as in force immediately before the commencement of this section, shall continue to apply in relation to that Tribunal, until that Tribunal has completed the review of the decision or decisions.

SCHEDULE

Section 15

Sub-section 17 (1) (definition of “Chairperson”)—

Omit the definition, substitute the following definition:

“‘Convenor’ means a Convenor of the Tribunal, and includes a member acting as a Convenor;”.

Sub-section 17 (1) (definition of “member”)—

Omit the definition, substitute the following definition:

“‘member’, in relation to the Tribunal, includes a Convenor of the Tribunal;”.

Sub-section 17 (1) (definition of “Tribunal”)—

Omit “a Student”, substitute “the Student”.

Sub-section 17 (3)—

Omit “a Tribunal”, substitute “the Tribunal”.

Paragraph 17A (b)—

Omit “a Tribunal”, substitute “the Tribunal”.

Heading to Division 2 of Part V—

Omit “*Tribunals*”, substitute “*Tribunal*”.

Section 19—

Omit “a Tribunal” (wherever occurring), substitute “the Tribunal”.

Section 20—

Omit “a Tribunal” (wherever occurring), substitute “the Tribunal”.

Section 21—

Omit “a Tribunal”, substitute “the Tribunal”.

Section 23—

Omit “a Tribunal” (first, second, third, fourth and fifth occurring), substitute “the Tribunal”.

Paragraph 23 (3) (b)—

- (a) Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.
- (b) Omit “Chairperson of the Tribunal”, substitute “Convenor”.

Paragraph 23 (3) (c)—

Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.

Sub-section 24 (1)—

- (a) Omit “a Tribunal” (first occurring), substitute “the Tribunal”.
- (b) Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.

Sub-section 24 (2)—

- (a) Omit “a Tribunal” (first occurring), substitute “the Tribunal”.
- (b) Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.

Sub-section 25 (1)—

- (a) Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.
- (b) Omit “Chairperson” (second and third occurring), substitute “Convenor”.

Sub-section 25B (1)—

Omit “a Tribunal”, substitute “the Tribunal”.

Sub-section 25B (2)—

- (a) Omit “the Chairperson of a Tribunal”, substitute “a Convenor”.
- (b) After “Act”, insert “, being proceedings at which that Convenor is presiding or is to preside,”.

Paragraph 25B (2) (a)—

Omit “Chairperson” (wherever occurring), substitute “Convenor”.

Paragraph 25B (2) (b)—

Omit “Chairperson”, substitute “Convenor”.

Sub-section 25C (1)—

Omit “a Tribunal that reviews a procedural decision”, substitute “where the Tribunal reviews a procedural decision, the Tribunal”.

Sub-section 25C (2)—

Omit “a Tribunal”, substitute “the Tribunal”.

Sub-section 25C (3)—

Omit “a Tribunal”, substitute “the Tribunal”.

Sub-section 26 (3)—

Omit “a Tribunal” (wherever occurring), substitute “the Tribunal”.

Section 27—

Omit “a Tribunal” (first, second and third occurring), substitute “the Tribunal”.

Sub-section 27 (5)—

- (a) Omit “a Tribunal” (first occurring), substitute “the Tribunal”.
- (b) Omit “the Chairperson” (first occurring), substitute “a Convenor”.
- (c) Omit “Chairperson” (second and third occurring), substitute “Convenor”.
- (d) Omit “a Tribunal” (last occurring), substitute “the Tribunal”.

Sub-section 29 (1)—

Omit “a Tribunal”, substitute “the Tribunal”.

Sub-section 29 (2)—

- (a) Omit “a Tribunal”, substitute “the Tribunal”.
- (b) Omit “the Chairperson of the Tribunal” (wherever occurring), substitute “a Convenor”.

Sub-section 29 (3)—

- (a) Omit “the Chairperson of the Tribunal”, substitute “a Convenor”.
- (b) Omit “a Tribunal”, substitute “the Tribunal”.
- (c) Omit “Tribunals” (first, second and third occurring), substitute “the Tribunal”.
- (d) Omit “Chairpersons of Tribunals”, substitute “Convenors”.
- (e) Omit “Tribunals” (fifth occurring), substitute “the Tribunal”.

Section 29A—

Omit “a Tribunal”, substitute “the Tribunal”.

Section 30—

Omit “a Tribunal” (wherever occurring), substitute “the Tribunal”.

Section 30AA (definition of “reviewable decision”)—

Omit “a Student” (wherever occurring), substitute “the Student”.

Section 30AA (definition of “section 26 statement”)—

Omit “a Student”, substitute “the Student”.

Paragraph 36 (b)—

- (a) Omit “Student Assistance Review Tribunals”, substitute “the Student Assistance Review Tribunal”.
- (b) Omit “a Tribunal” (wherever occurring), substitute “the Tribunal”.

NOTES

1. No. 155, 1973, as amended. For previous amendments, see No. 26, 1982; and Nos. 63, 72 and 120, 1984.
2. On the day on which section 4 of the *Student Assistance Amendment Act 1985* comes into operation, the heading to section 24 of the *Student Assistance Act 1973* is altered to “Request, &c., to be forwarded to Convenor”.

