

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

STUDENT ASSISTANCE AMENDMENT BILL 1989

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 2 March 1989

(Minister for Employment and Education Services)

A BILL

FOR

An Act to amend the *Student Assistance Act 1973*

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

Short title etc.

5 1. (1) This Act may be cited as the *Student Assistance Amendment Act 1989*.

 (2) In this Act, "Principal Act" means the *Student Assistance Act 1973*¹.

Commencement

10 2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

 (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

 (3) If a provision referred to in subsection (2) does not commence before 1 January 1990, it commences on that day.

Benefits provided under this Act

3. Section 4 of the Principal Act is amended by omitting “by way of assistance in the form of Education Assistance of the kind provided for in Part III and Post-graduate Awards of the kind provided for in Part IV” and substituting “, being benefits under the AUSTUDY scheme, as provided for in Part III, and under Post-graduate Awards, as provided for in Part IV”.

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Interpretation

4. Section 5 of the Principal Act is amended:

(a) by omitting paragraphs (a) and (b) of the definition of “education institution” in subsection (1) and substituting the following paragraph:

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“(a) a higher education institution;”;

(b) by omitting the definitions of “authorized person”, “full-time student”, “officer”, “permanent resident of Australia” and “student assistance” and substituting the following definitions:

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“‘authorised person’ means an officer of the Department who is required or permitted by the duties of his or her office or, if he or she is acting in an office, of the office in which he or she is acting, to perform some or all of the functions, or exercise some or all of the powers, of an authorised person under this Act or the regulations;

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‘full-time student’ means a student who, under the regulations, is to be treated, for the purposes of this Act, as a full-time student;

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‘officer’ has the same meaning as in the *Public Service Act 1922*;

‘permanent resident of Australia’ means a person who, under the regulations, is to be treated, for the purposes of this Act, as permanently resident in Australia;

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‘student assistance’ means assistance under this Act by way of a benefit under the AUSTUDY scheme or under a Post-graduate Award;”;

(c) by omitting from subsection (1) the definitions of “advanced education institution” and “university”;

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(d) by inserting in subsection (1) the following definitions:

“‘employee’ has the same meaning as in the *Public Service Act 1922*;

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

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‘Secretary’ means Secretary to the Department;”;

(e) by omitting from subsection (2) “‘advanced education institution’, ‘education institution’, ‘secondary school’, ‘technical and further

education institution' and 'university'” and substituting “‘education institution’, ‘higher education institution’, ‘secondary school’ and ‘technical and further education institution’”;

(f) by omitting subsection (3) and substituting the following subsection:

“(3) A person who, although not employed by the Commonwealth, performs services for the Commonwealth shall be taken, for the purposes of this Act, to be included within the definition of ‘employee’ in subsection (1).”.

Repeal of section 6

5. Section 6 of the Principal Act is repealed.

New Part heading

6. The heading to Part III of the Principal Act is repealed and the following Part heading is substituted:

“PART III—AUSTUDY SCHEME”.

7. Before section 10 of the Principal Act the following section is inserted in Part III:

AUSTUDY scheme

“9. The scheme for the provision of benefits under this Part is referred to as the AUSTUDY scheme.”.

Benefits under AUSTUDY scheme

8. Section 10 of the Principal Act is amended:

(a) by omitting from subsection (1) all the words preceding paragraph (a) and substituting the following:

“Subject to and in accordance with this section and the regulations, an authorised person may grant a benefit under this Part to a person who:”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Without limiting the generality of matters that may be dealt with by the regulations the regulations may:

- (a) specify the benefits that may be granted under this Part; and
- (b) specify circumstances in which benefits are not payable under this Part.”.

Repeal of section 11

9. Section 11 of the Principal Act is repealed.

Grant of Post-graduate Awards

10. Section 14 of the Principal Act is amended by omitting “university or at an advanced education institution” and substituting “higher education institution”.

Interpretation

11. Section 17 of the Principal Act is amended:

(a) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) the Secretary.”;

(b) by omitting subsection (4).

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12. Section 17A of the Principal Act is repealed and the following section is substituted:

Request under Act on behalf of another person

“17A. Where a person is, under this Act, entitled to request:

(a) a consideration by a senior authorised person of a decision of an authorised person; or

(b) a review by the Tribunal of a primary decision;

that request may be made, on behalf of that first-mentioned person, by another person who is authorised to do so by that first-mentioned person.”.

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Consideration by senior authorised person

13. Section 22 of the Principal Act is amended:

(a) by omitting from subsection (1) “given to the authorized person” and substituting “given to the Secretary”;

(b) by omitting from subsection (1) “the authorized person approves, request the authorized person” and substituting “an authorised person approves, request the Secretary”;

(c) by omitting from subsection (3) “An authorized person who receives a request under subsection (1) to arrange for a senior authorized person to consider a decision” and substituting “Where the Secretary receives a request under subsection (1), the Secretary”;

(d) by omitting from subsection (3) “first-mentioned authorized person” and substituting “Secretary”.

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Request for review by Tribunal

14. Section 23 of the Principal Act is amended:

(a) by omitting from subsection (1) “who made the request under that section for the consideration of the decision” and substituting “in respect of whom the decision of that authorised person was made”;

(b) by omitting from subsection (1) “given to the senior authorized person” and “the senior authorized person allows, request the senior authorized person” and substituting “given to the Secretary” and “an authorised person allows, request the Secretary” respectively;

(c) by omitting from subsection (1A) “who made the request” and substituting “in respect of whom the decision of that authorised person was made”;

(d) by omitting from subsection (1A) “given to the authorized person” and “the authorized person allows, request the authorized person”

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and substituting "given to the Secretary" and "an authorised person allows, request the Secretary" respectively;

(e) by inserting in subsection (1B) "in respect of whom a primary decision was made" after "If a person";

5 (f) by omitting from subsection (1B) "a primary decision" and substituting "the primary decision";

(g) by omitting from subsection (1B) "the authorized person" (wherever occurring) and substituting "the Secretary";

10 (h) by omitting from subsection (3) "an authorized person" and substituting "the Secretary";

(j) by omitting from subsection (3) "the authorized person" (wherever occurring) and substituting "the Secretary".

Request etc. to be forwarded to Convenor

15 15. Section 24 of the Principal Act is amended:

(a) by omitting from subsection (1) "An authorized person who" and substituting "Where the Secretary";

(b) by inserting in subsection (1) ", the Secretary" after "a primary decision";

20 (c) by omitting from subsection (2) "An authorized person who" and substituting "Where the Secretary";

(d) by inserting in subsection (2) ", the Secretary" after "primary decision".

Referral of request by Convenor

25 16. Section 24A of the Principal Act is amended by omitting from subsection (1) "an authorised person" and substituting "the Secretary".

Convenor to arrange for review of decisions etc.

17. Section 25 of the Principal Act is amended:

(a) by omitting from subsection (1) "an authorized person" and substituting "the Secretary";

30 (b) by omitting from paragraph (1) (b) all the words preceding subparagraph (i) and substituting the following:

"(b) unless the relevant person has waived his or her right to receive the copies and the notice referred to in this paragraph, give to the relevant person, not less than 14 days or such lesser number of days as the relevant person allows before the day fixed for the review:".

Review of primary decision

18. Section 26 of the Principal Act is amended by omitting subparagraph

(1) (c) (ii) and substituting the following subparagraph:

40 "(ii) remitting the matter to the Secretary for consideration, in accordance with any directions or recommendations of the Tribunal, by an authorised person."

Representation before Tribunal

19. Section 28 of the Principal Act is amended by omitting “, if the Tribunal thinks fit,”.

Interpretation

20. Section 30AA of the Principal Act is amended by omitting the definition of “administering Department”. 5

Operation of Tribunal Act

21. Section 30AC of the Principal Act is amended:

- (a) by omitting from subsections (2), (3), (4) and (6) “of the administering Department” (wherever occurring); 10
- (b) by omitting from paragraph (6) (a) “authorized person who was a party to the proceedings before the Student Assistance Review Tribunal in relation to the primary decision” and substituting “Secretary”;
- (c) by omitting from subsections (7) and (8) “of the administering Department”. 15

Action in relation to money owing to recipients

22. Section 31B of the Principal Act is amended by adding at the end the following subsection:

“(11) This section applies to an additional amount payable by a recipient under subsection 31A (4) as if that amount were an overpayment made to the recipient.”. 20

Waiver etc.

23. Section 31C of the Principal Act is amended by adding at the end the following subsection: 25

“(5) This section applies to an additional amount payable by a person under subsection 31A (4) as if that amount were an overpayment made to the person.”.

Power to obtain information etc.

24. Section 31D of the Principal Act is amended: 30

- (a) by inserting in subparagraph (1) (a) (i) “or employee of the Department” after “an officer”;
- (b) by inserting in subparagraph (1) (a) (ii) “or employee” after “an officer”;
- (c) by inserting in paragraph (1) (b) “or employee” after “an officer”; 35
- (d) by inserting in subparagraph (2) (a) (i) “or employee of the Department” after “or an officer”;
- (e) by inserting in subparagraph (2) (a) (i) “or employee” after “to an officer”;

- (f) by inserting in subparagraph (2) (a) (ii) "or employee" after "an officer";
- (g) by inserting in paragraph (2) (b) "or employee of the Department" after "an officer";
- 5 (h) by inserting in subsection (3) "or employee" after "an officer".

Offences

25. Section 31G of the Principal Act is amended:

- (a) by omitting from subparagraph (1) (a) (ii) "in the performance of the officer's" and substituting "or employee of the Department in the performance of the officer's or employee's";
- 10 (b) by inserting in paragraph (1) (d) "or employee of the Department" after "an officer".

Delegation

15 26. Section 34A of the Principal Act is amended by omitting from paragraph (1) (a) "to the Department".

Savings

20 27. (1) Where, before the commencement of the amendments of Part III of the Principal Act made by this Act, a person had made an application for the grant of Education Assistance as referred to in that Part but an authorised person within the meaning of the Principal Act had not made a decision under section 10 of that Act in respect of that application, that application shall, with effect from the commencement of those amendments, have effect as if it were an application by that first-mentioned person for a grant of a benefit under Part III of the Principal Act as amended by this Act.

30 (2) Where, before the commencement of the amendments of Part III of the Principal Act made by this Act, a person had made an application for the grant of Education Assistance as referred to in that Part and an authorised person within the meaning of the Principal Act had made a decision under section 10 of that Act in respect of that application, the provisions of the Principal Act, and of the regulations under the Principal Act, in force at the time of commencement of those amendments, continue in force in relation to the decision and to any entitlement arising under it as if the amendments of the Principal Act made by this Act had not been made.

NOTE

- 1. No. 155, 1973, as amended. For previous amendments, see No. 37, 1976; No. 26, 1982; Nos. 63, 72 and 120, 1984; No. 137, 1985; No. 114, 1986; Nos. 125, 130 and 141, 1987; and No. 35, 1988.





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