

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

STUDENT ASSISTANCE AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Education)

## STUDENT ASSISTANCE AMENDMENT BILL

### OUTLINE

The Student Assistance Amendment Bill 1985 (the Bill) amends the Student Assistance Act 1973 (the Act), which gives the statutory basis to the Tertiary Education Assistance Scheme (TEAS) and to the Post-graduate Awards Scheme.

The Bill makes several administrative changes and includes some minor drafting changes. The following are the major amendments:

- (1) The present Student Assistance Review Tribunals (SARTs) are replaced by one Student Assistance Review Tribunal (clause 4). This will avoid the administrative difficulties imposed by the need to ensure that a member was correctly appointed to the intended SARTs and will generally simplify administrative practice.
- (2) It is provided that the SART may not give to the student, during the hearing, Taxation Office documents or other confidential material concerning another person's affairs, unless the other person agrees (clause 10). The amendment extends the protection currently given to such documents prior to the hearing, and allows disclosure by consent.
- (3) The Minister is enabled to delegate some powers under the Act to senior Departmental officers (clause 12).
- (4) The period for bringing a prosecution under the Student Assistance Regulations is extended from one to two years (clause 13).

The Bill has no significant financial implications.

## NOTES ON CLAUSES

Clause 1 : Short title, & c.

Formal.

Clause 2: Commencement

Clause 2 provides for three commencement days. The formal clauses (clauses 1, 2), other clauses concerned with minor drafting matters (clauses 3, 11, 14) and the delegations provision (clause 12) come into effect when the Bill receives the Royal Assent: sub-clause 2(1). The clauses dealing with the SART (clauses 4 to 10, 15, 16) take effect on a day to be fixed by Proclamation: sub-clause 2(2). Clause 13, which deals with the prosecution period, takes effect on the 28th day after the Bill receives the Royal Assent: sub-clause 2(3).

Clause 3: Interpretation

Clause 3 amends section 5, which defines terms used in the Act. Sub-clause 3(1) amends section 5 by changing references to "technical college" to "technical and further education institution", in line with current educational terminology.

Sub-clause 3(2) is a savings provision and provides that, where an institution comes under the existing definition of "technical college", it is to be regarded as coming under the new definition of "technical and further education institution".

Clause 4 : Student Assistance Review Tribunal

Clause 4 repeals the former section 18 and substitutes proposed new section 18. The amendment establishes a single SART in place of the existing system of a number of SARTs, each comprising a Chairperson and two members. In reviewing a decision, the SART will consist of a Convenor, drawn from a panel of Convenors, and two other members, drawn from a panel of other members.

Proposed sub-section 18(1) formally establishes the new Student Assistance Review Tribunal. This replaces the existing sub-section 18(1), under which SARTs are established by the Minister.

Proposed sub-section 18(2) provides that the number of Convenors and members is a matter for the Minister's discretion and does not require a formal determination.

Proposed sub-section 18(3) provides that Convenors and members shall be appointed by the Minister. This substantially repeats the provisions of the existing sub-section 18(3).

Proposed sub-section 18(6) substantially repeats the provisions of the existing sub-section 18(4), that a SART member may be appointed for up to 3 years and is eligible for re-appointment.

Clause 5: Acting Convenor

Clause 5 inserts proposed section 21A, a new provision to enable the appointment of acting Convenors.

Proposed sub-section 21A(1) provides for the appointment of acting Convenors. Appointments are made by the Minister, in accordance with the Minister's power of appointing substantive Convenors (proposed sub-section 18(3)). Two kinds of appointment are provided for: an acting appointment for up to 12 months (paragraph 18(1)(a)) and an indefinite appointment to act where a specified Convenor is unavailable (paragraph 18(1)(b)).

Proposed sub-section 21A(6) provides that challenges to an acting Convenor's actions may not be made on the basis of the appointment as acting Convenor. For example, it will prevent a challenge on the basis that an acting Convenor acted for a substantive Convenor who was in fact able to perform his or her duties.

Clause 6 : Referral of request

Clause 6 inserts a new section 24A, which enables a Convenor to pass a request for a review to another Convenor. The second Convenor arranges for the review under section 25, and presides at the hearing in accordance with proposed sub-section 25A(2).

Clause 7 : Convenor to arrange for review of decisions, & c.

Clause 7 amends section 25, which deals with the arrangements prior to the SART hearing.

Proposed paragraph 25(1)(aa) places an obligation on the Convenor to arrange for at least 14 days' notice of a hearing to be given to both the parties to the hearing. This requirement is at present imposed by regulation 79 of the Student Assistance Regulations but is appropriately placed in section 25 of the Act, which deals with the general obligations of the Convenor prior to the hearing. No provision is made for cases where notice cannot be given, eg because a person's address is unknown, but the proposed paragraph 36(aa) will enable regulations to be made for such situations. The amendment clarifies that a person may waive the right to receive notice.

The existing sub-section 25(2) is omitted. It is substantially re-enacted in proposed section 29B.

The proposed new sub-section 25(2) enables a Convenor to set aside a review and to order a new review where a party did not receive prior notice of the review proceedings and wishes to have a fresh review.

Clause 8 : Constitution of Tribunal

Clause 8 repeals the existing section 25A and substitutes a new section 25A in its place. The proposed new section 25A substantially repeats the provisions of the existing section 25A, that a SART may be constituted by the Chairperson and one member if the other member is unable to sit, whether because of an interest in the case (see section 25B) or for some other reason.

Proposed sub-section 25A(1) provides that the SART is normally to be constituted by the Convenor who arranged for the review and by two members selected by the Convenor.

Proposed sub-section 25A(2) provides that the Convenor is to preside at the hearing. (Existing sub-section 27(4) provides, however, that questions are to be decided by the majority of the SART members.)

Proposed sub-section 25A(3) enables the SART to be constituted by the Convenor and one other member where the third member is unable to take part in the proceedings.

Clause 9 : Review of primary decision

Clause 9 inserts a new proposed sub-section 26(1), which includes a new provision enabling the SART to set aside a Departmental decision and to remit the matter to the original decision-maker for re-consideration in accordance with any directions or recommendations by the SART (sub-paragraph 26(1)(c)(ii)).

Clause 10 : Non-disclosure of certain information

Clause 10 inserts a new section 29B concerning the protection from disclosure of Taxation Office and other confidential documents. Section 29B replaces the existing sub-section 25(2) (omitted by paragraph 7(d) of the Bill), with the following modifications:

- . documents are protected at SART proceedings, not merely at the pre-hearing stage;
- . oral disclosure of a document's contents is prohibited if disclosure of the document itself is prohibited;

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- . the restrictions on the disclosure of a document dealing with a person's affairs do not generally apply if that person consents to the document being disclosed.

Clause 11 : Approvals, directions and determinations

Clause 11 amends sub-section 34(2), which deals with the Minister's responsibility to give public notice about approvals, directions and determinations under the Act. The amendment clarifies that the provision deals only with Ministerial decisions or decisions made by the Minister's delegate (see proposed section 34A) and not, for example, to decisions by authorised persons on individual applications for student assistance.

Clause 12 : Delegation

Clause 12 inserts a new provision, proposed section 34A, enabling some Ministerial powers to be delegated to senior Departmental officers. A delegation may be made to the Secretary of the Minister's Department, to a Senior Executive Service officer of the Department, or to a person acting as Secretary or as a Senior Executive Service officer. The delegations provision applies to the Minister's powers under section 6 (appointing authorised persons, ie Departmental assessors), sub-section 17(4) (directing that a former authorised person's decision be regarded as the decision of another authorised person), sub-section 32(1) (determining the method for paying benefits) and sub-section 34(2) (making arrangements about public notice of Ministerial decisions under the Act), and to Ministerial powers conferred by the Student Assistance Regulations.

Clause 13 : Time for instituting criminal proceedings

Sub-clause 13(1) inserts proposed sub-section 35A, which provides that the prosecution of an offence against the Student Assistance Regulations may be instituted up to two years after the offence is committed. The present prosecution period is set by section 21 of the Crimes Act 1914, which specifies time limits in the absence of a contrary statutory provision. Section 21 provides that, in such cases, offences with a pecuniary penalty only are to have a one-year prosecution period.

Sub-clause 13(2) provides that new section 35A only applies to offences committed after clause 13 comes into operation.

Clause 14 : Regulations

Clause 14 inserts proposed paragraph 36(aa). This provides that regulations may be made concerning the giving of notices and other documents under the Act. It is included, in particular, to enable provision to be made for cases where it is not possible to give notice to a person pursuant to proposed paragraph 25(1)(aa).

Clause 15 : Consequential amendments

Clause 15 gives effect to the amendments set out in the Schedule to the Bill. These are drafting changes consequential on the re-structuring of the SART under proposed new section 18.

Clause 16 : Transitional

Clause 16 makes transitional provisions in relation to requests for a SART review where the request is made before the re-structuring of the SART (effected by proposed new section 18). Sub-clause 16(1) deals with the case where a SART review has not been arranged, and ensures that the request for review will be received by a Convenor in accordance with the amended section 24. Sub-clause 16(2) deals with the case where a SART review has been arranged, and provides that the existing SART which was to have heard the review shall continue in existence until the review is completed.

