



Student Assistance Amendment Act 1991

No. 95 of 1991

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

[Assented to 26 June 1991]

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Student Assistance Amendment Act 1991*.

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

Commencement

2. (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Paragraph 16 (b) is taken to have commenced on 2 January 1990.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by adding at the end of the definition of “current special educational assistance scheme” in subsection (1) the following word and paragraph:

“or (d) the Living Allowance for English as a Second Language Scheme;”;

(b) by omitting paragraph (a) of the definition of “late payment charge” in subsection (1) and substituting the following paragraph:

“(a) paragraph 40 (2) (a);”;

(c) by omitting “or under a Post-graduate Award” from the definition of “student assistance” in subsection (1);

(d) by omitting from subsection (1) the definition of “officer” and substituting the following definition:

“‘officer’:

(a) in section 55A, has the meaning given in that section;
and

(b) in any other provision of this Act, has the same meaning as in the *Public Service Act 1922*;”;

(e) by omitting from subsection (1) the definition of “full-time student”.

Benefits under the AUSTUDY scheme

4. Section 7 of the Principal Act is amended by adding at the end the following subsections:

“(6) A determination under subparagraph (1) (c) (i) or (ii) or subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(7) Subsection (6) does not apply to a determination made before the date of commencement of that subsection (which was also the date of commencement of section 4 of the *Student Assistance Amendment Act 1991*).”.

Repeal of Part 3

5. Part 3 of the Principal Act is repealed.

Source of funds for payment of benefit

6. (1) Section 10 of the Principal Act is amended by omitting subsections (2) and (3).

(2) In spite of subsection (1), a determination in force under subsection 10 (2) of the Principal Act immediately before the commencement of this section continues to have effect after that commencement, and may be amended or repealed, as if it were a

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regulation made for the purposes of paragraph 56 (e) of the Principal Act, as amended by this Act.

Advances on account of benefits

7. Section 11 of the Principal Act is amended by adding at the end the following subsection:

“(2) Section 10 applies to an advance under this section as if the advance were a benefit payable under student assistance.”.

Interpretation

8. Section 13 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“‘**working day**’, in relation to the period within which the Tribunal must, under section 27 or 28, provide copies of its decision to the parties to the review of a procedural or primary decision, means a day that is not:

(a) a Saturday or a Sunday; or

(b) a public holiday in the State or Territory in which the review takes place.”;

(b) by omitting paragraphs (2) (a), (b) and (c) and substituting the following paragraphs:

“(a) a reference to any variation or revocation of a decision of an authorised person; and

(b) a reference to a refusal or failure of an authorised person to make a decision.”.

Review of procedural decision

9. Section 27 of the Principal Act is amended by inserting in paragraph (2) (b) “within 10 working days after the making of the decision” after “proceedings”.

Review of primary decision

10. Section 28 of the Principal Act is amended by adding at the end of subsection (2) “within 10 working days after the making of the decision”.

Recovery of certain overpayments by offsetting

11. Section 38 of the Principal Act is amended by omitting from paragraph (2) (c) “is, under a determination under subsection 10 (2), being paid, or to be paid,”.

Repeal of section 39

12. Section 39 of the Principal Act is repealed.

Late payment charge and interest in relation to overpayment of a benefit

13. Section 40 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where, whether before or after the commencement of this subsection, a person has been paid an amount that is a student assistance overpayment or a special educational assistance scheme overpayment, the amount of the overpayment (in this section called the ‘**recoverable amount**’) is a debt owed by the person to the Commonwealth.

“(1A) Where the whole or a part of the recoverable amount is due to the Commonwealth, a prescribed officer may give the person by whom the amount is due a written notice that specifies however much of the recoverable amount as is still due and draws the person’s attention to the terms of subsection (2).

“(2) If the whole or a part of the recoverable amount is still due to the Commonwealth at the end of 3 months after the notice is given, the person is liable:

- (a) to pay to the Commonwealth an additional amount of \$100; and

- (b) to pay interest to the Commonwealth:

(i) from the date when the notice was given until the date when the recoverable amount is repaid; and

(ii) at the rate ascertained under the regulations;

on so much of the recoverable amount as, from time to time, remains due.”;

- (b) by omitting subsection (4) and substituting the following subsection:

“(4) Any amount paid to the Commonwealth by or under the authority of the person in relation to the recoverable amount is:

- (a) to be taken first to reduce any additional amount payable under paragraph (2) (a); and

- (b) to be taken secondly to reduce any interest payable under paragraph (2) (b).”.

Determination that late payment interest not to be payable in relation to particular periods

14. Section 41 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

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“(1) The Minister or a prescribed officer may, in writing, determine that:

- (a) an additional amount otherwise payable by a person under paragraph 40 (2) (a); or
 - (b) interest otherwise payable by a person in respect of a certain period under paragraph 40 (2) (b);
- is not payable.”;
- (b) by omitting from subsection (2) “The determination” and substituting “A determination under paragraph (1) (b)”;
 - (c) by omitting from subsection (3) “The determination” and substituting “A determination”;
 - (d) by omitting from subsection (4) “the determination” (last occurring) and substituting “a determination”;
 - (e) by omitting from subsection (5) “the determination” and substituting “a determination”;
 - (f) by omitting from subsection (6) “the determination” (first occurring) and substituting “a determination”;
 - (g) by omitting subsection (7) and substituting the following subsection:

“(7) Without limiting the operation of subsection 52 (2), a determination of the Minister or a prescribed officer may, at any time, be cancelled or varied by the Minister by written notice to the person.”.

Recovery of certain overpayments from third parties etc.

15. Section 42 of the Principal Act is amended by omitting “under section 39” from paragraph (c) of the definition of “recoverable amount” in subsection (1).

Write off and waiver of certain overpayments etc.

16. Section 43 of the Principal Act is amended:

- (a) by omitting “under section 39” from paragraph (c) of the definition of “recoverable amount” in subsection (1);
- (b) by omitting from subsection (6) “(5) and (6)” and substituting “(4) and (5)”.

17. The following section is inserted in Part 7 of the Principal Act before section 45:

Provision of tax file numbers

“44A. (1) Subject to this section, a benefit is not payable in respect of a person (in this section called the ‘**applicant**’) under the AUSTUDY scheme or a current special educational assistance scheme unless the Secretary is given:

- (a) the applicant’s tax file number; and

- (b) where another person's income or assets are required to be taken into account for the purpose of calculating the benefit, that person's tax file number.

“(2) Paragraph (1)(b) does not require the giving of the tax file number of a person who:

- (a) is a parent of the applicant for the purposes of the scheme under which application for the benefit in question has been made; and
- (b) is resident outside Australia; and
- (c) had no assessable income under the *Income Tax Assessment Act 1936* for the period in relation to which the person's income is to be taken into account for the purpose of calculating the benefit.

“(3) Subsection (1) does not apply to a benefit if the application for the benefit was made before 1 July 1991.

“(4) The regulations may prescribe circumstances in which a benefit may be paid even though a tax file number required by subsection (1) to be given to the Secretary has not been given.

“(5) Subject to subsection (6), a person is taken, for the purposes of the ABSTUDY scheme, to have given his or her tax file number to the Secretary if he or she has lodged an application for a tax file number with the Department.

“(6) If the Commissioner for Taxation refuses to issue a tax file number to a person who has lodged an application with the Department under subsection (5), subsection (5) is taken not to have applied to that person in relation to that application.

“(7) In this section, ‘tax file number’ has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.”.

Power to obtain information

18. Section 45 of the Principal Act is amended by omitting from subsection (1) “this Act” and substituting “the AUSTUDY scheme, a current special educational assistance scheme or a former special educational assistance scheme”.

Evidentiary certificates

19. Section 51 of the Principal Act is amended by omitting from paragraph (b) “39 (1) or 40 (1)” and substituting “40 (1A)”.

20. Sections 52 and 53 of the Principal Act are repealed and the following sections are substituted:

Decisions of authorised persons and prescribed officers

“52. (1) A decision of an authorised person may be varied or revoked by the authorised person or by another authorised person.

“(2) A decision of a prescribed officer may be varied or revoked by the prescribed officer or by another prescribed officer.

“(3) If the decision in question must be in writing, a variation or revocation of that decision is required to be in writing.

“(4) If the decision in question must be given to a person, a variation or revocation of that decision is required to be given to that person.

Delegation

“53. The Minister may, in writing, delegate all or any of the Minister’s powers under section 41 or subsection 43 (2) to:

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

21. After section 55 of the Principal Act the following section is inserted:

Disclosure of personal information

“55A. (1) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘officer’ means a person performing duties, or exercising powers or functions, under or in relation to this Act and includes:

- (a) a person who has been such a person; and
- (b) a person who is or has been appointed or employed by the Commonwealth and who, as a result of that appointment, may acquire or has acquired information concerning a person under this Act.

“(2) An officer is not to be required, except for the purposes of this Act or of the AUSTUDY scheme, a current special educational assistance scheme or a former special educational assistance scheme, to produce in a court any document in his or her possession, or to divulge or communicate to a court any information, if:

- (a) the document contains, or the information constitutes, personal information relating to another person (whether alive or dead); and
- (b) the information is relevant to the question whether a benefit is payable to a person under such a scheme and, if so, to the determination of the amount of the benefit;

where the officer has possession of the document, or became aware of the information, because of the performance or exercise of his or her

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duties, functions or powers under or in relation to this Act or in relation to the scheme.”.

Regulations

22. Section 56 of the Principal Act is amended:

(a) by omitting paragraph (a) and substituting the following paragraphs:

“(a) making provision in relation to the furnishing of information by applicants for benefits under the AUSTUDY scheme or a current special educational assistance scheme and by persons to whom such benefits have been granted; and

(ab) making provision in relation to the furnishing of information relating to persons whose income or assets are required to be taken into account for the purpose of calculating a benefit under the AUSTUDY scheme or under a current special educational assistance scheme; and”;

(b) by adding at the end of paragraph (b) “and”;

(c) by adding at the end the following word and paragraph:

“; and (e) making provision in relation to:

(i) the times at which; and

(ii) the manner in which; and

(iii) the persons to whom;

benefits payable under student assistance are to be paid.”.

Transitional provision: decision under Part 3

23. Where an authorised person has made a decision under Part 3 of the Principal Act about an application for, or a benefit under, a Post-graduate Award in respect of a period before the commencement of this section, the Principal Act continues, after the commencement of this section, to have effect in relation to the decision as if paragraph 3 (c) and section 5 of this Act had not been enacted.

Transitional provision: notice under section 39 or 40

24. In relation to:

(a) a notice given under section 39 or 40 of the Principal Act before the commencement of this section; and

(b) the person to whom the notice was given;

the Principal Act continues to have effect as if this Act had not been enacted.

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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; No. 35, 1988; and Nos. 76 and 171, 1989.

*[Minister's second reading speech made in—
House of Representatives on 14 March 1991
Senate on 16 May 1991]*