



Innovation and Education Legislation Amendment Act (No. 2) 2001

No. 116, 2001



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An Act to amend the *Higher Education Funding Act 1988*, and for related purposes

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An Act to amend the *Higher Education Funding Act 1988*, and for related purposes

[Assented to 18 September 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Innovation and Education Legislation Amendment Act (No. 2) 2001*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Extra funding for higher education

Part 1—Extra funding for operating purposes

Higher Education Funding Act 1988

1 Paragraphs 17(m) and (n)

Repeal the paragraphs, substitute:

(m) in the case of the year 2001—\$2,753,460,000; and

(n) in the case of the year 2002—\$2,830,835,000; and

Schedule 1 Extra funding for higher education

Part 2 Extra funding for superannuation expenses

Part 2—Extra funding for superannuation expenses

Higher Education Funding Act 1988

2 Paragraphs 20(3)(n) and (o)

Repeal the paragraphs, substitute:

(n) in the case of the year 2002—\$112,603,000; and

(o) in the case of the year 2003—\$103,210,000.

Schedule 2—Post-graduate education loan scheme

Higher Education Funding Act 1988

1 Section 3 (after paragraph (a) of the definition of year to which this Chapter applies)

Insert:

(aa) in Chapter 4A—the year 2002 or any subsequent year; or

2 Paragraph 60(1)(a)

Omit “this Chapter or”, substitute “this Chapter, Chapter 4A or”.

3 At the end of paragraph 61(1)(a)

Add “and”.

4 After paragraph 61(1)(a)

Insert:

(aa) the making by the Commonwealth of payments under Chapter 4A, or of advances on account of payments under that Chapter; and

5 After Chapter 4

Insert:

Chapter 4A—Post-graduate education loan scheme

Part 4A.1—Preliminary

98A Definitions

(1) In this Chapter, unless the contrary intention appears:

appropriate officer of an institution means:

- (a) a person who is an appropriate officer of the institution for the purposes of Chapter 4; or
- (b) if the institution is Marcus Oldham College—a person, or a person included in a class of persons, appointed by the chief executive officer of the institution or the chief executive officer's delegate to be an appropriate officer of the institution for the purposes of this Chapter.

eligible post-graduate course of study at an institution means a course of study at the institution that:

- (a) is a post-graduate course for which fees may be charged; and
- (b) is not a post-graduate research award course of study.

eligible student, for a semester, has the meaning given by section 98B.

institution has the meaning given by section 4 (despite subsection (2) of this section).

semester means a semester in a year to which this Chapter applies, and has a meaning affected by subsection (3).

student means:

- (a) a person who proposes to undertake on or after 1 January 2002, or is undertaking or has undertaken on or after that date, an eligible post-graduate course of study at an institution; and
 - (b) when used in relation to a particular eligible post-graduate course of study at an institution—a person who proposes to undertake on or after 1 January 2002, or is undertaking or has undertaken on or after that date, the eligible post-graduate course of study at that institution.
- (2) Expressions used in this Chapter that are defined in Chapter 4 have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4.
- (3) For the purposes of subsection (2), section 37 and subsection 39(2) apply in relation to the expressions **semester** and **standard student load** in this Chapter in the same way that they apply in relation to those expressions in Chapter 4, as if:

- (a) the references in section 37 and subsection 39(2) to institution were references to institution within the meaning of Chapter 4A; and
 - (b) the reference in subsection 39(2) to each designated course of study were a reference to each eligible post-graduate course of study.
- (4) Section 36 does not affect the meaning of the expression *student load* in this Chapter.
 - (5) Expressions used in this Chapter that are defined in the *Income Tax Assessment Act 1936* have in this Chapter, unless the contrary intention appears, the same meanings as in that Act.
 - (6) For the purposes of this Chapter, the payment of an amount to an institution by a person other than a student in respect of fees payable by the student to the institution is taken to constitute payment of that amount to the institution by the student.

98B Eligible student

- (1) A student is an *eligible student* for a semester if on the day (the *enrolment day*) on which the person completes his or her enrolment for the semester, the student is:
 - (a) an Australian citizen; or
 - (b) a person who has been granted a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948* and who has yet to make the pledge referred to in section 15 of that Act; or
 - (c) a New Zealand citizen who is the holder of a permanent visa, is present in Australia and:
 - (i) does not satisfy the residency test in subsection (2); or
 - (ii) if, on enrolment day, he or she satisfies that test—first satisfied that test on a day within the 12 months immediately preceding the enrolment day; or
 - (d) a person (other than a New Zealand citizen) who is a permanent resident, is present in Australia and:
 - (i) does not satisfy the residency test in subsection (2); or
 - (ii) if, on enrolment day, he or she satisfies that test—first satisfied that test on a day within the 12 months immediately preceding the enrolment day;

unless subsection (3) applies to the student.

Note: If subsection (3) applies to the student, then the student is not an eligible student.

- (2) A person satisfies the residency test on a particular day if the person:
 - (a) has been present in Australia as a permanent resident for a period of, or for periods totalling, not less than one year during the period of 2 years immediately preceding that day; and
 - (b) has been present in Australia as a permanent resident for a period of, or for periods totalling, not less than 2 years during the period of 5 years immediately preceding that day.
- (3) This subsection applies to a student in relation to a course of study for a semester if, on the enrolment day, the student:
 - (a) is covered by paragraph (1)(c) or (d); and
 - (b) will be resident outside Australia for the duration of the course in that semester for a reason other than a requirement of the course.
- (4) In determining, for the purpose of paragraph (3)(b), whether a student will be resident outside Australia for the duration of a course in a semester, any period of residence in Australia that cannot reasonably be regarded as indicating an intention to reside in Australia for the duration of the course in that semester must be disregarded.

Part 4A.2—Additional condition of grant of financial assistance

98C Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting the operation of subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Part 4A.3—Applications for and grants of PELS loans

Division 1—Application for PELS loan

98D Making an application for a PELS loan

- (1) A person may make an application under this section if he or she:
 - (a) has enrolled in or proposes to enrol in an eligible post-graduate course of study for a semester at an institution; and
 - (b) is or will be an eligible student for the semester.
 - (2) The application must be made on or before the census date for the course of study for the semester.
 - (3) The application must state that the applicant asks the Commonwealth if:
 - (a) on the census date for the eligible post-graduate course of study for any semester the applicant:
 - (i) is an eligible student for that semester; and
 - (ii) is enrolled in the course of study for that semester at the institution; and
 - (iii) has not paid the full amount of the fees charged by the institution for so much of the course of study as is being undertaken by the student for that semester, leaving part of those fees outstanding; and
 - (b) that census date is on or after the date on which the application is made;to lend to the applicant the amount of those fees outstanding and to use the amount so lent to pay the fees outstanding on behalf of the applicant.
- Note: The applicant makes only one application for each course of study.
- (4) The application must also acknowledge that if the Commonwealth complies with the request the applicant will be liable to make payments under Chapter 5A.
 - (5) The application must be in the approved form, signed by the applicant and given to an appropriate officer of the institution.

98E Tax file number of student

Sections 41A, 41B, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 apply in relation to the tax file number of a student as if:

- (a) any references in those sections to student were references to student within the meaning of Chapter 4A; and
- (b) the references in paragraphs 41A(1)(a) and 41B(1)(a) to a contributing student were references to an eligible student; and
- (c) the references in paragraphs 41A(1)(a) and 41B(1)(a) to giving a document as mentioned in paragraph 41(1)(b) or (1A)(c) were references to making an application under section 98D; and
- (d) the references in paragraph 41A(1)(b), subsection 41A(2) and paragraph 41B(1)(b) to the document were references to the application; and
- (e) the reference in paragraph 41B(1)(a) to a designated course of study were a reference to an eligible post-graduate course of study; and
- (f) the references in subsection 50(4) and paragraphs 52(1)(a) and 53(1)(d) to this Chapter were references to Chapter 4A.

98F Notice by institution

- (1) An institution must give a written notice under this subsection to each student who:
 - (a) is enrolled in an eligible post-graduate course of study at the institution on the census date for that course of study for a semester; and
 - (b) has made an application under section 98D on or before that date in relation to that course of study.
- (2) The notice must:
 - (a) set out particulars of so much of that course of study as is being undertaken by the student for that semester; and
 - (b) state whether the student is an eligible student for that semester; and
 - (c) set out the student's student load in respect of that course of study for that semester expressed as a proportion of the standard student load for that course of study in the year in which that semester occurs; and

- (d) specify the full amount of the fees charged by the institution for so much of that course of study as is being undertaken by the student for that semester; and
 - (e) specify the amount of those fees that has been paid by the student on or before the census date for that course of study for that semester; and
 - (f) specify the amount of those fees outstanding in respect of the student immediately after the census date for that course of study for that semester.
- (3) A notice to a student under subsection (1) in relation to a semester must be given not later than a date specified by the Minister by notice published in the *Gazette* in relation to that semester for the purposes of this section.
- (4) If, after giving a notice to a student under subsection (1) or this subsection, the institution is satisfied that a material particular in the notice was not, or has ceased to be, correct, the institution must give a further written notice to the student setting out the correct particular.
- (5) A notice under this section is given for the purpose only of providing information to a student, and the liability of a student to pay fees charged by the institution is not affected:
- (a) if the institution fails to give a notice or to give a notice by the specified date; or
 - (b) if there is an incorrect statement in the notice.
- (6) A notice under this section must set out the effect of subsections 55(1) and (2), as applied in relation to the notice by subsection (7).
- (7) Section 55 applies in relation to a notice under this section as if:
- (a) any references in that section to student were references to student within the meaning of Chapter 4A; and
 - (b) the references in subsections 55(1) and (4) to section 54 were references to section 98F; and
 - (c) the reference in subsection 55(3) to the liability of the student to pay the contribution were a reference to the liability of the student to pay fees charged by the institution; and
 - (d) the reference in subsection 55(4) to subsection 54(3) were a reference to subsection 98F(4).

Division 2—Discharge by Commonwealth of students' liability for fees

98G Commonwealth to discharge students' liabilities

- (1) This section operates if an eligible student for a semester:
 - (a) has made an application under section 98D before the census date for the student's eligible post-graduate course of study for the semester, being the course specified in the application; and
 - (b) is enrolled in the eligible post-graduate course of study for the semester at the institution, as specified in the application; and
 - (c) has not, on or before the census date for the course of study for the semester, paid the full amount of the fees charged by the institution for so much of the course of study as is being undertaken by the student for the semester, leaving part of those fees outstanding.
- (2) The Commonwealth must, as a benefit to the student:
 - (a) lend to the student an amount equal to the amount of the fees outstanding immediately after the census date; and
 - (b) apply the amount so lent in making a payment to the institution in discharge of the student's liability to pay the amount of the fees outstanding.
- (3) The Commonwealth may make advances to the institution on account of an amount that is expected to become payable by the Commonwealth to the institution under this section.

98H Commonwealth not liable where person does not have a tax file number

- (1) This section operates if:
 - (a) the institution receives notice under subsection 42(3) or (5) as applied by section 98E to the effect that a person who has made an application under section 98D does not have, or no longer has, a tax file number; and
 - (b) at the end of 28 days after the institution receives that notice, the institution has not been notified of a number that the

institution is satisfied (in accordance with guidelines issued by the Commissioner) is the person's tax file number.

- (2) The Commonwealth is not liable, and is taken never to have been liable:
 - (a) to lend an amount to the person under paragraph 98G(2)(a); or
 - (b) to apply any amount in making a payment to the institution under paragraph 98G(2)(b) in discharge of a liability of the person.
- (3) The regulations may set out procedures for the institution to notify persons who may be affected by subsection (2).

98J Institution to provide information to Minister

An institution must give to the Minister, if and when required by the Minister to do so, any statistical and other information relating to students in relation to eligible post-graduate courses of study (not being information as to the name or address of a student) that the Minister reasonably requires for the purposes of this Part.

Part 4A.4—Miscellaneous

98K Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if the section were included in this Chapter.

98L Annual statement

The chief executive officer of an institution must give to the Minister, on or before 31 December in each year, a statement:

- (a) as to whether the institution has complied with the requirements of this Chapter in respect of the year ending on that 31 December; and
- (b) if the institution has not complied with such a requirement in respect of that year, setting out particulars of the non-compliance.

98M Electronic communications between students and institutions

- (1) Sections 56C, 56D and 56E apply for the purposes of this Chapter as if a reference in those sections to a person, thing or provision mentioned in the second column of an item of the table were a reference to the person, thing or provision mentioned in the third column of the item.

| How sections 56C, 56D and 56E apply | | |
|-------------------------------------|---|---|
| Item | Person, thing or provision mentioned in section 56C, 56D or 56E | Equivalent person, thing or provision for this Chapter |
| 1 | Student | Student (within the meaning of Chapter 4A), person or applicant |
| 2 | Institution | Institution within the meaning of Chapter 4A |
| 3 | Document | Application |
| 4 | Paragraph 41(1)(b) | Section 98D |
| 5 | Section 54 | Section 98F |

- (2) This section does not affect the way in which sections 56C, 56D and 56E apply apart from this section.

6 Chapter 5A (heading)

Repeal the heading, substitute:

Chapter 5A—Repayment of loans made under Chapters 4, 4A and 5

7 Subsection 106H(1)

Insert:

PELS semester debt has the meaning given by section 106JA.

8 Subsection 106H(1) (paragraph (b) of the definition of *semester debt*)

Omit “debt.”, substitute “debt; or”.

9 Subsection 106H(1) (at the end of the definition of *semester debt*)

Add:

- (c) a PELS semester debt.

10 Subsection 106H(2)

Omit “Chapter 4 or 5” (wherever occurring), substitute “Chapter 4, 4A or 5”.

11 After paragraph 106I(a)

Insert:

- (aa) to students under Chapter 4A; or

12 After section 106J

Insert:

106JA PELS semester debt

(1) When the Commonwealth under section 98G:

- (a) makes a loan to a person; and
- (b) uses the amount lent to make a payment in discharge of the person’s liability to pay fees in respect of a course of study in respect of a semester;

the person incurs a *PELS semester debt* to the Commonwealth equal to the amount of the loan.

(2) The PELS semester debt is taken to have been incurred immediately after the census date for the course of study for the semester, whether or not the Commonwealth has made a payment to the institution in respect of the fees.

13 Subsection 106N(1)

Omit “an HEC semester debt or debts, or an OL study period debt or debts, or both,”, substitute “a semester debt or debts”.

14 Paragraph 106N(1)(a)

Repeal the paragraph, substitute:

- (a) that debt; or

15 Paragraph 106N(2)(a)

Omit “an HEC semester debt or debts, or an OL study period debt or debts,”, substitute “a semester debt or debts”.

16 Paragraph 106N(2)(b)

Omit “a debt or debts of that kind”, substitute “a semester debt or debts”.

17 Paragraph 106O(1)(b)

Omit “HEC semester debt or OL study period debt”, substitute “semester debt”.

18 At the end of section 106R

Add:

- (4) An institution must give to the Commissioner, if asked by the Commissioner to do so, any information in its possession relating to students in relation to eligible post-graduate courses of study at the institution that the Commissioner reasonably requires for the purposes of this Chapter.

19 Subparagraph 106Y(2)(e)(i)

Omit “HEC semester debt or OL study period debt”, substitute “semester debt”.

20 Subsection 118(1)

Omit “Chapter 4”, substitute “Chapters 4 and 4A”.

21 Subsection 118(2)

Omit “Chapter 4”, substitute “Chapter 4 or 4A”.

22 Transitional provision for Commissioner’s guidelines

- (1) This item operates if guidelines issued by the Commissioner under paragraph 42A(1)(b) of the *Higher Education Funding Act 1988* are in force immediately before the commencement of this Schedule.
- (2) The guidelines operate on and after that commencement in relation to paragraph 98H(1)(b) of the *Higher Education Funding Act 1988* as if they had been made under that paragraph and paragraph 42A(1)(b) of that Act.

- (3) This item does not prevent the amendment or repeal of the guidelines.

Schedule 3—Limit on student debt to Commonwealth

Higher Education Funding Act 1988

1 Section 3 (definition of *institution*)

Omit “Chapter 4”, substitute “Chapters 4 and 5B”.

2 After Chapter 5A

Insert:

Chapter 5B—Limit on student debt to Commonwealth

Part 5B.1—Preliminary

106ZB Definitions

- (1) In this Chapter, unless the contrary intention appears:

loan limit notice means a notice given under subsection 106ZE(1).

maximum permitted debt means the amount specified in a determination in force under section 106ZD.

suspension notice means a notice given under subsection 106ZH(1).

total indebtedness under this Act has the meaning given by subsection (3).

- (2) Expressions used in this Chapter that are defined in Chapter 4, 4A, 5 or 5A have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4, 4A, 5 or 5A (as the case may be).
- (3) A person’s *total indebtedness under this Act* at a time is the sum of:

- (a) the person's accumulated HEC debt as at the most recent 1 June before that time; and
- (b) the semester debt or semester debts that:
 - (i) the person owes to the Commonwealth; and
 - (ii) were incurred after that 1 June;reduced by any payments made after that 1 June in reduction of the debts mentioned in paragraph (a) or (b).

Part 5B.2—Additional condition of grant of financial assistance

106ZC Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution referred to in section 4 on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting the operation of subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Part 5B.3—Maximum permitted debt

106ZD Minister may determine maximum permitted debt

The Minister may make a determination specifying an amount that is the *maximum permitted debt* for the purposes of this Chapter.

Part 5B.4—Loan limit notices

106ZE Commissioner to give loan limit notice

- (1) The Commissioner must give a notice (the *loan limit notice*) under this section in relation to a person if the person's total indebtedness under this Act exceeds the maximum permitted debt.
- (2) The notice must:

- (a) state that, on the day on which the notice is given, the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (b) summarise the effect of sections 106ZF, 106ZG, 106ZH and 106ZJ.
- (3) The notice must be in writing and given to the person to whom it relates.
- (4) The Commissioner must give a copy of the notice to:
- (a) each institution at which, according to information that the institution has given the Commissioner, the person to whom the notice relates is enrolled in or undertaking a designated course of study or an eligible post-graduate course of study; and
 - (b) if the Agency has given information to the Commissioner indicating that the person to whom the notice relates is an eligible client of the Agency for a study period—the Agency;
- unless the notice has been cancelled under section 106ZF.
- Note: The Commissioner must give a copy of the notice from time to time as occasion requires. See subsection 33(1) of the *Acts Interpretation Act 1901*.
- (5) At the time the notice is given, the Commissioner must also give a statement in writing to the person to whom the notice relates that specifies:
- (a) the maximum permitted debt; and
 - (b) the person's total indebtedness under this Act at that time.

106ZF Cancelling loan limit notice

- (1) The person to whom the loan limit notice relates may ask the Commissioner to give a notice (the *cancellation notice*) under this section cancelling the loan limit notice.
- (2) The Commissioner must give the cancellation notice to the person if the person's total indebtedness under this Act no longer exceeds the maximum permitted debt.
- (3) The cancellation notice must be in writing and state that, on the day on which it is given, the person's total indebtedness under this Act does not exceed the maximum permitted debt.

106ZG Consequences of loan limit notice—no amounts payable by Commonwealth

- (1) This section operates if the Commissioner has given a person a loan limit notice in accordance with section 106ZE that relates to the person.

HECS and PELS

- (2) The Commonwealth is not liable, and is taken never to have been liable, in relation to a course of study for a semester covered by subsection (3):
- (a) to lend an amount to the person under:
 - (i) subsection 57(3), paragraph 57(3A)(e) or subparagraph 57(3B)(b)(i); or
 - (ii) paragraph 98G(2)(a); or
 - (b) to apply any amount in making a payment to an institution, in discharge of a liability of the person, under:
 - (i) subsection 57(2) or (3), paragraph 57(3A)(e) or (f) or subparagraph 57(3B)(b)(ii); or
 - (ii) paragraph 98G(2)(b).
- (3) Subsection (2) relates to a course of study for a semester if:
- (a) the course of study is:
 - (i) a designated course of study; or
 - (ii) an eligible post-graduate course of study; and
 - (b) the census date for the course of study for the semester is:
 - (i) on or after the day on which the Commissioner gave the person the loan limit notice; and
 - (ii) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.

Open Learning Deferred Payment Scheme

- (4) The Commonwealth is not liable, and is taken never to have been liable, in relation to a unit of study for a study period covered by subsection (5):
- (a) to lend an amount to the person under paragraph 106D(1)(a); or

- (b) to apply any amount in making a payment to the Agency, in discharge of a liability of the person, under paragraph 106D(1)(b).
- (5) Subsection (4) relates to a unit of study for a study period if the census date for the study period is:
 - (a) on or after the day on which the Commissioner gave the person the loan limit notice; and
 - (b) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.

Notifying affected persons

- (6) The regulations may set out procedures for an institution or the Agency to notify persons who may be affected by subsection (2) or (4).

Part 5B.5—Suspension notices

106ZH Commissioner must give suspension notice

- (1) The Commissioner must give an institution a notice (the *suspension notice*) in writing under this subsection in relation to a person if:
 - (a) the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (b) the Commissioner has given the person a loan limit notice in accordance with section 106ZE; and
 - (c) the loan limit notice has not been cancelled by a notice under section 106ZF; and
 - (d) according to information that the institution has given the Commissioner, the person:
 - (i) is enrolled in or undertaking a designated course of study at the institution; or
 - (ii) proposes to enrol in or undertake a designated course of study at the institution.
- (2) The suspension notice must:
 - (a) state that:

-
- (i) on the day on which it is given, the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (ii) the Commissioner gave the person a loan limit notice on or before that day; and
 - (iii) the loan limit notice has not been cancelled by a notice under section 106ZF on or before that day; and
- (b) specify the day on which the Commissioner gave the person the loan limit notice.
- (3) The Commissioner must give a copy of the suspension notice to the person to whom it relates.

106ZJ Consequences of suspension notice—HECS courses

- (1) This section operates if the Commissioner has given an institution a suspension notice in relation to a person.
- (2) The institution must:
 - (a) not permit the person to undertake a course of study for a semester covered by subsection (3) at the institution; and
 - (b) if the person applies to enrol for a course of study for a semester covered by subsection (3) at the institution—not permit the person to enrol for the course of study for the semester; and
 - (c) if the person has already enrolled for a course of study for a semester covered by subsection (3) at the institution—cancel the person's enrolment for the course of study for the semester.
- (3) Subsection (2) relates to a course of study for a semester if:
 - (a) the course of study is a designated course of study; and
 - (b) the census date for the course of study for the semester is:
 - (i) on or after the day specified in the suspension notice as the day on which the Commissioner gave the person a loan limit notice; and
 - (ii) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.
- (4) The regulations may set out procedures for the institution to notify persons who may be affected by subsection (2).

- (5) Subsection (2) does not apply if:
- (a) the person pays to the institution the total amount of the contribution that the institution assesses will be payable by the student for the course of study for the semester; or
 - (b) the person is an exempt student for the course of study for the semester.

Part 5B.6—Secrecy

106ZK Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if the section were included in this Chapter.

3 Paragraph 110(b)

Omit “or 27A”, substitute “, 27A or 106ZD”.

Schedule 4—Electronic communications with students

Higher Education Funding Act 1988

1 Section 3

Insert:

electronic communication has the meaning given by the *Electronic Transactions Act 1999*.

2 Section 3

Insert:

information system has the meaning given by the *Electronic Transactions Act 1999*.

3 At the end of Division 2 of Part 4.2

Add:

56C Electronic communications from students to institutions

- (1) This section applies in relation to a document, notice, certificate or request that:
 - (a) is described in one of the following provisions:
 - (i) subparagraph 41(1)(a)(ii);
 - (ii) paragraph 41(1)(b);
 - (iii) paragraph 41(1A)(c);
 - (iv) paragraph 41B(2)(a);
 - (v) paragraph 41B(2)(b);
 - (vi) section 55; and
 - (b) is required or permitted by the provision to be given by the student to the appropriate officer of the institution.
- (2) The student complies with the provision, so far as it requires or permits the student to give the document, notice, certificate or request to the officer, if the student gives the document, notice, certificate or request to the officer:

- (a) by electronic communication using an information system:
 - (i) that is declared by an appropriate officer of the institution to be a system that may be used by any student to give to an appropriate officer of the institution such a document, notice, certificate or request; and
 - (ii) that is declared by the Minister to meet guidelines relating to information systems that may be used to give such a document, notice, certificate or request; and
 - (b) at a time when section 9 of the *Electronic Transactions Act 1999* does not apply to the requirement or permission because of regulations made under that Act.
- (3) This section does not limit the ways in which the student may comply with the provision.

Declaration by appropriate officers of institution

- (4) An appropriate officer of an institution may declare, in writing given to the Minister, that a specified information system may be used by any student to give to an appropriate officer of the institution a document, notice, certificate or request required or permitted by a provision mentioned in paragraph (1)(a) to be given by a student to an appropriate officer of the institution.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Declarations by Minister

- (5) The Minister may declare, in writing given to an institution, that a specified information system meets the guidelines relating to information systems that may be used by a student to give to an appropriate officer of the institution a document, notice, certificate or request that the student is required or permitted by a provision mentioned in paragraph (1)(a) to give.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Guidelines

- (6) The Minister may issue written guidelines relating to information systems that may be used to give documents, notices, certificates or

requests that students are required or permitted by a provision mentioned in paragraph (1)(a) to give.

Note: Guidelines under this subsection may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

56D Electronic signature of communications by students

- (1) This section applies in relation to a document that:
 - (a) is described in one of the following provisions:
 - (i) subparagraph 41(1)(a)(ii);
 - (ii) paragraph 41(1)(b);
 - (iii) paragraph 41(1A)(c); and
 - (b) is required by the provision to be signed by the student who gives it to the appropriate officer of an institution.
- (2) The student complies with the requirement if the student's identity and approval of the document are made apparent in connection with the document:
 - (a) by a method:
 - (i) that is declared by an appropriate officer of the institution to be a method that may be used in connection with such a document; and
 - (ii) that is declared by the Minister to meet guidelines relating to methods of identifying students, and indicating their approval of documents, in connection with such documents; and
 - (b) at a time when section 10 of the *Electronic Transactions Act 1999* does not apply to the requirement because of regulations made under that Act.
- (3) This section does not limit the ways in which the student may comply with the requirement.

Declarations by appropriate officers of institutions

- (4) An appropriate officer of an institution may declare, in writing given to the Minister, that a specified method may be used, in connection with a document required by a provision mentioned in paragraph (1)(a) to be signed by a student, to indicate the student's identity and approval of the document.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Declarations by Minister

- (5) The Minister may declare, in writing given to an institution, that a specified method meets the guidelines relating to methods of identifying students, and indicating their approval of documents, in connection with documents required by a provision mentioned in paragraph (1)(a) to be signed by students.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Guidelines

- (6) The Minister may issue written guidelines relating to methods of identifying students, and indicating their approval of documents, in connection with documents that students are required by a provision mentioned in paragraph (1)(a) to sign.

Note: Guidelines under this subsection may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

56E Electronic communications from institutions to students

- (1) This section applies to a notice that is described in section 41A or 54 and given by an institution to a student by electronic communication using an information system to which the student has access provided by the institution in accordance with guidelines about access to information systems used to give notices described in that section.
- (2) For the purposes of paragraph 9(1)(a) of the *Electronic Transactions Act 1999*, it is reasonable to expect that the notice will be readily accessible so as to be useable for subsequent reference.
- (3) For the purposes of paragraph 9(1)(d) of the *Electronic Transactions Act 1999*, the student is taken to consent to the giving of the notice by electronic communication.

Note: This section has the effect that subsection 9(1) of the *Electronic Transactions Act 1999* will treat the electronic communication of the notice as meeting the requirement in section 41A or 54 of this Act to give the notice.

- (4) The Minister may issue written guidelines about institutions providing students with access to information systems used by institutions to give students notices described in section 41A or 54.

Note: Guidelines issued under this section may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

4 At the end of Division 1 of Part 5.2

Add:

106CA Electronic communications between clients and Agency

- (1) Sections 56C, 56D and 56E apply for the purposes of this Chapter as if a reference in those sections to a person, thing or provision mentioned in the second column of an item of the table were a reference to the person, thing or provision mentioned in the third column of the item.

How sections 56C, 56D and 56E apply

| Item | Person, thing or provision mentioned in section 56C, 56D or 56E | Equivalent person, thing or provision for this Chapter |
|-------------|--|---|
| 1 | Student | Client |
| 2 | Appropriate officer of an institution | Appropriate officer of the Agency |
| 3 | Institution | Agency |
| 4 | Paragraph 41(1)(b) | Subsection 105(2) |
| 5 | Paragraph 41B(2)(a) | Paragraph 105(3)(a) |
| 6 | Paragraph 41B(2)(b) | Paragraph 105(3)(b) |
| 7 | Section 54 | Section 106B |
| 8 | Section 55 | Section 106C |

- (2) This section does not affect the way in which sections 56C, 56D and 56E apply apart from this section.

5 Paragraph 110(c)

After “40A”, insert “, subsection 56C(6), 56D(6) or 56E(4) (as any of those subsections applies of its own force or otherwise)”.

*[Minister's second reading speech made in—
House of Representatives on 22 August 2001
Senate on 29 August 2001]*

(147/01)