



Queensland

Assisted Students (Enforcement of Obligations) Act 1951

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Assisted Students (Enforcement of Obligations) Act 1951

An Act relating to the performance by students of the conditions upon which they accept assistance from the Crown in order to enable them to pursue their studies

1 Short title

This Act may be cited as the *Assisted Students (Enforcement of Obligations) Act 1951*.

2 Meaning of terms

In this Act—

assistance, in relation to an assisted student, includes, but without limit to the generality of the meaning of that term—

- (a) a scholarship, fellowship, bursary, or exhibition;
- (b) the payment of money, fares, or allowances, whether payable in respect of the assisted student or of any 1 or more of the student's dependants, or of that student and any of the student's dependants;
- (c) leave from employment and either with or without the payment in whole or in part of salary or other remuneration.

assisted student means a person who accepts, or agrees to accept, from the Crown, assistance in order to enable the person to pursue the person's studies.

Crown includes, but without limit to the generality of the meaning of that term, any department or sub-department of the Government of this State and any Crown corporation or instrumentality or corporation or instrumentality representing the Crown in right of this State.

service as an employee, in relation to an assisted student, includes, but without limit to the generality of the meaning of the term, service as an employee as stipulated in the contract.

studies, in relation to an assisted student includes, but without limit to the generality of the meaning of that term, a course or part of a course, or an extended or part of an extended course, of study at a university, college, school, or other educational institution or at any other place whatsoever where any studies may be undertaken or completed and whether in or outside Australia.

3 Contract relating to assistance

- (1) Where assistance proposed to be given to a person is to be subject to terms and conditions binding upon that person, those terms and conditions shall, subject to the provisions of this Act, be set out in a document called in this Act *the contract*.
- (1A) However, it shall not be necessary to set out in the contract any of the provisions of this Act.
- (2) The parties to the contract shall be the chief executive concerned, on behalf of the Crown, and the assisted student.
- (2A) The contract may be signed for the chief executive by the chief executive's agent authorised in writing, either generally or in a particular case.
- (3) A person who agrees to accept assistance offered by the Crown shall execute the contract and thereupon shall be bound by each and every term and condition expressed by the contract to be binding upon the person including, if expressed in the contract, a condition requiring the person to perform service as an employee.
- (4) However, an assisted student who was a minor when the student executed the contract shall not be so bound unless the student's parent or guardian or if the student has no parent or guardian a stipendiary magistrate shall have endorsed on the contract his or her consent to the execution thereof by that minor.

4 Damages for failure to perform service as employee

- (1) Where an assisted student binds himself or herself by the contract to perform service as an employee the contract may stipulate the sum payable to the Crown as damages for a breach of that condition.
- (2) The sum so stipulated shall not be held to be unreasonable or extravagant but shall be deemed to be by way of liquidated damages and the parties to the contract shall be deemed to have intended accordingly.

5 Remedies of the Crown for breach by student of the contract

- (1) If the assisted student is guilty of a breach of any term or condition of the contract binding upon the student (other than a condition requiring the student to perform service as an employee), then, notwithstanding any other Act or law or rule or practice of law, that student shall be liable to pay to the Crown a sum equal to the aggregate of all sums expended by the Crown in or towards the assistance of that student, unless that breach has arisen from circumstances beyond the student's own control proof whereof shall lie upon the student.
 - (2) If the assisted student fails, neglects, or refuses to perform the whole or any part of the service as an employee to which the student has bound himself or herself by the contract then, notwithstanding any other Act or law, or rule or practice of law, that student shall be liable to pay to the Crown the sum stipulated in the contract to be payable to the Crown as damages for a breach by that student of the condition binding the student to serve as an employee together with a further sum equal to the aggregate of all sums expended by the Crown in or towards the assistance of that student less an amount bearing the same proportion to the total of the aforesaid sums as the performed part of the service to which the student bound himself or herself by the contract bears to the whole of that service.
- (2A) However, notwithstanding that a contract does not stipulate any sum to be payable to the Crown as damages for the breach hereinbefore specified in subsection (2), the student

concerned shall nevertheless be liable in respect of that breach to make to the Crown the payment other than damages hereinbefore set out in subsection (2).

(2B) Also, if—

- (a) an amount or part of an amount payable under subsection (1) or (2) (a **relevant amount**) is for a supply for which GST is payable; and
- (b) the relevant amount does not include the appropriate amount for GST in relation to the supply;

the amount payable under the subsection is increased by an amount equal to the appropriate amount for GST in relation to the supply less any amount included in the relevant amount for GST in relation to the supply.

- (3) Any amount of moneys payable to the Crown under subsections (1) to (2A) shall be recoverable and may be recovered as a debt due to Her Majesty either by the Crown pursuant to the provisions of the *Crown Proceedings Act 1980* or by the chief executive in the chief executive's official name pursuant to the provisions of this Act by action in any court of competent jurisdiction against the assisted student made liable by this section for the payment of those moneys.
- (4) In and for the purposes of any proceeding to recover any moneys recoverable by the Crown under this section—
 - (a) the assisted student shall be deemed to have always been legally competent to enter into the contract and to bind himself or herself to perform all of the conditions thereof expressed thereby to be binding upon the student notwithstanding that the student was under the age of 18 years when he or she did so;
 - (b) if the proceeding has arisen out of the failure, neglect, or refusal of the student to perform the condition of service as an employee binding upon the student under the contract—evidence shall not be led or admitted proving or tending to prove that the sum expressed by the contract to be payable to the Crown in respect of that breach is a penalty or penal damages, or unreasonable or extravagant, or not intended to be by way of liquidated

damages, or that the actual damage suffered by the Crown by the failure, neglect, or refusal as aforesaid of the assisted student was less than that sum or any proportionate amount thereof payable by the student concerned.

6 Condition binding assisted student to perform service as employee not to be void for uncertainty

Provisions of the contract which provide that the assisted student shall or, if required, will serve as an employee shall constitute a condition thereof binding upon that student notwithstanding that all or any of the following are not ascertainable from those provisions, but are thereby expressed or implied to be left to be ascertained or determined either at some future time, or by a person or authority who is not a party to the contract, or both at some future time and by a person or authority as aforesaid, namely—

- (a) the capacity in which that assisted student is to so serve;
- (b) the date of commencement of that service, or the period thereof, or the conditions of service, or all or any of them;
- (c) the place or places of service;
- (d) any other matter or thing which if those provisions purported to be a contract of service by an employee with an employer would make that contract void in law for uncertainty.

7 Bond with respect to condition of service entered into by student before this Act passed

- (1) Where, before the passing of this Act, the Crown agreed to give assistance to a student in order to enable the student to pursue the student's studies and the giving of that assistance was subject to a condition relating to the performance by that student of service and that student accepted that assistance and entered into a bond then, if at any time on or after the passing of this Act, that student shall fail, neglect, or refuse to perform service for the stipulated term or any part thereof in

accordance with the conditions relating to that service set out in that bond and purporting to be binding upon the student, that student shall, notwithstanding any other Act or law, or rule or practice of law, be liable to pay the sum in which the aforesaid bond is conditioned to Her Majesty or, if the aforesaid bond provides for the payment of that sum to a Minister, to that Minister.

- (2) Any amount of that sum which has not been paid to Her Majesty or, if the aforesaid bond provides for the payment of that sum to a Minister, to that Minister at the expiration of 1 month after the date of the failure, negligence, or refusal as aforesaid of the student may be recovered as a debt due to Her Majesty by action in any court of competent jurisdiction.
- (3) In and for the purposes of any proceeding to recover that sum or any amount thereof—
 - (a) the student shall be deemed to have always been legally competent to enter into the bond notwithstanding that the student was under the age of 18 years when the student did so; and
 - (b) that sum shall be a genuine pre-estimate of the damage suffered and recoverable by the Crown or, if payable under the bond to a Minister, by that Minister in respect of the failure, negligence, or refusal of the student proved in that proceeding; and
 - (c) it shall not be competent for the defence to plead that the student was incompetent in law to enter into the bond, that the aforesaid damage was less than that sum, that that sum or any amount thereof is a penalty or penal damages, that the bond being a deed which did not take effect as from delivery by the student is not binding on the student, that any covenant in the bond by which the student purported to bind himself or herself is not legally binding upon the student, or any 1 or more of those matters; and
 - (d) evidence proving or tending to prove any of the matters set out in paragraph (c) shall not be led or admitted.

8 Effect of dismissal from service

Where the service as an employee of an assisted student or the service of a student to whom section 7 applies is terminated before the expiration of the period of that service stipulated in the contract (or in the case of a student to whom section 7 applies, in the bond entered into by the student) for a contravention of or failure to comply with any Act which is binding upon the student in respect of that service, or with any regulation, rule, or by-law made thereunder, then the student shall be deemed to have failed to perform that service and this Act shall thereupon apply as if the student had terminated that service of the student's own motion and without the consent of the appropriate person or authority.

9 Attachment of debts etc. due to assisted student to satisfy judgment

- (1) Where, pursuant to the foregoing provisions of this Act, a judgment of any court for the payment of money by an assisted student shall have been obtained, the chief executive may, notwithstanding anything contained in any other Act or law or rule or practice of law, serve upon any third person a copy of that judgment together with a notice in writing specified in subsection (2).
- (2) The aforementioned notice shall set out the amount due under the judgment and shall require the person to whom it is directed to pay to the chief executive so much as is specified in the notice of all or any debts or moneys then due or that may thereafter become due or accrue from that third person to the assisted student in question.
- (2A) The amount specified in the notice may be increased by an amount equal to the appropriate amount for any GST payable in relation to reassignment of debt or money due or accruing from the third person to the assisted student.
- (3) Any third person as aforesaid shall at any time and from time to time when any debt or money is or becomes due or payable by the person to the assisted student in question, pay forthwith to the chief executive so much of that debt or money as is specified in the notice served under this section and, until duly

paid, any and every amount so payable shall be a debt due to Her Majesty from the third person in question and be recoverable either by the Crown pursuant to the provisions of the *Crown Proceedings Act 1980* or by the chief executive in the chief executive's official name pursuant to the provisions of this Act.

(3A) However—

- (a) the third person shall be deemed to have complied in full with the notice when the person shall have made payments aggregating the amount specified in the notice or when the judgment is satisfied in another way, whichever event first happens; and
- (b) the notice shall not be effective so as to require the third person to pay to the Crown any amount of wages within the meaning of the *Wages Attachment Act 1936* which is exempted by that Act from being attached or charged by order of a court.

Editor's note—

The *Wages Attachment Act 1936* has been repealed by 1995 No. 58 section 5(1) schedule 7.

- (4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the person who failed to comply with the judgment to which the notice requiring him or her to make such payment relates and of all other persons concerned, and is hereby indemnified in respect of such payment.
- (5) This section shall apply so as not to prejudice any other mode of executing a judgment as referred to in this section.

11 Legal proceedings

(1) For the purposes of this Act—

- (a) the chief executive shall have and may exercise all the powers, privileges, rights, and remedies of the Crown;
- (b) all legal proceedings may be brought by or against the chief executive in the chief executive's official name.

- (2) In any proceedings under this Act a certificate by the chief executive that the provisions of this Act have been complied with shall be sufficient proof of that compliance until the contrary is proved.
- (3) The appointment of the chief executive and the chief executive's signature shall be judicially noticed.

13 Construction of Act

This Act shall apply so as not to limit the power and authority of the Crown to give assistance to students, it being hereby declared that nothing herein shall prohibit or be deemed to prohibit the Crown from giving assistance to students who are not required to execute the contract provided for by this Act.

14 Construction of contracts

A reference to the Public Service Board in a document that is the contract for the purposes of this Act shall be read as a reference to the chief executive of the department in which the assisted student is or is to be employed.