

DEPARTMENT OF THE SENATE
PAPER NO. 775
DATE
PRESENTED 22 MAY 1973
<i>J.R. Odgers</i>
Clerk of the Senate

T H E S E N A T E

FORTY-FOURTH REPORT  
FROM  
THE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Commonwealth Scholarships and Awards Regulations

#### MEMBERS OF THE COMMITTEE

Senator D. M. Devitt (Chairman)  
Senator W. W. C. Brown  
Senator P. D. Durack  
Senator J. R. McClelland  
Senator J. M. Wheeldon  
Senator I. A. C. Wood  
Senator the Hon. R. C. Wright

**FUNCTIONS OF THE COMMITTEE**—Since 1932, when the Committee was first established, the principle has been followed that the functions of the Committee are to scrutinize regulations and ordinances to ascertain—

- (a) that they are in accordance with the Statute;
- (b) that they do not trespass unduly on personal rights and liberties;
- (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
- (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.

Standing Committee on Regulations and Ordinances

FORTY-FOURTH REPORT

The Standing Committee on Regulations and Ordinances has the honour to present its Forty-fourth Report to the Senate.

Commonwealth Scholarships and Awards Regulations

2. The Committee has noted that matters relating to Commonwealth scholarships are still being dealt with by regulations under the Education Act 1945-1966, in spite of the fact that that Act was repealed by the Scholarships Act 1969.

3. In 1967 the Senate rejected a Scholarships Bill which provided for scholarships to be dealt with by ministerial determination and not by regulation.

4. In 1969 the Scholarships Act (see Appendix 1 to this Report) was passed, the essential feature of which was that it based scholarships upon regulation and not upon ministerial discretion. By section 2, the Act was to come into operation on a date to be fixed by Proclamation.

5. The 1969 Act has not been so proclaimed, and has therefore not come into operation.

6. In September 1970 it was stated in the Senate in answer to a question on notice (Appendix 2) that the proclamation of the Act awaited only the drafting of the regulations under it, and that this had been delayed because experienced draftsmen had not had time to work on the regulations. This appears to have been the sole reason for the delay since that time, as is indicated by a statement made before Estimates Committee C in September 1972 (Appendix 3).

7. As the present Government proposes a number of changes to the various Commonwealth scholarships schemes, it seems possible that the Scholarships Act 1969 will be either repealed or substantially amended without being first proclaimed. In other words, the Act as passed by the Parliament in 1969 may never come into operation.

8. The Committee cannot escape the duty of ensuring that regulations operating for the time being are in accordance with the current statutory expression of Parliament's will. Otherwise the Committee would be acquiescing in the appropriate regulations eluding its attention. The Committee considers that it ought to be a matter of grave concern to the Senate that the clearly expressed intention of the Parliament, embodied in legislation, should be nullified for a period of

four years or more by executive action, or inaction. The disregard of Parliament's will on the basis of the want of parliamentary draftsmen to frame regulations is inexcusable.

9. The Committee considers that no amount of administrative difficulty can justify the failure to proclaim an Act for four years after it received the Royal Assent.

D. M. Devitt  
Chairman

Senate Committee Room,

17 May 1973.

DISSENT  
BY SENATOR DURACK

In my opinion, the Committee's terms of reference should not be extended in the manner contained in the majority report. Standing Order 36A provides that regulations and ordinances are referred to the Committee for scrutiny and report. It has been held that these terms of reference do not extend to the consideration of the contents of Bills (see the ruling of President McMullin, 18 March 1959, when he ruled out of order the Committee's 14th Report). By the same force, the terms of reference could not extend to a consideration of the contents of an Act. Furthermore, the Committee has always avoided any criticism of Government policy except insofar as it may offend the Committee's principles.

In the majority report the Committee criticises the Government's failure to proclaim an Act passed by the Parliament. The power to bring the Scholarships Act into operation was granted by the Parliament to the Executive and any decision on this matter is one for the Executive as a matter of policy. In accordance with the ruling of President McMullin, the Committee does not have the power to comment on such a provision in a Bill or Act. It is doubly wrong therefore, for the Committee to criticise the exercise by the Executive of its administrative powers under the Act. There is here no breach by the Executive of the Committee's principles.

P. D. Durack

17 May 1973.



COMMONWEALTH OF AUSTRALIA

## Scholarships Act 1969

No. 17 of 1969

---

### AN ACT

#### Relating to Commonwealth Scholarships and Post-graduate Awards.

[Assented to 9 May 1969]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Scholarships Act 1969*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. The *Education Act 1945* and the *Education Act 1959* are repealed. Repeal of the Education Act.
4. In this Act, unless the contrary intention appears—  
“course” means a course of study or instruction;  
“full-time student” means a student included in a class of students which, under a direction of the Minister, is to be treated as a class of students engaged in full-time study for the purposes of this Act;  
“part-time student” means a student other than a full-time student;  
“scholarship” means a scholarship or award provided for by this Act. Definitions.

Commonwealth  
Secondary  
Scholarships.

5.—(1.) Scholarships, to be known as Commonwealth Secondary Scholarships, may, subject to and in accordance with the regulations, be granted by the Minister to persons who are undertaking or propose to undertake, as full-time students at secondary schools in Australia, a course of secondary education at a level approved by the Minister for the purposes of this section.

(2.) In this section, "secondary school" includes any educational institution in Australia which, under a direction of the Minister, is to be treated as a secondary school for the purposes of this section.

Commonwealth  
Technical  
Scholarships.

6.—(1.) Scholarships, to be known as Commonwealth Technical Scholarships, may, subject to and in accordance with the regulations, be granted by the Minister to persons who are undertaking or propose to undertake, as full-time students or part-time students at technical colleges in Australia, any course approved by the Minister for the purposes of this section.

(2.) In this section, "technical college" includes any educational institution in Australia which, under a direction of the Minister, is to be treated as a technical college for the purposes of this section.

Commonwealth  
Advanced  
Education  
Scholarships.

7.—(1.) Scholarships, to be known as Commonwealth Advanced Education Scholarships, may, subject to and in accordance with the regulations, be granted by the Minister to persons who are undertaking or propose to undertake, as full-time students or part-time students at advanced education institutions, any course approved by the Minister for the purposes of this section.

(2.) In this section, "advanced education institution" means any institution in Australia which, under a direction of the Minister, is to be treated as an advanced education institution for the purposes of this section.

Commonwealth  
University  
Scholarships.

8.—(1.) Scholarships, to be known as Commonwealth University Scholarships, may, subject to and in accordance with the regulations, be granted by the Minister to persons who are undertaking or propose to undertake, as full-time students or part-time students at Universities, any course approved by the Minister for the purposes of this section.

(2.) In this section, "University" means a University in Australia, and includes—

- (a) a University College in Australia; or
- (b) any other institution in Australia which, under a direction of the Minister, is to be treated as a University for the purposes of this section.

Commonwealth  
Postgraduate  
Awards.

9. Awards, to be known as Commonwealth Post-graduate Awards, may, subject to and in accordance with the regulations, be granted by the Minister to persons who are undertaking or propose to undertake, as full-time students at Universities, any post-graduate course approved by the Minister for the purposes of this section.



10. Benefits under a scholarship shall be by way of the provision by the Commonwealth, in accordance with section 11, 12, 13 or 14 of this Act, of financial assistance to, or for the benefit of, the holder of the scholarship.

Benefits to be by way of financial assistance.

11. The financial assistance to be provided by the Commonwealth in respect of a Commonwealth Secondary Scholarship shall consist of—

Benefits under Commonwealth Secondary Scholarships.

- (a) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to text books and equipment for use by the holder of the scholarship, of such amount as is prescribed for the purposes of this paragraph;
- (b) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to fees of a prescribed kind paid in respect of that year by or in respect of the holder of the scholarship, of whichever is the less of—
  - (i) an amount equal to the sum of the fees so paid; or
  - (ii) such amount as is prescribed for the purposes of this sub-paragraph; and
- (c) the payment by the Commonwealth of a living allowance in respect of the holder of the scholarship at such rate as is prescribed for the purposes of this paragraph.

12.—(1.) The financial assistance to be provided by the Commonwealth in respect of a Commonwealth Technical Scholarship of which the holder is a full-time student shall consist of—

Benefits under Commonwealth Technical Scholarships.

- (a) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to text books and equipment for use by the holder of the scholarship, of—
  - (i) such amount as is prescribed for the purposes of this paragraph; and
  - (ii) where the Minister is satisfied, in relation to a particular course, that additional assistance should be provided in respect of text books and equipment, such amount as is determined by the Minister in relation to that course;
- (b) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to fees of a prescribed kind paid in respect of that year by or in respect of the holder of the scholarship, of whichever is the less of—
  - (i) an amount equal to the sum of the fees so paid or, where an amount is payable in respect of that year in relation to the scholarship by virtue of sub-paragraph (ii) of the last preceding paragraph, an amount equal to the sum of the fees so paid and that amount; or

- (ii) such amount as is prescribed for the purposes of this sub-paragraph; and
  - (c) the payment by the Commonwealth of a living allowance in respect of the holder of the scholarship at such rate as is prescribed for the purposes of this paragraph.
- (2.) The financial assistance to be provided by the Commonwealth in respect of a Commonwealth Technical Scholarship of which the holder is a part-time student shall consist of—
- (a) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to fees of a prescribed kind paid in respect of that year by or in respect of the holder of the scholarship, of whichever is the less of—
    - (i) an amount equal to the sum of the fees so paid; or
    - (ii) such amount as is prescribed for the purposes of this sub-paragraph; and
  - (b) the payment by the Commonwealth in respect of each year in which the scholarship is held, for the purpose of assistance in relation to the other expenses of the holder of the scholarship, of such amount as is prescribed for the purposes of this paragraph.

Benefits under  
Commonwealth  
Advanced  
Education  
Scholarships  
and Common-  
wealth  
University  
Scholarships.

13. The financial assistance to be provided by the Commonwealth in respect of a Commonwealth Advanced Education Scholarship or a Commonwealth University Scholarship shall consist of—

- (a) the payment by the Commonwealth of amounts equal to fees of a prescribed kind paid or payable by or in respect of the holder of the scholarship;
- (b) where a living allowance is payable to the holder of the scholarship under the regulations, the payment by the Commonwealth of such an allowance at such rate as is determined in accordance with the regulations; and
- (c) the payment by the Commonwealth in respect of fares payable by or in respect of the holder of the scholarship of such amounts as are determined in accordance with the regulations.

Benefits under  
Commonwealth  
Post-graduate  
Awards.

14. The financial assistance to be provided by the Commonwealth in respect of a Commonwealth Post-graduate Award shall consist of—

- (a) the payment by the Commonwealth, in relation to the cost of the course being undertaken by the holder of the Award, of such amount as is, or such amounts as are, payable in accordance with the regulations;
- (b) the payment by the Commonwealth of a living allowance at such rate as is determined in accordance with the regulations; and
- (c) the payment by the Commonwealth of such additional amount as is, or such additional amounts as are, determined by the Minister in relation to the Award.

15. Benefits under a scholarship shall be paid at such times, in such manner and to such person, or to a person included in such class of persons, as the Minister determines.

Payment of benefits under scholarships.

16. The regulations may make provision for and in relation to the suspension and termination of scholarships.

Terrure of scholarships.

17. Benefits under a scholarship shall be paid out of moneys appropriated by the Parliament for the purpose.

Benefits to be paid out of moneys appropriated by the Parliament.

18.—(1.) An approval, direction or determination of the Minister under this Act may be varied or revoked by the Minister.

Approvals, directions and determinations.

(2.) The Minister shall make such arrangements as he thinks proper for giving public notice of the giving or making by him under this Act of any approval, direction or determination or of any variation or revocation by him of such an approval, direction or determination.

19.—(1.) The Minister may, by instrument in writing, delegate to a person, either generally or otherwise as provided in the instrument of delegation, all or any of his powers or functions under this Act, except this power of delegation.

Delegation.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation, and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

20. The Minister shall, as soon as practicable after each thirty-first day of December, prepare a report on the operation of this Act during the year that ended on that date (being a report that includes a statement of the number of scholarships of each class awarded during the year) and cause a copy of the report to be laid before each House of the Parliament.

Annual report.

21.—(1.) In this section, "existing scholarship" means any Commonwealth Secondary Scholarship, Commonwealth Technical Scholarship, Commonwealth Advanced Education Scholarship, Commonwealth University Scholarship or Commonwealth Post-graduate Award that was granted, but had not terminated, before the commencement of this Act.

Transitional provisions—existing scholarships.

(2.) This Act, and, subject to any modifications specified in the regulations as applicable to existing scholarships, the regulations, and, subject to any modifications specified in any direction, approval or determination of the Minister under this Act as applicable to existing scholarships, any such direction, approval or determination, apply to and in relation to existing scholarships.

**Regulations.**

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

- (a) making provision for and in relation to the furnishing of information by applicants for scholarships and the holders of scholarships; and
- (b) providing for penalties, not exceeding a fine of One hundred dollars, for offences against the regulations.

## APPENDIX 2

Senate Debates, 16 September 1970

### EDUCATION

(Question No. 431)

Senator **GREENWOOD** asked the Minister representing the Minister for Education and Science, upon notice:

(1) When will the Scholarships Act 1969 be proclaimed.

(2) What is the reason for the delay in bringing the provisions of the Act into operation.

Senator **WRIGHT**—The Minister for Education and Science has provided the following answer to the honourable senator's question:

(1) As soon as the necessary Regulations under the Act have been drawn up.

(2) The Minister for Education and Science has consulted with the Attorney-General who has advised that the draft of the Regulations for the Scholarships Act 1969 involves the consideration of a number of legal and drafting problems which will require the attention of an experienced draftsman. The legislative programme arising from the 1970 Parliamentary sitting has been so heavy that at the moment an experienced draftsman is not available to commence this work. Honourable Senators may be assured however that the work of drafting the Regulations so that the Act may be proclaimed will be put in hand at the earliest opportunity.

ESTIMATES COMMITTEE C

Department of Education and Science

21 September 1972

extract from an introductory statement by the Minister.

The Commonwealth secondary scholarships scheme is to be replaced by a new scheme of senior secondary scholarships which will provide 25,000 awards per annum from 1973. The old scheme will be phased out over the 1972-73 and 1973-74 financial years. The net additional cost of secondary awards in 1972-73 will be \$1.4m and \$4.1m at the end of the phasing out period. At present, of the 5 major Commonwealth scholarship schemes, only the 3 tertiary ones are administered under Commonwealth scholarships and awards regulations. A Scholarships Act which will provide a legislative basis for all 5 schemes has been passed by both Houses of Parliament. Regulations under this Act are being prepared, but the task is a complex one and pressure of work arising from the rest of the Government's legislative programme has delayed their completion. A substantial part is completed and the Parliamentary Counsel is giving the remainder high priority.