

SOUTH AUSTRALIA

**TERTIARY EDUCATION ACT, 1986**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **15 January 1992**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## **TERTIARY EDUCATION ACT, 1986**

being

Tertiary Education Act, 1986, No. 119 of 1986  
[Assented to 18 December 1986]<sup>1</sup>

as amended by

Tertiary Education Act Amendment Act, 1987, No. 99 of 1987 [Assented to 17 December 1987]<sup>2</sup>

Tertiary Education Act Amendment Act, 1989, No. 2 of 1989 [Assented to 9 March 1989]<sup>3</sup>

Statutes Amendment and Repeal (Merger of Tertiary Institutions) Act, 1990, No. 65 of 1990 [Assented to 13 December 1990]<sup>4</sup>

<sup>1</sup> Came into operation 1 January 1987: *Gaz.* 18 December 1986, p. 1876.

<sup>2</sup> Came into operation 4 February 1988: *Gaz.* 4 February 1988, p. 213.

<sup>3</sup> Came into operation 20 April 1989: *Gaz.* 20 April 1989, p. 1080.

<sup>4</sup> Came into operation 1 January 1991: *Gaz.* 13 December 1990, p. 1755.

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

**An Act to provide for the planning and co-ordination of tertiary education, and for the maintenance of high standards in tertiary education, in South Australia; to repeal the Tertiary Education Authority Act, 1979; and for other purposes.**

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Tertiary Education Act, 1986*.

**Commencement**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"academic award" means an award conferred by an institution of tertiary education in recognition of achievement in a course conducted by the institution:

"the Advisory Council" or "the Council" means the Advisory Council on Tertiary Education established under this Act:

"course" means a course of tertiary education consisting of—

- (a) a series of subjects or units;
  - (b) a project;
  - (c) research work;
- or
- (d) a combination of two or more of the above,

leading to an academic award:

"institution of tertiary education" means any body or person by whom tertiary education is provided:

"language studies" means—

- (a) the study of a language for the purpose of learning to communicate in that language;
- (b) the study of the literature of a language;

3.

- (c) the study of the history and development of a language;
- (d) any other study related to a language:

"principal institution of tertiary education" means—

- (a) The University of Adelaide;
- (b) The Flinders University of South Australia;
- (c) the University of South Australia;

\* \* \* \* \*

- (f) the Department of Technical and Further Education;
- (g) an institution declared by proclamation to be one of the principal institutions of tertiary education:

"tertiary education" means education (not being primary or secondary education) directed wholly or primarily at those who have completed their primary and secondary education or are above the age of compulsory school attendance:

"university" means The University of Adelaide, The Flinders University of South Australia or the University of South Australia.

(2) The Governor may, by proclamation, declare an institution to be one of the principal institutions of tertiary education for the purposes of this Act and may, by subsequent proclamation, vary or revoke such a proclamation.

(3) A proclamation must not be made under subsection (2) without the concurrence of the institution concerned.

PART II

ACCREDITATION OF COURSES AND INTRODUCTION OF NEW COURSES

**Academic awards conferred by institutions of tertiary education**

4. (1) Subject to subsection (5), an institution of tertiary education (other than a university) must not—

(a) confer a degree in relation to any course;

or

(b) confer any academic award in relation to a prescribed course,

unless the course is accredited by the Minister.

(2) Subject to subsections (4) and (5), a principal institution of tertiary education (other than a university) must not confer an academic award in relation to any course unless the course is accredited by the Minister.

(3) An institution of tertiary education (other than a principal institution of tertiary education) that contravenes subsection (1) is guilty of an offence.

Penalty: \$1 000.

(4) A course provided by a principal institution of tertiary education that requires less than one years full-time study or the equivalent of one years full-time study need not be accredited by the Minister unless a degree is conferred in relation to the course or the course is prescribed under subsection (1)(b).

(5) Subsections (1) and (2) do not apply in relation to a course approved by the Industrial and Commercial Training Commission under the *Industrial and Commercial Training Act, 1981*.

**Accreditation of courses, etc., by Minister**

5. (1) The Minister may accredit a course, or a proposed course, if, after receiving and considering advice from the Chief Executive Officer of the Office of Tertiary Education, the Minister is satisfied that the standard of the course and the method of instruction are appropriate to the academic award to be conferred in relation to the course.

(2) The Minister must, when accrediting a course, fix the period of accreditation.

(3) If the Minister refuses to accredit a course, or proposed course, the Minister must cause a statement of his or her reasons to be laid before each House of Parliament within 12 sitting days after the refusal.

(4) The Minister may delegate the power set out in subsection (1) to any person.

5.

(5) The delegation—

(a) may be absolute or conditional;

(b) is revocable at will;

and

(c) does not derogate from the Minister's power to accredit a course.

**Proposal for the introduction of new courses, etc.**

6. (1) A principal institution of tertiary education (other than a university) must inform the Minister in writing of—

(a) a proposal to introduce a new course;

and

(b) all other proposals of a kind or kinds prescribed by regulation,

at least three months before implementing the proposal.

(2) The institution must provide the Minister with such information in relation to the proposal as the Minister may reasonably require.

(3) The Minister may direct the institution not to implement the proposal if, after receiving and considering advice from the Advisory Council, the Minister is satisfied that the proposal—

(a) would not be conducive to the effective and efficient planning or co-ordination of tertiary education;

(b) would result in the ineffective or inefficient use of resources in tertiary education to the detriment of the State;

(c) would, or might, reduce standards of tertiary education;

or

(d) would, for any other reason, be contrary to the public interest.

(4) The Minister must not give a direction under subsection (3) later than three months after being informed of the proposal, or, where the Minister requires further information, later than three months after receiving the information.

(5) An institution of tertiary education must not contravene the Minister's direction under subsection (3).

(6) The Minister may revoke a direction at any time.

(7) The Minister must cause a statement of the reasons for giving a direction to be laid before each House of Parliament within 12 sitting days after giving the direction.

**Duty of institutions to provide information**

7. (1) A principal institution of tertiary education must provide the Minister with such information as the Minister may reasonably require to assist the Minister in carrying out his or her functions under this Act.

(2) In particular, such an institution must, when making an application or representation related to funding of the institution to the State or Commonwealth Government or to an instrumentality of the State or Commonwealth Government, inform the Minister of the nature and content of the application or representation.

(3) Subsection (2) does not apply to funding intended solely for research.

PART III

THE ADVISORY COUNCIL ON TERTIARY EDUCATION

**Advisory Council on Tertiary Education**

8. (1) There shall be a council entitled the "Advisory Council on Tertiary Education".

(2) The Council shall consist of the following members—

(a) nine persons (one of whom shall be the presiding officer of the Council) appointed by the Minister;

and

(b) four other persons appointed by the Minister of whom—

(i) one has been nominated by The University of Adelaide;

(ii) one has been nominated by The Flinders University of South Australia;

(iii) one has been nominated by the University of South Australia;

\* \* \* \* \*

and

(vi) one has been nominated by the Director-General of Technical and Further Education.

(3) In making appointments under subsection (2)(a) the Minister shall ensure, as far as possible—

(a) that the interests of the major cultural groups comprising the South Australian community are represented;

and

(b) that of the members appointed under subsection (2)(a) equal numbers of men and women are appointed.

(4) A member will be appointed for a term not exceeding 3 years upon such conditions as the Minister determines and at the expiration of that term of office is eligible for re-appointment.

(5) The Minister may appoint a person to be a deputy of a member and the deputy may, in the absence of that member, act as a member of the Council.

(6) The requirement of nomination made by this section in relation to the appointment of a member extends to the appointment of the member's deputy.

8.

(7) The Minister may remove a member from office for—

- (a) a breach of, or non-compliance with, the conditions of the appointment;
- (b) mental or physical incapacity to carry out official duties satisfactorily;
- (c) neglect of duty;

or

- (d) dishonourable conduct.

(8) The office of a member becomes vacant—

- (a) on death of the member;
- (b) on expiration of the member's term of office;
- (c) on resignation of the member by written notice to the Minister;

or

- (d) on removal of the member from office by the Minister pursuant to subsection (7).

(9) Upon the office of a member becoming vacant a person will be appointed in accordance with this Act to the vacant office.

(10) A member is entitled to such remuneration, allowances and expenses as are determined by the Minister.

#### **Function of the Council**

9. The function of the Council is to advise the Minister in relation to—

- (a) the planning and co-ordination of tertiary education;

and

- (b) the Minister's functions under this Act.

PART IV

THE SOUTH AUSTRALIAN INSTITUTE OF LANGUAGES

**The South Australian Institute of Languages**

**9a.** (1) The *South Australian Institute of Languages* continues in existence.

(2) The Institute is a body corporate.

(3) The Institute has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) Where a document appears to bear the common seal of the Institute, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Institute.

**Membership of the Institute**

**9b.** (1) The Institute will consist of nine members appointed by the Minister, of whom—

(a) one will be a person chosen from a panel of three nominated by the Minister of Ethnic Affairs;

(b) one will be a person chosen from a panel of three nominated by the Minister of Education;

(c) one will be a person chosen from a panel of three nominated by The University of Adelaide;

(d) one will be a person chosen from a panel of three nominated by The Flinders University of South Australia;

(e) one will be a person chosen from a panel of three nominated by the University of South Australia;

\* \* \* \* \*

(h) one will be a person chosen from a panel of three nominated by the Director-General of Technical and Further Education;

(i) one will be a person chosen from a panel of three nominated by the Commonwealth Minister responsible for tertiary education.

(2) One of the members of the Institute appointed without nomination may be appointed by the Minister to be the presiding member of the Institute and the other such member may be appointed by the Minister to be the deputy presiding member of the Institute.

(3) In making appointments under subsection (1), the Minister should ensure, as far as practicable—

(a) that men and women are equally represented;

and

(b) that the interests of the major cultural groups comprising the South Australian community are represented.

### **Conditions of membership**

**9c.** (1) A member of the Institute may be appointed for such term of office, not exceeding two years, and on such conditions as the Minister determines and specifies in the instrument of appointment.

(2) A member of the Institute is eligible for reappointment on the expiration of a term of office.

(3) The office of a member of the Institute becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice addressed to the Minister;

(d) is removed from the office by the Minister on the grounds of—

(i) any breach of, or non-compliance with, conditions of appointment;

(ii) mental or physical incapacity to carry out official duties satisfactorily;

(iii) neglect of duty;

or

(iv) misconduct.

(4) On the office of a member of the Institute becoming vacant, a person may be appointed in accordance with this Part to the vacant office.

(5) A member of the Institute whose term of office expires may continue to act as a member until the appointment of a replacement.

### **Procedure at meetings**

**9d.** (1) The presiding member or, in his or her absence, the deputy presiding member will preside at a meeting of the Institute and, in the absence of both, a member chosen by the members present at the meeting will preside at the meeting.

(2) Five members constitute a quorum at a meeting of the Institute.

(3) A decision in which a majority of the members present at a meeting concur is a decision of the Institute.

(4) The Institute must keep minutes of its proceedings.

(5) Subject to this Part, the Institute may decide its own procedures.

### **Functions and powers of the Institute**

**9e.** (1) The functions of the Institute are as follows:

(a) to advise the Minister on—

(i) the need for courses in language studies in institutions of tertiary education;

(ii) courses, and the development and maintenance of courses, in language studies including—

(A) courses that form part of other courses;

and

(B) courses designed for teachers of language studies, interpreters or any other persons who use language in the course of employment or business;

(iii) the best methods by which interested members of the public can gain access to courses in language studies offered outside South Australia;

(b) to advise the principal institutions of tertiary education on—

(i) the provision of courses in language studies, and the co-ordination of courses in language studies offered, by the principal institutions;

(ii) the recognition and accreditation of courses in language studies offered by the principal institutions;

(c) to co-operate with the principal institutions of tertiary education in relation to the provision and development of courses in language studies;

(d) to provide courses (but not courses leading to academic awards) in areas related to language studies;

(e) to provide the public with information about opportunities to study, learn or teach languages;

(f) to conduct research in relation to language studies.

(2) The Institute may—

(a) establish committees (which may, but need not, consist of or include members of the Institute) to advise the Institute on any aspect of its functions;

- (b) delegate any of its functions or powers to any such committee or any member or employee of the Institute;
- (c) charge a fee for any service provided to a member of the public or an institution of tertiary education.

(3) The Institute should, in performing its functions and exercising its powers, consult as far as practicable with—

- (a) the principal institutions of tertiary education;
  - (b) the South Australian Government;
- and
- (c) the Commonwealth Government,

on matters pertaining to language studies.

#### **Staff of the Institute**

**9f.** The Institute may, with the Minister's approval, appoint staff to assist it in carrying out its functions.

#### **Report**

**9g.** (1) The Minister must, in June 1991, arrange for a suitable person, or group of persons, who is, or are, independent of the Institute to prepare a report on the Institute's performance of its functions under this Part.

(2) The Minister must, within six sitting days after receiving the report, cause copies of it to be laid before both Houses of Parliament.

PART V

MISCELLANEOUS

**Committees**

**10.** (1) The Minister may establish committees to advise the Minister in relation to particular areas of tertiary education or particular matters relating to tertiary education.

(2) In appointing members to committees under subsection (1) the Minister shall ensure, as far as possible—

(a) that the interests of the major cultural groups comprising the South Australian community are represented;

and

(b) that equal numbers of men and women are appointed.

\* \* \* \* \*

**Report**

**11.** (1) The Minister must, before the thirtieth day of September in each year, prepare a report on the operation of this Act during the period of 12 months ending on the preceding thirtieth day of June.

(2) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after the thirtieth day of September.

**Summary offence**

**12.** The offence constituted by this Act is a summary offence.

**Regulations**

**13.** (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) In particular a regulation may prescribe and provide for the payment of fees for any services provided by the Minister under this Act.

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**APPENDIX**

## Legislative History

Long title:	amended by 65, 1990, s. 51
Heading preceding section 1:	inserted by 2, 1989, s. 3
Section 3(1):	definition of "language studies" inserted by 2, 1989, s. 4 definition of "principal institution of tertiary education" amended by 65, 1990, s. 52(a); paras. (d) and (e) repealed by 65, 1990, s. 52(a) definition of "university" substituted by 65, 1990, s. 52(b)
Heading preceding section 4:	inserted by 2, 1989, s. 5
Heading preceding section 8:	inserted by 2, 1989, s. 6
Section 8(2):	amended by 65, 1990, s. 53
Section 8(2)(b)(iv) and (v):	repealed by 65, 1990, s. 53(b)
	Part IV comprising ss. 9a - 9g and heading inserted by 2, 1989, s. 7
Section 9b(1):	amended by 65, 1990, s. 54
Section 9b((1)(f) and (g):	repealed by 65, 1990, s. 54(b)
Section 9d(2):	amended by 65, 1990, s. 55
Heading preceding section 10:	inserted by 2, 1989, s. 8
Section 10a:	inserted by 99, 1987, s. 3; repealed by 2, 1989, s. 9
Schedules 1 and 2:	repealed by 65, 1990, s. 56