

NORTHERN TERRITORY OF AUSTRALIA

EDUCATION AMENDMENT ACT 1989

No. 4 of 1989

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NORTHERN TERRITORY OF AUSTRALIA

No. 4 of 1989

AN ACT

to amend the Education Act

[Assented to 28 March 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Education Amendment Act 1989.

2. COMMENCEMENT

This Act shall come into operation on 1 July 1989.

3. PRINCIPAL ACT

The Education Act is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 4 of the Principal Act is amended by inserting after the definition of "child of compulsory school age" the following:

"'college' means an institution specified as such in section 41(1)(a) or declared to be a college under section 41(1)(b);".

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5. DELEGATED POWER

Section 9(2A) of the Principal Act is amended -

- (a) by inserting after "council" the words "of a college or"; and
- (b) by inserting after "courses provided by that" the words "college or".

6. NEW PART

The Principal Act is amended by inserting after section 39 the following:

"PART VI - COLLEGES

"Division 1 - Definitions

"40. DEFINITIONS

"In this Part, unless the contrary intention appears -

'by-laws' means by-laws made by a council under section 60H;

'chairman' means the chairman of a council appointed under section 45(1)(a);

'council' means the council of a college;

'member' means a member of a council;

'rules' means rules made by a council under section 60J;

'vice-chairman' means the vice-chairman of a council elected under section 45(2).

"Division 2 - Establishment, Functions and Powers of Colleges

"41. ESTABLISHMENT OF COLLEGES

"(1) The following institutions are colleges for the purposes of this Act -

(a) the institutions known respectively as -

- (i) the Alice Springs College of Technical and Further Education;
- (ii) Batchelor College;
- (iii) Katherine Rural College; and
- (iv) the Northern Territory Open College of Technical and Further Education; and

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- (b) any other institution which the Minister may by notice in the Gazette declare to be a college for those purposes, being an institution wholly established and wholly maintained by the Minister for the provision of education services in an academic, vocational or practical discipline or of a recreational nature.

"(2) A notice under subsection (1)(b) declaring an institution to be a college shall specify the name by which it is to be known as such.

"(3) A college -

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property, and of suing and being sued.

"(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of a college affixed to a document, and shall presume that it was duly affixed.

"42. FUNCTIONS OF COLLEGES

"The functions of a college are -

- (a) to conduct programmes of education, training and research of such kinds, at such levels, and in such fields of science, technology and trades, the arts, administration, commerce, and other fields of knowledge or the application of knowledge, as the council of the college may with the approval of the Minister determine or as the Minister may require;
- (b) to use and develop the facilities and resources of the college to advance knowledge and skills in the fields in which the college is concerned, and to provide consultancy services in such fields; and
- (c) to keep under review the particular education, training and employment needs of the communities served by the college, and the courses of instruction, study and training required to be provided to satisfy those needs, and to submit any proposals arising from a review to the Technical and Further Education Advisory Council for consideration by that Council and the giving to the Minister of such advice with respect thereto as that Council thinks fit.

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"43. POWERS OF COLLEGES

"(1) Subject to this Part, a college has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.

"(2) Without limiting the generality of subsection (1), a college may, for the purpose of carrying out its functions or exercising its powers (including powers conferred on it elsewhere in this Part or by any other Act) -

- (a) make arrangements with other educational institutions for the establishment in the college of courses of lectures or studies for degrees, diplomas, certificates or other awards;
- (b) co-operate with other institutions that provide facilities for teaching or research;
- (c) make such awards, either in relation to the passing of examinations or otherwise in connection with the education and training provided by the college, as are provided for by by-laws of the college;
- (d) enter into contracts;
- (e) purchase, take on lease or otherwise acquire, and sell, grant leases of or otherwise dispose of, real or personal property;
- (f) erect buildings;
- (g) occupy, use and control any land or building owned or held under lease and made available for the purposes of the college;
- (h) create, develop, apply for, obtain and hold intellectual and industrial property and rights, and enter into agreements or arrangements for the commercial exploitation of any such property or rights on such terms as to royalties, lump sum payments or otherwise as the council of the college thinks fit;
- (j) accept gifts, grants, bequests, devises and assignments made to the college, whether on trust or otherwise, and act as trustee of moneys or other property vested in the college on trust;
- (k) establish and maintain libraries, laboratories and museum facilities in connection with the college; and
- (m) establish and maintain residential accommodation for staff and students of the college and other persons attending it.

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"Division 3 - College Councils

"44. COLLEGE AFFAIRS TO BE CONDUCTED BY COUNCIL

"(1) Subject to this Act, the affairs of a college shall be conducted by its council.

"(2) All things done by a council, or in the name or on behalf of a college with the express or implied authority of its council, shall be deemed to have been done by the college.

"(3) A council -

- (a) shall, in the discharge of its responsibility for the efficient and effective administration of the college and the efficient and effective management of its finances and facilities, make the fullest practicable use of services and resources available to the council through the Department of Education; and
- (b) is in the exercise of its powers and the performance of its functions subject to the directions of the Minister.

"45. COMPOSITION OF COUNCIL

"(1) Subject to this Part, a council shall consist of -

- (a) a chairman, who shall be appointed by the Minister;
- (b) the Secretary or his nominee;
- (c) the Departmental Head, or the nominee of the Departmental Head, of the Department of the Public Service for the time being having responsibility for employment and training;
- (d) the principal of the college;
- (e) a member of the teaching staff of the college elected by that staff;
- (f) a student of the college elected by the students of the college;
- (g) a person appointed by the Minister on the nomination of the Technical and Further Education Advisory Council, being a person appearing to that Council to have expertise in the field of higher education; and
- (h) up to 10 other persons appointed by the Minister, being persons who, in the opinion of the Minister, will contribute to the exercise and performance of the powers and functions of the council.

"(2) A council shall from time to time elect a vice-chairman from amongst its members.

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"46. TERMS OF OFFICE OF APPOINTED AND ELECTED MEMBERS

"(1) Subject to this Part, a member of a council appointed under section 45(1)(a), (g) or (h) holds office for such period not exceeding 3 years as is specified in the instrument by which he is appointed.

"(2) Subject to this Part, a member elected under section 45(1)(e) or (f) holds office for a period of one year or such other period not exceeding 3 years as may be prescribed by by-laws of the college.

"(3) An appointed or elected member is, on the expiry of his term of office, eligible for re-appointment or re-election if he still has at that time any qualification necessary under section 45 for appointment or election as the case may be.

"47. VACATION OF OFFICE AND FILLING OF CASUAL VACANCIES

"(1) This section does not apply to the members of a council specified in section 45(1)(b), (c) and (d) as members ex officio.

"(2) The Minister shall remove a member of a council from office if the member -

- (a) is convicted in the Territory of an offence punishable by imprisonment, or is convicted elsewhere than in the Territory of an offence which, if committed in the Territory, would be an offence so punishable;
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) becomes a voluntary patient within the meaning of, or is ordered to be kept in custody under section 13 of, the Mental Health Act, or is similarly confined, controlled or restricted under a law of a State or another Territory of the Commonwealth which provides for the care and control of persons who are mentally ill;
- (d) knowingly contravenes or fails to comply with section 50; or
- (e) being a member elected under section 45(1)(e) or (f), ceases to be a member of the teaching staff of the college or, as the case may be, a student of the college.

"(3) The Minister may remove a member from office if the member -

- (a) has, in the opinion of the Minister, been guilty of grave misconduct or wilful neglect in the discharge of his office;

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- (b) is, in the opinion of the Minister, physically or (notwithstanding that the case does not fall within subsection (2)(c)) mentally incapable of performing the duties of his office; or
- (c) has, except with the leave of the council, absented himself from 3 consecutive meetings of the council of which notice has been given to him personally or by post.

"(4) A member may resign his office by writing signed by him and delivered to the Minister.

"(5) Where a vacancy occurs in the office of a member elected under section 45(1)(e) or (f) otherwise than by the expiry of his term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of that term.

"48. COUNCIL MEETINGS AND PROCEDURE

"(1) The chairman of a council -

- (a) shall call such meetings of the council as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 4 months; and
- (b) where requested to do so by a notice signed by not less than one third of the members for the time being holding office, shall call a special meeting of the council within 7 days after that on which he receives the notice.

"(2) Where there is no chairman, or the chairman is for any reason not available for the purposes of subsection (1), references in that subsection to the chairman shall include references to the vice-chairman.

"(3) The Minister may if he considers it necessary to do so call a meeting of a council.

"(4) A meeting of a council shall be presided over by the chairman or, in his absence, by the vice-chairman or, in the absence of both the chairman and the vice-chairman, by a member elected for the purpose by the members present at the meeting.

"(5) At a meeting of a council, 50% of the members for the time being holding office shall constitute a quorum.

"(6) Questions arising at a meeting of a council shall be determined by a majority of the votes of the members present and voting, and -

- (a) in the event of there being an equality of votes on a question, the matter shall be deferred for consideration at the next meeting of the council held on a subsequent day; and

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- (b) if at that next meeting the same question is put and there is again an equality of votes, the person presiding at the meeting shall have a casting vote.

"(7) Subject to this Part and any by-laws of the college, a council shall itself determine the procedure to be followed at or in connection with its meetings.

"49. COMMITTEES

"(1) A council may establish such committees as it thinks fit.

"(2) A person may be appointed as a member of a committee established under subsection (1) whether or not he is a member of the council by which it is established.

"50. DISCLOSURE OF INTEREST

"(1) A member of a council who has a direct or indirect pecuniary interest in -

- (a) a matter being considered or about to be considered at a meeting of the council; or
- (b) a thing being done or about to be done by the council,

otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 members and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the council.

"(2) A disclosure by a member at a meeting of a council that he -

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body, or to that person, which may arise after the date of the disclosure.

"(3) A council shall cause particulars of all disclosures made under this section to be recorded in a book kept for the purpose and that book shall be open at all reasonable times to the inspection of any person on payment of such fee, if any, as is determined from time to time by the council.

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"(4) After a member of a council has, or shall be deemed to have, disclosed the nature of an interest in a matter or thing pursuant to this section, he shall not, unless the council (in the absence of the member) otherwise determines -

- (a) be present during any deliberation of the council, or take part in a decision of the council, in relation to that matter; or
- (b) exercise a function under this Part in relation to that thing.

"(5) A reference in this section to a council includes a reference to a committee of a council.

"Division 4 - College Principals, Staff, &c.

"51. APPOINTMENT OF COLLEGE PRINCIPAL

"(1) Subject to subsection (3), a council shall appoint, on such terms and conditions as it thinks fit, a principal of the college who shall be responsible to the council for the administration of the college.

"(2) A principal shall have such powers and duties as are prescribed by by-laws of the college or determined by its council.

"(3) The Minister may confirm or refuse to confirm a person's appointment as a principal, or a term or condition in respect of such appointment, and no such appointment or term or condition in respect thereof shall have effect unless and until confirmed by the Minister.

"52. OTHER STAFF, &c.

"(1) Subject to subsection (2), a council may -

- (a) employ such staff (whether on a permanent, part-time or casual basis); and
- (b) otherwise contract or arrange for the services of such persons (including consultants and advisers),

as the council considers necessary to enable it to carry out the functions of the college or to secure the efficient and effective administration and maintenance of the college.

"(2) The terms and conditions of any contract of employment or other contract or arrangement under subsection (1) shall be such as are determined by the council with the approval of the Minister, who shall, in deciding whether or not to give his approval, consult with the Technical and Further Education Advisory Council.

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"Division 5 - Financial, &c., Provisions

"53. EXCLUSION OF FINANCIAL ADMINISTRATION AND AUDIT ACT

"(1) A college is not a statutory corporation within the meaning or for the purposes of the Financial Administration and Audit Act.

"(2) Notwithstanding subsection (1), sections 17 and 27 of the Financial Administration and Audit Act shall apply in relation to a college as if it were a department within the meaning of that Act, and, for the purposes of those sections as so applying, the Secretary is the accountable officer.

"54. FINANCIAL YEAR OF COLLEGE

"The financial year of a college is the period of 12 months beginning on 1 January.

"55. COLLEGE FEES AND CHARGES

"(1) Subject to this section, fees or charges are payable to a college at such rates, for such courses of study or instruction of the college, for admission to such examinations conducted by the college and in relation to such other facilities or privileges of the college as are determined by its council.

"(2) A student to whom a college has granted a scholarship or bursary in accordance with any by-law is exempt from payment of fees and charges to the extent of the exemption applicable under the scholarship or bursary.

"(3) A college may exempt a student from the payment of the whole or any part of a fee or charge otherwise payable by him if it considers that the payment of the whole or part of the fee or charge, as the case may be, would cause substantial hardship to him.

"(4) There shall also be payable to a college fees of such amounts as are determined by its council for the provision by the college of consultancy services.

"56. PAYMENTS TO COUNCIL MEMBERS IN RESPECT OF ATTENDANCE AT MEETINGS

"(1) Subject to subsection (3), the chairman and other members of a council appointed by the Minister, and the member of a council elected by the students of the college, shall be paid by the council in respect of their attendance at council meetings remuneration, allowances and expenses at such rates, or of such amounts, as are determined by the Minister.

"(2) A determination under subsection (1) may make different provision with respect to different members of a council.

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"(3) Subsection (1) does not apply to a member who is an employee within the meaning of the Public Service Act or an officer or employee within the meaning of the Teaching Service Act.

"57. TRUST ACCOUNT AND OFFICIAL BANK ACCOUNT

"Sections 59 to 61 and 65 of the Financial Administration and Audit Act shall apply to and in relation to a college as if the college were a prescribed statutory corporation within the meaning and for the purposes of those sections.

"58. PROPER ACCOUNTS TO BE KEPT

"The Secretary shall cause to be kept proper accounts and records of the transactions and affairs of a college, and shall do all things necessary to ensure that all payments out of the moneys of the college are correctly made and properly authorized and that adequate control is maintained over the property of, or in the custody of, the college and over the incurring of liabilities by the college.

"59. GIFTS, &c., AND TRUST FUNDS

"(1) In exercising its powers to acquire, hold, deal with or dispose of real or personal property, a college may agree to and carry out the conditions of a gift, grant, bequest, devise, purchase, lease or other means whereby it acquires or holds property, and the council of the college may create and administer such trust fund or funds in connection therewith, or for any other purpose, as it thinks fit.

"(2) Subsection (1) does not apply to grants or other receipts from the Territory or the Commonwealth.

"60. INVESTMENT AND BORROWING

"Sections 62 and 63 of the Financial Administration and Audit Act shall apply to and in relation to a college as if the college were a prescribed statutory corporation within the meaning and for the purposes of those sections.

"60A. BUDGET AND FINANCIAL INFORMATION

"(1) A council -

(a) shall in each financial year, adopt for the next following financial year a budget for all funds of the college, other than those to which paragraph (b) relates, and shall approve all amendments to the budget and control the expenditure of the college so that it conforms as nearly as practicable to the approved budget; and

(b) shall review periodically (and not less than annually) funds available to the college by way of bequest, donation or special grant and the expenditure thereof, and, subject to the terms of a

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trust and before any such expenditure is made, approve the proposed disposition of those funds.

"(2) As soon as practicable after adopting or amending a budget under subsection (1)(a), a council shall forward to the Secretary a copy of the budget or amendment, as the case may be.

"(3) The Secretary shall if the Minister so directs after consultation with the Technical and Further Education Advisory Council require a council, by notice in writing, to vary a budget in a manner specified in the notice, and the council shall comply with the requirement.

"(4) The Secretary may at any time require a council to provide him with such information as, in his opinion, is necessary to enable him to accurately assess the financial affairs of the college, and the council shall provide that information accordingly.

"60B. AUDIT AND ANNUAL REPORT, &c.

"Sections 67 and 68 of the Financial Administration and Audit Act -

- (a) shall apply to and in relation to a college as if the college were a prescribed statutory corporation within the meaning and for the purposes of those sections; and
- (b) as so applying, shall have effect -
 - (i) as if the references therein to the Minister included (except in section 68(3)) a reference to the Secretary; and
 - (ii) with the financial year referred to in section 68 being the financial year of the college under section 54 of this Act.

"Division 6 - Miscellaneous

"60C. TRADING, &c., CORPORATIONS

"A council may with the approval of the Treasurer establish by incorporation, or participate in the establishment of, such trading, research or other corporations as the council thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the college.

"60D. DELEGATION

"(1) A council may by instrument in writing delegate to the principal of the college any of its powers or functions under this Act other than this power of delegation and the power of the council to make by-laws.

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"(2) A power or function delegated under this section, when exercised or performed by the delegate, shall for the purposes of this Act be deemed to have been exercised or performed by the council.

"(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the council.

"60E. TERMS OF CONTRACT AND EXECUTION OF DOCUMENTS

"(1) A deed, instrument, contract or agreement relating to any property or matter which, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of a college in writing under its common seal.

"(2) An instrument, contract or agreement relating to any property or matter which, if made by or between individuals would be required to be in writing signed by the parties to be charged therewith, may be made on behalf of a college in writing by a person acting under the authority, express or implied, of its council.

"(3) A contract relating to any property or matter which, if made between individuals, would by law be valid although made by parol only (and not reduced to writing) may be made on behalf of a college by a person acting under the authority, express or implied, of its council.

"(4) A contract entered into or an instrument, contract or agreement signed in relation to any property or obligation of a college shall be deemed to have been entered into or signed with the express authority of its council if it is entered into or signed in accordance with a resolution of the council for the time being in force.

"60F. PROTECTION OF MEMBERS

"No action or proceeding, civil or criminal, shall be commenced or lie against a member of a council for or in respect of an act or thing done or omitted to be done in good faith -

(a) by him in his capacity as such a member; or

(b) by the college or that council,

in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Part.

"60G. VALIDITY OF PROCEEDINGS

"No proceedings of a council or of a committee of a council, and no act done by the principal of a college as a delegate of its council, shall be invalidated by reason only of -

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- (a) a defect in the appointment or election of, or a disqualification of, a member of the council;
- (b) a defect in the convening or conduct of a meeting of the council or of a committee of the council;
- (c) there being a vacancy in the membership of the council or of a committee of the council; or
- (d) a contravention or non-compliance with section 50 by a member of the council or of a committee of the council.

"60H. BY-LAWS

"(1) A council may make by-laws, not inconsistent with this Part, prescribing matters -

- (a) required or permitted by this Part to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

"(2) Without limiting the generality of subsection (1), a council's by-laws may in particular make provision relating to -

- (a) the use and custody of the common seal of the college;
- (b) the method of election of members of the council, including procedures relating to nominating, enrolling and voting and the counting of votes and the declaration of polls;
- (c) the manner and time of convening, holding and adjourning the meetings of the council, voting at such meetings, the powers and duties of the chairman or other person presiding at a meeting, and the conduct and recording of the business thereat;
- (d) the appointment of committees of the council, and the quorum, powers and duties of such committees;
- (e) the admission of students to courses conducted by the college;
- (f) the holding of, and admission of persons to, examinations of the college;
- (g) the awards of the college and the requirements for making them;
- (h) the granting of scholarships, bursaries and prizes by the college;

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- (j) the admission of students of other educational institutions to a corresponding status or of graduates of other educational institutions to a corresponding qualification of the college without examination;
- (k) the establishment, management and control of libraries and museums in connection with the college;
- (m) the establishment, management and control of halls of residence established, and other accommodation provided, by the college;
- (n) the control and investment of the property of the college, including property held on trust or subject to a condition;
- (p) the protection of the property of or under the control of the college from trespass, damage or misuse;
- (q) the regulation and control of access to, and the use of, land and buildings the property of or under the control of the college and the conduct of persons and the presence and use of vehicles thereon;
- (r) student discipline; and
- (s) the making of rules.

"(3) Without limiting the generality of subsection (1), a by-law may -

- (a) provide, in the case of an offence of -
 - (i) bringing a vehicle onto or parking or standing a vehicle on a site in breach of a by-law;
 - (ii) driving a vehicle on a part of a site in breach of a by-law;
 - (iii) driving a vehicle on a part of a site at a speed in excess of a speed that, in relation to that part, is prescribed, determined by a method prescribed or fixed by a person authorized by a by-law so to do in respect of the site or that part;
 - (iv) driving a vehicle on a part of a site contrary to a direction, whether given by a person authorized by a by-law so to do or by a traffic control device on the site; or
 - (v) doing on a site with or in respect of a vehicle such other act as is prescribed,

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"60K. PENALTIES UNDER BY-LAWS AND RULES

"(1) A by-law or rule may impose, or empower the council or an officer of the college or a body established in accordance with the By-laws to impose, a penalty not exceeding -

(a) in the case of a by-law - \$1,000; and

(b) in the case of a rule - \$20,

for a contravention of or failure to comply with a by-law or rule.

"(2) A penalty imposed under a power conferred by a by-law or rule is a debt due and payable by the person on whom it is imposed to the college, and in proceedings for its recovery from that person, a certificate signed by an officer of the college and specifying the person or body by whom it was imposed, the date on which it was imposed and the amount thereof shall be prima facie evidence of the matters specified.

"60M. REMOVAL OF COLLEGIATE STATUS

"(1) The Minister may by notice in the Gazette declare that a college shall, on a date specified in the notice, cease to be a college for the purposes of this Act.

"(2) On the date specified in a notice under subsection (1), the college to which the notice relates shall cease to be a body corporate and all property, rights and liabilities of the college shall, subject to and in accordance with any regulations under this Act, become property, rights and liabilities of the Territory."

7. INTERPRETATION AND SCOPE

Section 70 of the Principal Act is amended -

(a) by omitting from the definition of "post-school institution" in subsection (1) all words after "nature"; and

(b) by inserting after subsection (1) the following:

"(1A) This Part does not apply to or in relation to a college."
