



Higher Education Support Act 2003

Act No. 149 of 2003 as amended

This compilation was prepared on 3 June 2011
taking into account amendments up to Act No. 32 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Chapter 1—Introduction	1
Division 1—Preliminary	1
1-1 Short title [<i>see</i> Note 1].....	1
1-5 Commencement.....	1
1-10 Identifying defined terms.....	2
1-15 Application of Chapter 6 etc.....	3
Division 2—Objects	4
2-1 Objects of this Act.....	4
Division 3—Overview of this Act	5
3-1 General.....	5
3-5 Grants for higher education assistance etc. (Chapter 2).....	5
3-10 Assistance to students (Chapter 3).....	5
3-15 Repayment of loans (Chapter 4).....	6
3-20 Administration (Chapter 5).....	6
3-25 Provision of higher education in the external Territories (Chapter 6).....	6
3-30 VET FEE-HELP Assistance Scheme (Schedule 1A).....	6
Division 5—Application of Act to Table C providers	7
5-1 Application of Act to Table C providers.....	7
Division 6—Schedule 1A	10
6-1 Schedule 1A.....	10
Chapter 2—Grants for higher education assistance etc.	11
Division 8—Introduction	11
8-1 What this Chapter is about.....	11
Part 2-1—Higher education providers	13
Division 13—Introduction	13
13-1 What this Part is about.....	13
13-5 The Higher Education Provider Guidelines.....	13
Division 16—What is a higher education provider?	14
Subdivision 16-A—General	14
16-1 Meaning of <i>higher education provider</i>	14
16-5 When a body becomes or ceases to be a higher education provider.....	14
Subdivision 16-B—Which bodies are listed providers?	14
16-10 Listed providers.....	14
16-15 Table A providers.....	15
16-20 Table B providers.....	16

16-22	Table C providers	17
Subdivision 16-C—How are bodies approved as higher education providers?		17
16-25	Approval by the Minister.....	17
16-30	The tuition assurance requirements	18
16-31	Tuition assurance requirements exemption for approvals.....	18
16-40	Application	19
16-45	Minister may seek further information	19
16-50	Minister to decide application	19
16-55	Approvals are legislative instruments.....	20
Division 19—What are the quality and accountability requirements?		21
Subdivision 19-A—General		21
19-1	The quality and accountability requirements	21
Subdivision 19-B—The financial viability requirements		21
19-5	Basic requirement.....	21
19-10	Financial information must be provided.....	21
19-12	Minister to have regard to financial information	22
Subdivision 19-C—The quality requirements		22
19-15	Provider must maintain quality.....	22
19-20	Provider to comply with National Protocols etc.	22
19-25	Quality assurance—provider (other than Table A provider).....	23
19-27	Quality assurance—Table A provider	23
19-29	Quality auditing bodies.....	24
Subdivision 19-D—The fairness requirements		24
19-30	Basic requirement	24
19-35	Benefits and opportunities must be available equally to all students.....	24
19-37	Requiring membership of certain organisations or payment of certain amounts	25
19-40	Compliance with the tuition assurance requirements.....	26
19-45	Student grievance and review procedures.....	27
19-50	Higher education providers to appoint review officers	28
19-55	Review officers not to review own decisions	28
19-60	Procedures relating to personal information	29
Subdivision 19-E—The compliance requirements		29
19-65	Basic requirements	29
19-70	Provider to provide statement of general information	29
19-75	Notice of events that affect provider’s ability to comply with conditions of Commonwealth assistance	30
19-77	Notice of events affecting accreditation	30

19-80	Compliance assurance—provider (other than Table A provider).....	30
Subdivision 19-F—What are the contribution and fee requirements?		31
19-85	Basic requirement.....	31
19-87	Determining student contribution amounts for all places in units.....	31
19-90	Determining tuition fees for all students.....	32
19-95	Schedules of student contribution amounts for places and tuition fees.....	33
19-100	Limits on fees for courses of study.....	34
19-102	Meaning of <i>fee</i>	34
19-105	Meaning of <i>tuition fee</i>	35
Division 22—When does a body cease to be a higher education provider?		36
Subdivision 22-A—General		36
22-1	Cessation of approval as a provider.....	36
Subdivision 22-B—Revocation for cause		36
22-5	Revocation of approval if application for approval as a provider is false or misleading.....	36
22-7	Revocation of approval if providing education and/or conducting research ceases to be the body’s principal purpose.....	36
22-10	Revocation of approval if status or accreditation changes.....	37
22-15	Revocation of approval as a provider for a breach of conditions or the quality and accountability requirements.....	38
Subdivision 22-C—Process for decisions on revocation under Subdivision 22-B		39
22-20	Process for revoking approval as a provider for loss of status or a breach.....	39
22-25	Determination retaining approval as a provider in respect of existing students.....	40
22-30	Suspension of approval as a provider.....	41
22-32	Determination retaining approval as a provider in respect of existing students following suspension of approval.....	41
22-35	Revocations are legislative instruments.....	42
Subdivision 22-D—Revocation of approval on application		42
22-40	Revocation of approval as a provider on application.....	42
Subdivision 22-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003		43
22-45	Notice of approval ceasing to have effect under the <i>Legislative Instruments Act 2003</i>	43

Part 2-2—Commonwealth Grant Scheme	44
Division 27—Introduction	44
27-1 What this Part is about.....	44
27-5 Guidelines.....	44
Division 30—Which higher education providers are eligible for a grant?	45
Subdivision 30-A—Basic rules	45
30-1 Eligibility for grants	45
30-5 Maximum grants.....	45
Subdivision 30-B—Allocation of places	46
30-10 Allocation of places	46
30-15 Funding clusters	47
30-20 National priorities.....	47
Subdivision 30-C—Funding agreements	47
30-25 Funding agreements.....	47
Division 33—How are grant amounts worked out?	50
Subdivision 33-A—Basic rule	50
33-1 How grant amount is worked out.....	50
Subdivision 33-B—Basic grant amounts	50
33-5 Basic grant amounts	50
33-10 Commonwealth contribution amounts.....	51
Subdivision 33-C—Adjustments	52
33-25 Adjustments.....	52
33-30 Working out the number of Commonwealth supported places provided.....	54
33-35 Funding clusters in which units of study are included.....	54
33-37 Adjustments for breach of section 19-37	55
Subdivision 33-D—Special purpose advances	56
33-40 Advances for certain purposes.....	56
Division 36—What are the conditions of receiving a grant?	58
Subdivision 36-A—General	58
36-1 Condition of grant to comply with this Division	58
Subdivision 36-B—Conditions relating to Commonwealth supported students	58
36-5 Meaning of <i>Commonwealth supported student</i>	58
36-10 Advice on whether a person is a Commonwealth supported student	59
36-15 Persons not to be advised they are Commonwealth supported	62
36-20 Providers to repay amounts if Student Learning Entitlement is re-credited.....	63

36-22	Providers to repay amounts etc. for units wholly consisting of work experience in industry—special circumstances	64
36-22A	Providers to repay amounts etc. for units wholly consisting of work experience in industry—provider ceases to provide course	67
36-23	Providers to repay amounts etc. for units wholly consisting of work experience in industry—no tax file numbers.....	68
Subdivision 36-C—Conditions relating to enrolment		68
36-25	Continued support for Commonwealth supported students	68
36-30	Providers to enrol persons as Commonwealth supported students.....	69
36-32	Commonwealth supported study at a particular campus.....	71
36-40	Providers to cancel enrolments in certain circumstances	71
Subdivision 36-D—Conditions relating to student contribution amounts		72
36-45	Limits on student contribution amounts	72
36-50	Provider must not accept up-front payments of more than 80% of student contribution amounts	72
Subdivision 36-E—Conditions relating to tuition fees		73
36-55	Tuition fees for non-Commonwealth supported students	73
Subdivision 36-F—Other conditions		74
36-60	Providers to meet the quality and accountability requirements	74
36-65	Providers to comply with funding agreement	74
36-70	Providers to comply with the Commonwealth Grant Scheme Guidelines.....	74
Part 2-3—Other grants		75
Division 41—Other grants		75
41-1	What this Part is about.....	75
41-5	The Other Grants Guidelines	75
41-10	Eligibility for grants under this Part	75
41-15	Grants may be paid under programs	77
41-20	Approval of grants	78
41-25	Conditions on grants.....	78
41-30	Amount of a grant.....	78
41-35	Amounts payable under this Part.....	79
41-40	Rollover of grant amounts	79
41-45	Maximum payments for other grants under this Part	80
41-50	List of maximum grant amounts	80
Part 2-4—Commonwealth scholarships		81
Division 46—Commonwealth scholarships		81
46-1	What this Part is about.....	81

46-5	The Commonwealth Scholarships Guidelines	81
46-10	Classes of Commonwealth scholarships.....	81
46-13	Eligibility of students to receive directly-paid standard Commonwealth scholarships	81
46-15	Eligibility of higher education providers to receive grants for certain Commonwealth scholarships	82
46-20	Other matters relating to Commonwealth scholarships	83
46-25	Condition of grants	84
46-30	Amounts payable under this Part.....	85
46-35	Rollover of grant amounts	85
46-40	Maximum payments for Commonwealth scholarships.....	85
Part 2-5—Reduction and repayment of grants		87
Division 51—Introduction		87
51-1	What this Part is about.....	87
51-5	The Reduction and Repayment Guidelines.....	87
Division 54—In what circumstances may a grant be reduced or required to be repaid?		88
54-1	Decision as to reduction or repayment of a grant	88
54-5	Appropriateness of requiring reduction or repayment of grant	88
Division 57—What is the amount of a reduction or repayment?		90
57-1	Reduction in amount of grants.....	90
57-5	Amount of the repayment	90
Division 60—How are decisions reducing a grant or requiring repayment of a grant made?		91
60-1	Procedure prior to decision	91
60-5	Notification of decision	91
60-10	When a decision takes effect	92
Chapter 3—Assistance to students		93
Division 65—Introduction		93
65-1	What this Chapter is about.....	93
Part 3-1—Student Learning Entitlement		95
Division 70—Introduction		95
70-1	What this Part is about.....	95
70-5	The Student Learning Entitlement Guidelines.....	95
Division 73—What is a person’s Student Learning Entitlement?		96
73-1	A person’s Student Learning Entitlement.....	96
73-5	Ordinary SLE	96
73-10	Meaning of <i>EFTSL</i>	96
73-15	Meaning of <i>EFTSL value</i>	97

73-20	Additional SLE.....	97
73-22	Life long SLE.....	98
73-25	SLE not transferable.....	98
73-30	Ceasing to be an eligible person.....	98
Division 76—When is a person’s Student Learning Entitlement reduced?		99
76-1	Reducing a person’s SLE.....	99
76-5	Reducing a person’s additional SLE.....	100
76-10	Reducing a person’s life long SLE.....	100
Division 79—In what circumstances can a person’s Student Learning Entitlement be re-credited?		102
Subdivision 79-A—Main case of re-crediting a person’s SLE		102
79-1A	Application of this Subdivision.....	102
79-1	Main case of re-crediting a person’s SLE.....	102
79-5	Special circumstances.....	103
79-10	Application period.....	104
79-15	Dealing with applications.....	104
Subdivision 79-B—Re-crediting a person’s SLE if provider ceases to provide course of which unit forms part		105
79-20	Re-crediting a person’s SLE if provider ceases to provide course of which unit forms part.....	105
Subdivision 79-C—Students without tax file numbers		105
79-25	Re-crediting a person’s SLE—no tax file number.....	105
Division 82—When is a unit of study covered by a person’s Student Learning Entitlement?		107
82-1	General rule.....	107
82-5	Availability of a person’s SLE.....	107
82-10	Additional SLE.....	108
82-15	Simultaneous enrolments that exceed a person’s SLE.....	108
Part 3-2—HECS-HELP assistance		110
Division 87—Introduction		110
87-1	What this Part is about.....	110
87-5	The HECS-HELP Guidelines.....	110
Division 90—Who is entitled to HECS-HELP assistance?		111
90-1	Entitlement to HECS-HELP assistance.....	111
90-5	Citizenship or residency requirements.....	112
Division 93—How are amounts of HECS-HELP assistance worked out?		113
93-1	The amount of HECS-HELP assistance for a unit of study.....	113
93-5	Student contribution amounts.....	113

93-10	Maximum student contribution amounts for places.....	114
93-15	Up-front payments.....	115
Division 96—How are amounts of HECS-HELP assistance paid?		117
96-1	Payments to higher education providers—no up-front payment of student contribution amount	117
96-5	Payments to higher education providers—partial up-front payment of student contribution amount	117
96-10	Payments to higher education providers—full up-front payment of student contribution amount	119
Part 3-3—FEE-HELP assistance		120
Division 101—Introduction		120
101-1	What this Part is about.....	120
101-5	The FEE-HELP Guidelines	120
Division 104—Who is entitled to FEE-HELP assistance?		121
Subdivision 104-A—Basic rules		121
104-1	Entitlement to FEE-HELP assistance	121
104-2	Failure by a student to complete previous units accessed through Open Universities Australia	122
104-3	Failure by Open Universities Australia to comply with FEE-HELP Guidelines etc.....	122
104-4	Failure by Open Universities Australia to set tuition fees and census date.....	123
104-5	Citizenship or residency requirements.....	125
104-10	Course requirements.....	126
Subdivision 104-B—FEE-HELP balances		126
104-15	A person’s FEE-HELP balance	126
104-20	The FEE-HELP limit.....	127
104-25	Main case of re-crediting a person’s FEE-HELP balance.....	127
104-27	Re-crediting a person’s FEE-HELP balance—no tax file number.....	129
104-30	Special circumstances.....	129
104-35	Application period.....	130
104-40	Dealing with applications.....	131
104-42	Re-crediting a person’s FEE-HELP balance if provider ceases to provide course of which unit forms part.....	132
Subdivision 104-C—Bridging courses for overseas-trained professionals		132
104-45	Meaning of <i>bridging course for overseas-trained professionals</i>	132
104-50	Assessment statements	134
104-55	Meaning of <i>assessing body</i>	135
104-60	Meaning of <i>listed professional occupations</i>	136

104-65	Occupation includes part of an occupation	136
104-70	Requirements for entry to an occupation	136
Division 107—How are amounts of FEE-HELP assistance worked out?		
107-1	The amount of FEE-HELP assistance for a unit of study	138
107-5	Up-front payments	138
107-10	Amounts of FEE-HELP assistance and VET FEE-HELP assistance must not exceed the FEE-HELP balance	138
Division 110—How are amounts of FEE-HELP assistance paid?		
110-1	Payments	141
110-5	Effect of FEE-HELP balance being re-credited	141
Part 3-4—OS-HELP assistance		
Division 115—Introduction		
115-1	What this Part is about	143
115-5	The OS-HELP Guidelines	143
Division 118—Who is entitled to OS-HELP assistance?		
118-1	Entitlement to OS-HELP assistance	144
118-5	Citizenship or residency requirements	145
118-7	Prior study requirements	145
118-10	Overseas study requirements	145
118-15	Selection of students for receipt of OS-HELP assistance	146
Division 121—How are amounts of OS-HELP assistance worked out?		
121-1	The amount of OS-HELP assistance for a period	147
121-5	Maximum OS-HELP amount	147
121-10	Minimum OS-HELP amounts	147
Division 124—How are amounts of OS-HELP assistance paid?		
124-1	Amounts of OS-HELP assistance are lent to students	148
Chapter 4—Repayment of loans		
Division 129—Introduction		
129-1	What this Chapter is about	149
Part 4-1—Indebtedness		
Division 134—Introduction		
134-1	What this Part is about	150
Division 137—How do HELP debts arise?		
137-1	HELP debts	151
137-5	HECS-HELP debts	151
137-10	FEE-HELP debts	152

137-15	OS-HELP debts	153
137-18	VET FEE-HELP debts.....	153
137-20	HELP debt discharged by death	154
Division 140	—How are accumulated HELP debts worked out?	155
Subdivision 140-A	—Outline of this Division	155
140-1	Outline of this Division	155
Subdivision 140-B	—Former accumulated HELP debts	156
140-5	Working out a former accumulated HELP debt.....	156
140-10	HELP debt indexation factor	159
140-15	Index numbers	160
140-20	Publishing HELP debt indexation factors.....	161
Subdivision 140-C	—Accumulated HELP debts	161
140-25	Working out an accumulated HELP debt	161
140-30	Rounding of amounts	163
140-35	Accumulated HELP debt discharges earlier debts	163
140-40	Accumulated HELP debt discharged by death	164
Part 4-2	—Discharge of indebtedness	165
Division 148	—Introduction	165
148-1	What this Part is about.....	165
148-5	The HECS-HELP Benefit Guidelines.....	165
Division 151	—How is indebtedness voluntarily discharged?	166
151-1	Voluntary repayments in respect of debts.....	166
151-5	Voluntary repayment bonus relating to HELP debts	166
151-10	Application of voluntary repayments	167
151-15	Refunding of payments.....	167
Division 154	—How is indebtedness compulsorily discharged?	169
Subdivision 154-A	—Liability to repay amounts	169
154-1	Liability to repay amounts	169
154-3	Reduction of liability by HECS-HELP benefit.....	169
154-5	Repayment income	170
154-10	Minimum repayment income.....	170
154-15	Repayable debt for an income year.....	171
Subdivision 154-B	—Amounts payable to the Commonwealth	171
154-20	Amounts payable to the Commonwealth	171
154-25	Indexation.....	173
154-30	Publishing indexed amounts.....	173
Subdivision 154-C	—Assessments	174
154-35	Commissioner may make assessments	174
154-40	Notification of notices of assessment of tax	174
154-45	Commissioner may defer making assessments	175

154-50	Commissioner may amend assessments	175
154-55	Higher education providers etc. to provide information to Commissioner.....	176
Subdivision 154-D—Application of tax legislation		177
154-60	Returns, assessments, collection and recovery	177
154-65	Charges and civil penalties for failing to meet obligations	177
154-70	Pay as you go (PAYG) withholding	178
154-80	Pay as you go (PAYG) instalments	178
154-85	Reduction of compulsory repayment amount by HECS-HELP benefit	178
Division 157—HECS-HELP benefit		179
Subdivision 157-A—Who is eligible for the HECS-HELP benefit?		179
157-1	Application for the HECS-HELP benefit	179
157-5	Form of application	179
157-10	Providing application to Commissioner.....	179
Subdivision 157-B—What is the amount of the HECS-HELP benefit?		179
157-15	Amount of HECS-HELP benefit	179
Subdivision 157-C—Determination of applications		180
157-20	Commissioner must determine application.....	180
157-25	Notifying applicant of determination.....	180
157-30	Review of determinations.....	180
Chapter 5—Administration		181
Division 159—Introduction		181
159-1	What this Chapter is about.....	181
159-5	The Administration Guidelines.....	181
Part 5-1—Payments by the Commonwealth		182
Division 164—Payments by the Commonwealth		182
164-1	What this Part is about.....	182
164-5	Time and manner of payments	182
164-10	Advances	182
164-15	Overpayments of Commonwealth grants.....	183
164-17	Overpayments of Commonwealth scholarships to students.....	183
164-18	Repayment of Commonwealth scholarships paid to students—breach of condition	184
164-20	Rounding of amounts	184

Part 5-2—Administrative requirements on higher education providers	185
Division 169—Administrative requirements on higher education providers	185
169-1 What this Part is about.....	185
169-5 Notices.....	185
169-10 Correction of notices	186
169-15 Charging student contribution amounts and tuition fees.....	187
169-20 Exempt students	188
169-25 Determining census dates and EFTSL values.....	190
169-30 Communications with the Commonwealth concerning students etc.	191
169-35 6 week cut off for corrections affecting entitlement to Commonwealth assistance.....	191
Part 5-3—Electronic communications	193
Division 174—Electronic communications	193
174-1 What this Part is about.....	193
174-5 Guidelines may deal with electronic communications.....	193
Part 5-4—Protection of personal information	195
Division 179—Protection of personal information	195
179-1 What this Part is about.....	195
179-5 Meaning of <i>personal information</i>	195
179-10 Use of personal information	195
179-15 Meanings of <i>officer</i> etc. and <i>official employment</i>	196
179-20 When information is disclosed in the course of official employment.....	198
179-25 Commissioner may disclose information.....	199
179-30 Oath or affirmation to protect information	200
179-35 Unauthorised access to, or modification of, personal information	200
Part 5-5—Tax file numbers	202
Division 184—Introduction	202
184-1 What this Part is about.....	202
Division 187—What are the tax file number requirements for assistance under Chapter 3?	203
187-1 Meeting the tax file number requirements	203
187-2 Who is an appropriate officer?	204
187-5 Student to notify tax file number when issued.....	205

Division 190—In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters?	206
190-1 When tax file numbers are issued etc.	206
190-5 When tax file numbers are altered	206
190-10 When tax file numbers are incorrectly notified—students with tax file numbers	207
190-15 When tax file numbers are incorrectly notified—students without tax file numbers	207
190-20 When applications are refused or tax file numbers are cancelled.....	208
Division 193—Other provisions relating to tax file numbers	210
193-1 Giving information about tax file number requirements.....	210
193-5 No entitlement to HECS-HELP assistance for students without tax file numbers	212
193-10 No entitlement to FEE-HELP assistance for students without tax file numbers	213
Part 5-6—Indexation	215
Division 198—Indexation	215
198-1 What this Part is about.....	215
198-5 The amounts that are to be indexed	215
198-10 Indexing amounts	215
198-15 Meaning of <i>indexation factor</i>	216
198-20 Meaning of <i>index number</i>	216
Part 5-7—Review of decisions	218
Division 203—Introduction	218
203-1 What this Part is about.....	218
Division 206—Which decisions are subject to review?	219
206-1 Reviewable decisions etc.....	219
206-5 Deadlines for making reviewable decisions.....	221
206-10 Decision maker must give reasons for reviewable decisions	221
Division 209—How are decisions reconsidered?	222
209-1 Reviewer of decisions.....	222
209-5 Reviewer may reconsider reviewable decisions	222
209-10 Reconsideration of reviewable decisions on request	223
Division 212—Which decisions are subject to AAT review?	225
212-1 AAT review of reviewable decisions.....	225

Chapter 6—The provision of higher education in the external Territories	226
Division 217—Introduction	226
217-1 What this Chapter is about.....	226
217-5 The Higher Education in External Territories Guidelines	226
Part 6-1—Approval and accreditation	227
Division 222—Introduction	227
222-1 What this Part is about.....	227
Division 225—How does a person obtain approval and accreditation?	228
225-1 Application for approval and accreditation.....	228
225-3 Approving a person to operate as a university in relation to an external Territory	229
225-5 Approving a person to operate as a self-accrediting entity in relation to an external Territory	230
225-7 Approving a person to operate as a non self-accrediting entity in relation to an external Territory	231
225-10 Accrediting a course of study	232
225-15 Duration of approval and accreditation.....	232
225-20 Amending or revoking an approval, authorisation or accreditation in relation to an external Territory	232
225-25 Fees	235
Division 228—Limitations upon operations of certain persons in the external Territories	236
228-1 Persons without approval not to operate as universities or other provider in external Territories.....	236
228-5 Persons without accreditation not to offer higher education awards or courses in external Territories	236
228-10 Persons without accreditation not to describe themselves as universities in external Territories	237
228-15 Meanings of <i>operating</i> and <i>offering</i>	238
Part 6-2—Use of company names and business names	240
Division 233—Use of company names and business names	240
233-1 Law in force in external Territory not to allow company or business names using the word “university” etc.....	240
Chapter 7—Miscellaneous	241
238-1 Delegations by Secretary	241
238-5 Delegations by Minister.....	241
238-7 Review of impact of Act.....	242
238-10 Guidelines.....	242

238-12	Appropriation	243
238-15	Regulations.....	243
Schedule 1A—VET FEE-HELP Assistance Scheme		244
1	What this Schedule is about.....	244
Part 1—VET providers		245
Division 1—Introduction		245
2	What this Part is about.....	245
3	The VET Provider Guidelines	245
Division 3—What is a VET provider?		246
Subdivision 3-A—General		246
4	Meaning of <i>VET provider</i>	246
5	When a body becomes or ceases to be a VET provider	246
Subdivision 3-B—How are bodies approved as VET providers?		246
6	Approval by the Minister.....	246
7	The VET tuition assurance requirements.....	247
8	VET tuition assurance requirements exemption for approvals	247
9	Application	247
10	Minister may seek further information	248
11	Minister to decide application	248
12	Approvals are legislative instruments.....	249
Division 4—What are the VET quality and accountability requirements?		250
Subdivision 4-A—General		250
13	The VET quality and accountability requirements	250
Subdivision 4-B—The VET financial viability requirements		250
14	Basic requirement.....	250
15	Financial information must be provided.....	250
16	Minister to have regard to financial information	251
Subdivision 4-C—The VET quality requirements		251
17	Provider must maintain quality.....	251
Subdivision 4-D—The VET fairness requirements		251
18	Equal benefits and opportunity requirements	251
19	Student grievance and review requirements	252
20	Tuition assurance requirements	252
21	VET providers to appoint review officers	252
22	Review officers not to review own decisions	253
23	Procedures relating to personal information	253
Subdivision 4-E—The VET compliance requirements		253
24	VET provider to provide statement of general information.....	253

25	Notice of events that affect provider's ability to comply with VET quality and accountability requirements	254
26	Compliance assurance—provider	254
	Subdivision 4-F—The VET fee requirements	255
27	Determining tuition fees for all students.....	255
27A	Requirements in the VET Provider Guidelines.....	255
28	Schedules of VET tuition fees	256
	Division 5—When does a body cease to be a VET provider?	258
	Subdivision 5-A—General	258
29	Cessation of approval as a provider	258
	Subdivision 5-B—Revocation for cause	258
30	Revocation of approval if application for approval as a provider is false or misleading.....	258
30A	Revocation of approval if body's links to Australia are broken.....	258
31	Revocation of approval if providing education ceases to be the body's principal purpose.....	258
32	Revocation of approval as a provider if body ceases to be a registered training organisation	259
32A	Revocation of approval if body ceases to offer VET courses of study	259
33	Revocation of approval as a provider for a breach of the VET quality and accountability requirements	259
	Subdivision 5-C—Process for decisions on revocation under Subdivision 5-B	260
34	Process for revoking approval as a provider for loss of status or a breach	260
35	Determination retaining approval as a provider in respect of existing students	261
36	Suspension of approval as a provider	261
37	Determination retaining approval as a provider in respect of existing students following suspension of approval.....	262
38	Revocations are legislative instruments.....	262
	Subdivision 5-D—Revocation of approval on application	263
39	Revocation of approval as a provider on application.....	263
	Subdivision 5-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003	263
39A	Notice of approval ceasing to have effect under the <i>Legislative Instruments Act 2003</i>	263
	Part 2—VET FEE-HELP assistance	265
	Division 6—Introduction	265
40	What this Part is about.....	265

41	The VET FEE-HELP Guidelines.....	265
42	The VET Tuition Fee Guidelines	265
Division 7—Who is entitled to VET FEE-HELP assistance?		266
Subdivision 7-A—Basic rules		266
43	Entitlement to VET FEE-HELP assistance.....	266
44	Citizenship or residency requirements.....	267
45	Course requirements	267
45A	VET unit of study not undertaken as part of VET course of study	268
Subdivision 7-B—FEE-HELP balances		268
46	Main case of re-crediting a person’s FEE-HELP balance.....	268
47	Re-crediting a person’s FEE-HELP balance—no tax file number.....	269
48	Special circumstances.....	270
49	Application period	270
50	Dealing with applications	270
51	Re-crediting a person’s FEE-HELP balance if provider ceases to provide course of which unit forms part.....	271
Division 8—How are amounts of VET FEE-HELP assistance worked out?		272
52	The amount of VET FEE-HELP assistance for a VET unit of study	272
53	Up-front payments	272
54	Amounts of VET FEE-HELP assistance and FEE-HELP assistance must not exceed the FEE-HELP balance	272
Division 9—How are amounts of VET FEE-HELP assistance paid?		274
55	Payments	274
56	Effect of FEE-HELP balance being re-credited.....	274
Part 3—Administration		276
Division 10—Introduction		276
57	What this Part is about.....	276
58	The VET Administration Guidelines	276
Division 11—Payments by the Commonwealth		277
59	What this Division is about	277
60	Time and manner of payments	277
61	Advances	277
62	Rounding of amounts	278
Division 12—Administrative requirements on VET providers		279
63	What this Division is about	279
64	Notices.....	279

65	Correction of notices	280
66	Charging VET tuition fees.....	281
67	Determining census dates	281
68	Communications with the Commonwealth concerning students etc.	282
Division 13—Electronic communications		283
69	What this Division is about	283
70	Guidelines may deal with electronic communications.....	283
Division 14—Protection of VET personal information		285
71	What this Division is about	285
72	Meaning of <i>VET personal information</i>	285
73	Use of VET personal information.....	285
74	Meanings of <i>VET officer</i> etc. and <i>official employment</i>	286
75	When information is disclosed in the course of official employment	286
76	Commissioner may disclose information.....	287
77	Oath or affirmation to protect information	288
78	Unauthorised access to, or modification of, VET personal information	288
Division 15—Tax file numbers		290
Subdivision 15-A—Introduction		290
79	What this Division is about	290
Subdivision 15-B—What are the tax file number requirements for assistance under Part 2?		290
80	Meeting the tax file number requirements	290
81	Who is an appropriate officer?	291
82	Student to notify tax file number when issued.....	291
Subdivision 15-C—In what circumstances can VET providers be notified of tax file number matters?		292
83	When tax file numbers are issued etc.	292
84	When tax file numbers are altered	292
85	When tax file numbers are incorrectly notified—students with tax file numbers	292
86	When tax file numbers are incorrectly notified—students without tax file numbers	293
87	When applications are refused or tax file numbers are cancelled.....	293
Subdivision 15-D—Other provisions relating to tax file numbers		294
88	Giving information about tax file number requirements.....	294
89	No entitlement to VET FEE-HELP assistance for students without tax file numbers	295

Division 16—Review of decisions	296
Subdivision 16-A—Introduction	296
90 What this Division is about	296
Subdivision 16-B—Which decisions are subject to review?	296
91 Reviewable VET decisions etc.	296
92 Deadlines for making reviewable VET decisions.....	297
93 Decision maker must give reasons for reviewable VET decisions	297
Subdivision 16-C—How are decisions reconsidered?	297
94 Reviewer of decisions.....	297
95 Reviewer may reconsider reviewable VET decisions.....	298
96 Reconsideration of reviewable VET decisions on request	299
Subdivision 16-D—Which decisions are subject to AAT review?	300
97 AAT review of reviewable VET decisions	300
Part 4—Miscellaneous	301
98 Delegations by Secretary	301
99 VET Guidelines	301
Schedule 1—Dictionary	303
1 Definitions	303
Notes	321

An Act relating to the funding of higher education, and for other purposes

Chapter 1—Introduction

Division 1—Preliminary

1-1 Short title [see Note 1]

This Act may be cited as the *Higher Education Support Act 2003*.

1-5 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1-1 and 1-5 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 December 2003
2. Sections 1-10 to 238-15	The later of: (a) 1 January 2004; and (b) the day after the day on which this Act receives the Royal Assent.	1 January 2004
3. Schedule 1	The later of: (a) 1 January 2004; and (b) the day after the day on which this Act receives the Royal Assent.	1 January 2004

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 1 Introduction

Division 1 Preliminary

Section 1-10

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

1-10 Identifying defined terms

- (1) Many of the terms in this Act are defined in the Dictionary in Schedule 1.
- (2) Most of the terms that are defined in the Dictionary in Schedule 1 are identified by an asterisk appearing at the start of the term: as in “*accredited course”. The footnote with the asterisk contains a signpost to the Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.
- (6) The following basic terms used throughout the Act are not identified with an asterisk:

Terms that are not identified		
Item	This term:	is defined in:
1	enrol	Schedule 1
2	higher education provider	section 16-1
3	student	Schedule 1
4	unit of study	Schedule 1

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

1-15 Application of Chapter 6 etc.

Chapter 6 and any regulation made for the purposes of that Chapter extend to every external Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Objects

2-1 Objects of this Act

The objects of this Act are:

- (a) to support a higher education system that:
 - (i) is characterised by quality, diversity and equity of access; and
 - (ii) contributes to the development of cultural and intellectual life in Australia; and
 - (iii) is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and
- (b) to support the distinctive purposes of universities, which are:
 - (i) the education of persons, enabling them to take a leadership role in the intellectual, cultural, economic and social development of their communities; and
 - (ii) the creation and advancement of knowledge; and
 - (iii) the application of knowledge and discoveries to the betterment of communities in Australia and internationally;recognising that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university's overall performance and its ongoing independence; and
- (c) to strengthen Australia's knowledge base, and enhance the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals; and
- (d) to support students undertaking higher education and certain vocational education and training.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Overview of this Act

3-1 General

This Act primarily provides for the Commonwealth to give financial support for higher education and certain vocational education and training:

- (a) through grants and other payments made largely to higher education providers; and
- (b) through financial assistance to students (usually in the form of loans).

3-5 Grants for higher education assistance etc. (Chapter 2)

- (1) Chapter 2 sets out who are higher education providers, and provides for the following grants and payments:
 - (a) grants under the Commonwealth Grant Scheme;
 - (b) other grants for particular purposes;
 - (c) grants for Commonwealth scholarships.
- (2) Higher education providers will be universities, self-accrediting entities or non self-accrediting entities.
- (3) Chapter 2 also provides for the direct payment to students of certain Commonwealth scholarships.

3-10 Assistance to students (Chapter 3)

Chapter 3 provides for the following assistance to students:

- (a) HECS-HELP assistance for student contribution amounts;
- (b) FEE-HELP assistance for tuition fees;
- (c) OS-HELP assistance for overseas study.

Chapter 3 also provides for the Student Learning Entitlement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 1 Introduction

Division 3 Overview of this Act

Section 3-15

3-15 Repayment of loans (Chapter 4)

Chapter 4 sets out how debts are incurred and worked out in relation to loans made under Chapter 3, and provides for their repayment.

3-20 Administration (Chapter 5)

Chapter 5 provides for several administrative matters relating to the operation of this Act.

3-25 Provision of higher education in the external Territories (Chapter 6)

Chapter 6 primarily provides for approval of universities, self-accrediting entities and non self-accrediting entities to operate in external Territories, and for accreditation of courses of study in those Territories.

3-30 VET FEE-HELP Assistance Scheme (Schedule 1A)

Schedule 1A provides for financial assistance to students undertaking certain accredited vocational education and training (VET) courses.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 5—Application of Act to Table C providers

5-1 Application of Act to Table C providers

General application to Table C providers

- (1) The provisions of this Act not listed in the table in subsection (2) or in subsection (4) apply to a *Table C provider, the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.

Modified application to Table C providers

- (2) The provisions of this Act listed in the table apply to a *Table C provider in the way set out in the table.

Application of Act to Table C providers		
Item	Provision	Application
1	Subdivision 19-C (quality requirements)	Applies to the *Australian branch of the provider. However, an audit by a *quality auditing body may need to assess the overall performance of the provider as it relates to that branch.
2	Subdivision 19-D (fairness requirements)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
3	Subdivision 19-F (contribution and fee requirements)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
4	Part 3-3 (FEE-HELP assistance)	Applies to eligible students of the *Australian branch of the provider, but only for units of study in which the students are enrolled at the Australian branch.
5	Part 3-4 (OS-HELP assistance)	Applies to eligible students of the *Australian branch of the provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Item	Provision	Application
6	Chapter 4 (Repayment of loans)	Applies to the *Australian branch of the provider and to students undertaking, or students who undertook, units of study at that branch.
7	Part 5-2 (Administrative requirements on higher education providers)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
8	Part 5-3 (Electronic communications)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
9	Part 5-4 (Protection of personal information)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
10	Part 5-5 (Tax file numbers)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
11	Part 5-7 (Review of decisions)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.

Provisions that do not apply to Table C providers

- (3) The provisions of this Act listed in subsection (4) do not apply to:
- (a) a *Table C provider; or
 - (b) the *Australian branch of the provider; or
 - (c) students in their capacity as students of that provider or of that branch.
- (4) The provisions are:
- (a) Part 2-2 (Commonwealth Grant Scheme);
 - (b) Part 2-3 (Other grants);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) Part 2-4 (Commonwealth scholarships);
- (d) Part 2-5 (Reduction and repayment of grants);
- (e) Part 3-2 (HECS-HELP assistance);
- (f) Schedule 1A (VET FEE-HELP Assistance Scheme).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 1 Introduction

Division 6 Schedule 1A

Section 6-1

Division 6—Schedule 1A

6-1 Schedule 1A

Schedule 1A has effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2—Grants for higher education assistance etc.

Division 8—Introduction

8-1 What this Chapter is about

This Chapter provides for who are higher education providers, and for 3 kinds of grants to be made.

Part 2-1 sets out who are higher education providers (universities, self-accrediting entities and non self-accrediting entities), the quality and accountability requirements for higher education providers and how bodies cease to be higher education providers.

Note: Except in very limited cases, only higher education providers can get grants under this Chapter.

The 3 kinds of grants available under this Chapter are:

- grants under Part 2-2 (Commonwealth Grant Scheme) to certain higher education providers. Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider. Grants are made subject to conditions; and
- other grants under Part 2-3 to higher education providers and other bodies corporate for a variety of purposes; and
- grants for Commonwealth scholarships to certain higher education providers under Part 2-4.

The amount of a grant may be reduced, or an amount paid may be required to be repaid, if the recipient breaches a quality and accountability requirement or a condition of the grant (see Part 2-5).

Note: A body's approval as a higher education provider may be suspended or revoked for such a breach.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance etc.

Division 8 Introduction

Section 8-1

This Chapter also provides for the direct payment to students of certain Commonwealth scholarships under Part 2-4.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-1—Higher education providers

Division 13—Introduction

13-1 What this Part is about

A body generally has to be approved as a higher education provider before it can receive grants, or its students can receive assistance, under this Act. Listed providers (universities and certain self-accrediting entities) have that approval upon commencement of this Act. Table C providers have that approval from the time they are included in Table C. Bodies that do not have that automatic approval, or whose approval has been revoked, have to apply for approval.

Higher education providers are subject to the quality and accountability requirements.

A body's approval as a higher education provider may be revoked in circumstances such as breach of a quality and accountability requirement.

13-5 The Higher Education Provider Guidelines

Higher education providers and the *quality and accountability requirements are also dealt with in the Higher Education Provider Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Higher Education Provider Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 16—What is a higher education provider?

Subdivision 16-A—General

16-1 Meaning of *higher education provider*

A *higher education provider* is a body corporate that is approved under this Division.

16-5 When a body becomes or ceases to be a higher education provider

- (1) A *listed provider is taken to be approved as a higher education provider from the commencement of this Act.
- (1A) A *Table C provider is taken to be approved as a higher education provider from the commencement of the provision that included the provider in Table C in section 16-22.
- (2) A body corporate:
 - (a) that is not a *listed provider or a *Table C provider; or
 - (b) that is a listed provider or a Table C provider that has previously ceased to be a higher education provider;becomes a provider if approved by the Minister under section 16-25.
- (3) A higher education provider ceases to be a provider if the provider's approval is revoked or suspended under Division 22 or the notice of the provider's approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

Subdivision 16-B—Which bodies are listed providers?

16-10 Listed providers

The following are *listed providers*:

- (a) a *Table A provider;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) a *Table B provider.

16-15 Table A providers

(1) The following are *Table A providers*:

Table A providers
Providers
Central Queensland University
Charles Darwin University
Charles Sturt University
Curtin University of Technology
Deakin University
Edith Cowan University
Griffith University
James Cook University
La Trobe University
Macquarie University
Monash University
Murdoch University
Queensland University of Technology
Royal Melbourne Institute of Technology
Southern Cross University
Swinburne University of Technology
The Australian National University
The Flinders University of South Australia
The University of Adelaide
The University of Melbourne
The University of Queensland
The University of Sydney
The University of Western Australia
University of Ballarat
University of Canberra
University of Newcastle

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-20

Table A providers

Providers

University of New England
University of New South Wales
University of South Australia
University of Southern Queensland
University of Tasmania
University of Technology, Sydney
University of the Sunshine Coast
University of Western Sydney
University of Wollongong
Victoria University
Australian Catholic University
Batchelor Institute of Indigenous Tertiary Education

- (2) However, a body is not a Table A provider if its approval as a higher education provider is revoked or suspended.

16-20 Table B providers

- (1) The following are *Table B providers*:

Table B providers

Providers

Bond University
The University of Notre Dame Australia
Melbourne College of Divinity

- (2) However, a body is not a Table B provider if its approval as a higher education provider is revoked or suspended.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

16-22 Table C providers

- (1) The following are *Table C providers*:

Table C providers
Providers
Carnegie Mellon University, a non-profit organisation established under Pennsylvania law
University College London, a non-profit organisation established under United Kingdom law

- (2) However, a body is not a *Table C provider* if its approval as a higher education provider is revoked or suspended.

Note: A Table C provider is not entitled to receive a grant under this Chapter: see section 5-1.

Subdivision 16-C—How are bodies approved as higher education providers?

16-25 Approval by the Minister

The Minister, in writing, may approve a body corporate as a higher education provider if:

- (a) the body:
 - (i) is established under the law of the Commonwealth, a State or a Territory; and
 - (ii) carries on business in Australia; and
 - (iii) has its central management and control in Australia; and
- (aa) the body's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research; and
- (b) the body is:
 - (i) an *Australian university; or
 - (ii) a *self-accrediting entity; or
 - (iii) a *non self-accrediting entity; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-30

- (c) the body either fulfils the *tuition assurance requirements or is exempted from those requirements under section 16-31; and
- (d) the body is in a State or Territory that the Minister is satisfied has legislation that complies with the *National Protocols; and
- (da) the body offers at least one *course of study that leads to a *higher education award; and
- (db) if the body is a self-accrediting entity:
 - (i) the body is authorised by a *government accreditation authority to accredit that course; or
 - (ii) the course is an *accredited course; and
- (dc) if the body is a non self-accrediting entity—the course is an accredited course; and
- (e) the body applies for approval as provided for in section 16-40; and
- (f) the Minister is satisfied that the body is willing and able to meet the *quality and accountability requirements.

16-30 The tuition assurance requirements

The *tuition assurance requirements* are that the body corporate complies with the requirements for tuition assurance set out in the Higher Education Provider Guidelines.

16-31 Tuition assurance requirements exemption for approvals

- (1) The Minister may, in writing, exempt a body corporate from the *tuition assurance requirements for the purposes of approving the body under section 16-25.

Note: This section only deals with exemptions from the tuition assurance requirements when approving bodies as higher education providers. For exemptions from the tuition assurance requirements after approval has happened, see subsection 19-40(2).

- (2) An exemption is subject to such conditions as are specified in the exemption.

Note: A body will not be exempt if a condition of the exemption is not complied with.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) An exemption given under this section is not a legislative instrument.

16-40 Application

- (1) A body corporate may apply in writing to the Minister for approval as a higher education provider.
- (2) The application:
 - (a) must be in the form approved by the Minister; and
 - (b) must be accompanied by such information as the Minister requests.

16-45 Minister may seek further information

- (1) For the purposes of determining an application, the Minister may, by notice in writing, require an applicant to provide such further information as the Minister directs within the period specified in the notice.
- (2) If an applicant does not comply with a requirement under subsection (1), the application is taken to have been withdrawn.
- (3) A notice under this section must include a statement about the effect of subsection (2).

16-50 Minister to decide application

- (1) The Minister must:
 - (a) decide an application for approval as a higher education provider; and
 - (b) cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider.
- (2) For the purposes of paragraph 16-25(f), the Minister may be satisfied that a body corporate is willing and able to meet the *quality and accountability requirements if the body gives the Minister such written undertakings as the Minister requires.
- (3) The Minister's decision must be made:
 - (a) within 90 days after receiving the application; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-55

- (b) if further information is requested under section 16-45—
within 60 days after the end of the period within which the
information was required to be provided under that section;
whichever is the later.
- (4) If the Minister decides that an applicant is approved as a higher
education provider, the notice must also contain such information
as is specified in the Higher Education Provider Guidelines as
information that must be provided to an applicant upon approval as
a higher education provider.

16-55 Approvals are legislative instruments

- (1) A notice of approval under paragraph 16-50(1)(b) is a legislative
instrument.
- (2) A decision of the Minister to approve a body corporate as a higher
education provider takes effect when the notice of approval takes
effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when
a legislative instrument takes effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 19—What are the quality and accountability requirements?

Subdivision 19-A—General

19-1 The quality and accountability requirements

- (1) The *quality and accountability requirements* are:
 - (a) the *financial viability requirements (see Subdivision 19-B); and
 - (b) the *quality requirements (see Subdivision 19-C); and
 - (c) the *fairness requirements (see Subdivision 19-D); and
 - (d) the *compliance requirements (see Subdivision 19-E); and
 - (e) the *contribution and fee requirements (see Subdivision 19-F).
- (2) This Division does not of its own force require a higher education provider to do any act or thing.

Subdivision 19-B—The financial viability requirements

19-5 Basic requirement

A higher education provider:

- (a) must be financially viable; and
- (b) must be likely to remain financially viable.

19-10 Financial information must be provided

- (1) A higher education provider must give to the Minister a financial statement for each *annual financial reporting period for the provider in which:
 - (a) the provider receives assistance under this Chapter; or
 - (b) a student of the provider receives assistance under Chapter 3.
- (2) The statement:
 - (a) must be in the form approved by the Minister; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-12

- (b) must be provided together with a report on the statement by an independent *qualified auditor; and
 - (c) must be provided within 6 months after the end of the *annual financial reporting period for which the statement was given.
- (3) An **annual financial reporting period**, for a higher education provider, is the period of 12 months:
- (a) to which the provider's accounts relate; and
 - (b) that is notified in writing to the Minister as the provider's annual financial reporting period.

19-12 Minister to have regard to financial information

In determining whether a higher education provider is financially viable, and likely to remain so, the Minister must have regard to any financial statement provided by the provider under section 19-10.

Subdivision 19-C—The quality requirements

19-15 Provider must maintain quality

- (1) A higher education provider must operate, and continue to operate, at an appropriate level of quality for an Australian higher education provider.
- (2) The Minister must not determine that a higher education provider meets an appropriate level of quality for an Australian higher education provider, unless the Minister is satisfied that:
 - (a) the provider meets the requirements of section 19-20; and
 - (b) if the provider is not a *Table A provider—the provider meets the requirements of section 19-25; and
 - (c) if the provider is a Table A provider—the provider meets the requirements of section 19-27.

19-20 Provider to comply with National Protocols etc.

A higher education provider must:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) be assessed, by a *government accreditation authority, as meeting the relevant requirements set out in the *National Protocols; and
- (b) comply with any requirement imposed on the provider by a government accreditation authority; and
- (c) comply with any requirement imposed on the provider by the Minister in writing in order to implement a specified recommendation of a *quality auditing body.

19-25 Quality assurance—provider (other than Table A provider)

- (1) A higher education provider (other than a *Table A provider) must be audited:
 - (a) by a *quality auditing body for the provider; and
 - (b) as the auditing body requires.
- (2) The provider must also:
 - (a) after a request from a *quality auditing body for the provider to audit the provider, allow the audit to start within the time agreed to by the body and provider; and
 - (b) fully co-operate with the auditing body in the course of its audit; and
 - (c) pay to the auditing body any charges payable for such an audit.
- (3) The provider's agreement under paragraph (2)(a) must be given to the *quality auditing body within one month after the body makes the request to the provider.

19-27 Quality assurance—Table A provider

- (1) A *Table A provider must be audited by a *quality auditing body for the provider at least once every 5 years.
- (2) The provider must, in relation to each audit of the provider:
 - (a) either:
 - (i) before the start of the audit, reach agreement with the body on the time of, and the arrangements for, the audit;
 - or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-29

- (ii) comply with the Minister's determination under subsection (3); and
 - (b) in relation to each audit, comply with any requests, made in the course of the audit by the body conducting the audit, that are reasonable having regard to the provider's circumstances.
- (3) If the provider and the *quality auditing body are unable to agree on matters referred to in subparagraph (2)(a)(i) in relation to an audit of the provider, the Minister may, after consulting with the provider, determine in writing the audit arrangements for the provider.

19-29 Quality auditing bodies

The Higher Education Provider Guidelines may:

- (a) list a body as a *quality auditing body for one or more kinds of higher education provider; and
- (b) set out requirements that must be met by quality auditing bodies in conducting audits of higher education providers.

Subdivision 19-D—The fairness requirements

19-30 Basic requirement

A higher education provider must treat fairly:

- (a) all of its students; and
- (b) all of the persons seeking to enrol with the provider.

19-35 Benefits and opportunities must be available equally to all students

- (1) A higher education provider that receives assistance under this Chapter in respect of a student, or a class of students, must ensure that the benefits of, and the opportunities created by, the assistance are made equally available to all such students, or students in such class, in respect of whom that assistance is payable.
- (2) A higher education provider that receives:
 - (a) any grant or allocation under this Chapter; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) any payment under section 124-1 on account of amounts of *OS-HELP assistance;
must have open, fair and transparent procedures that, in the provider's reasonable view, are based on merit for making decisions about the selection of students who are to benefit from the grant, allocation or payment.
- (3) Subsection (2) does not prevent a higher education provider taking into account, in making such decisions about the selection of students, educational disadvantages that a particular student has experienced.
- (4) A higher education provider that receives any payment under section 110-1 on account of amounts of *FEE-HELP assistance for a unit of study must have open, fair and transparent procedures that, in the provider's reasonable view, are based on merit for making decisions about:
- (a) the selection, from among the persons who seek to enrol with the provider in that unit of study, of persons to enrol; and
 - (b) the treatment of students undertaking that unit of study.
- (5) Subsection (4) does not prevent a higher education provider taking into account, in making decisions mentioned in that subsection, educational disadvantages that a particular student has experienced.

19-37 Requiring membership of certain organisations or payment of certain amounts

- (1) A higher education provider must not:
- (a) require a person to be or to become a member of an organisation of students, or of students and other persons; or
 - (b) require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount in respect of an organisation of students, or of students and other persons;
- unless the person has chosen to be or to become a member of the organisation.
- (2) A higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay to the provider

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-40

or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service.

- (3) Subsection (2) does not apply to an amount that the higher education provider requires the person to pay if the amount is for goods or services that:
- (a) are essential for the course of study in which the person is enrolled or seeking to enrol; and
 - (b) the person has the choice of acquiring from, but does not acquire from, a supplier other than the higher education provider; and
 - (c) either:
 - (i) are goods that become the property of the person that are not intended to be consumed during the course of study; or
 - (ii) consist of food, transport or accommodation associated with provision of field trips in connection with the course of study.

19-40 Compliance with the tuition assurance requirements

- (1) A higher education provider, other than a *Table A provider or a body declared under subsection (2), must comply with the *tuition assurance requirements.
 - (2) The Minister may, by declaration in writing, exempt a specified higher education provider from the requirement in subsection (1).
 - (3) An exemption:
 - (a) is subject to such conditions as are specified in the exemption; and
 - (b) may be expressed to be in force for a period specified in the exemption.
- Note: A body will not be exempt if a condition of the exemption is not complied with.
- (4) An exemption given under this section is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-45 Student grievance and review procedures

Must have grievance and review procedures

- (1) A higher education provider must have:
 - (a) a grievance procedure for dealing with complaints by the provider's students, and persons who seek to enrol in *courses of study with the provider, relating to non-academic matters; and
 - (b) a grievance procedure for dealing with complaints by the provider's students relating to academic matters; and
 - (c) a review procedure for dealing with review of decisions made by the provider:
 - (i) under section 36-22; or
 - (ii) relating to assistance under Chapter 3.

Note: Part 5-7 also deals with reconsideration and review of decisions.

- (2) Except where the provider is a *Table A provider, the grievance procedures referred to in paragraphs (1)(a) and (b) must comply with the requirements of the Higher Education Provider Guidelines.
- (3) The review procedure referred to in paragraph (1)(c) must comply with the requirements of the Higher Education Provider Guidelines.

Guidelines may provide for matters relating to reviews

- (4) The Higher Education Provider Guidelines may provide for matters relating to reviews of decisions made by higher education providers:
 - (a) under section 36-22; or
 - (b) relating to assistance under Chapter 3;including procedures that are to be followed by *review officers when reviewing those decisions.

Provider to comply with procedures

- (5) The provider must comply with its grievance and review procedures.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-50

Provider to provide information about procedures

- (6) The provider must publish, and make publicly available, up to date information setting out the procedures.

Provider to provide information about other complaint mechanisms

- (7) The provider must publish information about any other complaint mechanisms available to complain about the provider's decisions.

19-50 Higher education providers to appoint review officers

- (1) A higher education provider must appoint a *review officer to undertake reviews of decisions made by the provider:
- (a) under section 36-22; or
 - (b) relating to assistance under Chapter 3.

Note: The Secretary may delegate to a review officer of a higher education provider the power to reconsider decisions of the provider under Division 209: see subsection 238-1(2).

- (2) A **review officer** of a higher education provider is a person, or a person included in a class of persons, whom:
- (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider; has appointed to be a review officer of the provider for the purposes of reviewing decisions made by the provider:
 - (c) under section 36-22; or
 - (d) relating to assistance under Chapter 3.

19-55 Review officers not to review own decisions

A higher education provider must ensure that a *review officer of the provider:

- (a) does not review a decision that the review officer was involved in making; and
- (b) in reviewing a decision of the provider, occupies a position that is senior to that occupied by any person involved in making the original decision.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-60 Procedures relating to personal information

- (1) A higher education provider must comply with the information privacy principles set out in section 14 of the *Privacy Act 1988* in respect of *personal information obtained for the purposes of section 36-22 or Chapter 3 or 4.
- (2) A higher education provider must have a procedure under which a student enrolled with the provider may apply to the provider for, and receive, a copy of *personal information that the provider holds in relation to that student.
- (3) The provider must comply with:
 - (a) the requirements of the Higher Education Provider Guidelines relating to *personal information in relation to students; and
 - (b) the procedure referred to in subsection (2).

Subdivision 19-E—The compliance requirements

19-65 Basic requirements

- (1) A higher education provider must comply with the requirements of this Act and the regulations, and the requirements of the Guidelines made under section 238-10 that apply to the provider.
- (2) A higher education provider must provide information to the Minister in relation to the affairs of the provider in accordance with the requirements of this Act.
- (3) A higher education provider's administrative arrangements must support the provision of assistance under this Act.

19-70 Provider to provide statement of general information

- (1) A higher education provider must give to the Minister such statistical and other information that the Minister by notice in writing requires from the provider in respect of:
 - (a) the provision of higher education by the provider; and
 - (b) compliance by the provider with the requirements of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-75

- (2) The information must be provided:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with such other requirements as the Minister makes.
- (3) A notice under this section must not require the giving of information that a higher education provider is required to give to the Minister under section 19-95.

19-75 Notice of events that affect provider's ability to comply with conditions of Commonwealth assistance

A higher education provider must by writing inform the Minister of any event affecting:

- (a) the provider; or
 - (b) a *related body corporate of the provider;
- that may significantly affect the provider's capacity to meet the conditions of grants under this Chapter or the *quality and accountability requirements.

19-77 Notice of events affecting accreditation

A higher education provider must by writing inform the Minister of any event affecting:

- (a) the provider; or
 - (b) a *related body corporate of the provider;
- that relates to:
- (c) the provider's authority to accredit *courses of study leading to *higher education awards; or
 - (d) the accreditation by a *government accreditation authority, of such courses offered by the provider.

19-80 Compliance assurance—provider (other than Table A provider)

- (1) The Minister may require a higher education provider (other than a *Table A provider) to be audited as to compliance with any one or more of the following requirements:
 - (a) the *financial viability requirements;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the *fairness requirements;
 - (c) the *compliance requirements;
 - (d) the *contribution and fee requirements.
- (2) The audit must be conducted:
- (a) by a body determined in writing by the Minister; and
 - (b) at such time or times, and in such manner, as the Minister requires.
- (3) The provider must:
- (a) fully co-operate with the auditing body in the course of its audit; and
 - (b) pay to the auditing body any charges payable for such an audit.
- (4) A determination made under paragraph (2)(a) is not a legislative instrument.

Subdivision 19-F—What are the contribution and fee requirements?

19-85 Basic requirement

A higher education provider must charge, in accordance with the requirements of this Act, *student contribution amounts and *tuition fees for each unit of study in which it enrolls students.

19-87 Determining student contribution amounts for all places in units

- (1) This section applies to a unit of study:
- (a) that a higher education provider provides or proposes to provide during a period ascertained in accordance with the Higher Education Provider Guidelines; and
 - (b) in relation to which the provider may advise a person that he or she is a *Commonwealth supported student.
- (2) The provider must determine, for places in the unit, one or more *student contribution amounts that are to apply to students who may enrol in the unit during the period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-90

- (2A) In determining more than one *student contribution amount under subsection (2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must not have regard.
- (3) The provider must not vary a *student contribution amount unless the provider:
 - (a) does so:
 - (i) before the date ascertained in accordance with the Higher Education Provider Guidelines; and
 - (ii) in circumstances specified in the Higher Education Provider Guidelines; or
 - (b) does so with the written approval of the Minister.

19-90 Determining tuition fees for all students

- (1) This section applies to a unit of study that a higher education provider provides or proposes to provide during a period ascertained in accordance with the Higher Education Provider Guidelines.
- (2) The provider must determine, for the unit, one or more *fees that are to apply to students who may enrol in the unit during the period.
- (3) In determining more than one *fee under subsection (2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must not have regard.
- (4) The provider must not vary a *fee unless the provider:
 - (a) does so:
 - (i) before the date ascertained in accordance with the Higher Education Provider Guidelines; and
 - (ii) in circumstances specified in the Higher Education Provider Guidelines; or
 - (b) does so with the written approval of the Minister.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-95 Schedules of student contribution amounts for places and tuition fees

- (1) A higher education provider must give the Minister a schedule of the *student contribution amounts for places, and *tuition fees, determined under sections 19-87 and 19-90 for all the units of study it provides or proposes to provide during a period ascertained in accordance with the Higher Education Provider Guidelines. It must give the schedule:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with the requirements that the Minister determines in writing.
- (2) The provider must:
 - (a) ensure that the schedule provides sufficient information to enable a person to work out, for each unit of study the provider provides or is to provide:
 - (i) the person's *student contribution amount; and
 - (ii) if the provider determined more than one student contribution amount for places in a unit under section 19-87—which of those student contribution amounts applies to the person; and
 - (aa) ensure that the schedule provides sufficient information to enable a person to work out, for each unit of study the provider provides or is to provide:
 - (i) the person's *tuition fee; and
 - (ii) if the provider determined more than one tuition fee for a unit under section 19-90—which of those tuition fees applies to the person; and
 - (b) publish the schedule for a particular period by the date ascertained in accordance with the Higher Education Provider Guidelines; and
 - (c) ensure that the schedule is available to all students enrolled, and persons seeking to enrol, with the provider on request and without charge.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-100

Replacement schedules

- (3) If:
- (a) the provider has given the Minister a schedule (the *previous schedule*) under:
 - (i) subsection (1); or
 - (ii) this subsection; and
 - (b) the provider:
 - (i) varies a *student contribution amount in the previous schedule; or
 - (ii) varies a *tuition fee in the previous schedule;
- the provider must:
- (c) by written notice given to the Minister:
 - (i) withdraw the previous schedule; and
 - (ii) inform the Minister of the variation; and
 - (d) give the Minister a replacement schedule incorporating the variation.
- Note 1: The provider must comply with subsection 19-87(3) when varying a student contribution amount.
- Note 2: The provider must comply with subsection 19-90(4) when varying a tuition fee.
- (4) Subsections (1) and (2) apply to the replacement schedule in a corresponding way to the way in which they apply to the previous schedule.

19-100 Limits on fees for courses of study

A higher education provider must not charge a person a *fee for a *course of study that exceeds the sum of the person's *tuition fees for all of the units of study undertaken with the provider by the person as part of the course.

19-102 Meaning of *fee*

- (1) A *fee* includes any tuition, examination or other fee payable to a higher education provider by a person enrolled with, or applying for enrolment with, the provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) A *fee* may also include any fee payable to the provider in respect of the granting of a *higher education award.
- (3) A *fee* does not include a fee that is:
- (a) payable in respect of an organisation of students, or of students and other persons; or
 - (b) payable in respect of the provision to students of amenities or services that are not of an academic nature; or
 - (c) payable in respect of residential accommodation; or
 - (d) imposed in accordance with the Higher Education Provider Guidelines for the imposition of fees in respect of *overseas students; or
 - (e) payable in respect of studies (other than an *enabling course) that are not permitted to be undertaken for the purpose of obtaining a *higher education award; or
 - (f) determined, in accordance with the Higher Education Provider Guidelines, to be a fee of a kind that is incidental to studies that may be undertaken with a higher education provider; or
 - (g) a *student contribution amount payable in respect of a student.
- (4) The definition of *fee* in this section does not apply for the purposes of sections 104-50 and 225-25.

19-105 Meaning of *tuition fee*

A person's *tuition fee* for a unit of study is:

- (a) if only one fee has been determined for the unit under subsection 19-90(2)—that fee; or
- (b) if more than one fee has been determined for the unit under that subsection—the fee determined under that subsection that applies to the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 22—When does a body cease to be a higher education provider?

Subdivision 22-A—General

22-1 Cessation of approval as a provider

A body ceases to be approved as a higher education provider:

- (a) if the approval is revoked under Subdivision 22-B or 22-D;
or
- (b) while the approval is suspended under section 22-30; or
- (c) if the notice of the provider's approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

Subdivision 22-B—Revocation for cause

22-5 Revocation of approval if application for approval as a provider is false or misleading

The Minister may revoke a body's approval as a higher education provider if the Minister:

- (a) is satisfied that the body's application under section 16-40 for approval as a higher education provider contained material that was false or misleading; and
- (b) complies with the requirements of section 22-20.

22-7 Revocation of approval if providing education and/or conducting research ceases to be the body's principal purpose

The Minister may revoke a body's approval as a higher education provider if:

- (a) at the last time the body became a higher education provider, the body's principal purpose was either or both of the following:
 - (i) to provide education;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) to conduct research; and
- (b) since that time, the body's circumstances have changed so that it no longer satisfies paragraph 16-25(aa); and
- (c) the Minister complies with the requirements of section 22-20.

22-10 Revocation of approval if status or accreditation changes

Bodies that cease to be Australian universities

- (1) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was an *Australian university at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be an Australian university; and
 - (c) the Minister complies with the requirements of section 22-20.

Bodies that cease to be self-accrediting entities

- (2) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was a *self-accrediting entity at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be a self-accrediting entity; and
 - (c) the Minister complies with the requirements of section 22-20.

Self-accrediting entities that cease to have authority to accredit courses

- (2A) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was a *self-accrediting entity at the last time the body became a higher education provider; and
 - (b) the body is no longer authorised by a *government accreditation authority to accredit a *course of study that the body was authorised to accredit at that time; and
 - (c) the Minister complies with the requirements of section 22-20.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 22-15

Bodies that cease to be non self-accrediting entities

- (3) The Minister may revoke a body's approval as a higher education provider if:
- (a) the body was a *non self-accrediting entity at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be a non self-accrediting entity; and
 - (c) the Minister complies with the requirements of section 22-20.

Bodies offering courses that cease to be accredited courses

- (4) The Minister may revoke a body's approval as a higher education provider if:
- (a) the body was a *self-accrediting entity or a *non self-accrediting entity at the last time the body became a higher education provider; and
 - (b) a *course of study offered by the body that was an *accredited course ceases to be an accredited course; and
 - (c) the Minister complies with the requirements of section 22-20.

Bodies that no longer meet certain approval criteria

- (5) The Minister may revoke a body's approval as a higher education provider if:
- (a) the body no longer meets a requirement set out in:
 - (i) paragraph 16-25(a); or
 - (ii) paragraph 16-25(da); and
 - (b) the Minister complies with the requirements of section 22-20.

22-15 Revocation of approval as a provider for a breach of conditions or the quality and accountability requirements

- (1) The Minister may revoke a body's approval as a higher education provider if the Minister:
- (a) is satisfied that the body has either:
 - (i) breached a condition of a grant made to the body under Part 2-2, 2-3 or 2-4; or
 - (ii) breached a *quality and accountability requirement; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) is satisfied that it is appropriate to take that action (see subsection (2)); and
 - (c) complies with the requirements of section 22-20.
- (2) Without limiting the matters that the Minister may consider in deciding whether it is appropriate under this section to revoke a body's approval as a higher education provider, the Minister may consider any or all of the following matters:
- (a) whether the breach in question is of a minor or major nature;
 - (b) whether the breach has occurred before and, if so, how often;
 - (c) the impact that the breach may have on the body's students;
 - (d) the impact of the breach on the higher education provided by the body;
 - (e) the impact of the breach on Australia's reputation as a provider of high quality higher education;
 - (f) any other matter set out in the Higher Education Provider Guidelines.

Subdivision 22-C—Process for decisions on revocation under Subdivision 22-B

22-20 Process for revoking approval as a provider for loss of status or a breach

- (1) Before revoking a body's approval as a higher education provider under Subdivision 22-B, the Minister must give the body notice in writing:
- (a) stating that the Minister is considering revoking the body's approval; and
 - (b) stating the reasons why the Minister is considering revoking the body's approval; and
 - (c) inviting the body to make written submissions to the Minister within 28 days concerning why the approval should not be revoked.
- (2) In deciding whether or not to revoke a body's approval under Subdivision 22-B, the Minister must consider any submissions received from the body within the 28 day period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 22-25

- (3) The Minister must notify the body in writing of his or her decision whether to revoke the body's approval under Subdivision 22-B.
The notice:
 - (a) must be in writing; and
 - (b) must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subsection (1); and
 - (c) if the Minister decides to revoke the body's approval—must specify the day that the revocation takes effect.
- (4) If no notice is given within the period provided for in subsection (3), the Minister is taken to have decided not to revoke the approval.
- (5) If the Minister decides to revoke the body's approval:
 - (a) the revocation takes effect on the day specified in the notice under subsection (3); and
 - (b) a copy of the notice must be published in the *Gazette*.

22-25 Determination retaining approval as a provider in respect of existing students

- (1) The Minister may determine, in writing, that a revocation of a body's approval as a higher education provider under Subdivision 22-B is of no effect for the purposes of:
 - (a) grants to the body under this Chapter; and
 - (b) assistance payable to the body's students under Chapter 3; to the extent that the grants or assistance relate to students of the body who have not completed the *courses of study in which they were enrolled with the body on the day specified for the purposes of paragraph 22-20(5)(a).
- (2) The determination may be included in the notice of revocation under subsection 22-20(3).
- (3) The body is taken, for the purposes of this Act, to continue to be a higher education provider, but only to the extent referred to in subsection (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) Subsection (3) does not prevent the Minister subsequently revoking the body's approval as a higher education provider under this Division.

22-30 Suspension of approval as a provider

- (1) The Minister may, by legislative instrument, determine that, with effect from a specified day, a body's approval as a higher education provider is suspended pending the making of a decision under Subdivision 22-B as to whether to revoke the body's approval as a provider.
- (2) A copy of the determination must be given to the body concerned.
- (3) If the Minister makes a determination under subsection (1) in respect of a body, the Minister must give to the body a notice under section 22-20 within 48 hours after giving a copy of the determination to the body.
- (4) A determination under this section:
- (a) takes effect accordingly on the day specified in the determination; and
 - (b) ceases to have effect if the Minister decides not to revoke the body's approval as a higher education provider.

22-32 Determination retaining approval as a provider in respect of existing students following suspension of approval

- (1) The Minister may determine, in writing, that a suspension of a body's approval as a higher education provider under section 22-30 is of no effect for the purposes of:
- (a) grants to the body under this Chapter; and
 - (b) assistance payable to the body's students under Chapter 3;
- to the extent that the grants or assistance relate to students of the body who have not completed the *courses of study in which they were enrolled with the body on the day specified for the purposes of paragraph 22-30(4)(a).
- (2) A copy of the determination must be given to the body concerned.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 22-35

- (3) The body is taken, for the purposes of this Act, to continue to be a higher education provider, but only to the extent referred to in subsection (1).
- (4) Subsection (3) does not prevent the Minister subsequently revoking the body's approval as a higher education provider under this Division.
- (5) A determination made under subsection (1) is not a legislative instrument.

22-35 Revocations are legislative instruments

- (1) A notice of revocation under subsection 22-20(3) is a legislative instrument.
- (2) A decision of the Minister to revoke the approval of a higher education provider takes effect at the later of the following times:
 - (a) on the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the notice could be passed;
 - (b) the day specified in the notice of revocation under subsection 22-20(3) as the day on which the revocation takes effect.

Subdivision 22-D—Revocation of approval on application

22-40 Revocation of approval as a provider on application

- (1) The Minister may revoke the approval of a body as a higher education provider if the body requests the Minister in writing to revoke the approval.
- (2) The request must be given to the Minister at least 30 days before the day on which the revocation is requested to have effect.
- (3) The Minister must cause the body to be notified of the revocation. The notice must:
 - (a) be in writing; and
 - (b) be given to the body at least 14 days before the day on which the revocation is to take effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3A) A notice of revocation under subsection (3) is a legislative instrument.
- (4) The revocation has effect on the day requested unless another day is specified in the notice under subsection (3).

Subdivision 22-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003

22-45 Notice of approval ceasing to have effect under the *Legislative Instruments Act 2003*

- (1) This section applies if:
- (a) a decision of the Minister to approve a body corporate as a higher education provider has taken effect; and
 - (b) the body ceases to be approved as a higher education provider because the notice of the approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.
- (2) The fact that the body ceases to be approved as a higher education provider does not:
- (a) affect:
 - (i) the operation of this Act, or any instrument made under this Act, in relation to the body before the cessation; or
 - (ii) anything duly done or suffered in relation to the body before the cessation; or
 - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred before the cessation; or
 - (c) affect any penalty, forfeiture or punishment incurred in respect of the body having been a higher education provider; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the body had not ceased to be approved as a higher education provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-2—Commonwealth Grant Scheme

Division 27—Introduction

27-1 What this Part is about

Grants are payable under this Part to higher education providers that meet certain requirements. Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider.

Grants are subject to several conditions relating to the provision of Commonwealth supported places and other matters.

Amounts of grants may be reduced, or some or all of a grant may be repayable if a condition is breached (see Part 2-5).

Note: This Part does not apply to Table C providers: see section 5-1.

27-5 Guidelines

- (1) The grants payable under this Part are also dealt with in the Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines.
- (2) The provisions of this Part indicate:
 - (a) when a particular matter is, or may be, dealt with in the guidelines; and
 - (b) whether the matter is dealt with in the Commonwealth Grant Scheme Guidelines or the Tuition Fee Guidelines.

Note 1: The Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines are made by the Minister under section 238-10.

Note 2: The Commonwealth Grant Scheme Guidelines may also deal with matters arising under section 93-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 30—Which higher education providers are eligible for a grant?

Subdivision 30-A—Basic rules

30-1 Eligibility for grants

- (1) A grant under this Part is payable, as a benefit to students, to a higher education provider, in respect of the year 2005 or a later year, if:
 - (a) the provider is:
 - (i) a *Table A provider; or
 - (ii) a higher education provider specified in the Commonwealth Grant Scheme Guidelines as a higher education provider that can be paid grants under this Part; and
 - (b) the Minister has allocated a *number of Commonwealth supported places to the provider for that year under section 30-10; and
 - (c) the provider has entered into a funding agreement with the Commonwealth under section 30-25 in respect of a period that includes that year.
- (2) However, a grant is payable to a higher education provider that is not a *Table A provider only if the grant relates only to *national priorities.

30-5 Maximum grants

- (1) The Minister must ensure that the total amounts of all grants payable under this Part in respect of a year, as a result of all the allocations to higher education providers for that year under section 30-10, does not exceed:
 - (a) for the year 2005—\$3,066,956,000; or
 - (b) for the year 2006—\$3,266,479,000; or
 - (c) for the year 2007—\$3,512,501,000; or
 - (d) for the year 2008—\$3,793,766,000; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 30-10

- (e) for the year 2009—\$4,138,233,000; or
 - (f) for the year 2010—\$4,833,034,000; or
 - (g) for the year 2011—\$5,011,996,000.
- (2) For the purposes of subsection (1), regard must be had to any adjustments under Subdivision 33-C to amounts for the year.
- Note: The adjustments would be in respect of the preceding year.

Subdivision 30-B—Allocation of places

30-10 Allocation of places

- (1) Before the commencement of a year, the Minister may allocate a specified *number of Commonwealth supported places to a higher education provider for that year.
- (2) The allocation must specify the distribution of those places between the *funding clusters.
- (2A) If the provider has indicated to the Minister its preferred distribution of those places, the Minister must have regard to that preferred distribution in deciding the distribution of those places.
- (3) The allocation may also specify:
 - (a) the number of those places that have a regional loading; and
 - (b) the number of those places that have a medical student loading; and
 - (c) the number of those places that have an enabling loading; and
 - (d) the number of those places that have a transitional loading.
- (4) If the provider is not a *Table A provider, the allocation must specify:
 - (a) that it is only in respect of *national priorities; and
 - (b) the number of places for each national priority for which the provider is allocated places.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

30-15 Funding clusters

The *funding clusters* are:

Funding clusters

Law, Accounting, Administration, Economics, Commerce
Humanities
Mathematics, Statistics, Behavioural Science, Social Studies,
Computing, Built Environment, Other Health
Education
Clinical Psychology, Allied Health, Foreign Languages, Visual and
Performing Arts
Nursing
Engineering, Science, Surveying
Dentistry, Medicine, Veterinary Science, Agriculture

30-20 National priorities

A *national priority* is a particular outcome:

- (a) that relates to the provision of higher education; and
- (b) that is an outcome specified in the Commonwealth Grant Scheme Guidelines as a national priority.

Note: The following are examples of national priorities:

- (a) increasing the number of persons undertaking particular courses of study;
- (b) increasing the number of particular kinds of persons undertaking courses of study;
- (c) increasing the number of persons in particular regions undertaking courses of study.

Subdivision 30-C—Funding agreements

30-25 Funding agreements

- (1) The Minister may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to grants under this Part in respect of each year in a period of 3 years (the *grant years*).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 30-25

(1A) In negotiating the agreement the Minister must have regard to all of the types of matters that the provider has indicated to the Minister it wishes to be specified in the agreement.

(2) The agreement may specify conditions to which the grants are subject, that are additional to the conditions that apply under Division 36.

Note: It is a condition of the grants that the provider comply with the agreement: see section 36-65.

(2A) However, the agreement must not specify as a condition to which the grants are subject a matter in respect of which the Minister could have made a determination under subsection 36-15(2) (or could have made such a determination but for subsection 36-15(3)).

Note: The Minister has the power under subsection 36-15(2) to determine that students are not to be enrolled as Commonwealth supported students in particular courses. The determination is disallowable (see subsection 36-15(3)).

(2B) Where the agreement specifies conditions to which the grants are subject, that are additional to the conditions that apply under Division 36, those conditions must not relate to industrial relations matters.

(3) Without limiting subsection (2), the agreement may specify:

(a) in relation to one or more of the following:

(i) places in *undergraduate courses of study;

(ii) places in non-research *postgraduate courses of study;

(iii) places in courses of study in medical programs;

(iv) places in courses of study in *enabling courses;

the minimum *number of Commonwealth supported places that the provider must provide in the grant year or grant years, or the maximum number of Commonwealth supported places that the provider may provide in the grant year or grant years, or both; and

(b) the maximum number of Commonwealth supported places provided by the provider which can have a regional loading in the grant years; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) the maximum number of Commonwealth supported places provided by the provider which can have a medical student loading in the grant years; and
 - (ca) the maximum number of Commonwealth supported places provided by the provider which can have an enabling loading in the grant years; and
 - (cb) the maximum number of Commonwealth supported places provided by the provider which can have a transitional loading in the grant years; and
 - (d) the maximum amount of regional loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant years; and
 - (da) the maximum amount of enabling loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant years; and
 - (e) the maximum amount of transitional loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant years; and
 - (g) adjustments that will apply to the amount of a grant payable to the provider under this Part if the provider breaches a condition of the grant.
- (4) The Minister must cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the making of the agreement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 33—How are grant amounts worked out?

Subdivision 33-A—Basic rule

33-1 How grant amount is worked out

- (1) The amount of a grant payable to a higher education provider under this Part for a year is worked out by:
 - (a) working out the *basic grant amount for the provider for that year under Subdivision 33-B; and
 - (b) if applicable, adjusting the basic grant amount under Subdivision 33-C; and
 - (c) if applicable, and if the year is 2011 or a later year—adding the performance funding grant amount for the provider for that year.

(1A) In subsection (1):

performance funding grant amount for a higher education provider for a year is the amount (if any) worked out under the Commonwealth Grant Scheme Guidelines.

- (2) Advances may be paid to a higher education provider under Subdivision 33-D.

Note: Part 5-1 deals with how payments can be made.

Subdivision 33-B—Basic grant amounts

33-5 Basic grant amounts

The *basic grant amount* for a higher education provider for a year is the sum of:

- (a) for each *funding cluster to which the Minister has allocated places to the provider under section 30-10—the amount worked out by multiplying:
 - (i) the *number of Commonwealth supported places allocated in relation to that funding cluster; by

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) the *Commonwealth contribution amount for a place in that funding cluster; and
- (b) if the allocation has specified under paragraph 30-10(3)(a) a number of Commonwealth supported places that have a regional loading—the amount of regional loading worked out under the Commonwealth Grant Scheme Guidelines for those places; and
- (c) if the allocation has specified under paragraph 30-10(3)(b) a number of Commonwealth supported places that have a medical student loading—the amount of medical student loading worked out under the Commonwealth Grant Scheme Guidelines for those places; and
- (d) if the allocation has specified under paragraph 30-10(3)(c) a number of Commonwealth supported places that have an enabling loading—the amount of enabling loading worked out under the Commonwealth Grant Scheme Guidelines for those places; and
- (e) if the allocation has specified under paragraph 30-10(3)(d) a number of Commonwealth supported places that have a transitional loading—the amount of transitional loading worked out under the Commonwealth Grant Scheme Guidelines for those places.

33-10 Commonwealth contribution amounts

The *Commonwealth contribution amount*, for a place in a *funding cluster, is:

Commonwealth contribution amount		
Item	Funding cluster	Commonwealth contribution amount
1	Law, Accounting, Administration, Economics, Commerce	\$1,765
2	Humanities	\$4,901
3	Mathematics, Statistics, Behavioural Science, Social Studies, Computing, Built Environment, Other Health	\$8,670

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 33-25

Commonwealth contribution amount		
Item	Funding cluster	Commonwealth contribution amount
4	Education	\$9,020
5	Clinical Psychology, Allied Health, Foreign Languages, Visual and Performing Arts	\$10,662
6	Nursing	\$11,903
7	Engineering, Science, Surveying	\$15,156
8	Dentistry, Medicine, Veterinary Science, Agriculture	\$19,235

Note: Commonwealth contribution amounts are indexed under Part 5-6.

Subdivision 33-C—Adjustments

33-25 Adjustments

Corrected basic amount is less than the basic grant amount (Table A and B providers)

- (1) The *basic grant amount for a *Table A provider or a *Table B provider for a year is reduced by an adjustment if the provider's *corrected basic amount for the preceding year was less than 99% of the provider's basic grant amount for that year.
- (2) The adjustment under subsection (1) is the lower of the following amounts:
 - (a) an amount equal to the difference between:
 - (i) 99% of the basic grant amount; and
 - (ii) the *corrected basic amount;
 - (b) 4% of the basic grant amount.

Corrected basic amount is less than the basic grant amount (non-Table A and B providers)

- (3) The *basic grant amount for a higher education provider that is not a *Table A provider or a *Table B provider is reduced by an adjustment if the provider's *corrected basic amount for the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

preceding year was less than the provider's basic grant amount for that year.

- (4) The adjustment under subsection (3) is an amount equal to the difference between:
- (a) the basic grant amount; and
 - (b) the *corrected basic amount.

Meaning of corrected basic amount

- (5) The provider's **corrected basic amount** for a year is what would have been the provider's *basic grant amount for the year if:
- (a) the *number of Commonwealth supported places allocated to the provider for that year under section 30-10 had equalled the number of Commonwealth supported places provided by the provider during that year; and
 - (b) the places allocated had been distributed under subsection 30-10(2) between the *funding clusters in a way that reflected:
 - (i) the units of study in which *Commonwealth supported students were enrolled with the provider during that year; and
 - (ii) the funding clusters in which those units are included.

*Corrected basic amount is more than the basic grant amount
(Table A and B providers)*

- (6) The *basic grant amount for a year for a *Table A provider or a *Table B provider is increased by an adjustment if the provider's *corrected basic amount for the preceding year was more than the provider's basic grant amount for the year.
- (7) The adjustment under subsection (6) is the lower of the following amounts:
- (a) an amount equal to the difference between:
 - (i) the *corrected basic amount; and
 - (ii) the *basic grant amount;
 - (b) 10% of the basic grant amount.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

33-30 Working out the number of Commonwealth supported places provided

- (1) The *number of Commonwealth supported places* that a higher education provider has provided during a particular year is a number equal to the number worked out as follows:

Method statement

Step 1. For each unit of study (other than a unit of study that wholly consists of *work experience in industry) that the provider provided that had its *census date during the year, multiply:

- (a) the *EFTSL value of the unit; by
- (b) the number of persons enrolled with the provider in that unit as *Commonwealth supported students.

Step 2. Add together all of the amounts worked out under step 1.

- (2) For the purposes of this section, if:
- (a) a unit of study provided by the provider forms part of more than one *course of study; and
 - (b) the provider determines under subsection 73-15(2) an *EFTSL value of the unit for each such course;
- the unit is taken to be a different unit of study in respect of each such course.

33-35 Funding clusters in which units of study are included

The Commonwealth Grant Scheme Guidelines may specify:

- (a) how to determine, for the purposes of this Act, the *funding clusters in which units of study are included; or
- (b) the particular funding cluster in which a particular unit of study is included for the purposes of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

33-37 Adjustments for breach of section 19-37

(1) A higher education provider's *basic grant amount for the grant year is reduced by an adjustment in respect of the grant year if, on one or more occasions during the grant year, the provider breaches a condition imposed under section 19-37.

(2) The adjustment under subsection (1) is an amount worked out using the formula:

Reduction amount \times Total places allocated

where:

reduction amount is \$100.

Note: The reduction amount is indexed under Part 5-6.

total places allocated is the total number of Commonwealth supported places allocated under section 30-10 to the higher education provider for the grant year.

(3) This section does not apply in relation to a breach of a condition imposed under section 19-37 by a higher education provider if:

- (a) the breach consists of requiring a person to pay money to the provider or another entity; and
- (b) as a result of the requirement, the person paid money to the provider or other entity; and
- (c) the Minister has given a written notice to the provider under subsection (4); and
- (d) the provider or other entity repays the money to the person within 28 days after the Minister gave the notice to the provider.

(4) If the Minister becomes aware that:

- (a) a higher education provider has breached a condition imposed under section 19-37; and
- (b) the breach consists of requiring a person to pay money to the provider or another entity;

the Minister must give to the provider a written notice:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 33-40

- (c) requiring repayment, within 28 days after the notice is given, of any money paid to the provider or any other entity as a result of the requirement; and
 - (d) stating that failure to repay any such money within that period will result in a reduction under this section of the provider's *basic grant amount for the grant year in question.
- The notice may relate to more than one breach.
- (5) A failure by the Minister to give a notice under subsection (4) in relation to a breach of a condition imposed under section 19-37 does not prevent this section from applying in relation to the breach.
 - (6) This section does not apply more than once in relation to a higher education provider's *basic grant amount for a grant year.

Subdivision 33-D—Special purpose advances

33-40 Advances for certain purposes

- (1) The Minister may determine that an advance is payable to a higher education provider, in respect of a year, in relation to expenditure of the provider for such purposes as the Minister determines.
- (2) The Minister may pay an advance to the provider under subsection (1) on such conditions (if any) as the Minister determines.
- (3) The total of the advances in respect of a year must not exceed the amount set out in section 30-5 in respect of the following year.
- (4) If the Minister determines an advance for the provider in respect of a year, the amounts of grant payable to the provider under section 33-1 in respect of:
 - (a) the year next following that year; or
 - (b) the 2 years next following that year; or
 - (c) the 3 years next following that year;are reduced by amounts that equal in total the amount of the advance.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (5) Determinations under subsections (1) and (2), and reductions under subsection (4), must be made in accordance with Commonwealth Grant Scheme Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 36—What are the conditions of receiving a grant?

Subdivision 36-A—General

36-1 Condition of grant to comply with this Division

- (1) A higher education provider receives a grant under this Part on condition that the provider complies with this Division.
- (2) Without limiting subsection (1), the following provisions of this Division do not of their own force require the provider to do any act or thing.

Subdivision 36-B—Conditions relating to Commonwealth supported students

36-5 Meaning of *Commonwealth supported student*

- (1) A person is a *Commonwealth supported student*, in relation to a unit of study, if:
 - (a) the higher education provider with which he or she is enrolled in that unit has advised the person in writing that he or she is a Commonwealth supported student:
 - (i) in relation to the unit; or
 - (ii) if the person is undertaking a *course of study with the provider of which the unit forms a part—in relation to that course of study; and
 - (b) at the end of the *census date for the unit, the higher education provider would not have been prohibited, under section 36-10 or 36-15, or both, from so advising the person.
- (3) However, the person is not a Commonwealth supported student in relation to the unit if he or she notifies an *appropriate officer of the provider that he or she does not wish to be a Commonwealth supported student in relation to the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) A notice under subsection (3):
 - (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

36-10 Advice on whether a person is a Commonwealth supported student

When a provider must not advise that a person is Commonwealth supported

- (1) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study unless:
 - (a) a *number of Commonwealth supported places has been allocated to the provider under section 30-10 for the year in which the person is undertaking the unit; and
 - (b) the unit contributes to the requirements of a *course of study in which the person is enrolled with that provider or another higher education provider; and
 - (c) the person meets the citizenship or residency requirements for the purposes of this paragraph (see subsections (2) and (2A)); and
 - (d) the unit:
 - (i) is *covered by the person's *Student Learning Entitlement; or
 - (ii) wholly consists of *work experience in industry; or
 - (iii) is undertaken as part of an *enabling course; and
 - (e) the person:
 - (i) enrolled in the unit on or before the *census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled.
- (2) A person meets the citizenship or residency requirements for the purposes of paragraph (1)(c) if the person is:
 - (a) an Australian citizen; or
 - (b) a citizen of New Zealand who will be resident within Australia for the duration of the unit; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 36-10

- (c) a *permanent visa holder who will be resident within Australia for the duration of the unit.
- (2A) In determining, for the purposes of subparagraph (2)(b) or (c), whether a person will be resident within Australia for the duration of the unit of study, disregard any period of residence outside Australia if:
- (a) it cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
 - (b) it is required for the purpose of completing a requirement of that unit.
- (2B) Despite subsections (2) and (2A), a person does not meet the citizenship or residency requirements under paragraph (2)(b) or (c), if the higher education provider reasonably expects that he or she will not undertake in Australia any units of study contributing to the *course of study of which the unit forms a part.

Persons who do not wish to be Commonwealth supported

- (3) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study if the person has notified an *appropriate officer of the provider that he or she does not wish to be a Commonwealth supported student in relation to the unit.
- (4) A notice under subsection (3):
 - (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

Additional requirement for non-Table A providers

- (5) A higher education provider that is not a *Table A provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study unless:
 - (a) the unit in which the person is enrolled is within a *national priority; and
 - (b) the provider has received a grant under this Part for that national priority for the year in which the person is undertaking the unit; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) if the national priority is a *course of study that has been specified in the Commonwealth Grant Scheme Guidelines to be a national priority—the unit is contributing to the requirements of that course.

Additional requirement relating to work experience in industry

- (6) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study that wholly consists of *work experience in industry unless:
- (a) the unit forms part of a *course of study; and
 - (b) the person is enrolled, or has previously been enrolled, in another unit of study in that course:
 - (i) that does not, or did not, wholly consist of work experience in industry; and
 - (ii) in relation to which the person is, or was, a Commonwealth supported student.

Units of study at full fee summer or winter schools

- (7) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study if:
- (a) the person undertakes the unit wholly during a summer school period (the *current summer school period*) or a winter school period (the *current winter school period*); and
 - (b) the provider has determined that this subsection applies to the unit.
- (8) A higher education provider may determine that subsection (7) applies to a unit of study only if each person who could undertake the unit during the current summer school period or current winter school period could undertake, or could have undertaken, the unit during a period other than a summer school period or winter school period as part of a *course of study undertaken by the person with the higher education provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 36-15

- (9) The higher education provider must make the determination:
- (a) before the start of the current summer school period, if the determination relates to a unit undertaken during a summer school period; or
 - (b) before the start of the current winter school period, if the determination relates to a unit undertaken during a winter school period.

- (10) In this section:

summer school period means a period that starts on or after 1 November in a year and ends after 1 January, but before 1 March, in the following year.

winter school period means a period that starts on or after 1 June in a year and ends on or before 31 August in that year.

36-15 Persons not to be advised they are Commonwealth supported

- (1) A higher education provider must not advise a person enrolled in a unit of study with the provider that the person is a *Commonwealth supported student in relation to the unit if:
- (a) the enrolment is in an *employer reserved place; or
 - (b) the unit forms part of a *bridging course for overseas-trained professionals; or
 - (c) the unit forms part of a course to which a determination under subsection (2) applies.
- (2) The Minister may, by legislative instrument, determine that:
- (a) a specified *course of study is not one in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students; or
 - (b) a *course of study of a specified type is not one in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students.
- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course, or a course of that type.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or a course of that type, with the provider.

36-20 Providers to repay amounts if Student Learning Entitlement is re-credited

- (1) If a person's *Student Learning Entitlement, in relation to a unit of study in which the person was enrolled with a higher education provider as a *Commonwealth supported student, has been re-credited under Division 79, the provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.
- (2) Subsection (1) does not apply to the provider if:
- (a) the person's *Student Learning Entitlement was re-credited under section 79-1 (main case of re-crediting a person's SLE); and
 - (b) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements.
- (3) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to the re-crediting of a person's *Student Learning Entitlement in circumstances to which subsection (2) applies:
- (a) the amount (if any) that is to be paid to the person; and
 - (b) the amount (if any) that is to be paid to the Commonwealth; and
 - (c) the person (if any) who is to pay the amounts.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

36-22 Providers to repay amounts etc. for units wholly consisting of work experience in industry—special circumstances

- (1) A higher education provider must, on the *Secretary's behalf, determine that this section applies to a person if:
- (a) the person has been enrolled as a *Commonwealth supported student with the provider in a unit of study; and
 - (aa) the unit would, if completed, form part of a *course of study undertaken with that provider or another higher education provider; and
 - (b) the unit wholly consists of *work experience in industry; and
 - (c) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (d) the provider with which the person is enrolled in the unit is satisfied that special circumstances apply to the person (see subsection (3)); and
 - (e) the person applies in writing to that provider for either or both:
 - (i) the repayment of any amounts that the person paid in relation to his or her *student contribution amount for the unit; or
 - (ii) the remission of the person's *HECS-HELP debt in relation to the unit; and
 - (f) either:
 - (i) the application is made before the end of the application period under subsection (5) or (6); or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.
- Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(5).
- (2) The provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.
- (2A) Subsection (2) does not apply to the provider if the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements.
- (2B) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to circumstances to which subsection (2A) applies:
 - (a) the amount (if any) that is to be paid to the person; and
 - (b) the amount (if any) that is to be paid to the Commonwealth; and
 - (c) the person (if any) who is to pay the amounts.

Special circumstances

- (3) For the purposes of paragraph (1)(d), special circumstances apply to the person if and only if the higher education provider receiving the application is satisfied that circumstances apply to the person that:
 - (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit; and
 - (c) make it impracticable for the person to complete the requirements for the unit during the period during which the person undertook, or was to undertake, the unit.

Student Learning Entitlement Guidelines may specify circumstances

- (4) If the Student Learning Entitlement Guidelines specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph 79-5(1)(a), (b) or (c), any decision of a higher education provider under subsection (3) of this section must be in accordance with any such guidelines.

Note: The matters referred to in paragraphs 79-5(1)(a), (b) and (c) (which relate to the re-crediting of Student Learning Entitlement) are identical to the matters referred to in paragraphs (3)(a), (b) and (c) of this section.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Application period where enrolment withdrawn

- (5) If:
- (a) the person applying under paragraph (1)(e) has withdrawn his or her enrolment in the unit; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;
- the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.

Application period in other cases

- (6) If subsection (5) does not apply, the application period for the application is the period of 12 months after the end of the period during which the person undertook, or was to undertake, the unit.

Dealing with applications

- (7) If:
- (a) the application is made before the end of the application period under subsection (5) or (6); or
 - (b) the higher education provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;
- the provider must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision on the application.

Statement of reasons

- (8) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Part 5-7.

Secretary may act if provider is unable to

- (9) If the provider is unable to act for one or more of the purposes of subsection (1), or subsection (3), (5) or (7), the *Secretary may act

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

as if one or more of the references in those subsections to the provider were a reference to the Secretary.

36-22A Providers to repay amounts etc. for units wholly consisting of work experience in industry—provider ceases to provide course

- (1) A higher education provider must, on the *Secretary's behalf, determine that this section applies to a person if:
- (a) the person has been enrolled as a *Commonwealth supported student with the provider in a unit of study; and
 - (b) the unit would, if completed, form part of a *course of study undertaken with the provider; and
 - (c) the unit wholly consists of *work experience in industry; and
 - (d) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (e) the *tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (f) the person chose the option designated under the *tuition assurance requirements as student contribution/fee repayment in relation to the unit.

Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(5).

- (2) The provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.
- (3) The *Secretary may determine that this section applies to a person if the provider is unable to do so.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

36-23 Providers to repay amounts etc. for units wholly consisting of work experience in industry—no tax file numbers

- (1) This section applies to a person if:
- (a) a higher education provider cancels the person's enrolment in a unit of study under subsection 193-5(1); and
 - (b) the unit wholly consists of *work experience in industry.

Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(5).

- (2) The provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.

Subdivision 36-C—Conditions relating to enrolment

36-25 Continued support for Commonwealth supported students

- (1) A higher education provider must advise a person who is enrolled in a unit of study with the provider, as part of a *course of study being undertaken with the provider, that he or she is a *Commonwealth supported student in relation to the unit if:
- (a) the person is or has been a Commonwealth supported student in relation to one or more other units of study, undertaken with the provider, as part of the course; and
 - (b) the provider is not prohibited, under section 36-10 or section 36-15, or both, from so advising the person.
- (2) A *Table A provider (the *host provider*) must advise a person who is enrolled in a unit of study with the provider, as part of a *course of study being undertaken with another Table A provider (the *home provider*), that he or she is a *Commonwealth supported student in relation to the unit if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the person is or has been a Commonwealth supported student in relation to one or more other units of study in the course undertaken with the home provider; and
 - (b) the person must undertake the unit, because it is required to complete the course; and
 - (c) the host provider is not prohibited, under section 36-10 or section 36-15, or both, from so advising the person.
- (3) If a higher education provider has, under subparagraph 36-5(1)(a)(ii), advised a person that he or she is a Commonwealth supported student in relation to a *course of study with the provider, then the higher education provider is taken to have advised the person that he or she is a Commonwealth supported student in relation to each unit of study undertaken with the provider, as part of that course.

36-30 Providers to enrol persons as Commonwealth supported students

Table A providers

- (1) If:
- (a) a person is to be enrolled with a *Table A provider in a unit of study that is *covered by the person's *Student Learning Entitlement; and
 - (aa) the unit to be undertaken with the provider forms part of an *undergraduate course of study; and
 - (b) the provider is not prohibited, under section 36-10 or section 36-15, or both, from advising the person that he or she is a *Commonwealth supported student in relation to the unit;
- the provider must enrol the person in the unit as a Commonwealth supported student.
- (2) Subsection (1) does not apply in respect of a person's enrolment with a *Table A provider in a unit of study that forms part of an *undergraduate course of study if:
- (a) the person commences the undergraduate course of study with the provider before 1 January 2009; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 36-30

- (b) both:
 - (i) the person transfers to the undergraduate course of study with the provider on or after 1 January 2009 from another undergraduate course of study in which the person was enrolled with the provider before 1 January 2009; and
 - (ii) the person had not completed that other undergraduate course of study; or
- (c) all of the following apply:
 - (i) the person was offered, and accepted, a place (other than a Commonwealth supported place) in the undergraduate course of study with the provider before 1 January 2009;
 - (ii) the undergraduate course of study was to commence before 1 January 2009;
 - (iii) with the provider's approval, the person commences the course of study after that time; or
- (d) at the time the person commences the undergraduate course of study with the provider, the person is an *overseas student.

Other higher education providers

- (3) If a person is to be enrolled, with a higher education provider that is not a *Table A provider, in a unit of study that is *covered by a person's *Student Learning Entitlement, the provider must enrol the person in the unit as a *Commonwealth supported student if:
 - (a) completion of the unit is in furtherance of a *national priority; and
 - (b) places have been allocated to the provider under section 30-10 in respect of that national priority for the year in which the person is enrolled in the unit.
- (4) Subsection (3) does not apply, and is taken never to have applied, in relation to that enrolment if:
 - (a) in respect of the year in which the person is enrolled in the unit, the provider has already filled, or fills, all of the *number of Commonwealth supported places in respect of that *national priority; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the person notifies an *appropriate officer of the provider that he or she does not wish to be a *Commonwealth supported student in relation to the unit.

Notices under paragraph (4)(b)

- (5) A notice under paragraph (4)(b):
 - (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

36-32 Commonwealth supported study at a particular campus

Nothing in sections 36-25 or 36-30 requires a higher education provider to advise a person that he or she is a Commonwealth supported student in relation to a unit of study undertaken at a particular campus of the provider.

36-40 Providers to cancel enrolments in certain circumstances

- (1) A higher education provider must cancel a person's enrolment in a unit of study with the provider if the person:
 - (a) is enrolled as a *Commonwealth supported student in relation to the unit; and
 - (b) has not, on or before the *census date for the unit:
 - (i) completed, and signed, a *request for Commonwealth assistance in relation to the unit or, where the unit forms part of a *course of study undertaken with the provider, in relation to the course of study; and
 - (ii) given it to an *appropriate officer of the provider.
- (2) A higher education provider must cancel a person's enrolment in a unit of study with the provider if the person:
 - (a) is enrolled as a *Commonwealth supported student in relation to the unit; and
 - (b) is not entitled to *HECS-HELP assistance for the unit; and
 - (c) has not, on or before the *census date for the unit, paid to the provider the whole of the person's *student contribution amount for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 36-45

However, this subsection does not apply if the person's student contribution amount for the unit is a nil amount.

- (3) A *request for Commonwealth assistance*, in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit was not provided by *Open Universities Australia), means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit or, where the unit forms part of a *course of study undertaken with the provider, in relation to the course of study; and
 - (b) that is in the form approved by the Minister.

Subdivision 36-D—Conditions relating to student contribution amounts

36-45 Limits on student contribution amounts

If a person is enrolled with a higher education provider in a unit of study as a *Commonwealth supported student, the provider must not charge, as the person's *student contribution amount for the unit, an amount that exceeds the amount worked out as follows:

$$\text{*Maximum student contribution amount for a place} \times \text{The *EFTSL value of the unit}$$

36-50 Provider must not accept up-front payments of more than 80% of student contribution amounts

A higher education provider must not accept, from a person who:

- (a) is enrolled in a unit of study with the provider; and
 - (b) is entitled to *HECS-HELP assistance for the unit;
- *up-front payments for the unit totalling more than 80% of the person's *student contribution amount for the unit.

Note: For entitlement to HECS-HELP assistance: see Division 90.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 36-E—Conditions relating to tuition fees

36-55 Tuition fees for non-Commonwealth supported students

Tuition fees for units of study

- (1) A higher education provider must not determine, as a person's *tuition fee for a unit of study, an amount that is less than:
 - (a) if paragraph (b) does not apply—the highest *student contribution amount that the provider would charge any person who is a *Commonwealth supported student in relation to the unit; or
 - (b) such other higher amount as is specified in the Tuition Fee Guidelines.
- (2) Subsection (1) does not apply if the person is enrolled in an *employer reserved place. However, the provider must not charge, as the person's *tuition fees for the unit, amounts that are such that the sum of:
 - (a) the tuition fees; and
 - (b) the *employer contribution amount for the unit;is less than:
 - (c) if paragraph (d) does not apply—the *student contribution amount referred to in paragraph (1)(a); or
 - (d) such amount as is specified in the Tuition Fee Guidelines for the purposes of paragraph (1)(b).
- (3) If a person:
 - (a) is enrolled in study with a higher education provider on a *non-award basis; and
 - (b) could have enrolled in that study as a unit of study if the enrolment were not on a non-award basis;the provider must not charge, as the person's *fees for the study, amounts that in total are less than the highest amount that the provider would charge any person:
 - (c) who may enrol in the study as a unit of study; and
 - (d) who is a *Commonwealth supported student in relation to the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 36-F—Other conditions

36-60 Providers to meet the quality and accountability requirements

A higher education provider must meet the *quality and accountability requirements.

36-65 Providers to comply with funding agreement

A higher education provider must comply with any funding agreement the provider enters into under section 30-25.

36-70 Providers to comply with the Commonwealth Grant Scheme Guidelines

- (1) The Commonwealth Grant Scheme Guidelines may specify conditions that higher education providers must comply with for the purposes of this Division.
- (2) A higher education provider must comply with all such conditions in respect of any year for which the provider receives a grant under this Part.
- (3) However, the provider need not comply with such a condition during a particular year if the condition comes into force on or after the day on which the provider entered into a funding agreement under section 30-25 in respect of a period that includes that year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-3—Other grants

Division 41—Other grants

41-1 What this Part is about

Grants under this Part are payable to higher education providers and other eligible bodies for a variety of purposes.

Note: This Part does not apply to Table C providers: see section 5-1.

41-5 The Other Grants Guidelines

Other grants are also dealt with in the Other Grants Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Other Grants Guidelines are made by the Minister under section 238-10.

41-10 Eligibility for grants under this Part

- (1) Subject to subsection (2), a body corporate referred to in an item in the third column of the table is eligible for grants under this Part, in respect of the year 2005 or a later year, for the purposes specified in the second column of that item.

Eligibility for grants under this Part		
Item	Purpose of grant	Who is eligible
1	Grants to promote equality of opportunity in higher education	*Table A providers
2	Grants to promote the productivity of higher education providers	*Table A providers
4	Grants to support national institutes specified in the Other Grants Guidelines for the purposes of this item	*Table A providers

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance etc.

Part 2-3 Other grants

Division 41 Other grants

Section 41-10

Eligibility for grants under this Part		
Item	Purpose of grant	Who is eligible
5	Grants to support the capital development projects of higher education providers	*Table A providers and *Table B providers
6	Grants to assist with the cost of higher education providers' superannuation liabilities	*Table A providers
7	Grants to support research by, and the research capability of, higher education providers	*Table A providers and *Table B providers
8	Grants to support the training of research students	*Table A providers and *Table B providers
9	Grants to foster collaboration and reform in higher education	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item
9A	Grants to support diversity and structural reform	*Table A providers, *Table B providers that are universities, and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item
9B	Grants to support structural adjustment	*Table A providers and *Table B providers that are universities
10	Grants to support the development of systemic infrastructure used by higher education providers	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Eligibility for grants under this Part

Item	Purpose of grant	Who is eligible
11	Grants for activities that: (a) assure and enhance the quality of Australia's higher education sector; or (b) foster an understanding of the importance of, or promote research and scholarship in, science, social science or the humanities in Australia; or (c) support open access to higher education across Australia.	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item
12	Grants to assist higher education providers with the transitional costs of changes to maximum student contribution amounts	Higher education providers to which Commonwealth-supported places have been allocated for any year

(2) If the Other Grants Guidelines:

- (a) specify a program under which grants for a particular purpose specified in the table are to be paid; and
- (b) specify extra conditions of eligibility to receive a grant under the program;

then a body corporate specified in the table in respect of those grants is not eligible for such a grant unless it complies with those extra conditions.

41-15 Grants may be paid under programs

- (1) The Other Grants Guidelines may specify one or more programs under which grants for particular purposes specified in the table in subsection 41-10(1) are to be paid.
- (2) If the Other Grants Guidelines specify a program for a grant for a particular purpose, the guidelines may also specify all or any of the following matters for the program:
 - (a) the program's objectives;
 - (b) the extra conditions of eligibility to receive a grant under the program;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 41-20

- (c) the amount, being a part of the amount referred to in section 41-45 for a year, that will be spent on the program in that particular year;
- (d) the indexation of that amount for subsequent years, using the method of indexation set out in Part 5-6;
- (e) the method by which the amount of grants under the program will be determined;
- (f) whether grants under a program are in respect of a year or a project;
- (g) the conditions that apply to grants under the program.

41-20 Approval of grants

The Minister may approve a grant under this Part in respect of a year or a project to a body corporate that is eligible for such a grant.

41-25 Conditions on grants

A grant is made on the following conditions:

- (a) if the grant is made under a program and the Other Grants Guidelines specified conditions that apply to a grant under that program:
 - (i) on the conditions provided for in the guidelines; and
 - (ii) if the body receiving the grant is a higher education provider—also on the condition that the body must meet the *quality and accountability requirements; or
- (b) if paragraph (a) does not apply:
 - (i) on such conditions (if any) as the Minister determines in writing; and
 - (ii) if the body receiving the grant is a higher education provider—also on the condition that the body must meet the quality and accountability requirements.

41-30 Amount of a grant

The amount of a grant is:

- (a) if the grant is made under a program and the Other Grants Guidelines specify a method by which the amount of grants

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

under the program are to be determined—the amount determined by that method; or

- (b) if paragraph (a) does not apply—the amount determined in writing by the Minister.

41-35 Amounts payable under this Part

If:

- (a) a body corporate meets, in respect of a year, the requirements of the Other Grants Guidelines made for the purposes of section 41-15 in relation to a program; or
- (b) the Minister approves, under section 41-20, a grant to a body corporate in respect of a year or project;

there is payable to the body corporate concerned, in respect of that year or project, an amount equal to the amount referred to in section 41-30 in respect of that grant.

41-40 Rollover of grant amounts

(1) If:

- (a) a body to which a grant under this Part has been made in respect of a year fails to spend an amount of that grant; and
- (b) the *Secretary determines in writing that this section is to apply to the body in respect of that grant;

then so much of the unspent amount as the Secretary specifies is taken to be granted to the body under this Part in respect of the next following year.

(2) The amount is taken to be granted for the same purpose as the original grant.

(3) The grant is taken to be made:

- (a) under the same conditions as the conditions of the original grant—except the grant is taken to be made in respect of the next following year; or
- (b) under such other conditions as are determined by the *Secretary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

41-45 Maximum payments for other grants under this Part

- (1) The total payments made under this Part in respect of a year referred to in the table must not exceed the amount specified next to that year in the table.

Maximum payments for other grants under this Part		
Item	Year	Amount
1	2005	\$1,539,636,000
2	2006	\$1,716,942,000
3	2007	\$1,768,622,000
4	2008	\$1,912,350,000
5	2009	\$1,883,928,000
6	2010	\$1,874,910,000
7	2011	\$2,032,393,000
8	2012	\$2,056,285,000
9	2013	\$2,179,375,000
10	2014	\$2,163,501,000

- (2) Payments made in respect of a project in a year are taken, for the purposes of subsection (1) to have been made in respect of that year.

41-50 List of maximum grant amounts

Before the start of a year, the Minister must, by legislative instrument, cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-4—Commonwealth scholarships

Division 46—Commonwealth scholarships

46-1 What this Part is about

Grants for scholarships are made to higher education providers who pay the scholarships to students for the purposes of the students' education.

Certain scholarships may be paid directly to students.

Note: This Part does not apply to Table C providers: see section 5-1.

46-5 The Commonwealth Scholarships Guidelines

*Commonwealth scholarships are also dealt with in the Commonwealth Scholarships Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Commonwealth Scholarships Guidelines are made by the Minister under section 238-10.

46-10 Classes of Commonwealth scholarships

There are 3 classes of *Commonwealth scholarships:

- (a) directly-paid standard scholarships; and
- (aa) indirectly-paid standard scholarships; and
- (b) postgraduate research scholarships.

Note: The Commonwealth Scholarships Guidelines set out the kinds of scholarships in each class.

46-13 Eligibility of students to receive directly-paid standard Commonwealth scholarships

If:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 46-15

- (a) the Commonwealth Scholarships Guidelines provide for a particular kind of directly-paid standard *Commonwealth scholarship; and
 - (b) those guidelines set out eligibility requirements for that kind of scholarship; and
 - (c) a student of:
 - (i) a *Table A provider; or
 - (ii) a higher education provider to which subparagraph 30-1(1)(a)(ii) applies;satisfies those eligibility requirements; and
 - (d) the student is selected by the provider to receive that kind of scholarship; and
 - (e) the selection is in accordance with a selection policy maintained by that provider; and
 - (f) the selection policy complies with the requirements set out in the Commonwealth Scholarships Guidelines;
- the student is entitled to receive from the Commonwealth that kind of directly-paid standard Commonwealth scholarship.

46-15 Eligibility of higher education providers to receive grants for certain Commonwealth scholarships

- (1) *Table A providers, and higher education providers to which subparagraph 30-1(1)(a)(ii) applies, are eligible to receive a grant from the Commonwealth to pay, as a benefit to students, indirectly-paid standard *Commonwealth scholarships to their students.
- (2) *Table A providers and *Table B providers are eligible to receive a grant from the Commonwealth to pay, as a benefit to students, postgraduate research *Commonwealth scholarships to their students.
- (3) A provider that is eligible to receive a grant under subsection (1) or (2) is an *eligible scholarship provider*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

46-20 Other matters relating to Commonwealth scholarships

- (1) The Commonwealth Scholarships Guidelines may provide for *Commonwealth scholarships.

Directly-paid standard Commonwealth scholarships

- (1A) Without limiting subsection (1), the Commonwealth Scholarships Guidelines may provide for the following matters in relation to directly-paid standard *Commonwealth scholarships:
- (a) the kinds of scholarships that are to be directly-paid standard Commonwealth scholarships;
 - (b) the eligibility requirements for each kind of scholarship;
 - (c) how the amounts of scholarships are to be determined;
 - (d) the indexation of amounts of scholarships, using the method of indexation set out in Part 5-6;
 - (e) how scholarships are to be paid;
 - (f) the conditions that apply to a particular kind of scholarship;
 - (g) the amount, being part of the amount referred to in section 46-40 for a year, that will be spent on each kind of scholarship in that year;
 - (h) the indexation of such an amount for subsequent years, using the method of indexation set out in Part 5-6;
 - (i) the maximum number of students that a particular higher education provider can select to receive a particular kind of scholarship for a particular year;
 - (j) requirements to be complied with by selection policies maintained by higher education providers;
 - (k) information that higher education providers are to give the Minister.

Other Commonwealth scholarships

- (2) Without limiting subsection (1), the Commonwealth Scholarships Guidelines may provide for the following matters in relation to indirectly-paid standard *Commonwealth scholarships and postgraduate research Commonwealth scholarships:
- (a) the kinds of scholarships that are to be indirectly-paid standard Commonwealth scholarships;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 46-25

- (b) the kinds of scholarships that are to be postgraduate research Commonwealth scholarships;
- (c) which students are eligible for each kind of scholarship;
- (e) the conditions that apply to each kind of scholarship;
- (f) how the amounts of grants to an *eligible scholarship provider are to be determined;
- (g) the amount, being part of the amount referred to in section 46-40 for a year, that will be spent on each kind of scholarship in that year;
- (h) the indexation of such an amount for subsequent years, using the method of indexation set out in Part 5-6;
- (i) how grants to providers are to be made;
- (j) how providers are to determine the amount of each scholarship;
- (k) the indexation of amounts of scholarships, using the method of indexation set out in Part 5-6;
- (l) how providers are to pay scholarships;
- (m) information that providers are to give the Minister or the Chief Executive Officer, or an *employee, of *Centrelink;
- (n) information that providers are to give to:
 - (i) the Repatriation Commission; or
 - (ii) the Military Rehabilitation and Compensation Commission; or
 - (iii) the Secretary, or an employee, of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*; or
 - (iv) the Secretary, or an employee, of the Department administered by the Minister who administers the *Military Rehabilitation and Compensation Act 2004*.

46-25 Condition of grants

It is a condition of a grant to a higher education provider under this Part that the higher education provider to whom the grant is payable must meet the *quality and accountability requirements.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

46-30 Amounts payable under this Part

The amount that is payable under this Part to an *eligible scholarship provider is the amount worked out in accordance with the Commonwealth Scholarships Guidelines.

46-35 Rollover of grant amounts

(1) If:

- (a) a higher education provider to which a grant under this Part has been made fails to spend an amount of that grant; and
- (b) the *Secretary determines in writing that this section is to apply to the provider in respect of that grant;

then so much of the unspent amount as the Secretary specifies is taken to be granted to the provider under this Part in respect of the next following year.

(2) The amount is taken to be granted:

- (a) under the same conditions as the conditions of the original grant—except the grant is taken to be made in respect of the next following year; or
- (b) under such other conditions as are determined by the *Secretary.

46-40 Maximum payments for Commonwealth scholarships

The total payments made under this Part in respect of a year referred to in the table must not exceed the amount specified next to that year in the table.

Maximum payments for Commonwealth Scholarships		
Item	Year	Amount
1	2004	\$124,212,000
2	2005	\$151,452,000
3	2006	\$179,733,000
4	2007	\$209,569,000
5	2008	\$239,305,000
6	2009	\$290,104,000

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance etc.

Part 2-4 Commonwealth scholarships

Division 46 Commonwealth scholarships

Section 46-40

Maximum payments for Commonwealth Scholarships		
Item	Year	Amount
7	2010	\$304,553,000
8	2011	\$316,212,000
9	2012	\$307,376,000
10	2013	\$278,370,000
11	2014	\$278,830,000

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-5—Reduction and repayment of grants

Division 51—Introduction

51-1 What this Part is about

Bodies may have their grants reduced, or be required to repay a grant, for breaches of conditions of grants under Part 2-2, 2-3 or 2-4.

Note: This Part does not apply to Table C providers: see section 5-1.

51-5 The Reduction and Repayment Guidelines

Reduction and repayment of grants is also dealt with in the Reduction and Repayment Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Reduction and Repayment Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 54—In what circumstances may a grant be reduced or required to be repaid?

54-1 Decision as to reduction or repayment of a grant

- (1) The Minister may determine:
 - (a) that an amount of a grant made, or to be made, to a body under Part 2-2, 2-3 or 2-4 is to be reduced; or
 - (b) that an amount of a grant made to a body under Part 2-2, 2-3 or 2-4 is to be repaid to the Commonwealth.
- (2) The Minister may make a determination under subsection (1) if:
 - (a) the body breaches a condition of a grant made to the body under Part 2-2, 2-3 or 2-4, whether or not that grant is the grant to be reduced or repaid; and
 - (b) the Minister is satisfied that it is appropriate to take that action (see section 54-5); and
 - (c) the Minister complies with the requirements of Division 60.

54-5 Appropriateness of requiring reduction or repayment of grant

Without limiting the matters that the Minister may consider in deciding whether it is appropriate under subsection 54-1(1) to take particular action, the Minister may consider any or all of the following matters:

- (a) whether the breach is of a minor or major nature;
- (b) whether the breach has occurred before and, if so, how often;
- (ba) if the breach is a breach of a condition imposed under section 19-37—the amount of any adjustment under section 33-37 in relation to that breach, or any other breach by the body, during the same year;
- (c) if the body is a higher education provider—the impact that the breach may have on the body's students;
- (d) if the body is a higher education provider—the impact of the breach on the higher education provided by the body;
- (e) the impact of the breach on Australia's reputation as a provider of high quality higher education;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (f) any other matter set out in the Reduction and Repayment Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 57—What is the amount of a reduction or repayment?

57-1 Reduction in amount of grants

- (1) If an amount of a grant is to be reduced under this Part, it must be reduced by an amount determined by the Minister in writing.
- (2) The Reduction and Repayment Guidelines may set out requirements about how such an amount is to be determined. The Minister must make his or her determination in accordance with any such requirements.

57-5 Amount of the repayment

- (1) If an amount of a grant is to be repaid under this Part, the amount to be repaid is the amount that the Minister determines in writing.
- (2) The amount to be repaid must not exceed the amount of the grant.
- (3) The Reduction and Repayment Guidelines may set out requirements about how such an amount is to be determined. The Minister must make his or her determination in accordance with any such requirements.
- (4) The amount to be repaid is a debt owed to the Commonwealth by the body to which the grant was paid.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 60—How are decisions reducing a grant or requiring repayment of a grant made?

60-1 Procedure prior to decision

- (1) Before making a decision under paragraph 54-1(a) or (b) in respect of a body, the Minister must give to the body notice in writing:
 - (a) stating that the Minister is considering reducing the body's grant, or requiring the repayment of a grant made to the body, as the case may be; and
 - (b) stating the amount of the proposed reduction or repayment and the reasons why the Minister is considering taking that action; and
 - (c) inviting the body to make written submissions to the Minister within 28 days on either or both of the following matters:
 - (i) why that action should not be taken;
 - (ii) why the amount of the proposed reduction or repayment should be reduced; and
 - (d) informing the body that, if no submission is received under paragraph (c) within the time required, the action will take effect on the day after the last day for making submissions.
- (2) In deciding whether to take the action, the Minister must consider any submissions received from the body within the 28 day period.

60-5 Notification of decision

- (1) The Minister must notify the body in writing of his or her decision on whether or not to take the action. The notice:
 - (a) must be in writing; and
 - (b) if a submission was received from the body within the 28 day period—must specify the day that the decision is to take effect; and
 - (c) must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subsection 60-1(1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance etc.

Part 2-5 Reduction and repayment of grants

Division 60 How are decisions reducing a grant or requiring repayment of a grant made?

Section 60-10

- (2) If no notice is given within the period provided for in paragraph (1)(c), the Minister is taken to have decided not to take the action.

60-10 When a decision takes effect

If the Minister's decision is to take the action, the decision takes effect:

- (a) if no submission was made under subsection 60-1(1)—on the day after the last day for making submissions; or
- (b) if such a submission was made—on the day specified in the notice under subsection 60-5(1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3—Assistance to students

Division 65—Introduction

65-1 What this Chapter is about

This Chapter provides for the Student Learning Entitlement and for 3 kinds of assistance that the Commonwealth provides to students.

A sufficient Student Learning Entitlement is required for a student to access HECS-HELP assistance under this Chapter. It also enables a student to access places that are funded under Part 2-2 (Commonwealth Grant Scheme).

Note: The Commonwealth meets all or part of the higher education costs of students who are enrolled in places funded under Part 2-2.

The 3 kinds of assistance available under this Chapter are:

- HECS-HELP assistance—assistance to meet a student’s liability to pay student contribution amounts for units of study that are Commonwealth supported (see Part 3-2);
- FEE-HELP assistance—assistance to meet a student’s liability to pay tuition fees for units of study that are not Commonwealth supported (see Part 3-3);
- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3.4).

The Commonwealth pays the assistance to the relevant higher education provider either (in the case of HECS-HELP assistance and FEE-HELP assistance) to discharge the student’s liability, or (in the case of OS-HELP assistance) to pay to students on the Commonwealth’s behalf.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Division 65 Introduction

Section 65-1

The assistance is (in most cases) in the form of a loan from the Commonwealth to the student.

Note: Chapter 4 deals with the repayment of loans made under this Chapter.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-1—Student Learning Entitlement

Division 70—Introduction

70-1 What this Part is about

Student Learning Entitlement (or SLE) is needed for many of the forms of assistance under this Act. In these cases, units of study that a person enrolls in must be covered by the person's SLE.

Broadly speaking, a person starts with an SLE equivalent to 7 years of full-time study. This is reduced as the person undertakes units of study as a Commonwealth supported student (but it can be re-credited in some circumstances).

70-5 The Student Learning Entitlement Guidelines

*Student Learning Entitlement is also dealt with in the Student Learning Entitlement Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Student Learning Entitlement Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 73—What is a person's Student Learning Entitlement?

73-1 A person's Student Learning Entitlement

A person's *Student Learning Entitlement* is the sum of:

- (a) the *ordinary SLE that the person has under section 73-5; and
- (b) any *additional SLE that the person has under section 73-20; and
- (c) any *life long SLE that the person has under section 73-22; taking into account any reductions in the person's *SLE under Division 76 and any re-crediting of the person's SLE under Division 79.

73-5 Ordinary SLE

Ordinary SLE accruing on 1 January 2005

- (1) A person who is an *eligible person on 1 January 2005 has, on that day, an *ordinary SLE equal to 7 *EFTSL.

Ordinary SLE accruing after 1 January 2005

- (2) Any other person who (by birth or otherwise) becomes an *eligible person on a day after 1 January 2005 has on the earliest such day an *ordinary SLE equal to 7 *EFTSL.

Meaning of eligible person

- (3) An *eligible person* is:
 - (a) an Australian citizen; or
 - (b) a citizen of New Zealand; or
 - (c) a *permanent visa holder.

73-10 Meaning of EFTSL

- (1) An *EFTSL* is an equivalent full-time student load for a year. It is a measure, in respect of a *course of study, of the study load for a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

year of a student undertaking that course of study on a full-time basis.

- (2) A particular amount of EFTSL is an amount of study, undertaken with a higher education provider as part of a *course of study, represented by units of study with *EFTSL values the sum of which equals that amount.

73-15 Meaning of *EFTSL value*

- (1) The *EFTSL value* of a unit of study is the value that the higher education provider with which the unit may be undertaken determines in writing to be the EFTSL value of the unit, expressed as a fraction of one *EFTSL.
- (2) If the unit can form part of more than one *course of study, the provider may determine an EFTSL value of the unit for each such course.
- (3) If a unit of study is subject to separate determinations in relation to different *courses of study, a reference in this Act to the EFTSL value of the unit is, when the unit forms part of such a course, a reference to the EFTSL value of the unit determined under subsection (2) for the course.
- (4) Determinations under this section must be in accordance with any requirements set out in the Student Learning Entitlement Guidelines.

73-20 Additional SLE

- (1) A person has an *additional SLE if:
 - (a) the person is enrolled in a *course of study with a higher education provider; and
 - (b) the course is specified, or is a course of a kind specified, in the Student Learning Entitlement Guidelines as a course or kind of course to which additional SLE applies; and
 - (c) the person meets any other requirements, relating to additional SLE, set out in the Student Learning Entitlement Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 73-22

- (2) The person is taken to have had the *additional SLE from the time immediately before he or she enrolled in the *course of study.
- (3) The amount of the *additional SLE is an amount (expressed in *EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

73-22 Life long SLE

- (1) A person has a *life long SLE in the circumstances specified in the Student Learning Entitlement Guidelines.
- (2) The amount of the *life long SLE is an amount (expressed in *EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

73-25 SLE not transferable

A person's *SLE cannot be transferred to, or used by, another person.

73-30 Ceasing to be an eligible person

- (1) A person ceases to have an *SLE if he or she ceases to be an *eligible person.
- (2) If a person:
 - (a) had previously ceased to be an *eligible person; and
 - (b) becomes an eligible person again;on becoming an eligible person again, the person has the same *SLE (if any) that he or she had immediately before the last time on which he or she ceased to be an eligible person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 76—When is a person's Student Learning Entitlement reduced?

76-1 Reducing a person's SLE

- (1) A person's *SLE is reduced if:
 - (a) at the end of the *census date for a unit of study with a higher education provider, the person is enrolled in the unit; and
 - (b) the person is enrolled in the unit as part of a *course of study (other than an *enabling course); and
 - (c) the person is a *Commonwealth supported student in relation to the unit; and
 - (d) the person has, on or before the census date, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance in relation to:
 - (i) the unit; or
 - (ii) where the course of study of which the unit forms a part is undertaken with the provider—the course of study.
- (2) The amount of the reduction is an amount equal to the *EFTSL value of the unit of study.
- (3) The reduction takes effect immediately after the *census date for the unit of study.
- (4) This section does not apply if the unit of study consists wholly of *work experience in industry.
- (5) This section does not apply to a unit that is a replacement unit within the meaning of the *tuition assurance requirements.

Note 1: There are special rules for reduction of a person's additional SLE or life long SLE: see sections 76-5 and 76-10.

Note 2: A person's SLE can be re-credited in some circumstances: see Division 79.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

76-5 Reducing a person's additional SLE

- (1) If a person has an *additional SLE, that additional SLE is not reduced under section 76-1 in relation to a unit of study unless:
 - (a) the person's *ordinary SLE is less than the *EFTSL value of the unit; and
 - (b) the person is enrolled in the unit as part of the *course of study in relation to which the additional SLE applies.
- (2) If:
 - (a) a person has both an *additional SLE and *ordinary SLE; and
 - (b) the ordinary SLE is insufficient to *cover a unit of study in which the person is enrolled;then, in reducing the person's *SLE under section 76-1 to take account of the unit:
 - (c) the person's ordinary SLE is reduced to zero; and
 - (d) the person's additional SLE is reduced only to the extent that the ordinary SLE is insufficient to cover the unit.

76-10 Reducing a person's life long SLE

- (1) If a person has a *life long SLE, that life long SLE is not reduced under section 76-1 in relation to a unit of study unless:
 - (a) if the person does not have an *additional SLE—the person's *ordinary SLE is less than the *EFTSL value of the unit; and
 - (b) if the person has an additional SLE—the sum of the person's ordinary SLE and the person's additional SLE is less than the EFTSL value of the unit.
- (2) If:
 - (a) a person has both:
 - (i) a *life long SLE; and
 - (ii) an *ordinary SLE or an *additional SLE, or both; and
 - (b) the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to *cover a unit of study in which the person is enrolled;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

then, in reducing the person's *SLE under section 76-1 to take account of the unit:

- (c) the person's ordinary SLE or additional SLE is reduced (or both the person's ordinary SLE and the person's additional SLE are reduced) to zero; and
- (d) the person's life long SLE is reduced only to the extent that the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to cover the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 79—In what circumstances can a person's Student Learning Entitlement be re-credited?

Subdivision 79-A—Main case of re-crediting a person's SLE

79-1A Application of this Subdivision

If Subdivision 79-B applies to re-credit a person's *SLE with an amount equal to the *EFTSL value of a unit of study, then this Subdivision does not apply in relation to that unit.

79-1 Main case of re-crediting a person's SLE

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *SLE with an amount equal to the *EFTSL value of a unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and
 - (aa) the unit would, if completed, form part of a *course of study undertaken with that provider or another higher education provider; and
 - (ab) the unit does not wholly consist of *work experience in industry; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) the provider is satisfied that special circumstances apply to the person (see section 79-5); and
 - (d) the person applies in writing to the provider for re-crediting of the SLE; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 79-10; or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

that it would not be, or was not, possible for the application to be made before the end of that period.

Note: A HECS-HELP debt relating to a unit of study will be remitted if the SLE in relation to the unit is re-credited: see subsection 137-5(4). In addition, it is a condition of the higher education provider's funding under Part 2-2 that payments for the unit must be repaid: see section 36-20.

- (2) If the provider is unable to act for any one or more of the purposes of subsection (1), or section 79-5, 79-10 or 79-15, the *Secretary may act as if any one or more of the references in those provisions to the provider were a reference to the Secretary.

79-5 Special circumstances

- (1) For the purposes of paragraph 79-1(1)(c), special circumstances apply to the person if and only if the higher education provider receiving the application is satisfied that circumstances apply to the person that:
- (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit during the period during which the person undertook, or was to undertake, the unit.
- (2) The Student Learning Entitlement Guidelines may specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph (1)(a), (b) or (c). A decision of a higher education provider under this section must be in accordance with any such guidelines.

Note: Guidelines made for the purposes of this subsection also have effect for the purposes of subsection 36-22(4) (repayments etc. for work experience units) and subsection 104-30(2) (re-crediting a person's FEE-HELP balance).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-1 Student Learning Entitlement

Division 79 In what circumstances can a person's Student Learning Entitlement be re-credited?

Section 79-10

79-10 Application period

- (1) If:
 - (a) the person applying under paragraph 79-1(1)(d) for the re-crediting of the person's *SLE in relation to a unit of study has withdrawn his or her enrolment in the unit; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (2) If subsection (1) does not apply, the application period for the application is the period of 12 months after the end of the period during which the person undertook, or was to undertake, the unit.

79-15 Dealing with applications

- (1) If:
 - (a) the application is made before the end of the application period under section 79-10; or
 - (b) the higher education provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;the provider must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision on the application.
- (2) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Part 5-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 79-B—Re-crediting a person's SLE if provider ceases to provide course of which unit forms part

79-20 Re-crediting a person's SLE if provider ceases to provide course of which unit forms part

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *SLE with an amount equal to the *EFTSL value of a unit of study if:
- (a) the person has been enrolled in the unit as part of a *course of study with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (ba) the unit does not wholly consist of *work experience in industry; and
 - (c) the *tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (d) the person chose the option designated under the tuition assurance requirements as student contribution/tuition fee repayment in relation to the unit.

Note: A HECS-HELP debt relating to a unit of study will be remitted if the SLE in relation to the unit is re-credited: see subsection 137-5(4). In addition, it is a condition of the higher education provider's funding under Part 2-2 that payments for the unit must be repaid: see section 36-20.

- (2) The *Secretary may re-credit the person's *SLE under subsection (1) if the provider is unable to do so.

Subdivision 79-C—Students without tax file numbers

79-25 Re-crediting a person's SLE—no tax file number

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *SLE with an amount equal to the *EFTSL value of a unit of study if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-1 Student Learning Entitlement

Division 79 In what circumstances can a person's Student Learning Entitlement be re-credited?

Section 79-25

- (a) the provider cancels the person's enrolment in the unit under subsection 193-5(1); and
- (b) the unit does not wholly consist of *work experience in industry.

Note: A HECS-HELP debt relating to a unit of study will be remitted if the SLE in relation to the unit is re-credited: see subsection 137-5(4). In addition, it is a condition of the higher education provider's funding under Part 2-2 that payments for the unit must be repaid: see section 36-20.

- (2) The *Secretary may re-credit the person's *SLE under subsection (1) if the provider is unable to do so.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 82—When is a unit of study covered by a person's Student Learning Entitlement?

82-1 General rule

A unit of study is *covered* by a person's *SLE if:

- (a) the person enrolls in the unit as part of a *course of study with a higher education provider; and
- (b) the *EFTSL value of the unit does not exceed the amount of the person's SLE that is *available to the person at the time of enrolment in the unit.

82-5 Availability of a person's SLE

The amount of a person's *SLE that is *available* to the person at a particular time is the difference between:

- (a) the amount of the person's SLE at that time; and
- (b) the sum of the *EFTSL values of all of the units of study (if any) in which the person is enrolled, each of which is a unit of study:
 - (i) the *census date for which will occur later than that time; and
 - (ii) that was *covered by the person's SLE at the time of enrolment; and
 - (iii) in relation to which the person is a *Commonwealth supported student.

Example: Assume that Alan has an SLE of 0.75 EFTSL on a day on which he enrolls as a Commonwealth supported student in 2 units of study with one higher education provider (total EFTSL value of 0.25 EFTSL), and in 3 units of study with another higher education provider (total EFTSL value of 0.38 EFTSL). Assume further that the census dates for all of the units are later days.

The amount of SLE that is available to Alan following the enrolments is:

$$0.75 \text{ EFTSL} - (0.25 \text{ EFTSL} + 0.38 \text{ EFTSL}) = 0.12 \text{ EFTSL}$$

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-1 Student Learning Entitlement

Division 82 When is a unit of study covered by a person's Student Learning Entitlement?

Section 82-10

Note that Alan still has an SLE of 0.75 EFTSL, which is unaffected until the first of the census dates for the units. However, only 0.12 EFTSL can be applied to further enrolments.

If Alan wanted to enrol in another unit of study with an EFTSL value of 0.125, the unit would not be covered by the person's SLE.

Alan could not be a Commonwealth supported student in relation to the other unit unless, before the census date for one of the units (with an EFTSL value of at least 0.05) in which he is enrolled, he:

- (a) provides written advice to the higher education provider in question that he did not wish to be a Commonwealth supported student in relation to the unit; or
- (b) discontinues his enrolment in the unit.

82-10 Additional SLE

A unit of study is not covered by a person's *SLE, despite section 82-1, if:

- (a) the person has an *additional SLE; and
- (b) the *EFTSL value of the unit exceeds the amount of the person's *ordinary SLE or *life long SLE that is *available (or the person's ordinary SLE and the person's life long SLE that are available) to the person at the time of enrolment in the unit;

unless the person is enrolled in, or proposes to enrol in, the unit as part of the *course of study in relation to which the additional SLE applies.

82-15 Simultaneous enrolments that exceed a person's SLE

(1) If:

- (a) a person enrolls at the same time in more than one unit of study as part of one or more *courses of study with one or more higher education providers; and
- (b) the sum of the *EFTSL values of the units exceed the amount of the person's *SLE that is *available to the person at the time of enrolment in the units;

then, despite section 82-1, a unit that is one of those units is covered by the person's SLE only if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 82-15

- (c) the person chooses not to be a *Commonwealth supported student in relation to one or more of the other units (*excluded units*); and
 - (d) the sum of the EFTSL values of all of those units that are not excluded units does not exceed the amount of the person's SLE that is available to the person at the time of enrolment in the units; and
 - (e) in a case where the person has an *additional SLE— section 82-10 does not prevent the unit from being covered by the person's SLE.
- (2) A person's choice under paragraph (1)(c) in relation to a unit of study is to be made by giving written notice of the choice:
- (a) to an *appropriate officer of the higher education provider with which the person is enrolled in the unit; and
 - (b) on or before the *census date for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-2—HECS-HELP assistance

Division 87—Introduction

87-1 What this Part is about

A student may be entitled to HECS-HELP assistance for units of study for which he or she is Commonwealth supported, if certain requirements are met.

The amount of assistance to which the student may be entitled is based on his or her student contribution amounts for the units, less any up-front payments. The assistance is paid to a higher education provider to discharge the student's liability to pay his or her student contribution amounts.

Note 1: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

Note 2: This Part does not apply to Table C providers: see section 5-1.

87-5 The HECS-HELP Guidelines

*HECS-HELP assistance is also dealt with in the HECS-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note 1: The HECS-HELP Guidelines are made by the Minister under section 238-10.

Note 2: Matters arising under section 93-10 may be dealt with in the Commonwealth Grant Scheme Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 90—Who is entitled to HECS-HELP assistance?

90-1 Entitlement to HECS-HELP assistance

A student is entitled to *HECS-HELP assistance for a unit of study in which the student is enrolled with a higher education provider as part of a *course of study if:

- (a) the student meets the citizenship or residency requirements under section 90-5; and
- (b) the *census date for the unit is on or after 1 January 2005; and
- (c) the student is a *Commonwealth supported student in relation to the unit; and
- (d) either:
 - (i) at the time of enrolment, the unit was *covered by the student's *Student Learning Entitlement; or
 - (ii) the unit wholly consists of *work experience in industry; and
- (e) the student:
 - (i) enrolled in the unit on or before the census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled; and
- (f) the student either:
 - (i) *meets the tax file number requirements (see section 187-1); or
 - (ii) pays, as one or more *up-front payments in relation to the unit, 80% of his or her *student contribution amount for the unit; and
- (g) the student has, on or before the census date, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance in relation to the unit or, where the course of study of which the unit forms a part is undertaken with the provider, in relation to the course of study.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

90-5 Citizenship or residency requirements

- (1) A student meets the citizenship or residency requirements under this section in relation to a unit of study if the student is:
 - (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit.
- (2) In determining, for the purpose of paragraph (1)(b), whether the student will be resident in Australia for the duration of the unit, disregard any period of residence outside Australia that:
 - (a) cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of that unit; or
 - (b) is required for the purpose of completing a requirement of that unit.
- (3) Despite subsections (1) and (2), a *permanent humanitarian visa holder does not meet the citizenship or residency requirements in relation to a unit of study if the provider reasonably expects that the visa holder will not undertake in Australia any units of study contributing to the *course of study of which the unit forms a part.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 93—How are amounts of HECS-HELP assistance worked out?

93-1 The amount of HECS-HELP assistance for a unit of study

The amount of *HECS-HELP assistance to which a student is entitled for a unit of study is the difference between:

- (a) his or her *student contribution amount for the unit; and
- (b) the sum of any *up-front payments made in relation to the unit.

93-5 Student contribution amounts

- (1) A person's *student contribution amount* for a unit of study is the amount worked out as follows:

$$\frac{\text{The person's student contribution amount for a place in the unit}}{\text{The *EFTSL value of the unit}}$$

where the person's *student contribution amount for a place* in the unit is:

- (a) if only one student contribution amount has been determined for places in the unit under subsection 19-87(2)—that student contribution amount; or
 - (b) if more than one student contribution amount has been determined for places in the unit under that subsection—the student contribution amount determined under that subsection that applies to the person.
- (2) A person's *student contribution amount for a place in a unit must not exceed the *maximum student contribution amount for a place in the unit.
- (3) A person's *student contribution amount* for a unit of study is nil if the person undertakes the unit as part of an *enabling course. This subsection has effect despite subsection (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-2 HECS-HELP assistance

Division 93 How are amounts of HECS-HELP assistance worked out?

Section 93-10

- (4) If an amount worked out by using the formula in subsection (1) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

93-10 Maximum student contribution amounts for places

- (1) The *maximum student contribution amount for a place* in a unit of study is the amount specified in the following table in relation to the funding cluster in which the unit is included.

Maximum student contribution amounts for places

Item	Column 1 For a place in a unit in this funding cluster:	Column 2 The maximum student contribution is:
1	Law, Accounting, Administration, Economics, Commerce	\$8,859
2	Humanities	\$5,310
3	Mathematics, Statistics, Behavioural Science, Social Studies, Computing, Built Environment, Other Health	(a) for a place in a unit in Computing, Built Environment or Other Health—\$7,567; or (b) for a place in a unit in Behavioural Science or Social Studies—\$5,310; or (c) for a place in a unit in Mathematics or Statistics— \$4,249.
4	Education	\$5,310
5	Clinical Psychology, Allied Health, Foreign Languages, Visual and Performing Arts	(a) for a place in a unit in Clinical Psychology, Foreign Languages or Visual and Performing Arts— \$5,310; or (b) for a place in a unit in Allied Health—\$7,567.
6	Nursing	\$5,310
7	Engineering, Science, Surveying	(a) for a place in a unit in Engineering or Surveying— \$7,567; or (b) for a place in a unit in Science— \$4,249.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Maximum student contribution amounts for places

Item	Column 1 For a place in a unit in this funding cluster:	Column 2 The maximum student contribution is:
8	Dentistry, Medicine, Veterinary Science, Agriculture	(a) for a place in a unit in Dentistry, Medicine or Veterinary Science—\$8,859; or (b) for a place in a unit in Agriculture—\$7,567.

Note 1: Commonwealth Grant Scheme Guidelines made for the purposes of section 33-35 and this section deal with the funding clusters in which particular units of study are included and whether particular units are units in a particular part of a funding cluster.

Note 2: Maximum student contribution amounts for places are indexed under Part 5-6.

- (2) The Commonwealth Grant Scheme Guidelines may specify, for the purposes of column 2 of the table in subsection (1):
- (a) how to determine whether a particular unit is a unit in a particular part of a *funding cluster; or
 - (b) that a particular unit is in a particular part of a funding cluster.

93-15 Up-front payments

- (1) An *up-front payment*, in relation to a unit of study for which a person is liable to pay his or her *student contribution amount, is a payment of part of the student's student contribution amount for the unit, other than a payment of *HECS-HELP assistance under this Part.
- (2) The payment must be made on or before the *census date for the unit.
- (3) A payment made in respect of a person is not an *up-front payment* to the extent that:
 - (a) the payment; or
 - (b) if other up-front payments have already been made in respect of the person in relation to the unit—the sum of the payment and all of those other up-front payments;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-2 HECS-HELP assistance

Division 93 How are amounts of HECS-HELP assistance worked out?

Section 93-15

exceeds 80% of the person's *student contribution amount for the unit.

Note 1: The Commonwealth pays $\frac{1}{4}$ of any up-front payments in respect of a student if the total amount of the up-front payments, for the unit and the student's other units with the same census date, is 80% of the sum of his or her student contribution amounts for all of his or her units or is \$500 or more: see sections 96-5 and 96-10.

Note 2: It is a condition of grants under Part 2-2 that a higher education provider not accept an up-front payment of more than 80% of a student's student contribution amount from a student who is entitled to HECS-HELP assistance: see section 36-50.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 96—How are amounts of HECS-HELP assistance paid?

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

96-1 Payments to higher education providers—no up-front payment of student contribution amount

If a student is entitled to an amount of *HECS-HELP assistance for a unit of study with a higher education provider and no *up-front payments are made for the unit, the Commonwealth must:

- (a) as a benefit to the student, lend to the student the amount of HECS-HELP assistance; and
- (b) pay to the provider the amount lent in discharge of the student's liability to pay his or her *student contribution amount for the unit.

96-5 Payments to higher education providers—partial up-front payment of student contribution amount

General

- (1) If:
 - (a) a student is entitled to an amount of *HECS-HELP assistance for a unit of study with a higher education provider; and
 - (b) one or more *up-front payments have been made for the unit; and
 - (c) the sum of all of the up-front payments made for all of the student's units of study:
 - (i) that have the same *census date as that unit; and
 - (ii) in relation to which the student is enrolled with the provider as a *Commonwealth supported student; is less than 80% of the sum of the student's *student contribution amounts for all of his or her units; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 96-5

- (d) the sum of all of the up-front payments made for all of the units is \$500 or more;

the Commonwealth must pay the amount of HECS-HELP assistance in accordance with subsections (2) and (3).

Payment of loan amount

- (2) The Commonwealth must:
- (a) as a benefit to the student, lend to the student an amount equal to the difference between the amount of *HECS-HELP assistance for the unit and the *HECS-HELP discount for the unit; and
 - (b) pay to the provider the amount lent in discharge of that amount of the student's liability to pay his or her *student contribution amount for the unit.

Payment of discount amount

- (3) The Commonwealth must, as a benefit to the student, pay to the provider an amount equal to the *HECS-HELP discount for the unit in discharge of that amount of the student's liability to pay his or her *student contribution amount for the unit.

Meaning of HECS-HELP discount

- (4) The **HECS-HELP discount** for a unit of study is an amount equal to one quarter of the sum of all of the *up-front payments made for the unit.

Example: Robert is required to pay a student contribution amount of \$2,745 by 31 March 2005, and makes an up-front payment of \$1,000 on 20 March 2005.

Robert is entitled to HECS-HELP assistance of \$1,745 (\$2,745 minus \$1,000), which the Commonwealth must pay to the higher education provider.

The up-front payment exceeded \$500 so there is a HECS-HELP discount of \$250 (one quarter of \$1,000). The Commonwealth lends to Robert the remainder of the HECS-HELP assistance, an amount of \$1,495 (\$1,745 minus \$250).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

96-10 Payments to higher education providers—full up-front payment of student contribution amount

If:

- (a) a student is entitled to an amount of *HECS-HELP assistance for a unit of study with a higher education provider; and
- (b) one or more *up-front payments have been made for the unit; and
- (c) the sum of all of the up-front payments made for all of the student's units of study:
 - (i) that have the same *census date as that unit; and
 - (ii) in relation to which the student is enrolled as a *Commonwealth supported student;is 80% of the sum of the student's *student contribution amounts for all of his or her units;

the Commonwealth must, as a benefit to the student, pay to the provider the amount of HECS-HELP assistance for the unit in discharge of that amount of the student's liability to pay his or her student contribution amount for the unit.

Note: HECS-HELP assistance does not give rise to a HECS-HELP debt if there has been an up-front payment of 80% of a student's student contribution amount for the unit and for the student's other units with the same census date.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-3—FEE-HELP assistance

Division 101—Introduction

101-1 What this Part is about

A student may be entitled to FEE-HELP assistance for units of study for which he or she is not Commonwealth supported, if certain requirements are met.

The amount of assistance to which the student may be entitled is based on his or her tuition fees for the units, but there is a limit on the total amount of assistance that the student can receive. The assistance is paid to a higher education provider or, if the student accesses units through Open Universities Australia, that body, to discharge the student's liability to pay his or her tuition fees.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

101-5 The FEE-HELP Guidelines

*FEE-HELP assistance is also dealt with in the FEE-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The FEE-HELP Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 104—Who is entitled to FEE-HELP assistance?

Subdivision 104-A—Basic rules

104-1 Entitlement to FEE-HELP assistance

- (1) Subject to sections 104-2, 104-3 and 104-4, a student is entitled to *FEE-HELP assistance for a unit of study if:
- (a) the student meets the citizenship or residency requirements under section 104-5; and
 - (b) the student's *FEE-HELP balance is greater than zero; and
 - (c) the *census date for the unit is on or after 1 January 2005; and
 - (d) the student is not a *Commonwealth supported student in relation to the unit; and
 - (e) the unit meets the course requirements under section 104-10; and
 - (f) the unit:
 - (i) is, or is to be, undertaken as part of a *course of study; or
 - (ii) is a unit access to which was provided by *Open Universities Australia; or
 - (iii) is part of a *bridging course for overseas-trained professionals; and
 - (g) the student:
 - (i) enrolled in the unit on or before the census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled; and
 - (h) the student *meets the tax file number requirements (see section 187-1); and
 - (i) the student has, on or before the census date:
 - (i) if access to the unit was provided by Open Universities Australia—completed, signed and given to an *appropriate officer of Open Universities Australia a *request for Commonwealth assistance in relation to the unit; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 104-2

- (ii) in any other case—completed, signed and given to an appropriate officer of the higher education provider a request for Commonwealth assistance in relation to the unit or, where the course of study of which the unit forms a part is, or is to be, undertaken with the provider, in relation to the course of study.

104-2 Failure by a student to complete previous units accessed through Open Universities Australia

A student is not entitled to *FEE-HELP assistance for a unit of study access to which is provided by *Open Universities Australia if:

- (a) the student has already undertaken 8 or more other units of study, access to which was provided by Open Universities Australia; and
- (b) the student did not successfully complete at least 50% of those other units.

104-3 Failure by Open Universities Australia to comply with FEE-HELP Guidelines etc.

- (1) The Minister may determine, by legislative instrument, that there is to be no entitlement to *FEE-HELP assistance for a specified year for units of study to which access is provided by *Open Universities Australia, if the Minister is satisfied that Open Universities Australia has, during the 2 years immediately preceding the specified year, failed to comply with the FEE-HELP Guidelines or with subsection (5).
- (2) Without limiting the generality of what may be included in the FEE-HELP Guidelines, they may include any or all of the following:
 - (a) requirements relating to the financial viability of *Open Universities Australia;
 - (b) requirements relating to the quality of tuition accessed through Open Universities Australia;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) requirements relating to fairness in the treatment of persons accessing, or seeking to access, tuition through Open Universities Australia;
 - (d) requirements relating to compliance with this Act, the regulations and other Guidelines made under this Act;
 - (e) requirements relating to *tuition fees for units of study accessed through Open Universities Australia;
 - (f) requirements relating to the provision of information to the Commonwealth by Open Universities Australia that is relevant in any way to the provision of *FEE-HELP assistance to students accessing units of study through Open Universities Australia, or the repayment of the *HELP debts of those students;
 - (g) administrative requirements of the kinds imposed on higher education providers under Parts 5.2 and 5.3 of this Act.
- (3) A student is not entitled to *FEE-HELP assistance for a unit of study if:
- (a) access to the unit is provided by *Open Universities Australia; and
 - (b) the Minister has made a determination under subsection (1) in relation to the year during which the unit is accessed; and
 - (c) the determination was made before 1 July in the year immediately preceding that year.
- (5) *Open Universities Australia must comply with section 19-37 as if it were a higher education provider.

104-4 Failure by Open Universities Australia to set tuition fees and census date

- (1) This section applies to a unit of study access to which is provided by *Open Universities Australia during a period ascertained in accordance with the FEE-HELP Guidelines.
- (2) *Open Universities Australia must determine, for the unit, one or more *fees that are to apply to students to whom Open Universities Australia provides access to the unit during the period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 104-4

- (2AA) In determining more than one *fee under subsection (2), *Open Universities Australia may have regard to any matters Open Universities Australia considers appropriate, other than matters specified in the FEE-HELP Guidelines as matters to which Open Universities Australia must not have regard.
- (2A) *Open Universities Australia must not vary a *fee unless Open Universities Australia:
- (a) does so:
 - (i) before the date ascertained in accordance with the FEE-HELP Guidelines; and
 - (ii) in circumstances specified in the FEE-HELP Guidelines; or
 - (b) does so with the written approval of the Minister.
- (3) A *fee* includes any tuition, examination or other fee payable to *Open Universities Australia by those students in relation to the unit.
- (4) A *fee* does not include a fee:
- (a) payable in respect of an organisation of students, or of students and other persons; or
 - (b) payable in respect of the provision to students of amenities or services that are not of an academic nature; or
 - (c) payable in respect of residential accommodation.

Census date

- (5) *Open Universities Australia must set a particular date to be the *census date for the unit for the period.
- (5A) *Open Universities Australia must not vary a *census date unless Open Universities Australia:
- (a) does so:
 - (i) before the date ascertained in accordance with the FEE-HELP Guidelines; and
 - (ii) in circumstances specified in the FEE-HELP Guidelines; or
 - (b) does so with the written approval of the Minister.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Consequence of failure to set tuition fees and census date

- (6) If *Open Universities Australia does not:
- (a) determine a *fee in accordance with subsection (2) for the unit for the period; or
 - (b) determine a *census date in accordance with subsection (5) for the unit for the period;
- no student to whom Open Universities Australia provides access to the unit for that period is entitled to *FEE-HELP assistance for the unit.

104-5 Citizenship or residency requirements

- (1) A student meets the citizenship or residency requirements under this section in relation to a unit of study if the student is:
- (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit; or
 - (c) if the student is undertaking, or is to undertake, the unit as part of a *bridging course for overseas-trained professionals—a *permanent visa holder who will be resident in Australia for the duration of the unit.
- (2) In determining, for the purpose of paragraph (1)(b) or (c), whether the student will be resident in Australia for the duration of the unit, disregard any period of residence outside Australia that:
- (a) cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
 - (b) is required for the purpose of completing a requirement of that unit.
- (3) Despite subsections (1) and (2), a *permanent humanitarian visa holder or *permanent visa holder does not meet the citizenship or residency requirements in relation to a unit of study if the provider reasonably expects that the visa holder will not undertake in Australia any units of study contributing to the *course of study, or the *bridging course for overseas-trained professionals, of which the unit forms a part.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

104-10 Course requirements

- (1) The course requirements for *FEE-HELP assistance for a unit of study are that:
 - (a) if the unit is being undertaken as part of a *course of study, the course is not a course that:
 - (i) is subject to a determination under subsection (2); or
 - (ii) is with a higher education provider that is subject to a determination under subsection (2); and
 - (b) if the unit is being undertaken as part of a course of study with a higher education provider and the course is not a course that the provider is authorised by a *government accreditation authority to accredit—the course is an *accredited course.
- (2) The Minister may, by legislative instrument, determine that:
 - (a) a specified course provided by a specified higher education provider is a course in relation to which *FEE-HELP assistance is unavailable; or
 - (b) all courses provided by a specified higher education provider are courses in relation to which FEE-HELP assistance is unavailable.
- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course or courses.
- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or courses, with the provider.

Subdivision 104-B—FEE-HELP balances

104-15 A person's FEE-HELP balance

- (1) A person's *FEE-HELP balance* at a particular time is:
 - (a) if the *FEE-HELP limit in relation to the person at the time exceeds the sum of all of the amounts of *FEE-HELP assistance and *VET FEE-HELP assistance that have previously been payable to the person, being that sum as

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

reduced by any amounts previously re-credited under this Subdivision or Subdivision 7-B of Schedule 1A—that excess; and

(b) otherwise—zero.

Note: If an amount is to be re-credited to a FEE-HELP balance, the balance that is to be re-credited is worked out immediately before that re-crediting. The balance is worked out after the re-crediting by taking account of the amount re-credited. If a person's FEE-HELP limit has been reduced, the balance might not increase, or might not increase by the same amount as the amount re-credited.

(2) To avoid doubt, the sum referred to in paragraph (1)(a) includes amounts of *FEE-HELP assistance and *VET FEE-HELP assistance that have been repaid.

104-20 The FEE-HELP limit

The *FEE-HELP limit* is:

- (a) \$80,000; or
- (b) in relation to a person who is enrolled in a *course of study in medicine, a *course of study in dentistry or a *course of study in veterinary science, while the person is enrolled in that course—\$100,000.

Note: The FEE-HELP limit is indexed under Part 5-6.

104-25 Main case of re-crediting a person's FEE-HELP balance

(1A) If section 104-42 applies to re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study, then this section does not apply in relation to that unit.

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and
 - (aa) access to the unit was not provided by *Open Universities Australia; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 104-25

- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake the unit; and
 - (c) the provider is satisfied that special circumstances apply to the person (see section 104-30); and
 - (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 104-35; or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.
- (2) *Open Universities Australia must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study if:
- (a) access to the unit was provided by Open Universities Australia; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) Open Universities Australia is satisfied that special circumstances apply to the person (see section 104-30); and
 - (d) the person applies in writing to Open Universities Australia for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 104-35; or
 - (ii) Open Universities Australia waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) If the provider is unable to act for one or more of the purposes of subsection (1) or (2), or section 104-30, 104-35 or 104-40, the *Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary.

104-27 Re-crediting a person's FEE-HELP balance—no tax file number

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if:
- (a) the person has been enrolled in the unit with the provider; and
 - (b) subsection 193-10(1) applies to the person in relation to the unit.
- (2) *Open Universities Australia must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study if subsection 193-10(2) applies to the person in relation to the unit.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-10.

- (3) The *Secretary may re-credit the person's *FEE-HELP balance under subsection (1) or (2) if the provider or *Open Universities Australia is unable to do so.

104-30 Special circumstances

- (1) For the purposes of paragraph 104-25(1)(c), special circumstances apply to the person if and only if the higher education provider receiving the application is satisfied that circumstances apply to the person that:
- (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 104-35

- (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake the unit.
- (2) If the Student Learning Entitlement Guidelines specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph 79-5(1)(a), (b) or (c), any decision of a higher education provider under this section must be in accordance with any such guidelines.

Note: The matters referred to in paragraphs 79-5(1)(a), (b) and (c) (which relate to re-crediting of Student Learning Entitlement) are identical to the matters referred to in paragraphs (1)(a), (b) and (c) of this section.

- (3) For the purposes of paragraph 104-25(2)(c), special circumstances apply to the person if and only if *Open Universities Australia is satisfied that circumstances apply to the person that:
 - (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.

104-35 Application period

- (1) If:
 - (a) the person applying under 104-25(1)(d) for the re-crediting of the person's *FEE-HELP balance in relation to a unit of study has withdrawn his or her enrolment in the unit; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (1A) If:
 - (a) the person applying under paragraph 104-25(2)(d) for the re-crediting of the person's *FEE-HELP balance in relation to a unit of study has withdrawn from the unit; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) *Open Universities Australia gives notice to the person that the withdrawal has taken effect;
the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (2) If subsections (1) and (1A) do not apply, the application period for the application is the period of 12 months after the period during which the person undertook, or was to undertake, the unit.

104-40 Dealing with applications

- (1) If:
 - (a) the application is made under paragraph 104-25(1)(d) before the end of the relevant application period; or
 - (b) the higher education provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;the provider must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision on the application.
- (1A) If:
 - (a) the application is made under paragraph 104-25(2)(d) before the end of the relevant application period; or
 - (b) *Open Universities Australia waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;Open Universities Australia must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision of the application.
- (2) The notice must include a statement of the reasons for the decision.
Note: Refusals of applications are reviewable under Part 5-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

104-42 Re-crediting a person's FEE-HELP balance if provider ceases to provide course of which unit forms part

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if:
- (a) the person has been enrolled in the unit with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (c) the *tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (d) the person chose the option designated under the tuition assurance requirements as student contribution/tuition fee repayment in relation to the unit.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see subsection 137-10(4).

- (2) The *Secretary may re-credit the person's *FEE-HELP balance under subsection (1) if the provider is unable to do so.

Subdivision 104-C—Bridging courses for overseas-trained professionals

104-45 Meaning of *bridging course for overseas-trained professionals*

Courses consisting of subjects or units

- (1) One or more subjects or units in which a person is enrolled with a higher education provider, or to which access is provided by *Open Universities Australia, are together a ***bridging course for overseas-trained professionals*** if:
- (a) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the statement is to the effect that, in the body's opinion, if the person were successfully to undertake additional studies of a kind specified in the statement, the person would meet the *requirements for entry to that occupation; and
- (c) the person undertakes, or proposes to undertake, those additional studies by:
 - (i) enrolling, or proposing to enrol, on a *non-award basis, in those subjects or units with the provider; or
 - (ii) accessing, or proposing to access, those subjects or units through Open Universities Australia; and
- (d) the total student load imposed on the person in relation to those subjects or units does not exceed the student load that, in the opinion of the provider or Open Universities Australia, represents the load imposed on a full-time student for one year; and
- (e) those subjects or units relate to the assessment statement.

Courses consisting of occupation-related courses of instruction

- (2) One or more occupation-related courses of instruction in which a person is enrolled with a higher education provider, or to which access is provided by *Open Universities Australia, are together a ***bridging course for overseas-trained professionals*** if:
 - (a) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and
 - (b) the statement is to the effect that, in the body's opinion, if the person were to be successful in one or more examinations specified in the statement, the person would meet the *requirements for entry to that occupation; and
 - (c) the person prepares, or proposes to prepare, for those examinations by:
 - (i) enrolling, or proposing to enrol, on a *non-award basis, in those occupation-related courses of instruction with the provider; or
 - (ii) accessing, or proposing to access, those occupation-related courses of instruction through Open Universities Australia; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 104-50

- (d) the total student load imposed on the person in relation to those courses does not exceed the student load that, in the opinion of the provider or Open Universities Australia, represents the load imposed on a full-time student for one year; and
- (e) those courses relate to the assessment statement.

Courses consisting of tuition and training programs

- (3) A tuition and training program in which a person is enrolled with a higher education provider, or to which access is provided by *Open Universities Australia, is a ***bridging course for overseas-trained professionals*** if:
 - (a) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and
 - (b) the statement is to the effect that, in the body's opinion, if the person were to undertake a tuition and training program of a kind specified in the statement, the person would meet the *requirements for entry to that occupation; and
 - (c) the person undertakes, or proposes to undertake, such a program by:
 - (i) enrolling, or proposing to enrol, on a *non-award basis, in a tuition and training program with the provider; or
 - (ii) accessing, or proposing to access, a tuition and training program through Open Universities Australia; and
 - (d) the total student load imposed on the person in relation to that program does not exceed the student load that, in the opinion of the provider or Open Universities Australia, represents the load imposed on a full-time student for one year; and
 - (e) that program relates to the assessment statement.

104-50 Assessment statements

- (1) An *assessing body for a *listed professional occupation may give to a person who:
 - (a) holds a qualification that:
 - (i) was awarded in a foreign country; and
 - (ii) relates to that occupation; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) proposes to seek entry to that occupation:
- (i) in Australia; or
 - (ii) if the assessing body is an *assessing body of a State or Territory—in that State or Territory;
- a written statement to the effect that, in the body's opinion, if the person were to do any or all of the things referred to in subsection (2), the person would meet the *requirements for entry to that occupation. The statement is an **assessment statement**.
- (2) The statement may refer to any or all of the following:
- (a) successfully undertaking additional studies of a kind specified in the statement;
 - (b) being successful in one or more examinations specified in the statement;
 - (c) successfully undertaking a tuition and training program of a kind specified in the statement.
- Note: A statement could specify one of the things mentioned in paragraph (a), (b) or (c) or any combination of the things mentioned in those paragraphs.
- (3) This section does not affect the power of an *assessing body to charge fees for an *assessment statement under subsection (1).

104-55 Meaning of *assessing body*

- (1) An **assessing body** for a particular *listed professional occupation is a person or body specified in the FEE-HELP Guidelines as an assessing body for that occupation.
- (2) This section does not prevent 2 or more persons or bodies from being assessing bodies for the same *listed professional occupation.
- (3) The FEE-HELP Guidelines may limit the specification of a person or body as an assessing body for a particular *listed professional occupation to:
 - (a) a particular State; or
 - (b) the Australian Capital Territory; or
 - (c) the Northern Territory.

Such an assessing body is an **assessing body of a State or Territory**.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

104-60 Meaning of *listed professional occupations*

- (1) A *listed professional occupation* is an *occupation specified in the FEE-HELP Guidelines as a listed professional occupation.
- (2) To avoid doubt, an *occupation may be specified even if it is not one of the traditional professions.

104-65 Occupation includes part of an occupation

- (1) An *occupation* includes a part of an occupation specified in the FEE-HELP Guidelines as an occupation in its own right.
- (2) The following are examples of ways in which a part of an occupation can be specified:
 - (a) so much of an occupation as has a bachelor degree (or equivalent) entry requirement;
 - (b) so much of an occupation as consists of a particular specialisation.

104-70 Requirements for entry to an occupation

- (1) The *requirements for entry*, to a *listed professional occupation, are the educational requirements:
 - (a) for entry to that occupation in Australia; or
 - (b) if the requirements are referred to in an *assessment statement given by an *assessing body of a State or Territory for that occupation—for entry to that occupation in that State or Territory.
- (2) A requirement for entry to a *listed professional occupation may:
 - (a) be imposed by or under a law; or
 - (b) be imposed by or under the rules of a body; or
 - (c) consist of eligibility for membership of a body; or
 - (d) arise as a generally accepted employment or industry practice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) However, neither of the following is a requirement for entry to a ^{*}listed professional occupation:
- (a) English language training relating to general aspects of written communication or verbal communication, or both; or
 - (b) being successful in:
 - (i) the Occupational English Test administered by Language Australia; or
 - (ii) any other English language test, where that test does not form an integral part of an occupation-related study unit, an occupation-related course of instruction or an occupation-related tuition and training program.

^{*}To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 107—How are amounts of FEE-HELP assistance worked out?

107-1 The amount of FEE-HELP assistance for a unit of study

The amount of *FEE-HELP assistance to which a student is entitled for a unit of study is the difference between:

- (a) the student's *tuition fee for the unit; and
- (b) the sum of any *up-front payments made in relation to the unit.

Note: A lesser amount may be payable because of section 107-10.

107-5 Up-front payments

- (1) An *up-front payment*, in relation to a unit of study for which a student is liable to pay a *tuition fee, is a payment of all or part of the student's tuition fee for the unit, other than a payment of *FEE-HELP assistance under this Part.
- (2) The payment must be made on or before the *census date for the unit.

107-10 Amounts of FEE-HELP assistance and VET FEE-HELP assistance must not exceed the FEE-HELP balance

Amount of FEE-HELP assistance for one unit

- (1) The amount of *FEE-HELP assistance to which a student is entitled for a unit of study is an amount equal to the student's *FEE-HELP balance on the *census date for the unit if:
 - (a) there is no other:
 - (i) unit of study, with the same census date, for which the student is entitled to FEE-HELP assistance; or
 - (ii) *VET unit of study, with the same census date, for which the student is entitled to *VET FEE-HELP assistance; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the amount of FEE-HELP assistance to which the student would be entitled under section 107-1 for the unit would exceed that FEE-HELP balance.

Amount of FEE-HELP assistance for more than one unit

- (2) If the sum of:
- (a) the amount of *FEE-HELP assistance to which a student would be entitled under section 107-1 for a unit of study; and
 - (b) any other amounts of:
 - (i) FEE-HELP assistance to which the student would be entitled under that section for other units that have the same *census date as that unit; and
 - (ii) *VET FEE-HELP assistance to which the student would be entitled under clause 52 of Schedule 1A for other units that have the same census date as that unit;

would exceed the student's *FEE-HELP balance on the census date for the unit, then, despite subsection (1) of this section, the total amount of FEE-HELP assistance and VET FEE-HELP assistance to which the student is entitled for all of those units is an amount equal to that FEE-HELP balance.

Example: Kath has a FEE-HELP balance of \$2,000, and is enrolled in 4 units with the same census date. Kath's tuition fee for each unit is \$600. The total amount of FEE-HELP assistance to which Kath is entitled for the units is \$2,000, even though the total amount of her tuition fees for the units is \$2,400.

- (3) If the student has enrolled in the units with more than one higher education provider or *VET provider, and access to none of the units was provided by *Open Universities Australia, the student must notify each provider of the proportion of the total amount of *FEE-HELP assistance or *VET FEE-HELP assistance that is to be payable in relation to the units in which the student has enrolled with that provider.
- (4) If access to some, but not all, of the units of study was provided by *Open Universities Australia, the student must:
- (a) notify Open Universities Australia of the proportion of the total amount of *FEE-HELP assistance that is to be payable

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-3 FEE-HELP assistance

Division 107 How are amounts of FEE-HELP assistance worked out?

Section 107-10

in relation to units access to which was provided by Open Universities Australia; and

- (b) notify each higher education provider or *VET provider at which the student is enrolled in a unit, access to which was not provided by Open Universities Australia, of the proportion of the total amount of FEE-HELP assistance or *VET FEE-HELP assistance that is to be payable in relation to that unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 110—How are amounts of FEE-HELP assistance paid?

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

110-1 Payments

- (1) If a student is entitled to an amount of *FEE-HELP assistance for a unit of study with a higher education provider, and access to the unit was not provided by *Open Universities Australia, the Commonwealth must:
 - (a) as a benefit to the student, lend to the student the amount of FEE-HELP assistance; and
 - (b) pay the amount lent to the provider in discharge of the student's liability to pay his or her *tuition fee for the unit.
- (2) If a student is entitled to an amount of *FEE-HELP assistance for a unit of study and access to the unit was provided by *Open Universities Australia, the Commonwealth must:
 - (a) as a benefit to the student, lend to the student the amount of FEE-HELP assistance; and
 - (b) pay the amount lent to Open Universities Australia in discharge of the student's liability to pay his or her *tuition fee for the unit.

110-5 Effect of FEE-HELP balance being re-credited

- (1) If, under subsection 104-25(1), 104-27(1) or section 104-42, a person's *FEE-HELP balance is re-credited with an amount relating to *FEE-HELP assistance for a unit of study, the provider must pay to the Commonwealth an amount equal to the amount of FEE-HELP assistance to which the person was entitled for the unit.

Note: The provider must repay the amount under subsection (1) even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 110-5

- (1A) Subsection (1) does not apply to the provider if:
- (a) the person's *FEE-HELP balance was re-credited under subsection 104-25(1) (main case of re-crediting a person's FEE-HELP balance); and
 - (b) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements.
- (1B) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to the re-crediting of a person's *FEE-HELP balance in circumstances to which subsection (1A) applies:
- (a) the amount (if any) that is to be paid to the Commonwealth; and
 - (b) the person (if any) who is to pay the amounts.
- (2) If, under subsection 104-25(2) or 104-27(2), *Open Universities Australia re-credits a person's *FEE-HELP balance with an amount relating to *FEE-HELP assistance for a unit of study, Open Universities Australia must pay to the Commonwealth an amount equal to the amount of FEE-HELP assistance to which the person was entitled for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-4—OS-HELP assistance

Division 115—Introduction

115-1 What this Part is about

Students may be entitled to OS-HELP assistance for periods of study with overseas higher education institutions, if they meet certain requirements. In particular, their higher education provider must have selected them for OS-HELP assistance.

The amount of OS-HELP assistance is limited to a maximum amount for each period of study, and only 2 such periods can attract OS-HELP assistance.

The purpose of OS-HELP assistance is to help students based in Australia to do part of their course of study overseas.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

115-5 The OS-HELP Guidelines

*OS-HELP assistance is also dealt with in the OS-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The OS-HELP Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 118—Who is entitled to OS-HELP assistance?

118-1 Entitlement to OS-HELP assistance

- (1) A student is entitled to *OS-HELP assistance in relation to a period of 6 months if:
 - (a) the student meets the citizenship or residency requirements under section 118-5; and
 - (b) the student has not received OS-HELP assistance on more than one other occasion; and
 - (c) the student is enrolled in an *undergraduate course of study with a higher education provider (the *home provider*); and
 - (d) the student meets the prior study requirements under section 118-7; and
 - (e) the student meets the overseas study requirements under section 118-10; and
 - (f) on the completion of that study outside Australia, the student will have to complete units of study that have a total EFTSL value of at least 0.5 EFTSL in order to complete the course requirements for that course of study; and
 - (g) the student *meets the tax file number requirements (see section 187-1); and
 - (h) the student has completed, signed and given to an *appropriate officer of the home provider a *request for Commonwealth assistance in relation to that course of study; and
 - (ha) the student has applied to the home provider for receipt of OS-HELP assistance in relation to the period; and
 - (i) the home provider has selected the student for receipt of OS-HELP assistance in relation to the period (see section 118-15).
- (2) However, the student is not entitled to *OS-HELP assistance in relation to that period if:
 - (a) another higher education provider has granted OS-HELP assistance to the student in relation to:
 - (i) that period; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) a period that overlaps with that period; or
 - (b) the student applies to the home provider for the assistance after the student has completed the study in relation to the period.
- (3) To avoid doubt, the student may be outside Australia when the student applies to the home provider for receipt of *OS-HELP assistance.

118-5 Citizenship or residency requirements

The citizenship or residency requirements for *OS-HELP assistance are that the student in question is:

- (a) an Australian citizen; or
- (b) a *permanent humanitarian visa holder.

118-7 Prior study requirements

The prior study requirements for *OS-HELP assistance are that:

- (a) the student in question has completed units of study in Australia that count towards the course requirements for the *course of study; and
- (b) the units of study have a total *EFTSL value of at least one *EFTSL; and
- (c) the student was a *Commonwealth supported student in relation to the units.

118-10 Overseas study requirements

The overseas study requirements for *OS-HELP assistance are that:

- (a) the student in question:
 - (i) is enrolled in full-time study with an overseas higher education institution or is enrolled with the home provider in full-time study at an overseas campus or enrolled with another higher education provider in full-time study at an overseas campus; and
 - (ii) will be outside Australia while undertaking that study; and
- (b) the study commences on or after 1 January 2005; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 118-15

- (c) the study outside Australia will count towards the course requirements of the *course of study in which the student is enrolled with the home provider.

118-15 Selection of students for receipt of OS-HELP assistance

- (1) The OS-HELP Guidelines may set out principles and procedures that higher education providers must follow in deciding whether to select students for receipt of *OS-HELP assistance.
- (3) Any decision by a higher education provider whether to select a student for receipt of *OS-HELP assistance must be made in accordance with the OS-HELP Guidelines.
- (4) Without limiting the matters that may be included in the OS-HELP Guidelines made for the purposes of subsection (3), those guidelines may deal with:
 - (a) the number of its students whom higher education providers may select for receipt of *OS-HELP assistance; or
 - (b) how that number is to be determined.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 121—How are amounts of OS-HELP assistance worked out?

121-1 The amount of OS-HELP assistance for a period

- (1) The amount of *OS-HELP assistance to which a student is entitled for a period of 6 months is the amount determined by the higher education provider to which the student applied for selection for receipt of the assistance.
- (2) The amount must not exceed:
 - (a) the amount specified in the application; or
 - (b) the *maximum OS-HELP amount for a period of 6 months.
- (3) The amount must not be less than the higher education provider's *minimum OS-HELP amount, if the provider has a minimum OS-HELP amount.

121-5 Maximum OS-HELP amount

The *maximum OS-HELP amount*, for a period of 6 months, is \$5,000.

Note: The maximum OS-HELP amount is indexed under Part 5-6.

121-10 Minimum OS-HELP amounts

- (1) A higher education provider may determine, in writing, its *minimum OS-HELP amount.
- (2) The determination has effect until:
 - (a) it is replaced by a later determination; or
 - (b) it is revoked.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 124—How are amounts of OS-HELP assistance paid?

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

124-1 Amounts of OS-HELP assistance are lent to students

- (1) If a student is entitled to an amount of *OS-HELP assistance for a period of 6 months, the Commonwealth must, as a benefit to the student, lend to the student the amount of OS-HELP assistance.
- (2) The higher education provider that selected the student for receipt of *OS-HELP assistance in relation to the period must, on the Commonwealth's behalf, pay to the student the amount lent.
- (3) The Commonwealth must make payments to the higher education provider on account of amounts the provider pays under this section on the Commonwealth's behalf.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4—Repayment of loans

Division 129—Introduction

129-1 What this Chapter is about

Loans that the Commonwealth makes to students under Chapter 3 are repayable under this Chapter. Loans that the Commonwealth makes to students under Schedule 1A are also repayable under this Chapter.

Each loan is incorporated into the person's accumulated HELP debt (see Part 4-1).

Under Part 4-2, the accumulated debts can be repaid in 2 ways:

- a person may make voluntary repayments (which may attract a repayment bonus); or
- compulsory repayments (based on a person's income) are made using the system for payment of income tax.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4-1—Indebtedness

Division 134—Introduction

134-1 What this Part is about

A person incurs a HELP debt if he or she receives, as HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, a loan from the Commonwealth under Chapter 3.

A person also incurs a HELP debt if he or she receives, as VET FEE-HELP assistance, a loan from the Commonwealth under Schedule 1A.

HELP debts are incorporated into the person's accumulated HELP debt. This accumulated debt forms the basis of working out the amounts that the person is obliged to repay (see Part 4-2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 137—How do HELP debts arise?

137-1 HELP debts

The following are *HELP debts*:

- (a) *HECS-HELP debts;
- (b) *FEE-HELP debts;
- (c) *OS-HELP debts;
- (d) *VET FEE-HELP debts.

137-5 HECS-HELP debts

Incurring HECS-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 96-1 or 96-5, the Commonwealth:
 - (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay his or her *student contribution amount for a unit of study.

The debt is a *HECS-HELP debt*.

- (2) The amount of the *HECS-HELP debt is the amount of the loan.

When HECS-HELP debts are incurred

- (3) A *HECS-HELP debt is taken to have been incurred by a person immediately after the *census date for the unit, whether or not the Commonwealth has made a payment in respect of the person's *student contribution amount for the unit.

Remission of HECS-HELP debts

- (4) A person's *HECS-HELP debt in relation to a unit of study is taken to be remitted if the person's *SLE is re-credited under Division 79 in relation to the unit.
- (5) A person's *HECS-HELP debt, in relation to a unit of study that wholly consists of *work experience in industry, is taken to be

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 137-10

remitted if section 36-22, 36-22A or 36-23 applies to the person (even if subsection 36-22(2A) applies to the provider in relation to the person).

137-10 FEE-HELP debts

Incurring FEE-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 110-1, the Commonwealth:
 - (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay his or her *tuition fee for a unit of study.

The debt is a **FEE-HELP debt**.

- (2) The amount of the *FEE-HELP debt is:
 - (a) if the loan relates to *FEE-HELP assistance for a unit of study that forms part of an *undergraduate course of study—an amount equal to 125% of the loan; or
 - (b) if paragraph (a) does not apply—the amount of the loan.

When FEE-HELP debts are incurred

- (3) A *FEE-HELP debt is taken to have been incurred by a person immediately after the *census date for the unit, whether or not the Commonwealth has made a payment in respect of the person's *tuition fee for the unit.

Remission of FEE-HELP debts

- (4) A person's *FEE-HELP debt in relation to a unit of study is taken to be remitted if the person's *FEE-HELP balance is re-credited under section 104-25, 104-27 or 104-42 in relation to the unit.

Note: The debt is taken to be remitted even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

137-15 OS-HELP debts

Incurring OS-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 124-1, the Commonwealth makes a loan to the person. The debt is an **OS-HELP debt**.
- (2) The amount of the *OS-HELP debt is an amount equal to the amount of the loan.

When OS-HELP debts are incurred

- (3) The *OS-HELP debt is taken to have been incurred on the day on which a higher education provider, on the Commonwealth's behalf, paid the amount lent to the person.

137-18 VET FEE-HELP debts

Incurring VET FEE-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under clause 55 of Schedule 1A, the Commonwealth:
 - (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay his or her *VET tuition fee for a *VET unit of study.The debt is a **VET FEE-HELP debt**.

- (2) The amount of the *VET FEE-HELP debt is:
 - (a) 120% of the loan; or
 - (b) if the *VET FEE-HELP Guidelines specify a lesser percentage of the loan for the person—that lesser percentage of the loan.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

When VET FEE-HELP debts are incurred

- (3) A *VET FEE-HELP debt is taken to have been incurred by a person immediately after the *census date for the unit, whether or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 137-20

not the Commonwealth has made a payment in respect of the person's *VET tuition fee for the unit.

Remission of VET FEE-HELP debts

- (4) A person's *VET FEE-HELP debt in relation to a *VET unit of study is taken to be remitted if the person's *FEE-HELP balance is re-credited under clause 46, 47 or 51 of Schedule 1A in relation to the unit.

Note: The debt is taken to be remitted even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

137-20 HELP debt discharged by death

Upon the death of a person who owes a *HELP debt to the Commonwealth, the debt is taken to have been paid.

Note: HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 140—How are accumulated HELP debts worked out?

Subdivision 140-A—Outline of this Division

140-1 Outline of this Division

- (1) There are 2 stages to working out a person's *accumulated HELP debt for a financial year.

Stage 1—Former accumulated HELP debt

- (2) The *former accumulated HELP debt is worked out by adjusting the preceding financial year's *accumulated HELP debt to take account of:
- (a) changes in the Consumer Price Index; and
 - (b) the *HELP debts that he or she incurs during the last 6 months of the preceding financial year; and
 - (c) *voluntary repayments of the debt; and
 - (d) *compulsory repayment amounts in respect of the debt; and
 - (e) if compulsory repayment amounts are not required to be paid in respect of the debt—the *HECS-HELP benefit (if any).

(See Subdivision 140-B.)

Stage 2—Accumulated HELP debt

- (3) The person's *accumulated HELP debt is worked out from:
- (a) his or her *former accumulated HELP debt; and
 - (b) the *HELP debts that he or she incurs during the first 6 months of the financial year; and
 - (c) *voluntary repayments of those debts.

(See Subdivision 140-C.)

Note: Incurring that financial year's accumulated HELP debt discharges the previous accumulated HELP debt and HELP debts under this Part: see section 140-35.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 140-B—Former accumulated HELP debts

140-5 Working out a former accumulated HELP debt

- (1) A person's *former accumulated HELP debt*, in relation to the person's *accumulated HELP debt for a financial year, is worked out by multiplying:
- (a) the amount worked out using the following method statement; by
 - (b) the *HELP debt indexation factor for 1 June in that financial year.

Method statement

- Step 1. Take the person's *accumulated HELP debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated HELP debt for that financial year.)
- Step 2. Take the HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year. Group them according to whether the debts are in relation to:
- (a) units undertaken with a higher education provider that formed part of one particular *course of study with that provider; or
 - (b) units undertaken with a higher education provider that formed part of one particular course of study with another higher education provider; or
 - (c) units that formed part of one particular *bridging course for overseas-trained professionals; or
 - (d) units access to which was provided by *Open Universities Australia; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (e) *OS-HELP assistance, the entitlement to which relates to the person's enrolment in an *undergraduate course of study with one particular higher education provider (see paragraph 118-1(1)(c)); or
- (f) units undertaken with a *VET provider that formed part of one particular *VET course of study with that provider; or
- (g) units undertaken with a VET provider that formed part of one particular VET course of study with another VET provider.

Note: There will be more than one group of debts under paragraph (a) if the person incurred debts in relation to more than one course of study with a provider. Similarly, there could be more than one group of debts under paragraph (b), (c), (e), (f) or (g).

Step 2A. Work out the total for each group of debts. If the total for a particular group is an amount consisting of a number of whole dollars and a number of cents, the total for that group is taken to be the number of whole dollars. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

Step 2B. If there is more than one group of debts for the person, add together the totals for all of the groups.

Step 3. Subtract the sum of the amounts by which the person's debts referred to above are reduced because of any *voluntary repayments that have been made during the period:

- (a) starting on 1 June in the immediately preceding financial year; and
- (b) ending immediately before the next 1 June.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 4. Subtract the sum of all of the person's *compulsory repayment amounts that:

- (a) were assessed during that period (excluding any assessed as a result of a *return given before that period); or
- (b) were assessed after the end of that period as a result of a return given before the end of that period.

Step 4A. In respect of that period, subtract the amount of *HECS-HELP benefit (if any) determined, in respect of the person, by the *Commissioner under section 157-20 for an *income year, if the person did not have any *compulsory repayment amounts for that year.

Step 5. Subtract the sum of the amounts by which any *compulsory repayment amount of the person is increased (whether as a result of an increase in the person's *taxable income of an *income year or otherwise) by an amendment of an assessment made during that period.

Step 6. Add the sum of the amounts by which any *compulsory repayment amount of the person is reduced (whether as a result of a reduction in the person's *taxable income of an *income year or otherwise) by an amendment of an assessment made during that period.

Example: Lorraine is studying part-time for a Degree of Bachelor of Communications. On 1 June 2007 Lorraine had an accumulated HELP debt of \$15,000. She incurred a HELP debt of \$1,500 on 31 March 2007. She made a voluntary repayment of \$550 (which includes a voluntary repayment bonus of \$50) on 1 May 2008. Lorraine lodged her 2006-07 income tax return and a compulsory repayment amount of \$3,000 was assessed and notified on her income tax notice of assessment on 3 September 2007.

To work out Lorraine's former accumulated HELP debt before indexation on 1 June 2008:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- Step 1: Take the previous accumulated HELP debt of \$15,000 on 1 June 2007.
- Step 2: Add the HELP debt of \$1,500 incurred on 31 March 2007.
- Step 3: Subtract the \$550 voluntary repayment made on 1 May 2008.
- Step 4: Subtract the \$3,000 compulsory repayment assessed on 3 September 2007.
- Step 4A: Does not apply because Lorraine does not satisfy the eligibility requirements for the HECS-HELP benefit.
- Steps 5 and 6: Do not apply because since 1 June 2007 Lorraine had no amendments to any assessment.

Lorraine's former accumulated HELP debt before indexation on 1 June 2008 is:

$$(\$15,000 + \$1,500) - (\$550 + \$3,000) = \$12,950$$

If, for example, the indexation factor for 1 June 2008 were 1.050, then the former accumulated HELP debt would be:

$$\$12,950 \times 1.050 = \$13,597.50$$

- (2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.
- (3) If a determination by the *Commissioner under section 157-20 is reviewed under Part 5-7:
- (a) the reference in step 4A of the method statement in subsection (1) to the determination includes a reference to the decision on review; and
 - (b) to the extent that the decision on review affects any step in the method statement—the decision on review must be taken into account in working out a person's *former accumulated HELP debt under this section.

140-10 HELP debt indexation factor

- (1) The *HELP debt indexation factor* for 1 June in a financial year is the number (rounded to 3 decimal places) worked out as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Method statement

Step 1. Add:

- (a) the *index number for the *quarter ending on 31 March in that financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 2. Add:

- (a) the *index number for the *quarter ending on 31 March in the immediately preceding financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 3. The **HELP debt indexation factor** for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.

- (2) For the purposes of rounding a *HELP debt indexation factor, the third decimal place is rounded up if, apart from the rounding:
 - (a) the factor would have 4 or more decimal places; and
 - (b) the fourth decimal place would be a number greater than 4.

140-15 Index numbers

- (1) The **index number** for a *quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the *Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this Act:
 - (a) the *Australian Statistician has published or publishes an *index number in respect of a *quarter; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;
disregard the publication of the later index for the purposes of this section.
- (3) If, at any time before or after the commencement of this Act, the *Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, in applying this section after the change took place or takes place, have regard only to *index numbers published in terms of the new reference base.

140-20 Publishing HELP debt indexation factors

The *Commissioner must cause to be published before 1 June in each financial year the *HELP debt indexation factor for that 1 June.

Subdivision 140-C—Accumulated HELP debts

140-25 Working out an accumulated HELP debt

- (1) A person's *accumulated HELP debt*, for a financial year, is worked out as follows:

$$\text{Former accumulated HELP debt} + \text{HELP debts incurred} - \text{HELP debt repayments}$$

where:

former accumulated HELP debt is the person's *former accumulated HELP debt in relation to that *accumulated HELP debt.

HELP debt repayments is the sum of all of the *voluntary repayments (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the *HELP debts incurred in that year.

HELP debts incurred means the amount worked out using the method statement in subsection (1A).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-1 Indebtedness

Division 140 How are accumulated HELP debts worked out?

Section 140-25

Example: Paula is studying part-time for a Degree of Bachelor of Science. On 1 June 2009, her former accumulated HELP debt was worked out using Subdivision 140-B to be \$20,000. She incurred a HELP debt of \$1,500 on 31 August 2008. No repayments have been made in the 12 months from 1 June 2008.

Paula's accumulated HELP debt on 1 June 2009 is worked out by taking her former accumulated HELP debt of \$20,000 and adding the \$1,500 HELP debt incurred on 31 August 2008. That is:

$$\$20,000 + \$1,500 = \$21,500$$

(1A) For the purposes of the definition of *HELP debts incurred* in subsection (1), use the following method statement:

- Step 1. Take the HELP debts (if any) that the person incurred during the first 6 months of the financial year. Group them according to whether the debts are in relation to:
- (a) units undertaken with a higher education provider that formed part of one particular *course of study with that provider; or
 - (b) units undertaken with a higher education provider that formed part of one particular course of study with another higher education provider; or
 - (c) units that formed part of one particular *bridging course for overseas-trained professionals; or
 - (d) units access to which was provided by *Open Universities Australia; or
 - (e) *OS-HELP assistance, the entitlement to which relates to the person's enrolment in an *undergraduate course of study with one particular higher education provider (see paragraph 118-1(1)(c)); or
 - (f) units undertaken with a *VET provider that formed part of one particular *VET course of study with that provider; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (g) units undertaken with a VET provider that formed part of one particular VET course of study with another VET provider.

Note: There will be more than one group of debts under paragraph (a) if the person incurred debts in relation to more than one course of study with a provider. Similarly, there could be more than one group of debts under paragraph (b), (c), (e), (f) or (g).

Step 2. Work out the total for each group of debts. If the total for a particular group is an amount consisting of a number of whole dollars and a number of cents, the total for that group is taken to be the number of whole dollars. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

Step 3. If there is more than one group of debts for the person, add together the totals for all of the groups.

- (2) The person incurs the *accumulated HELP debt on 1 June in the financial year.
- (3) The first financial year for which a person can have an *accumulated HELP debt is the financial year starting on 1 July 2005.

140-30 Rounding of amounts

- (1) If, apart from this section, a person's *accumulated HELP debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.
- (2) If, apart from this section, a person's *accumulated HELP debt would be an amount of less than one dollar, the person's accumulated HELP debt is taken to be zero.

140-35 Accumulated HELP debt discharges earlier debts

- (1) The *accumulated HELP debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-1 Indebtedness

Division 140 How are accumulated HELP debts worked out?

Section 140-40

- (a) any *HELP debt that the person incurred during the calendar year immediately preceding that day; and
 - (b) any accumulated HELP debt that the person incurred on the immediately preceding 1 June.
- (2) Nothing in subsection (1) affects the application of Division 137, Subdivision 140-B or section 140-25.

140-40 Accumulated HELP debt discharged by death

- (1) Upon the death of a person who has an *accumulated HELP debt, the accumulated HELP debt is taken to be discharged.
- (2) To avoid doubt, this section does not affect any *compulsory repayment amounts required to be paid in respect of the *accumulated HELP debt, whether or not those amounts were assessed before the person's death.

Note: Accumulated HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4-2—Discharge of indebtedness

Division 148—Introduction

148-1 What this Part is about

A person who owes a debt to the Commonwealth under this Chapter may make voluntary repayments. In some cases these may attract a 10% repayment bonus.

The person is required to make repayments, of amounts based on his or her income, if that income is above a particular amount. The Commissioner of Taxation makes assessments of repayment amounts, which are collected in the same way as amounts of income tax.

Repayment amounts may be reduced by the HECS-HELP benefit. To receive the benefit, a person must satisfy eligibility requirements and apply for it. The Commissioner determines whether a person is eligible for the benefit, and if so, the amount of the benefit.

148-5 The HECS-HELP Benefit Guidelines

The *HECS-HELP benefit is also dealt with in the HECS-HELP Benefit Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The HECS-HELP Benefit Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 151—How is indebtedness voluntarily discharged?

151-1 Voluntary repayments in respect of debts

- (1) A person may at any time make a payment in respect of a debt that the person owes to the Commonwealth under this Chapter.
- (2) The payment must be made to the *Commissioner.

151-5 Voluntary repayment bonus relating to HELP debts

- (1) The effect that a payment under section 151-1 has on a *HELP debt or an *accumulated HELP debt that a person (the *debtor*) owes to the Commonwealth under this Chapter is the effect specified in subsection (2) or (3) of this section if the amount of the payment is:
 - (a) \$500 or more; or
 - (b) sufficient to be taken under subsection (2) to pay off the total debt.

Total debt paid off

- (2) The debtor is taken to pay off the total debt if the payment in respect of the debt is equal to, or exceeds, an amount worked out as follows:

$$\frac{\text{Amount of the debt outstanding}}{1.1}$$

Example: The total of Andrew's HELP debts and accumulated HELP debt is \$2,500. To pay off his debt to the Commonwealth he only needs to repay \$2,272 (\$2,500 divided by 1.1 is \$2,272, rounding down to the nearest dollar).

Part of debt paid off

- (3) If the debtor is not taken to pay off the total debt, the outstanding amount of the debt is to be reduced by an amount worked out as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Amount of the payment \times 1.1

Example: The total of Helen's HELP debts and accumulated HELP debt is \$4,500. She makes a voluntary repayment of \$1,500. With a 10% bonus, the value of her repayment is \$1,650. The total amount that she owes to the Commonwealth is reduced to \$2,850.

- (4) If an amount worked out using the formula in subsection (2) or (3) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

151-10 Application of voluntary repayments

- (1) Any money a person pays under this Division to meet the person's debts to the Commonwealth under this Chapter is to be applied in payment of those debts as the person directs at the time of the payment.
- (2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:
- (a) first, in discharge or reduction of any *accumulated HELP debt of the person;
 - (b) secondly, in discharge or reduction of:
 - (i) any *HELP debt of the person; or
 - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

151-15 Refunding of payments

If:

- (a) a person pays an amount to the Commonwealth under this Division; and
- (b) the amount exceeds the sum of:
 - (i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Chapter; and
 - (ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-2 Discharge of indebtedness

Division 151 How is indebtedness voluntarily discharged?

Section 151-15

the Commonwealth must refund to the person an amount equal to that excess.

Note: Interest is payable if the Commonwealth is late in paying refunds: see Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 154—How is indebtedness compulsorily discharged?

Subdivision 154-A—Liability to repay amounts

154-1 Liability to repay amounts

- (1) Subject to section 154-3, if:
 - (a) a person's *repayment income for an *income year exceeds the *minimum repayment income for the income year; and
 - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an *accumulated HELP debt;the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 154-20 in reduction of the person's *repayable debt.
- (2) A person is not liable under this section to pay an amount for an *income year if, under section 8 of the *Medicare Levy Act 1986*:
 - (a) no *Medicare levy is payable by the person on the person's *taxable income for the income year; or
 - (b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

154-3 Reduction of liability by HECS-HELP benefit

If the *Commissioner has determined, in respect of a person, an amount of *HECS-HELP benefit under section 157-20 for an *income year, the amount that the person is liable to pay under section 154-1 for that year is reduced by the amount of the benefit.

Note 1: The calculation of a person's compulsory repayment amount under section 154-1 remains unaffected. A person's accumulated HELP debt is reduced by compulsory repayment amounts under Division 140. The HECS-HELP benefit reduces a person's liability that arises under section 154-1, so that the amount that the person will actually pay (if any) will be less than the compulsory repayment amount calculated.

Note 2: If a determination is reviewed, a reference to the determination includes a reference to the decision on review, see section 157-30.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-5 Repayment income

- (1) A person's **repayment income** for an *income year is an amount equal to the sum of:
 - (a) the person's *taxable income for the income year; and
 - (b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and
 - (c) if the person:
 - (i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and
 - (ii) has a reportable fringe benefits total (within the meaning of that Act) for the income year; the reportable fringe benefits total for the income year; and
 - (d) the person's *exempt foreign income for the income year; and
 - (e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.
- (4) The person's **exempt foreign income** is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.
- (5) For the purposes of subsection (4), disregard any capital losses and outgoings.

154-10 Minimum repayment income

The **minimum repayment income** for an *income year is:

- (a) for the 2005-06 income year—\$36,184; or
- (b) for a later income year—that amount as indexed under section 154-25.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-15 Repayable debt for an income year

- (1) A person's *repayable debt* for an *income year is:
 - (a) the person's *accumulated HELP debt referred to in paragraph 154-1(1)(b) in relation to that income year; or
 - (b) if one or more amounts:
 - (i) have been paid in reduction of that debt; or
 - (ii) have been assessed under section 154-35 to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.
- (2) A reference in paragraph (1)(b) to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

Subdivision 154-B—Amounts payable to the Commonwealth

154-20 Amounts payable to the Commonwealth

The amount that a person is liable to pay under section 154-1, in respect of an *income year, is an amount equal to so much of the person's *repayable debt for the income year as does not exceed the percentage of the person's *repayment income that is applicable under the following table:

Applicable percentages		
Item	If the person's repayment income is:	The percentage applicable is:
1	More than the * minimum repayment income, but less than: (a) for the 2005-06 *income year—\$40,307; or (b) for a later income year—that amount indexed under section 154-25.	4%

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-2 Discharge of indebtedness

Division 154 How is indebtedness compulsorily discharged?

Section 154-20

Applicable percentages		
Item	If the person's repayment income is:	The percentage applicable is:
2	More than the amount under item 1, but less than: (a) for the 2005-06 *income year—\$44,428; or (b) for a later income year—that amount indexed under section 154-25.	4.5%
3	More than the amount under item 2, but less than: (a) for the 2005-06 *income year—\$46,763; or (b) for a later income year—that amount indexed under section 154-25.	5%
4	More than the amount under item 3, but less than: (a) for the 2005-06 *income year—\$50,267; or (b) for a later income year—that amount indexed under section 154-25.	5.5%
5	More than the amount under item 4, but less than: (a) for the 2005-06 *income year—\$54,440; or (b) for a later income year—that amount indexed under section 154-25.	6%
6	More than the amount under item 5, but less than: (a) for the 2005-06 *income year—\$57,305; or (b) for a later income year—that amount indexed under section 154-25.	6.5%
7	More than the amount under item 6, but less than: (a) for the 2005-06 *income year—\$63,063; or (b) for a later income year—that amount indexed under section 154-25.	7%
8	More than the amount under item 7, but less than: (a) for the 2005-06 *income year—\$67,200; or (b) for a later income year—that amount indexed under section 154-25.	7.5%
9	More than the amount under item 8.	8%

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-25 Indexation

- (1) The following amounts for the 2006-07 *income year, or a later income year:
- (a) the *minimum repayment income;
 - (b) the amounts referred to in paragraph (a) of the second column of items 1 to 8 of the table in section 154-20;
- are indexed by multiplying the corresponding amounts for the 2005-06 income year by the amount worked out using the formula:

$$\frac{\text{*AWE for that income year}}{\text{AWE for the 2005-06 income year}}$$

- (2) **AWE**, for an *income year, is the number of dollars in the sum of:
- (a) the average weekly earnings for all employees (total earnings, seasonally adjusted) for the *reference period in the *quarter ending on 31 December immediately before the income year, as published by the *Australian Statistician; and
 - (b) the average weekly earnings for all employees for the reference period in each of the 3 quarters immediately before that quarter, as published by the Australian Statistician.
- (3) The **reference period** in a particular *quarter in a year is the period described by the *Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.
- (4) If an amount worked out under this section is an amount made up of dollars and cents, round the amount down to the nearest dollar.

154-30 Publishing indexed amounts

The Minister must cause to be published in the *Gazette*, before the start of the 2006-07 *income year or a later income year:

- (a) the *minimum repayment income; and
 - (b) the amounts referred to in paragraph (b) of the second column of items 1 to 8 of the table in section 154-20;
- for that income year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 154-C—Assessments

154-35 Commissioner may make assessments

The *Commissioner may, from any information in the Commissioner's possession, whether from a *return or otherwise, make an assessment of:

- (a) the person's *accumulated HELP debt on 1 June immediately before the making of the assessment; and
- (b) the amount required to be paid in respect of that debt under section 154-1.

Note: The amount that the person will actually pay (if any) will be less than the amount mentioned in paragraph (b) if the person receives the HECS-HELP benefit.

154-40 Notification of notices of assessment of tax

(1) If:

- (a) the *Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an *income year under section 174 of the *Income Tax Assessment Act 1936*; and
- (b) the Commissioner has made, in respect of the person, an assessment under section 154-35 of this Act of the amounts referred to in that section; and
- (c) notice of the assessment under that section has not been served on the person;

notice of the assessment under that section may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

- (2) If the *Commissioner has determined, in respect of the person, an amount of *HECS-HELP benefit under section 157-20 for the *income year, the notice of assessment for that year may also refer to the amount of the benefit.

Note: If a determination is reviewed, a reference to the determination includes a reference to the decision on review, see section 157-30.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-45 Commissioner may defer making assessments

- (1) A person may apply in writing to the *Commissioner for deferral of the making of an assessment in respect of the person under section 154-35.
- (2) The application must specify:
 - (a) the *income year for which the deferral is being sought; and
 - (b) the reasons for seeking the deferral.
- (3) The *income year specified in the application must be:
 - (a) the income year in which the person makes the application;
or
 - (b) the immediately preceding income year; or
 - (c) the immediately succeeding income year.
- (4) The *Commissioner may, on application by a person under this section, defer making an assessment in respect of the person under section 154-35 if the Commissioner is of the opinion that:
 - (a) if the assessment were made, payment of the assessed amount would cause serious hardship to the person; or
 - (b) there are other special reasons that make it fair and reasonable to defer making the assessment.
- (5) The *Commissioner may defer making the assessment for any period that he or she thinks appropriate.
- (6) The *Commissioner must, as soon as practicable after an application is made under this section:
 - (a) consider the matter to which the application relates; and
 - (b) notify the applicant of the Commissioner's decision on the application.

Note: Deferrals of making assessments, or refusals of applications, are reviewable under Part 5-7.

154-50 Commissioner may amend assessments

- (1) A person may apply in writing to the *Commissioner for an amendment of an assessment made in respect of the person under section 154-35 so that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-2 Discharge of indebtedness

Division 154 How is indebtedness compulsorily discharged?

Section 154-55

- (a) the amount payable under the assessment is reduced; or
 - (b) no amount is payable under the assessment.
- (2) The application:
- (a) must be made no later than 2 years after the end of the *income year to which the assessment relates; or
 - (b) must specify the reasons justifying a later application.
- (3) The *Commissioner may, on application by a person under this section, amend an assessment made in respect of the person under section 154-35 so that:
- (a) the amount payable under the assessment is reduced; or
 - (b) no amount is payable under the assessment;
- if the Commissioner is of the opinion that:
- (c) payment of the assessed amount has caused or would cause serious hardship to the person; or
 - (d) there are other special reasons that make it fair and reasonable to make the amendment.
- (4) The *Commissioner must, as soon as practicable after an application is made under this section:
- (a) consider the matter to which the application relates; and
 - (b) notify the applicant of the Commissioner's decision on the application.

Note: Amendments of assessments, or refusals of applications, are reviewable under Part 5-7.

154-55 Higher education providers etc. to provide information to Commissioner

- (1) A higher education provider must give to the *Commissioner, if asked by the Commissioner to do so, any information:
- (a) that is in its possession relating to students who have applied for:
 - (i) *HECS-HELP assistance or *FEE-HELP assistance for a unit of study; or
 - (ii) *OS-HELP assistance in relation to a period of 6 months; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) that the Commissioner reasonably requires for the purposes of this Chapter.
- (2) *Open Universities Australia must give to the *Commissioner, if asked by the Commissioner to do so, any information:
 - (a) that is in its possession relating to students who have applied for *FEE-HELP assistance for a unit of study; and
 - (b) that the Commissioner reasonably requires for the purposes of this Chapter.

Subdivision 154-D—Application of tax legislation

154-60 Returns, assessments, collection and recovery

Subject to this Part:

- (a) Part IV of the *Income Tax Assessment Act 1936*; and
- (aa) Division 5 of the *Income Tax Assessment Act 1997*; and
- (b) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*;

apply, so far as they are capable of application, in relation to a *compulsory repayment amount of a person as if it were *income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

154-65 Charges and civil penalties for failing to meet obligations

- (1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:
 - (a) any *compulsory repayment amount of a person were *income tax payable by the person in respect of the *income year in respect of which the assessment of that debt was made; and
 - (b) this Chapter, and Part 5-5, were *income tax laws.
- (2) Subsection (1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-70 Pay as you go (PAYG) withholding

Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of amounts of a *compulsory repayment amount of a person as if the compulsory repayment amount were *income tax.

154-80 Pay as you go (PAYG) instalments

Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of a *compulsory repayment amount of a person as if the compulsory repayment amount were *income tax.

154-85 Reduction of compulsory repayment amount by HECS-HELP benefit

- (1) This section applies if the *Commissioner has determined, in respect of a person, an amount of *HECS-HELP benefit under section 157-20 for an *income year.
- (2) For the purposes of this Subdivision, a *compulsory repayment amount of a person in respect of an *income year is to be reduced by the amount of *HECS-HELP benefit determined by the *Commissioner in respect of the person for that year.

Note: If a determination is reviewed, a reference to the determination includes a reference to the decision on review, see section 157-30.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 157—HECS-HELP benefit

Subdivision 157-A—Who is eligible for the HECS-HELP benefit?

157-1 Application for the HECS-HELP benefit

A person may apply to the *Commissioner for the *HECS-HELP benefit in respect of an *income year if:

- (a) the HECS-HELP Benefit Guidelines set out eligibility requirements for the HECS-HELP benefit; and
- (b) the person satisfies those eligibility requirements.

157-5 Form of application

An application for the *HECS-HELP benefit must:

- (a) be in writing; and
- (b) be in the form required by the HECS-HELP Benefit Guidelines; and
- (c) provide all the information, and be accompanied by any documents, required by the HECS-HELP Benefit Guidelines.

157-10 Providing application to Commissioner

An application must be made in the manner, and within the time, specified in the HECS-HELP Benefit Guidelines.

Subdivision 157-B—What is the amount of the HECS-HELP benefit?

157-15 Amount of HECS-HELP benefit

- (1) The amount of the *HECS-HELP benefit for an *income year is the amount specified in, or worked out in accordance with, the HECS-HELP Benefit Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 157-20

- (2) If an amount is required to be paid under section 154-1 for an *income year, the amount of the *HECS-HELP benefit for that year must not be more than the amount required to be paid for that year.

Subdivision 157-C—Determination of applications

157-20 Commissioner must determine application

- (1) If a person applies for the *HECS-HELP benefit for an *income year, the *Commissioner must determine:
- (a) whether the person is eligible for the benefit for the year; and
 - (b) if the person is eligible—the amount of the benefit, worked out in accordance with the HECS-HELP Benefit Guidelines.

Note: A determination is reviewable under Part 5-7.

- (2) A determination made under subsection (1) is not a legislative instrument.

157-25 Notifying applicant of determination

The *Commissioner must notify the applicant, in writing, of his or her determination. The notice must be given within the time specified in the HECS-HELP Benefit Guidelines.

Note: Notification may also be given to a person by referring to the amount of HECS-HELP benefit in the person's notice of assessment, see subsection 154-40(2).

157-30 Review of determinations

If a determination by the *Commissioner under section 157-20 is reviewed under Part 5-7, a reference in this Part (other than this Division) to the determination includes a reference to the decision on review.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5—Administration

Division 159—Introduction

159-1 What this Chapter is about

This Chapter deals with the following administrative matters:

- payments made by the Commonwealth under this Act (see Part 5-1);
- administrative requirements that are imposed on higher education providers (see Part 5-2);
- electronic communication between higher education providers and students (see Part 5-3);
- protection of personal information gained in the administration of Chapters 3 and 4 (see Part 5-4);
- tax file numbers of students (see Part 5-5);
- indexation of certain amounts (see Part 5-6);
- reconsideration and administrative review of certain decisions (see Part 5-7).

159-5 The Administration Guidelines

Administrative matters are also dealt with in the Administration Guidelines. The provisions of this Chapter may indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Administration Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-1—Payments by the Commonwealth

Division 164—Payments by the Commonwealth

164-1 What this Part is about

This Part contains general provisions relating to how the Commonwealth makes payments under this Act.

164-5 Time and manner of payments

- (1) Amounts payable by the Commonwealth to a higher education provider or other body under this Act are to be paid in such a way, including payment in instalments, as the Minister determines.
- (2) Payments of amounts payable by the Commonwealth to a higher education provider or other body under this Act are to be made at such times as the *Secretary determines.

164-10 Advances

- (1) The *Secretary may determine that an advance is to be made to a higher education provider or other body on account of an amount that is expected to become payable under a provision of this Act to the provider or other body.
- (1A) If the advance exceeds the amount that becomes payable, an amount equal to the excess may be:
 - (a) deducted from any amount that is payable, or to be paid, to the provider or body under this Act; or
 - (b) recovered by the Commonwealth from the provider or body as a debt due to the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (1B) If the provider or other body uses the advance for a purpose other than that for which it was given, an amount equal to the advance may be:
- (a) deducted from any amount that is payable, or to be paid, to the provider or body under this Act; or
 - (b) recovered by the Commonwealth from the provider or body as a debt due to the Commonwealth.
- (2) The conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.
- (3) This section does not affect the Minister's power to determine under section 33-40 that an advance is payable to a higher education provider.

164-15 Overpayments of Commonwealth grants

An overpayment of an amount made to a higher education provider or other body under Part 2-2, 2-3 or 2-4 may, in whole or part, be:

- (a) deducted from any amount that is payable, or to be paid, to that provider or body under Part 2-2, 2-3 or 2-4; or
- (b) recovered by the Commonwealth from that provider or body as a debt due to the Commonwealth.

164-17 Overpayments of Commonwealth scholarships to students

An overpayment of an amount paid, or purportedly paid, to a person by way of a *Commonwealth scholarship under section 46-13 may, in whole or part, be:

- (a) deducted from any amount that is payable, or to be paid, to that person under that section; or
- (b) recovered by the Commonwealth from that person as a debt due to the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

164-18 Repayment of Commonwealth scholarships paid to students—breach of condition

- (1) This section applies if:
 - (a) an amount is paid to a person by way of a *Commonwealth scholarship under section 46-13; and
 - (b) the person breaches a condition of the Commonwealth scholarship.
- (2) The amount may, in whole or part, be:
 - (a) deducted from any amount that is payable, or to be paid, to that person under that section; or
 - (b) recovered by the Commonwealth from that person as a debt due to the Commonwealth.

164-20 Rounding of amounts

If an amount payable by the Commonwealth under this Act is an amount made up of dollars and cents, round the amount down to the nearest dollar.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-2—Administrative requirements on higher education providers

Division 169—Administrative requirements on higher education providers

169-1 What this Part is about

This Part imposes a number of administrative requirements on higher education providers.

Note: It is a quality and accountability requirement that a higher education provider comply with this Act: see section 19-65.

169-5 Notices

Who gets a notice?

- (1) A higher education provider must give such notices as are required by the Administration Guidelines to a person:
 - (a) who is enrolled with the provider for a unit of study; and
 - (b) who:
 - (i) is seeking Commonwealth assistance under this Act for the unit; or
 - (ii) is a *Commonwealth supported student for the unit.

Contents of notice

- (2) A notice must contain the information set out in the Administration Guidelines as information that must be provided in such a notice.

Date by which notice to be given

- (3) A notice must be given within the period set out in the Administration Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 169-10

Purpose and effect of notice

- (4) A notice under this section is given for the purpose only of providing information to a person. Any liability or entitlement of a person under this Act (including the person's *Student Learning Entitlement) is not affected by:
- (a) the failure of a higher education provider to give a notice under this section; or
 - (b) the failure of a higher education provider to give such a notice by the date required under the Administration Guidelines; or
 - (c) the notice containing an incorrect statement.

169-10 Correction of notices

Higher education provider to correct notice

- (1) If, after giving a person a notice under section 169-5, a higher education provider is satisfied that a material particular in the notice was not, or has ceased to be, correct, the provider must give a further written notice to the person setting out the correct particular.

Person may request correction of notice

- (2) A person who receives a notice from a higher education provider under section 169-5 may give to the provider a written request for the notice to be corrected in respect of a material particular if the person considers that the notice was not, or has ceased to be, correct in that particular.
- (3) The request must be given to an *appropriate officer of the provider either:
- (a) within 14 days after the day the notice was given; or
 - (b) within such further period as the provider allows for the giving of the request.
- (4) The request must:
- (a) specify the particular in the notice that the person considers is incorrect; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) specify the reasons the person has for considering that the particular is incorrect.
- (5) The making of the request does not affect any liability or entitlement of the person under this Act (including the person's *Student Learning Entitlement).

Higher education provider to process request

- (6) If a higher education provider receives a request under this section the provider must, as soon as practicable:
 - (a) determine the matter to which the request relates; and
 - (b) notify the person in writing of the provider's determination; and
 - (c) if the provider determines that a material particular in the notice was not, or has ceased to be, correct—give a further notice under subsection (1).

169-15 Charging student contribution amounts and tuition fees

- (1) A higher education provider:
 - (a) must require any student who:
 - (i) is a *Commonwealth supported student in relation to a unit of study; and
 - (ii) is enrolling in the unit with the provider; and
 - (iii) is not an *exempt student for the unit;to pay to the provider the student's *student contribution amount for the unit; and
 - (b) must not require the student to pay any of his or her *tuition fee or any other *fee for the unit.
- (1A) Despite subsection (1), a higher education provider must not require a student who is enrolling in a unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements to pay to the provider the student's *student contribution amount for the unit.
- (2) A higher education provider:
 - (a) must require any *domestic student who:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-2 Administrative requirements on higher education providers

Division 169 Administrative requirements on higher education providers

Section 169-20

- (i) is not a *Commonwealth supported student in relation to a unit of study; and
 - (ii) is enrolling in the unit with the provider; and
 - (iii) is not an *exempt student for the unit;
- to pay to the provider the student's *tuition fee for the unit; and
- (b) must not require any domestic student to pay any other *fee, or any of his or her *student contribution amount, for the unit.
- (2A) Despite subsection (2), a higher education provider must not require a domestic student who is enrolling in a unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements to pay to the provider the student's *tuition fee for the unit.
- (3) However (unless subsection (4) applies), a higher education provider must repay to a person any payment of his or her *student contribution amount or *tuition fee for a unit of study that the person made on or before the *census date for the unit if the person is no longer enrolled in the unit at the end of the census date.
- Note: Other provisions about student contribution amounts and tuition fees are set out in Subdivision 19-F and Parts 2-2 and 3-2.
- (4) Subsection (3) does not apply if:
- (a) the student is no longer enrolled in the unit at the end of the census date because the provider has ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (b) the *tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (c) the student chose the option designated under those requirements as course assurance in relation to the unit.

169-20 Exempt students

- (1) The Minister may determine in writing that all students, or students of a specified kind, are exempt from payment of their *student contribution amounts and *tuition fees for:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) any units of study undertaken as part of a specified *course of study; or
- (b) any units of study undertaken as part of a course of study of a specified kind.

A student, or a student of such a kind, (as the case requires) is an ***exempt student*** for those units.

- (2) The Administration Guidelines may provide that:

- (a) in all circumstances; or
- (b) in the circumstances specified in those guidelines;

all students are exempt from payment of their *student contribution amounts and *tuition fees for any units of study that wholly consist of *work experience in industry. A student is, or is in those specified circumstances, (as the case requires) an ***exempt student*** for such units.

- (3) A student is an ***exempt student*** for a unit of study undertaken with a higher education provider as part of a *course of study with that provider if:

- (a) the provider has awarded the student an exemption scholarship for the course; and
- (b) the provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines.

- (3A) A student is an ***exempt student*** for a unit of study undertaken with one higher education provider as part of a *course of study with another (the ***home provider***) if:

- (a) the home provider has awarded the student an exemption scholarship for the course; and
- (b) the home provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines; and
- (c) the student must undertake the unit, because it is required to complete the course.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 169-25

- (3B) A student is an *exempt student* for a unit of study undertaken with one higher education provider (the *host provider*) as part of a *course of study undertaken with another if:
- (a) the host provider has awarded the student an exemption for the unit; and
 - (b) the host provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines.
- (4) Without limiting the matters that may be specified in the Administration Guidelines for the purposes of paragraph (3)(b), those matters may include one or both of the following:
- (a) the maximum number of exemption scholarships that a particular higher education provider may award in respect of a year;
 - (b) which students are eligible to receive exemption scholarships.

169-25 Determining census dates and EFTSL values

- (1) A higher education provider must, for each unit of study it provides or proposes to provide during a period ascertained in accordance with the Administration Guidelines, determine, for that period:
- (a) a particular date to be the *census date for the unit; and
 - (b) the *EFTSL value for the unit.
- Note: If a higher education provider provides the same unit over different periods, the unit is taken to be a different unit of study in respect of each period. Therefore the provider will have to determine a separate census date, and a separate EFTSL value, in respect of each period.
- (2) A date determined under paragraph (1)(a) must not occur less than 20% of the way through the period during which the unit is undertaken.
- (3) The provider must publish:
- (a) the *census date for the unit by the date ascertained in accordance with, and in the manner specified in, the Administration Guidelines; and
 - (b) the *EFTSL value for the unit by the date ascertained in accordance with, and in the manner specified in, the Administration Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Variations

- (4) The provider must not vary the *census date for the unit, or the *EFTSL value for the unit, after publication under subsection (3), unless the provider:
 - (a) does so:
 - (i) before the date ascertained in accordance with the Administration Guidelines; and
 - (ii) in circumstances specified in the Administration Guidelines; or
 - (b) does so with the written approval of the Minister.
- (5) If paragraph (4)(a) applies, the provider must publish the variation by the date ascertained in accordance with, and in the manner specified in, the Administration Guidelines.
- (6) If paragraph (4)(b) applies, the provider must publish the variation by the date, and in the manner, specified by the Minister in the approval.

169-30 Communications with the Commonwealth concerning students etc.

In communications under, or for the purposes of, this Act between the Commonwealth and a higher education provider concerning a person who:

- (a) is enrolled, or seeking to enrol, in a unit of study with the provider; and
- (b) has indicated that the person is seeking Commonwealth assistance under this Act for the unit, or is a *Commonwealth supported student for the unit;

the provider must use any identifier for that person that the *Secretary has indicated must be used in such communications.

169-35 6 week cut off for corrections affecting entitlement to Commonwealth assistance

If:

- (a) more than 6 weeks after the *census date for a unit of study undertaken with a higher education provider, a person gives

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-2 Administrative requirements on higher education providers

Division 169 Administrative requirements on higher education providers

Section 169-35

the provider information in writing (the *correct information*) that establishes that information contained in or accompanying the person's *request for Commonwealth assistance was incorrect; and

(b) the correct information establishes that the person was entitled to a particular kind of Commonwealth assistance; this Act applies as if the person had never been entitled to that particular Commonwealth assistance.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-3—Electronic communications

Division 174—Electronic communications

174-1 What this Part is about

Certain documents that this Act requires or permits to be given between students and higher education providers may be transmitted electronically.

174-5 Guidelines may deal with electronic communications

- (1) The Administration Guidelines may make provision for or in relation to requiring or permitting information or documents to be given by students to higher education providers, or by higher education providers to students, in accordance with particular information technology requirements:
 - (a) on a particular kind of data storage device; or
 - (b) by means of a particular kind of electronic communication.
- (2) The Administration Guidelines may make provision for or in relation to requiring, in relation to an electronic communication from a student to a higher education provider:
 - (a) that the communication contain an electronic signature (however described); or
 - (b) that the communication contain a unique identification in an electronic form; or
 - (c) that a particular method be used to identify the originator of the communication and to indicate the originator's approval of the information communicated.
- (3) The reference in subsection (1) to giving information includes a reference to anything that is ***giving information*** for the purposes of section 9 of the *Electronic Transactions Act 1999*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) In this section:

data storage device has the same meaning as in the *Electronic Transactions Act 1999*.

electronic communication has the same meaning as in the *Electronic Transactions Act 1999*.

information has the same meaning as in the *Electronic Transactions Act 1999*.

information technology requirements has the same meaning as in the *Electronic Transactions Act 1999*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-4—Protection of personal information

Division 179—Protection of personal information

179-1 What this Part is about

An officer who discloses, copies or records personal information otherwise than in the course of official employment, or causes unauthorised access to or modification of personal information, commits an offence.

179-5 Meaning of *personal information*

Personal information is:

- (a) information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (b) obtained or created by an *officer for the purposes of Chapter 2 or Chapters 3 and 4.

179-10 Use of personal information

An *officer commits an offence if:

- (a) the officer either:
 - (i) discloses information; or
 - (ii) makes a copy or other record of information; and
- (b) the information is *personal information; and
- (c) the information was acquired by the officer in the course of the officer's *official employment; and
- (d) the disclosure did not occur, or the copy or record was not made, in the course of that official employment.

Penalty: Imprisonment for 2 years.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

179-15 Meanings of *officer* etc. and *official employment*

Meaning of officer

- (1) A person is an *officer* if:
 - (a) the person is or was a *Commonwealth officer (see subsection (2)); or
 - (b) the person is or was an *officer of a higher education provider (see subsection (3)); or
 - (c) the person is or was an *officer of Open Universities Australia (see subsection (3A)); or
 - (d) the person is or was an *officer of a Tertiary Admission Centre (see subsection (3B)).
- (2) A *Commonwealth officer* is a person who holds office under, or is employed by, the Commonwealth, and includes the following:
 - (a) a person appointed or engaged under the *Public Service Act 1999*;
 - (b) a person permanently or temporarily employed:
 - (i) in the Public Service of a Territory (other than the Northern Territory); or
 - (ii) in, or in connection with, the Defence Force; or
 - (iii) in the Service of any authority or body constituted by or under a law of the Commonwealth or of a Territory (other than the Northern Territory);
 - (c) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);
 - (d) a person who, although not holding office under, or employed by:
 - (i) the Commonwealth; or
 - (ii) a Territory (other than the Northern Territory); or
 - (iii) any authority or body constituted by or under a law of the Commonwealth or of a Territory (other than the Northern Territory);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- performs services for or on behalf of the Commonwealth, a Territory (other than the Northern Territory), or such an authority or body;
- (e) a person who is an employee of the Australian Postal Corporation;
 - (f) a person who performs services for or on behalf of the Australian Postal Corporation;
 - (g) an employee of a person who performs services for or on behalf of the Australian Postal Corporation.
- (3) A person is an ***officer of a higher education provider*** if the person is:
- (a) an officer or employee of the provider; or
 - (b) a person who, although not an officer or employee of the provider, performs services for or on behalf of the provider.
- (3A) A person is an ***officer of Open Universities Australia*** if the person is:
- (a) an officer or employee of *Open Universities Australia; or
 - (b) a person who, although not an officer or employee of Open Universities Australia, performs services for or on behalf of Open Universities Australia.
- (3B) A person is an ***officer of a Tertiary Admission Centre*** if the person is:
- (a) an officer or employee of the *Tertiary Admission Centre; or
 - (b) a person who, although not an officer or employee of the Tertiary Admission Centre, performs services for or on behalf of the Tertiary Admission Centre.

Meaning of official employment

- (4) ***Official employment*** of an *officer is:
- (a) for a *Commonwealth officer—the performance of duties or functions, or the exercise of powers, under, or for the purposes of, this Act; or
 - (b) for an *officer of a higher education provider—service as such an officer; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 179-20

- (c) for an *officer of Open Universities Australia—service as such an officer; or
- (d) for an *officer of a Tertiary Admission Centre—service as such an officer.

179-20 When information is disclosed in the course of official employment

Without limiting the matters that are disclosures that occur in the course of an *officer's *official employment for the purposes of paragraph 179-10(d), the following disclosures are taken to be disclosures that occur in the course of an officer's official employment:

- (a) disclosure by a *Commonwealth officer of *personal information to another Commonwealth officer to assist that other officer in the other officer's official employment;
- (b) disclosure by an officer of personal information to the Administrative Appeals Tribunal in connection with a *reviewable decision;
- (c) disclosure by a Commonwealth officer of personal information to an *officer of a higher education provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (ca) disclosure by a Commonwealth officer of personal information to an *officer of Open Universities Australia to assist *Open Universities Australia in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (cb) disclosure by a Commonwealth officer of personal information to an *officer of a Tertiary Admission Centre to assist the officer of the Tertiary Admission Centre in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (d) disclosure by an officer of a higher education provider of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (e) disclosure by an officer of Open Universities Australia of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (ea) disclosure by an officer of a Tertiary Admission Centre of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (f) disclosure by an officer of Open Universities Australia of personal information to an officer of a higher education provider to assist the provider's officer in performing duties or functions or in exercising powers, under, or for the purposes of, this Act;
- (g) disclosure by an officer of a higher education provider of personal information to an officer of Open Universities Australia to assist the officer of Open Universities Australia in performing duties or functions or in exercising powers, under, or for the purposes of, this Act;
- (h) disclosure by an officer of a higher education provider of personal information to an officer of a Tertiary Admission Centre to assist the officer of the Tertiary Admission Centre in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (i) disclosure by an officer of a Tertiary Admission Centre of personal information to an officer of a higher education provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act.

179-25 Commissioner may disclose information

- (1) Despite anything in an Act of which the *Commissioner has the general administration, the Commissioner, or a person authorised by the Commissioner, may communicate *personal information to an *officer for use by that officer:
 - (a) in the case of a *Commonwealth officer—in the course of the officer's *official employment; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 179-30

- (b) in the case of an *officer of a higher education provider—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act; or
 - (c) in the case of an *officer of Open Universities Australia—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act; or
 - (d) in the case of an *officer of a Tertiary Admission Centre—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act.
- (2) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the *Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this section applies to a communication of *personal information.

179-30 Oath or affirmation to protect information

- (1) An *officer must, if and when required by the *Secretary or the *Commissioner to do so, make an oath or affirmation to protect information in accordance with this Part.
- (2) The *Secretary may determine, in writing:
 - (a) the form of the oath or affirmation that the Secretary will require; and
 - (b) the manner in which the oath or affirmation must be made.
- (3) The *Commissioner may determine, in writing:
 - (a) the form of the oath or affirmation that the Commissioner will require; and
 - (b) the manner in which the oath or affirmation must be made.

179-35 Unauthorised access to, or modification of, personal information

- (1) A person commits an offence if:
 - (a) the person causes any unauthorised access to, or modification of, *personal information that is:
 - (i) held in a computer; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) to which access is restricted by an access control system associated with a function of the computer; and
- (b) the person intends to cause the access or modification; and
- (c) the person knows that the access or modification is unauthorised; and
- (d) one or more of the following apply:
 - (i) the personal information is held in a computer of a higher education provider;
 - (ii) the personal information is held on behalf of a provider;
 - (iii) the personal information is held in a computer of *Open Universities Australia;
 - (iv) the personal information is held on behalf of Open Universities Australia;
 - (v) the personal information is held on a computer of a *Tertiary Admission Centre;
 - (vi) the personal information is held on behalf of a Tertiary Admission Centre.

Penalty: 2 years imprisonment.

- (2) Absolute liability applies to paragraph (1)(d).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-5—Tax file numbers

Division 184—Introduction

184-1 What this Part is about

Requirements relating to students' tax file numbers apply to assistance under Chapter 3 that gives rise to HELP debts.

The Commissioner may notify higher education providers, or where appropriate Open Universities Australia, of matters relating to tax file numbers.

Higher education providers, and where appropriate Open Universities Australia, have obligations relating to notifying students about tax file number requirements.

Higher education providers have obligations relating to cancelling the enrolment of students who do not have tax file numbers.

Note: Part VA of the *Income Tax Assessment Act 1936* provides for issuing, cancelling or altering tax file numbers.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 187—What are the tax file number requirements for assistance under Chapter 3?**187-1 Meeting the tax file number requirements**

- (1) A student who is enrolled, or proposes to enrol, with a higher education provider in a unit of study access to which was not provided by *Open Universities Australia, ***meets the tax file number requirements*** for assistance under Chapter 3 if:
 - (a) the student notifies his or her *tax file number to an *appropriate officer of the provider, and the provider is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.
- (1AA) Compliance by a person with subsection (1) in relation to a *course of study is to be ignored in determining whether there has been compliance by the person with subsection (1) in relation to any other course of study.
- (1A) A student who accesses, or proposes to access, a unit of study through *Open Universities Australia, ***meets the tax file number requirements*** for assistance under Chapter 3 if:
 - (a) the student notifies his or her *tax file number to an *appropriate officer of Open Universities Australia, and Open Universities Australia is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.
- (2) If the student is seeking *HECS-HELP assistance or *FEE-HELP assistance for a unit of study, he or she does not meet the tax file number requirements for the assistance unless he or she complies

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-5 Tax file numbers

Division 187 What are the tax file number requirements for assistance under Chapter 3?

Section 187-2

with subsection (1) or (1A) (as the case requires) on or before the *census date for the unit.

- (3) A notification under paragraph (1)(a) may be included in a *request for Commonwealth assistance that the student has given to the provider in relation to:
 - (a) the unit of study for which the assistance is sought; or
 - (b) the *course of study of which the unit forms a part; or
 - (c) any other unit of study forming part of that course.
- (3A) A notification under paragraph (1A)(a) may be included in a *request for Commonwealth assistance that the student has given to *Open Universities Australia in relation to the unit of study for which the assistance is sought.
- (4) The *Commissioner may issue guidelines about the circumstances in which:
 - (a) a higher education provider is to be, or is not to be, satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(a); and
 - (b) *Open Universities Australia is to be, or is not to be, satisfied that a number is a valid tax file number for the purposes of paragraph (1A)(a).
- (5) A certificate under paragraph (1)(b) must be in a form approved by the *Commissioner.
- (6) A certificate under paragraph (1A)(b) must be in a form approved by the *Commissioner.
- (7) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

187-2 Who is an appropriate officer?

- (1) An *appropriate officer* of a higher education provider, means a person, or a person included in a class of persons, whom:
 - (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 187-5

has appointed to be an appropriate officer of the provider for the purposes of this Act.

- (2) An *appropriate officer* of *Open Universities Australia, means a person, or a person included in a class of persons, whom:
- (a) the chief executive officer of Open Universities Australia; or
 - (b) a delegate of the chief executive officer of Open Universities Australia;
- has appointed to be an appropriate officer of Open Universities Australia for the purposes of this Act.

187-5 Student to notify tax file number when issued

- (1) If a student *meets the tax file number requirements for the assistance under paragraph 187-1(1)(b):
- (a) the student must notify his or her *tax file number to an *appropriate officer of the higher education provider within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
 - (b) the provider must be satisfied (in accordance with subsection 187-1(4)) that this number is a valid *tax file number.
- (2) If a student *meets the tax file number requirements for assistance under paragraph 187-1(1A)(b):
- (a) the student must notify his or her *tax file number to an *appropriate officer of *Open Universities Australia within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
 - (b) Open Universities Australia must be satisfied (in accordance with subsection 187-1(4)) that this number is a valid *tax file number.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 190—In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters?

190-1 When tax file numbers are issued etc.

- (1) The *Commissioner may give to a higher education provider written notice of the *tax file number of a student who is enrolled in a *course of study with the provider if the Commissioner:
 - (a) issues the tax file number to the student; or
 - (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.
- (2) The *Commissioner may give to *Open Universities Australia written notice of the *tax file number of a student to whom Open Universities Australia provides access to a unit of study if the Commissioner:
 - (a) issues the tax file number to the student; or
 - (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.

190-5 When tax file numbers are altered

- (1) The *Commissioner may give to a higher education provider written notice of the *tax file number of a student who is enrolled in a *course of study with the provider if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn.
- (2) That new number is taken to be the number that the student notified to the provider.
- (3) The *Commissioner may give to *Open Universities Australia written notice of the *tax file number of a student to whom Open Universities Australia provides access to a unit of study if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters? **Division 190**

Section 190-10

- (4) That new number is taken to be the number that the student notified to *Open Universities Australia.

190-10 When tax file numbers are incorrectly notified—students with tax file numbers

- (1) If the *Commissioner is satisfied:
- (a) that the *tax file number that a student has notified to a higher education provider:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and
 - (b) that the student has a tax file number;
- the Commissioner may give to the provider written notice of the incorrect notification and of the student's tax file number.
- (2) That number is taken to be the number that the student notified to the provider.
- (3) If the *Commissioner is satisfied:
- (a) that the *tax file number that a student has notified to *Open Universities Australia:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and
 - (b) that the student has a tax file number;
- the Commissioner may give to Open Universities Australia written notice of the incorrect notification and of the student's tax file number.
- (4) That number is taken to be the number that the student notified to *Open Universities Australia.

190-15 When tax file numbers are incorrectly notified—students without tax file numbers

- (1) If:
- (a) the *Commissioner is satisfied that the *tax file number that a student notified to a higher education provider:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-5 Tax file numbers

Division 190 In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters?

Section 190-20

- (i) has been cancelled since the notification was given; or
 - (ii) is for any other reason not the student's tax file number;
and
 - (b) the Commissioner is not satisfied that the student has a tax file number;
the Commissioner may give to the provider a written notice informing the provider accordingly.
- (1A) If:
- (a) the *Commissioner is satisfied that the *tax file number that a student notified to *Open Universities Australia:
 - (i) has been cancelled since the notification was given; or
 - (ii) is for any other reason not the student's tax file number;
and
 - (b) the Commissioner is not satisfied that the student has a tax file number;
the Commissioner may give Open Universities Australia a written notice informing Open Universities Australia accordingly.
- (2) The *Commissioner must give a copy of any notice under subsection (1) or (1A) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) or (1A) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

190-20 When applications are refused or tax file numbers are cancelled

- (1) If the *Commissioner:
- (a) refuses a student's application for the issue of a *tax file number; or
 - (b) cancels a tax file number issued to a student;
the Commissioner may give to a higher education provider with which the student is enrolled in a *course of study a written notice informing the provider accordingly.
- (1A) If the *Commissioner:
- (a) refuses a student's application for the issue of a *tax file number; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters? **Division 190**

Section 190-20

- (b) cancels a tax file number issued to a student;
the Commissioner may, if access to a unit of study is provided to the student by *Open Universities Australia, give to Open Universities Australia written notice informing Open Universities Australia accordingly.
- (2) The *Commissioner must give a copy of any notice under subsection (1) or (1A) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) or (1A) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 193—Other provisions relating to tax file numbers

193-1 Giving information about tax file number requirements

Requests for HECS-HELP assistance or FEE-HELP assistance—requirements on higher education providers

- (1) A higher education provider must notify a person in writing how to *meet the tax file number requirements if:
 - (a) the person is enrolled in a unit of study with the provider; and
 - (b) the person has, on or before the *census date for the unit, completed, signed and given to the *appropriate officer of the provider a *request for Commonwealth assistance in relation to the unit or, where the *course of study of which the unit forms a part is undertaken with the provider, in relation to the course of study;
 - (c) in that request, the person requests *HECS-HELP assistance or *FEE-HELP assistance for the unit or the course; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2) The provider must notify the person under subsection (1):
 - (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives the provider the *request for Commonwealth assistance;whichever is earlier.

Requests for FEE-HELP assistance—requirements on Open Universities Australia

- (2A) *Open Universities Australia must notify a person in writing how to *meet the tax file number requirements if:
 - (a) Open Universities Australia provides access to a unit of study to the person; and
 - (b) the person has, on or before the *census date for the unit, completed, signed and given to an *appropriate officer of

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- Open Universities Australia a *request for Commonwealth assistance in relation to the unit; and
- (c) in that request, the person requests *FEE-HELP assistance for the unit; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2B) *Open Universities Australia must notify the person under subsection (2A):
- (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives Open Universities Australia the *request for Commonwealth assistance; whichever is earlier.
- (2C) A ***request for Commonwealth assistance***, in relation to a person to whom *Open Universities Australia provides access to a unit of study, means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit; and
 - (b) that is in the form approved by the Minister.

Requests for OS-HELP assistance

- (3) A higher education provider must notify a person in writing how to *meet the tax file number requirements if:
- (a) the person is enrolled in a *course of study with the provider; and
 - (b) the person has, before receiving *OS-HELP assistance, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance; and
 - (c) in that request, the person requests OS-HELP assistance in relation to a period of 6 months; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (4) The provider must notify the person under subsection (3) within 7 days after the person gives the provider the *request for Commonwealth assistance.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 193-5

Cases where there is no obligation to notify

- (5) This section does not apply to the person if:
- (a) the person, in the *request for Commonwealth assistance, requests *HECS-HELP assistance, *FEE-HELP assistance or *OS-HELP assistance, but the person is not entitled to the assistance; or
 - (b) the person, in the request for Commonwealth assistance, requests HECS-HELP assistance in relation to a unit of study, but one or more *up-front payments for the unit have been made totalling 80% of the person's *student contribution amount for the unit.

Note: In the circumstances set out in paragraph (5)(b), the HECS-HELP assistance would not involve any loan by the Commonwealth to the person.

193-5 No entitlement to HECS-HELP assistance for students without tax file numbers

- (1) A higher education provider must cancel a person's enrolment in a unit of study with the provider if:
- (a) the provider receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and
 - (b) at the end of 28 days after the provider receives that notice, the provider has not been notified of a number that the provider is satisfied (in accordance with subsection (3)) is a valid tax file number; and
 - (c) the person is entitled to *HECS-HELP assistance for the unit (ignoring paragraph 90-1(f)); and
 - (d) the person has not paid, as one or more *up-front payments in relation to the unit, 80% of his or her *student contribution amount for the unit.

Note 1: If the unit does not wholly consist of work experience in industry, the person's SLE in relation to the unit is re-credited: see section 79-25.

Note 2: If the unit wholly consists of work experience in industry, the provider has certain payment obligations: see section 36-23.

- (2) The provider must not accept a further enrolment of the person in that unit as a *Commonwealth supported student.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) A higher education provider must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(b), comply with the guidelines issued by the *Commissioner under subsection 187-1(4).
- (4) A higher education provider must comply with any requirements, set out in guidelines issued by the *Commissioner, relating to procedures for informing persons who may be affected by subsection (1) or (3) of the need to obtain a valid *tax file number.
- (5) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

193-10 No entitlement to FEE-HELP assistance for students without tax file numbers

- (1) This subsection applies to a person in relation to a unit of study if:
 - (a) the person is enrolled with a higher education provider in the unit; and
 - (b) access to the unit was not provided by *Open Universities Australia; and
 - (c) the provider receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and
 - (d) at the end of 28 days after the provider receives that notice, the provider has not been notified of a number that the provider is satisfied (in accordance with subsection (3)) is a valid tax file number; and
 - (e) the person is entitled to *FEE-HELP assistance for the unit (ignoring paragraph 104-1(1)(h)).

Note: The person's FEE-HELP balance in relation to the unit is re-credited: see subsection 104-27(1).

- (2) This subsection applies to a person in relation to a unit of study if:
 - (a) the person is enrolled in the unit; and
 - (b) access to the unit was provided by *Open Universities Australia; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 193-10

- (c) Open Universities Australia receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and
- (d) at the end of 28 days after Open Universities Australia receives that notice, Open Universities Australia has not been notified of a number that it is satisfied (in accordance with subsection (3)) is a valid tax file number; and
- (e) the person is entitled to *FEE-HELP assistance for the unit (ignoring paragraph 104-1(1)(h)).

Note: The person's FEE-HELP balance in relation to the unit is re-credited: see subsection 104-27(2).

- (3) A higher education provider or *Open Universities Australia must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(d) or (2)(d), as the case may be, comply with the guidelines issued by the *Commissioner under subsection 187-1(4).
- (4) A higher education provider or *Open Universities Australia must comply with any requirements, set out in guidelines issued by the *Commissioner, relating to procedures for informing persons of the need to obtain a valid *tax file number, where the persons may be affected by subsection (1) or (2), as the case may be, applying to them.
- (5) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-6—Indexation

Division 198—Indexation

198-1 What this Part is about

Several amounts referred to in provisions of this Act are indexed. This Part sets out how those amounts are indexed.

Note 1: Different methods of indexation are used for the indexing of accumulated HELP debts under sections 140-10 and 140-15, and for the indexing of HELP repayment thresholds under section 154-25.

Note 2: Guidelines may provide for amounts to be indexed using the method of indexation set out in this Part.

198-5 The amounts that are to be indexed

This table sets out the amounts that are to be indexed.

Amounts that are to be indexed		
Item	Amounts:	See:
1	*Commonwealth contribution amounts	Section 33-10
2	Reduction amount	Section 33-37
3	*Maximum student contribution amounts for places	Section 93-10
4	The *FEE-HELP limit	Section 104-20
5	The *maximum OS-HELP amount	Section 121-5

198-10 Indexing amounts

- (1) An amount is indexed on 1 January 2012, and on each subsequent 1 January, by multiplying it by the *indexation factor for the relevant year.
- (2) However an amount is not indexed if its *indexation factor is 1 or less.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 198-15

- (3) If an amount worked out under subsection (1) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

198-15 Meaning of *indexation factor*

- (1) The *indexation factor* for the relevant year is:

$$\frac{\text{The *index number for the relevant year}}{\text{The *index number for the year immediately preceding the relevant year}}$$

- (2) Work out the *indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it is rounded up to 1.103.

198-20 Meaning of *index number*

- (1) For the purpose of applying section 198-10 to the amounts specified in the table in section 198-5 for a year, the *index number* is the Higher Education Grants Index number for the year published by the Minister in the *Gazette*.
- (2) The Higher Education Grants Index number for a year must reflect the following amounts:
- (a) 25% of the amount of the movement in the All Groups Consumer Price Index for the weighted average of the 8 capital cities, based on index numbers published by the *Australian Statistician for each *quarter in the *indexation period;
 - (b) 75% of 90% of the amount of the movement in the Professional, Scientific and Technical Services Labour Price Index, based on index numbers published by the Australian Statistician for each quarter in the indexation period.
- (3) Subject to subsection (4), if, at any time before or after the commencement of this subsection:
- (a) the *Australian Statistician has published or publishes an index number in respect of a *quarter; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;
regard may be had to the publication of the later index for the purposes of calculating the Higher Education Grants Index number for a year.
- (4) If, at any time before or after the commencement of this subsection, the *Australian Statistician has changed or changes the reference base for the All Groups Consumer Price Index or the Professional, Scientific and Technical Services Labour Price Index, then, for the purposes of applying this section after the change took place or takes place, have regard to index numbers published in terms of the new reference base.
- (5) For the purpose of applying section 198-10 to the amounts specified in each item of the table in section 198-5 for 2012, the ***index number*** for 2011 is taken to be 1.
- (6) A notice in the *Gazette* specifying an index number is not a legislative instrument.
- (7) In this section:
indexation period, in relation to a calendar year, means the period beginning on 1 January 2010 and ending on 31 December of the calendar year before the immediately preceding calendar year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-7—Review of decisions

Division 203—Introduction

203-1 What this Part is about

Some decisions made under this Act are subject to reconsideration and then review by the Administrative Appeals Tribunal.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 206—Which decisions are subject to review?

206-1 Reviewable decisions etc.

The table sets out:

- (a) the *reviewable decisions* under this Act; and
- (b) the *decision maker*, for the purposes of this Division, in respect of each of those decisions.

Reviewable decisions			
Item	Decision	Provision under which decision is made	Decision maker
1A	A decision that section 36-22 does not apply to a person	section 36-22	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision that the section does not apply—the Secretary
1	Refusal to re-credit some or all of a person's *student learning entitlement for a unit of study	section 79-1	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-7 Review of decisions

Division 206 Which decisions are subject to review?

Section 206-1

Reviewable decisions			
Item	Decision	Provision under which decision is made	Decision maker
2	Refusal to re-credit a person's *FEE-HELP balance	subsection 104-25(1)	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary
2A	Refusal to re-credit a person's *FEE-HELP balance	subsection 104-25(2)	(a) *Open Universities Australia; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary
3	Deferral of making an assessment or refusal to defer the making of an assessment	section 154-45	the *Commissioner
4	Amending the assessment or refusal to amend an assessment	section 154-50	the *Commissioner
4A	A determination	section 157-20	the *Commissioner
5	A decision under Division 225 (other than section 225-25), in relation to an external Territory	Division 225 (other than section 225-25)	the Minister

Note 1: The decisions referred to in items 1A, 1 and 2 of the table are made by a higher education provider on the Secretary's behalf.

Note 2: The decisions referred to in item 2A of the table are made by Open Universities Australia on the Secretary's behalf.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

206-5 Deadlines for making reviewable decisions

If:

- (a) this Act provides for a person to apply to a *decision maker to make a *reviewable decision; and
 - (b) a period is specified under this Act for giving notice of the decision to the applicant; and
 - (c) the decision maker has not notified the applicant of the decision maker's decision within that period;
- the decision maker is taken, for the purposes of this Act, to have made a decision to reject the application.

206-10 Decision maker must give reasons for reviewable decisions

- (1) If this Act requires the *decision maker to notify a person of the making of a *reviewable decision, the notice must include reasons for the decision.
- (2) Subsection (1) does not affect an obligation, imposed upon the *decision maker by any other law, to give reasons for a decision.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 209—How are decisions reconsidered?

209-1 Reviewer of decisions

- (1) The *reviewer* of a *reviewable decision is:
- (a) if the *decision maker was a higher education provider acting on behalf of the *Secretary—the Secretary; or
 - (b) if the *decision maker was *Open Universities Australia acting on behalf of the *Secretary—the Secretary; or
 - (c) in any other case—the decision maker, but see subsection (2).

- (2) If:
- (a) a *reviewable decision was made by a delegate of a *decision maker; and
 - (b) the decision is to be reconsidered by a delegate of the decision maker;

then the delegate who reconsiders the decision must be a person who:

- (c) was not involved in making the decision; and
- (d) occupies a position that is senior to that occupied by any person involved in making the decision.

Note 1: The Secretary may delegate to a review officer of a higher education provider the power to reconsider reviewable decisions made under section 36-22 or Chapter 3: see subsection 238-1(2).

Note 2: The Secretary may also delegate to a review officer of Open Universities Australia the power to reconsider reviewable decisions made under Chapter 3: see subsection 238-1(2A).

209-5 Reviewer may reconsider reviewable decisions

- (1) The *reviewer of a *reviewable decision may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.
- (2) The *reviewer may reconsider the decision even if:
- (a) an application for reconsideration of the decision has been made under section 209-10; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the decision has been confirmed, varied or set aside under section 209-10 and an application has been made under section 212-1 for review of the decision.
- (3) After reconsidering the decision, the *decision maker must:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (4) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (5) The *reviewer must give written notice of the decision on review to the person to whom that decision relates.
- (6) The notice:
 - (a) must be given within a reasonable period after the decision is made; and
 - (b) must contain a statement of the reasons for the *reviewer's decision on review.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

209-10 Reconsideration of reviewable decisions on request

- (1) A person whose interests are affected by a *reviewable decision may request the *reviewer to reconsider the decision.
- (2) The person's request must be made by written notice given to the *reviewer within 28 days, or such longer period as the reviewer allows, after the day on which the person first received notice of the decision.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the *reviewer must reconsider the decision and:
 - (a) confirm the decision; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-7 Review of decisions

Division 209 How are decisions reconsidered?

Section 209-10

- (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (5A) The *reviewer must give the person written notice of the decision on review.
- (5B) The notice:
 - (a) must be given within a reasonable period after the decision on review is made; and
 - (b) must contain a statement of the reasons for the decision on review.
- (6) The *reviewer is taken, for the purposes of this Part, to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 212—Which decisions are subject to AAT review?

212-1 AAT review of reviewable decisions

An application may be made to the Administrative Appeals Tribunal for the review of a *reviewable decision that has been confirmed, varied or set aside under section 209-5 or 209-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 6—The provision of higher education in the external Territories

Division 217—Introduction

217-1 What this Chapter is about

This Chapter primarily provides for approval of universities, self-accrediting entities and non self-accrediting entities to operate in external Territories, and for accreditation of courses of study in those Territories.

217-5 The Higher Education in External Territories Guidelines

Matters relating to the provision of higher education in the external Territories are also dealt with in the Higher Education in External Territories Guidelines.

Note: The Higher Education in External Territories Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6-1—Approval and accreditation

Division 222—Introduction

222-1 What this Part is about

Certain persons (other than natural persons) may apply for approval to operate in an external Territory as a university, as a self-accrediting entity, or as a non self-accrediting entity.

All courses of study offered in an external Territory that an approved person is not authorised to accredit must be accredited by the Minister.

Persons (including natural persons) who do not have approval or accreditation under this Part may commit an offence if they operate as a university or other provider, offer higher education awards or describe themselves as universities, in an external Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 225—How does a person obtain approval and accreditation?

225-1 Application for approval and accreditation

- (1) A person (other than a natural person) who wishes to *operate in an external Territory as a university or other provider of *courses of study leading to *higher education awards, may apply in writing to the Minister:
 - (a) for any of the following:
 - (i) approval to operate as a university in relation to that Territory;
 - (ii) approval to operate as a self-accrediting entity in relation to that Territory;
 - (iii) approval to operate as a non self-accrediting entity in relation to that Territory; and
 - (b) for accreditation, in relation to that Territory, of courses of study leading to higher education awards that the person proposes to offer in that Territory and is not authorised by a *government accreditation authority to accredit.

Note: Division 228 contains offences for persons who operate as a university or other provider, offer higher education awards or describe themselves as universities, in an external Territory, without approval or accreditation under this Part.

- (2) An application under this section:
 - (a) must be in the form approved by the Minister; and
 - (b) must be accompanied by the information (if any) specified in the Higher Education in External Territories Guidelines.
- (2A) The Minister may request an applicant to give the Minister specified additional information to enable the Minister to decide the application.
- (3) The Higher Education in External Territories Guidelines may provide for matters relating to applications under this section, including matters relating to either or both of the following:
 - (a) requests by the Minister for further information;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) processes and deadlines that applicants must comply with.

225-3 Approving a person to operate as a university in relation to an external Territory

- (1) The Minister may approve a person to operate as a university in relation to an external Territory if:
- (a) the person applies for approval, under section 225-1, to operate as a university; and
 - (b) the Minister is satisfied, following an assessment made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, that it is appropriate to approve the person to operate as a university in relation to the external Territory; and
 - (c) the person's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research.

Note: Refusal to approve a person to operate as a university is reviewable under Part 5-7.

- (2) If the Minister approves a person to operate as a university in relation to an external Territory under subsection (1), he or she may, having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, approve the person's use of:
- (a) the word "university"; or
 - (b) the words "university college"; or
 - (c) any like word or words;
- for the purpose of:
- (d) identifying the person in the person's *operation in the external Territory; or
 - (e) identifying the person's operation in the external Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

225-5 Approving a person to operate as a self-accrediting entity in relation to an external Territory

- (1) The Minister may approve a person to operate as a self-accrediting entity in relation to an external Territory if:
- (a) the person applies for approval, under section 225-1, to operate as a self-accrediting entity in relation to that Territory; and
 - (b) the Minister is satisfied, following an assessment made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, that it is appropriate that the person be authorised to accredit *courses of study leading to *higher education awards in relation to that Territory; and
 - (c) the person's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research.

Note: Refusal to approve a person to operate as a self-accrediting entity is reviewable under Part 5-7.

- (2) The Minister must, having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, specify in the approval:
- (a) whether the person's authority to accredit *courses of study leading to *higher education awards in relation to that Territory is limited in any way; and
 - (b) the nature of any such limitation.

Note 1: An authority may be limited, for example, by reference to a field of study or level of qualification.

Note 2: A decision to limit an authority is reviewable under Part 5-7.

Minister may accredit courses that person is not authorised to self-accredit

- (3) If the Minister proposes to:
- (a) approve under subsection (1) a person to operate as a self-accrediting entity in relation to an external Territory; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) limit under subsection (2) the person's authority to accredit *courses of study leading to *higher education awards in relation to that Territory;

the Minister may, when approving that person, accredit any course of study, in relation to that Territory, that the person proposes to offer in that Territory but would not be authorised to accredit because of that limitation.

- (4) The Minister may only accredit a *course of study under subsection (3) in relation to an external Territory if the Minister is satisfied, following an assessment made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, that the course, and the way of delivering it, are appropriate to the award.

Note: A decision not to accredit a course of study under subsection (3) is reviewable under Part 5-7.

225-7 Approving a person to operate as a non self-accrediting entity in relation to an external Territory

The Minister may approve a person to operate as a non self-accrediting entity in relation to an external Territory if:

- (a) the person applies under section 225-1 for:
- (i) approval to operate as a non self-accrediting entity in relation to that Territory; or
 - (ii) approval to operate as a self-accrediting entity in relation to that Territory; and
- (b) the Minister is satisfied, following an assessment made having regard to the *National Protocols and the Higher Education in External Territories Guidelines, that:
- (i) if subparagraph (a)(ii) applies—it would not be appropriate to authorise the person to accredit any *courses of study leading to *higher education awards in relation to that Territory; and
 - (ii) in any case—it is appropriate that the person be authorised to offer courses of study leading to higher education awards in relation to that Territory; and
- (c) the person's principal purpose is either or both of the following:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 225-10

- (i) to provide education;
- (ii) to conduct research.

Note: Refusal to approve a person to operate as a non self-accrediting entity, or a decision to approve a person to operate as a non self-accrediting entity on application for approval to operate as a self-accrediting entity, is reviewable under Part 5-7.

225-10 Accrediting a course of study

The Minister may accredit a particular *course of study, in relation to an external Territory, as a course of study leading to a *higher education award if:

- (a) the person applies, under section 225-1, for accreditation of that course in relation to that Territory; and
- (b) the Minister is satisfied, following an assessment made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, that the course, and the way of delivering it, are appropriate to the award.

Note: Refusal to accredit a course of study is reviewable under Part 5-7.

225-15 Duration of approval and accreditation

An approval or accreditation under this Part:

- (a) remains in force for the period that the Minister determines; and
- (b) is subject to any conditions that the Minister imposes.

Note: A decision determining a period during which an approval or accreditation remains in force, or imposing conditions on an approval or accreditation, is reviewable under Part 5-7.

225-20 Amending or revoking an approval, authorisation or accreditation in relation to an external Territory

Amending or revoking an approval to operate as a university

- (1) The Minister may amend or revoke an approval of a person under section 225-3 to operate as a university in relation to an external Territory at any time if the Minister is satisfied that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the person has breached a condition to which the person's approval is subject; or
- (b) following a reassessment of the person's approval made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, the person's circumstances have so changed that it is no longer appropriate that the person be approved to operate as a university in relation to that Territory; or
- (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-3(1)(c).

Note: Amendment or revocation of an approval is reviewable under Part 5-7.

Amending or revoking an approval to use a word or words

- (2) The Minister may amend or revoke an approval for a person under section 225-3 to use a word or words in relation to an external Territory at any time if the Minister is satisfied that:
 - (a) the person has breached a condition to which the person's approval was subject; or
 - (b) following a reassessment of the person's approval made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, it is not appropriate for the person to use the word or words in relation to that Territory; or
 - (c) the person's approval under section 225-3 to operate as a university in relation to that Territory has been amended or revoked.

Note: Amendment or revocation of an approval is reviewable under Part 5-7.

Amending or revoking an approval to operate as a self-accrediting entity

- (3) The Minister may amend or revoke an approval of a person under section 225-5 to operate as a self-accrediting entity in relation to an external Territory at any time if the Minister is satisfied that:
 - (a) the person has breached a condition to which the person's approval is subject; or
 - (b) following a reassessment of the person's approval made having regard to the *National Protocols and any matters set

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 225-20

out in the Higher Education in External Territories Guidelines, the person's circumstances have so changed that:

- (i) it is no longer appropriate that the person be authorised to accredit any courses of study in relation to that Territory; or
- (ii) it is no longer appropriate that the person be authorised to accredit one or more of the courses that it is currently authorised to accredit in relation to that Territory; or
- (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-5(1)(c).

Note: Amendment or revocation of an approval is reviewable under Part 5-7.

Amending or revoking an approval to operate as a non self-accrediting entity

- (4) The Minister may amend or revoke an approval of a person under section 225-7 to operate as a non self-accrediting entity in relation to an external Territory at any time if the Minister is satisfied that:
 - (a) the person has breached a condition to which the person's approval is subject; or
 - (b) following a reassessment of the person's approval made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, the person's circumstances have so changed that it is no longer appropriate that the person be approved to operate as a non self-accrediting entity in relation to that Territory; or
 - (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-7(c).

Note: Amendment or revocation of an approval is reviewable under Part 5-7.

Amending or revoking an accreditation of a course of study

- (5) The Minister may amend or revoke an accreditation of a *course of study under section 225-5 or 225-10 in relation to an external Territory at any time if the Minister is satisfied that:
 - (a) the person *offering the course has breached a condition to which the accreditation is subject; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) following a reassessment of the accreditation made having regard to the *National Protocols and any matters set out in the Higher Education in External Territories Guidelines, the content of, or manner of providing, the course has so changed that it is no longer appropriate to the award; or
- (c) the person's approval under section 225-5 or 225-7 has been amended or revoked.

Note: Amendment or revocation of an accreditation is reviewable under Part 5-7.

Amending or revoking an approval or accreditation because false or misleading information provided in application

- (6) The Minister may amend or revoke an approval or accreditation under this Part at any time if the Minister is satisfied that information given by a person in relation to an application under section 225-1 for that approval or accreditation was false or misleading.

Note: Amendment or revocation of an accreditation is reviewable under Part 5-7.

225-25 Fees

- (1) The Higher Education in External Territories Guidelines may:
 - (a) set out fees to be paid in respect of applications made under section 225-1; and
 - (b) for that purpose, take into account such costs as are directly or indirectly incurred by, or in assisting, the Minister to make a decision on such an application; and
 - (c) set out the manner and times of payment of such fees.
- (2) A person making an application under section 225-1 must pay such fees as are provided for in the Higher Education in External Territories Guidelines at such times as the Guidelines provide.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 228—Limitations upon operations of certain persons in the external Territories

228-1 Persons without approval not to operate as universities or other provider in external Territories

- (1) A person commits an offence if:
- (a) the person *operates, or purports to operate:
 - (i) as a university, or a part of a university, providing *courses of study leading to *higher education awards; or
 - (ii) as another provider of courses of study leading to higher education awards; and
 - (b) the operation or purported operation is in an external Territory; and
 - (c) the person is not:
 - (i) an *Australian university; or
 - (ii) a *self-accrediting entity; or
 - (iii) approved to operate in that Territory by the Minister under section 225-3 or 225-7.

Penalty: 40 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

228-5 Persons without accreditation not to offer higher education awards or courses in external Territories

- (1) A person commits an offence if:
- (a) the person *offers, or purports to offer, the whole or a part of a *course of study leading to a *higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) the person is not an *Australian university or approved under section 225-3 to operate in relation to that Territory as a university; and
- (d) if the person is a *self-accrediting entity—the person is not authorised by a *government accreditation authority to accredit the course; and
- (e) the course is not accredited by the Minister under section 225-5 or 225-10 in relation to that Territory.

Penalty: 40 penalty units.

- (2) A person commits an offence if:
 - (a) the person *offers, or purports to offer, a *higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and
 - (c) the person is not an *Australian university; and
 - (d) the offer, or purported offer, of the award is not dependent on the successful completion of a *course of study leading to a higher education award.

Penalty: 40 penalty units.

- (3) A person who contravenes subsection (1) or (2) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

228-10 Persons without accreditation not to describe themselves as universities in external Territories

- (1) A person commits an offence if:
 - (a) the person uses the word “university”, “university college” or any like words (whether or not in combination with other words):
 - (i) to identify the person in the person’s operation or purported operation in an external Territory; or
 - (ii) to identify the person’s operation or purported operation in an external Territory; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 228-15

- (b) the person, or the person's operation or purported operation, as so identified, is not an *Australian university; and
- (c) the Minister has not approved the use of that word or those words under subsection 225-3(2) or section 233-1 in relation to that Territory.

Penalty: 40 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

228-15 Meanings of *operating* and *offering*

- (1A) A reference to a person *operating*, or purporting to operate, in an external Territory:

- (a) as a university, or part of a university, providing *courses of study leading to *higher education awards; or
- (b) as another provider of courses of study leading to higher education awards;

includes a reference to a person:

- (c) offering, providing, or conducting a business of offering or providing:
 - (i) the whole or a part of such courses of study in relation to that Territory; or
 - (ii) such awards in relation to that Territory; or
- (d) using premises for the purposes of operating as such a provider in relation to that Territory.

- (1) A reference to a person *operating*, or purporting to operate, in an external Territory:

- (a) as a university, or part of a university, providing *courses of study leading to *higher education awards; or
- (b) as another provider of courses of study leading to higher education awards;

includes a reference to a person operating, or purporting to operate, as such a university, part of a university or other provider in or from that Territory by any of the following means:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ca) a postal or other like service;
 - (c) a computer adapted for communicating by way of the internet or another communications network;
 - (d) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;
 - (e) a telephone;
 - (f) any other electronic device.
- (2) A reference to a person *offering*, or purporting to offer, in an external Territory, *courses of study leading to *higher education awards, includes a reference to such a person offering, or purporting to offer, such courses in or from that Territory by any of the means referred to in subsection (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 6 The provision of higher education in the external Territories

Part 6-2 Use of company names and business names

Division 233 Use of company names and business names

Section 233-1

Part 6-2—Use of company names and business names

Division 233—Use of company names and business names

233-1 Law in force in external Territory not to allow company or business names using the word “university” etc.

Despite any provision of a law in force in an external Territory that regulates the use of company names or business names in that Territory:

(a) registration, or purported registration of; or

(b) authorisation, or purported authorisation of;

any company name or business name that uses the word “university”, “university college” or any like words is of no effect unless the Minister has given written approval for the use of that name.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 7—Miscellaneous

238-1 Delegations by Secretary

- (1) The *Secretary may, in writing, delegate to an APS employee in the Department all or any of the powers of the Secretary under this Act, the regulations or any Guidelines made under section 238-10.
- (2) The *Secretary may, in writing, delegate to a *review officer of a higher education provider the Secretary's powers under Division 209 to reconsider *reviewable decisions made by the provider:
 - (a) under section 36-22; or
 - (b) relating to Chapter 3.
- (2A) The *Secretary may, in writing, delegate to a *review officer of *Open Universities Australia the Secretary's powers under Division 209 to reconsider *reviewable decisions made by Open Universities Australia relating to Chapter 3.
- (2B) A *review officer* of *Open Universities Australia is a person, or a person included in a class of persons, whom:
 - (a) the chief executive officer of Open Universities Australia; or
 - (b) a delegate of the chief executive officer of Open Universities Australia;
 has appointed to be a review officer of Open Universities Australia for the purposes of reviewing decisions made by it relating to assistance under Chapter 3.
- (3) In exercising powers under the delegation, the delegate must comply with any directions of the *Secretary.

238-5 Delegations by Minister

- (1) The Minister may, by writing, delegate to:
 - (a) the *Secretary; or
 - (b) an APS employee in the Department;
 all or any of the Minister's powers under this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 238-7

- (2) In exercising powers under the delegation, the delegate must comply with any directions of the Minister.

238-7 Review of impact of Act

Before 31 December 2006, the Minister must cause a review to be commenced of the impact on the higher education sector of the higher education reforms enacted through this Act.

238-10 Guidelines

- (1) The Minister may, by legislative instrument, make Guidelines, specified in the second column of the table, providing for matters:
- (a) required or permitted by the corresponding Chapter, Part or section specified in the third column of the table to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

Guidelines		
Item	Guidelines	Chapter/Part/section
1	Administration Guidelines	Chapter 5
2	Commonwealth Grant Scheme Guidelines	Part 2-2; section 93-10
3	Commonwealth Scholarships Guidelines	Part 2-4
4	FEE-HELP Guidelines	Part 3-3
4A	HECS-HELP Benefit Guidelines	Part 4-2
5	HECS-HELP Guidelines	Part 3-2
6	Higher Education Provider Guidelines	Part 2-1
6A	Higher Education in External Territories Guidelines	Chapter 6
7	OS-HELP Guidelines	Part 3-4
8	Other Grants Guidelines	Part 2-3
9	Reduction and Repayment Guidelines	Part 2-5
10	Student Learning Entitlement Guidelines	Part 3-1
11	Tuition Fee Guidelines	Part 2-2

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (1A) The Minister may, by legislative instrument, make Guidelines, called Guidelines for Overseas Higher Education Providers, specifying additional requirements or conditions applicable to *Table C providers.

Indexation

- (3) Guidelines may provide for the indexation of any or all amounts in the Guidelines, using the method of indexation set out in Part 5-6.

238-12 Appropriation

Amounts payable by the Commonwealth under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

238-15 Regulations

The Governor-General may make regulations prescribing matters:

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 1

Schedule 1A—VET FEE-HELP Assistance Scheme

Note: See section 6-1.

1 What this Schedule is about

This Schedule provides for loans, called VET FEE-HELP assistance, to be made available to students enrolled in certain accredited vocational education and training (VET) courses.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 1—VET providers

Division 1—Introduction

2 What this Part is about

A body has to be approved as a VET provider before its students can receive VET FEE-HELP. This Part sets out VET provider application and approval processes.

VET providers are subject to the VET quality and accountability requirements.

A body's approval as a VET provider may be revoked in circumstances such as breach of a VET quality and accountability requirement.

3 The VET Provider Guidelines

*VET providers and the *VET quality and accountability requirements are also dealt with in the *VET Provider Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The VET Provider Guidelines are made by the Minister under clause 99.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—What is a VET provider?

Subdivision 3-A—General

4 Meaning of *VET provider*

A *VET provider* is a body corporate that is approved under this Division.

5 When a body becomes or ceases to be a VET provider

- (1) A body corporate becomes a *VET provider if approved by the Minister under clause 6.
- (2) A *VET provider ceases to be a provider if the provider's approval is revoked or suspended under Division 5 or the notice of the provider's approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

Subdivision 3-B—How are bodies approved as VET providers?

6 Approval by the Minister

The Minister, in writing, may approve a body corporate as a *VET provider if:

- (a) the body:
 - (i) is established under the law of the Commonwealth, a State or a Territory; and
 - (ii) carries on business in Australia; and
 - (iii) has its central management and control in Australia; and
- (b) the body's principal purpose is to provide education; and
- (c) the body is a registered training organisation as listed on *NTIS; and
- (d) the body either fulfils the *VET tuition assurance requirements or is exempted from those requirements under clause 8; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (da) the body offers at least one *VET course of study; and
- (e) the body applies for approval as provided for in clause 9; and
- (f) the Minister is satisfied that the body is willing and able to meet the *VET quality and accountability requirements; and
- (g) the body complies with any requirements set out in the *VET Provider Guidelines.

7 The VET tuition assurance requirements

The *VET tuition assurance requirements* are that the body corporate complies with the requirements for VET tuition assurance set out in the *VET Provider Guidelines.

8 VET tuition assurance requirements exemption for approvals

- (1) The Minister may, in writing, exempt a body corporate from the *VET tuition assurance requirements for the purposes of approving the body under clause 6.

Note: This clause only deals with exemptions from the VET tuition assurance requirements when approving bodies as VET providers. The VET Provider Guidelines will deal with exemptions from the VET tuition assurance requirements after approval has happened.

- (2) An exemption is subject to such conditions as are specified in the exemption.

Note: A body will not be exempt if a condition of the exemption is not complied with.

- (3) An exemption given under this clause is not a legislative instrument.

9 Application

- (1) A body corporate may apply in writing to the Minister for approval as a *VET provider.
- (2) The application:
 - (a) must be in the form approved by the Minister; and
 - (b) must be accompanied by such information as the Minister requests.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

10 Minister may seek further information

- (1) For the purposes of determining an application, the Minister may, by notice in writing, require an applicant to provide such further information as the Minister directs within the period specified in the notice.
- (2) If an applicant does not comply with a requirement under subclause (1), the application is taken to have been withdrawn.
- (3) A notice under this clause must include a statement about the effect of subclause (2).

11 Minister to decide application

- (1) The Minister must:
 - (a) decide an application for approval as a *VET provider; and
 - (b) cause the applicant to be notified in writing whether or not the applicant is approved as a VET provider.
- (2) For the purposes of paragraph 6(f):
 - (a) the Minister may be satisfied that a body corporate is willing and able to meet the *VET quality and accountability requirements if the body gives the Minister such written undertakings as the Minister requires; and
 - (b) the Minister may be satisfied that a body corporate is willing and able to meet:
 - (i) the *VET quality and accountability requirements; or
 - (ii) one or more of the requirements referred to in paragraphs 13(1)(a) to (f);if a body approved under the *VET Provider Guidelines so recommends in accordance with those guidelines.
- (2A) Subclause (2) does not limit the circumstances in which the Minister may be satisfied, for the purposes of paragraph 6(f), that a body corporate is willing and able to meet the *VET quality and accountability requirements.
- (3) The Minister's decision must be made:
 - (a) within 90 days after receiving the application; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) if further information is requested under clause 10—within 60 days after the end of the period within which the information was required to be provided under that clause; whichever is the later.
- (4) If the Minister decides that an applicant is approved as a *VET provider, the notice must also contain such information as is specified in the VET Provider Guidelines as information that must be provided to an applicant upon approval as a VET provider.

12 Approvals are legislative instruments

- (1) A notice of approval under paragraph 11(1)(b) is a legislative instrument.
- (2) A decision of the Minister to approve a body corporate as a *VET provider takes effect when the notice of approval takes effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when a legislative instrument takes effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—What are the VET quality and accountability requirements?

Subdivision 4-A—General

13 The VET quality and accountability requirements

- (1) The *VET quality and accountability requirements* are:
 - (a) the *VET financial viability requirements (see Subdivision 4-B); and
 - (b) the *VET quality requirements (see Subdivision 4-C); and
 - (c) the *VET fairness requirements (see Subdivision 4-D); and
 - (d) the *VET compliance requirements (see Subdivision 4-E); and
 - (e) the *VET fee requirements (see Subdivision 4-F); and
 - (f) any other requirements for VET quality and accountability set out in the *VET Provider Guidelines.
- (2) This Division does not of its own force require a *VET provider to do any act or thing.

Subdivision 4-B—The VET financial viability requirements

14 Basic requirement

A *VET provider:

- (a) must be financially viable; and
- (b) must be likely to remain financially viable.

15 Financial information must be provided

- (1) A *VET provider must give to the Minister a financial statement for each *annual financial reporting period for the provider in which a student of the provider receives assistance under this Schedule.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) The statement:
 - (a) must be in the form approved by the Minister; and
 - (b) must be provided together with a report on the statement by an independent *qualified auditor; and
 - (c) must be provided within 6 months after the end of the *annual financial reporting period for which the statement was given.
- (3) An *annual financial reporting period*, for a *VET provider, is the period of 12 months:
 - (a) to which the provider's accounts relate; and
 - (b) that is notified in writing to the Minister as the provider's annual financial reporting period.

16 Minister to have regard to financial information

In determining whether a *VET provider is financially viable, and likely to remain so, the Minister must have regard to any financial statement provided by the provider under clause 15.

Subdivision 4-C—The VET quality requirements

17 Provider must maintain quality

- (1) A *VET provider must operate, and continue to operate, at an appropriate level of quality for a VET provider.
- (2) The Minister must not determine that a *VET provider meets an appropriate level of quality for a VET provider unless the Minister is satisfied that the provider meets the requirements set out in the *Australian Quality Training Framework.

Subdivision 4-D—The VET fairness requirements

18 Equal benefits and opportunity requirements

A *VET provider must comply with the requirements relating to equal benefits and opportunity for students that are set out in the *VET Provider Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19 Student grievance and review requirements

A *VET provider must comply with the requirements relating to student grievance and review procedures that are set out in the *VET Provider Guidelines.

20 Tuition assurance requirements

- (1) A *VET provider must comply with the *VET tuition assurance requirements.
- (2) The Minister may, by declaration in writing, exempt a specified *VET provider from the requirement in subclause (1).
- (3) An exemption:
 - (a) is subject to such conditions as are specified in the exemption; and
 - (b) may be expressed to be in force for a period specified in the exemption.

Note: A body will not be exempt if a condition of the exemption is not complied with.

- (4) An exemption given under this clause is not a legislative instrument.

21 VET providers to appoint review officers

- (1) A *VET provider must appoint a *review officer to undertake reviews of decisions made by the provider relating to assistance under Part 2.

Note: The Secretary may delegate to a review officer of a VET provider the power to reconsider decisions of the provider under Subdivision 16-C: see subclause 98(2).

- (2) A *review officer* of a *VET provider is a person, or a person included in a class of persons, whom:
 - (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider; has appointed to be a review officer of the provider for the purposes of reviewing decisions made by the provider relating to assistance under Part 2.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

22 Review officers not to review own decisions

A *VET provider must ensure that a *review officer of the provider:

- (a) does not review a decision that the review officer was involved in making; and
- (b) in reviewing a decision of the provider, occupies a position that is senior to that occupied by any person involved in making the original decision.

23 Procedures relating to personal information

- (1) A *VET provider must comply with the information privacy principles set out in section 14 of the *Privacy Act 1988* in respect of *VET personal information obtained for the purposes of Part 2 of this Schedule or Chapter 4.
- (2) A *VET provider must have a procedure under which a student enrolled with the provider may apply to the provider for, and receive, a copy of *VET personal information that the provider holds in relation to that student.
- (3) The provider must comply with:
 - (a) the requirements of the *VET Provider Guidelines relating to *personal information in relation to students; and
 - (b) the procedure referred to in subclause (2).

Subdivision 4-E—The VET compliance requirements

24 VET provider to provide statement of general information

- (1) A *VET provider must give to the Minister such statistical and other information that the Minister by notice in writing requires from the provider in respect of:
 - (a) the provision of vocational education and training by the provider; and
 - (b) compliance by the provider with the requirements of this Schedule.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 25

- (2) The information must be provided:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with such other requirements as the Minister makes.
- (3) A notice under this section must not require the giving of information that a *VET provider is required to give to the Minister under clause 28.

25 Notice of events that affect provider's ability to comply with VET quality and accountability requirements

A *VET provider must, by writing, inform the Minister of any event affecting:

- (a) the provider; or
 - (b) a *related body corporate of the provider;
- that may significantly affect the provider's capacity to meet the *VET quality and accountability requirements.

26 Compliance assurance—provider

- (1) The Minister may require a *VET provider to be audited as to compliance with any one or more of the following requirements:
 - (a) the *VET financial viability requirements;
 - (b) the *VET fairness requirements;
 - (c) the *VET compliance requirements;
 - (d) the *VET fee requirements;
 - (e) other requirements for VET quality and accountability set out in the *VET Provider Guidelines.
- (2) The audit must be conducted:
 - (a) by a body determined in writing by the Minister; and
 - (b) at such time or times, and in such manner, as the Minister requires.
- (3) The provider must:
 - (a) fully co-operate with the auditing body in the course of its audit; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) pay to the auditing body any charges payable for such an audit.
- (4) A determination made under paragraph (2)(a) is not a legislative instrument.

Subdivision 4-F—The VET fee requirements

27 Determining tuition fees for all students

- (1) This section applies to a *VET unit of study that a *VET provider provides or proposes to provide during a period ascertained in accordance with the *VET Provider Guidelines.
- (2) The provider must determine, for the unit, the *VET tuition fees that are to apply to students who may enrol in the unit during the period.
- (3) In determining *VET tuition fees under subclause (2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the *VET Provider Guidelines as matters to which a provider must not have regard.
- (4) The provider must not vary a *VET tuition fee unless the provider:
 - (a) does so:
 - (i) before the date ascertained in accordance with the *VET Provider Guidelines; and
 - (ii) in circumstances specified in the VET Provider Guidelines; or
 - (b) does so with the written approval of the Minister.

27A Requirements in the VET Provider Guidelines

A *VET provider must comply with any requirements set out in the *VET Provider Guidelines relating to:

- (a) fees for *VET units of study; or
- (b) fees for *VET courses of study; or
- (c) matters or things for which fees may be charged.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

28 Schedules of VET tuition fees

General rule

- (1) A *VET provider must give the Minister a schedule of the *VET tuition fees determined under clause 27 for all the VET units of study it provides or proposes to provide, other than under *VET restricted access arrangements, during a period ascertained in accordance with the *VET Provider Guidelines. It must give the schedule:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with the requirements that the Minister determines in writing.
- (2) The provider must:
 - (a) ensure that the schedule provides sufficient information to enable a person to work out the person's *VET tuition fee for each *VET unit of study the provider provides or is to provide; and
 - (b) publish the schedule for a particular period by the date ascertained in accordance with the *VET Provider Guidelines; and
 - (c) ensure that the schedule is available to all students enrolled, and persons seeking to enrol, with the provider on request and without charge.

Restricted access arrangements

- (2A) A *VET provider must give the Minister a schedule of the *VET tuition fees determined under clause 27 for each *VET unit of study it provides or proposes to provide under a *VET restricted access arrangement during a period ascertained in accordance with the *VET Provider Guidelines. It must give the schedule:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with the requirements that the Minister determines in writing.
- (2B) The provider must:
 - (a) ensure that the schedule provides sufficient information to enable a person to work out the person's *VET tuition fee for

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- the *VET unit of study the provider provides or is to provide under the *VET restricted access arrangement; and
- (b) ensure that the schedule is available, on request and without charge, to all students enrolled, or eligible to be enrolled, under the VET restricted access arrangement.

Replacement schedules

- (3) If:
- (a) the provider has given the Minister a schedule (the *previous schedule*) under:
- (i) subclause (1) or (2A); or
- (ii) this subclause; and
- (b) the provider varies a *VET tuition fee in the previous schedule;
- the provider must:
- (c) by written notice given to the Minister:
- (i) withdraw the previous schedule; and
- (ii) inform the Minister of the variation; and
- (d) give the Minister a replacement schedule incorporating the variation.

Note: The provider must comply with subclause 27(4) when varying a tuition fee.

- (4) Subclauses (1) to (2B) apply to the replacement schedule in a corresponding way to the way in which they apply to the previous schedule.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 5—When does a body cease to be a VET provider?

Subdivision 5-A—General

29 Cessation of approval as a provider

A body ceases to be approved as a *VET provider:

- (a) if the approval is revoked under Subdivision 5-B or 5-D; or
- (b) while the approval is suspended under clause 36; or
- (c) if the notice of the provider's approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

Subdivision 5-B—Revocation for cause

30 Revocation of approval if application for approval as a provider is false or misleading

The Minister may revoke a body's approval as a *VET provider if the Minister:

- (a) is satisfied that the body's application under clause 9 for approval as a VET provider contained material that was false or misleading; and
- (b) complies with the requirements of clause 34.

30A Revocation of approval if body's links to Australia are broken

The Minister may revoke a body's approval as a *VET provider if:

- (a) the body ceases to be one described in paragraph 6(a); and
- (b) the Minister complies with the requirements of clause 34.

31 Revocation of approval if providing education ceases to be the body's principal purpose

The Minister may revoke a body's approval as a *VET provider if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the body's principal purpose is no longer to provide education; and
- (b) the Minister complies with the requirements of clause 34.

32 Revocation of approval as a provider if body ceases to be a registered training organisation

The Minister may revoke a body's approval as a *VET provider if:

- (a) the body was listed as a registered training organisation on *NTIS at the last time the body became a VET provider; and
- (b) since that time, the body has ceased to be listed as a registered training organisation on NTIS; and
- (c) the Minister complies with the requirements of clause 34.

32A Revocation of approval if body ceases to offer VET courses of study

The Minister may revoke a body's approval as a *VET provider if:

- (a) the body no longer offers any *VET courses of study; and
- (b) the Minister complies with the requirements of clause 34.

33 Revocation of approval as a provider for a breach of the VET quality and accountability requirements

- (1) The Minister may revoke a body's approval as a *VET provider if the Minister:
 - (a) is satisfied that the body has breached a *VET quality and accountability requirement; and
 - (b) is satisfied that it is appropriate to take that action (see subclause (2)); and
 - (c) complies with the requirements of clause 34.
- (2) Without limiting the matters that the Minister may consider in deciding whether it is appropriate under this clause to revoke a body's approval as a *VET provider, the Minister may consider any or all of the following matters:
 - (a) whether the breach in question is of a minor or major nature;
 - (b) whether the breach has occurred before and, if so, how often;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 34

- (c) the impact that the breach may have on the body's students;
- (d) the impact of the breach on the *accredited VET courses provided by the body;
- (e) the impact of the breach on Australia's reputation as a provider of high quality education;
- (f) any other matter set out in the *VET Provider Guidelines.

**Subdivision 5-C—Process for decisions on revocation under
Subdivision 5-B**

34 Process for revoking approval as a provider for loss of status or a breach

- (1) Before revoking a body's approval as a *VET provider under Subdivision 5-B, the Minister must give the body notice in writing:
 - (a) stating that the Minister is considering revoking the body's approval; and
 - (b) stating the reasons why the Minister is considering revoking the body's approval; and
 - (c) inviting the body to make written submissions to the Minister within 28 days concerning why the approval should not be revoked.
- (2) In deciding whether or not to revoke a body's approval under Subdivision 5-B, the Minister must consider any submissions received from the body within the 28 day period.
- (3) The Minister must notify the body in writing of his or her decision whether to revoke the body's approval under Subdivision 5-B. The notice:
 - (a) must be in writing; and
 - (b) must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subclause (1); and
 - (c) if the Minister decides to revoke the body's approval—must specify the day that the revocation takes effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) If no notice is given within the period provided for in subclause (3), the Minister is taken to have decided not to revoke the approval.
- (5) If the Minister decides to revoke the body's approval:
 - (a) the revocation takes effect on the day specified in the notice under subclause (3); and
 - (b) a copy of the notice must be published in the *Gazette*.

35 Determination retaining approval as a provider in respect of existing students

- (1) The Minister may determine, in writing, that a revocation of a body's approval as a *VET provider under Subdivision 5-B is of no effect for the purposes of assistance payable to the body's students under Part 2 to the extent that the assistance relates to students of the body who have not completed the *VET courses of study in which they were enrolled with the body on the day specified for the purposes of paragraph 34(5)(a).
- (2) The determination may be included in the notice of revocation under subclause 34(3).
- (3) The body is taken, for the purposes of this Schedule, to continue to be a *VET provider, but only to the extent referred to in subclause (1).
- (4) Subclause (3) does not prevent the Minister subsequently revoking the body's approval as a *VET provider under this Division.

36 Suspension of approval as a provider

- (1) The Minister may, by legislative instrument, determine that, with effect from a specified day, a body's approval as a *VET provider is suspended pending the making of a decision under Subdivision 5-B as to whether to revoke the body's approval as a provider.
- (2) A copy of the determination must be given to the body concerned.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 37

- (3) If the Minister makes a determination under subclause (1) in respect of a body, the Minister must give to the body a notice under clause 34 within 48 hours after giving a copy of the determination to the body.
- (4) A determination under this clause:
 - (a) takes effect accordingly on the day specified in the determination; and
 - (b) ceases to have effect if the Minister decides not to revoke the body's approval as a *VET provider.

37 Determination retaining approval as a provider in respect of existing students following suspension of approval

- (1) The Minister may determine, in writing, that a suspension of a body's approval as a *VET provider under clause 36 is of no effect for the purposes of assistance payable to the body's students under Part 2 to the extent that the assistance relates to students of the body who have not completed the *VET courses of study in which they were enrolled with the body on the day specified for the purposes of paragraph 36(4)(a).
- (2) A copy of the determination must be given to the body concerned.
- (3) The body is taken, for the purposes of this Schedule, to continue to be a *VET provider, but only to the extent referred to in subclause (1).
- (4) Subclause (3) does not prevent the Minister subsequently revoking the body's approval as a *VET provider under this Division.
- (5) A determination made under subclause (1) is not a legislative instrument.

38 Revocations are legislative instruments

- (1) A notice of revocation under subclause 34(3) is a legislative instrument.
- (2) A decision of the Minister to revoke the approval of a *VET provider takes effect at the later of the following times:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) on the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the notice could be passed;
- (b) the day specified in the notice of revocation under subclause 34(3) as the day on which the revocation takes effect.

Subdivision 5-D—Revocation of approval on application

39 Revocation of approval as a provider on application

- (1) The Minister may revoke the approval of a body as a *VET provider if the body requests the Minister in writing to revoke the approval.
- (2) The request must be given to the Minister at least 30 days before the day on which the revocation is requested to have effect.
- (3) The Minister must cause the body to be notified of the revocation. The notice must:
 - (a) be in writing; and
 - (b) be given to the body at least 14 days before the day on which the revocation is to take effect.
- (4) A notice of revocation under subclause (3) is a legislative instrument.
- (5) The revocation has effect on the day requested unless another day is specified in the notice under subclause (3).

Subdivision 5-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003

39A Notice of approval ceasing to have effect under the *Legislative Instruments Act 2003*

- (1) This clause applies if:
 - (a) a decision of the Minister to approve a body corporate as a *VET provider has taken effect; and
 - (b) the body ceases to be approved as a VET provider because the notice of the approval ceases to have effect under Part 5

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1A VET FEE-HELP Assistance Scheme

Part 1 VET providers

Division 5 When does a body cease to be a VET provider?

Clause 39A

(Parliamentary scrutiny of legislative instruments) of the
Legislative Instruments Act 2003.

- (2) The fact that the body ceases to be approved as a *VET provider does not:
- (a) affect:
 - (i) the operation of this Act, or any instrument made under this Act, in relation to the body before the cessation; or
 - (ii) anything duly done or suffered in relation to the body before the cessation; or
 - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred before the cessation; or
 - (c) affect any penalty, forfeiture or punishment incurred in respect of the body having been a VET provider; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the body had not ceased to be approved as a VET provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2—VET FEE-HELP assistance

Division 6—Introduction

40 What this Part is about

A student may be entitled to VET FEE-HELP assistance for VET units of study if certain requirements are met.

The amount of assistance to which the student may be entitled is based on his or her VET tuition fees for the units, but there is a limit on the total amount of assistance that the student can receive. The assistance is paid to a VET provider to discharge the student's liability to pay his or her VET tuition fees.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Chapter 4.

41 The VET FEE-HELP Guidelines

*VET FEE-HELP assistance is also dealt with in the *VET FEE-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The VET FEE-HELP Guidelines are made by the Minister under clause 99.

42 The VET Tuition Fee Guidelines

*VET tuition fees are also dealt with in the *VET Tuition Fee Guidelines.

Note: The VET Tuition Fee Guidelines are made by the Minister under clause 99.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 7—Who is entitled to VET FEE-HELP assistance?

Subdivision 7-A—Basic rules

43 Entitlement to VET FEE-HELP assistance

A student is entitled to *VET FEE-HELP assistance for a *VET unit of study if:

- (a) the student meets the citizenship or residency requirements under clause 44; and
- (b) the student's *FEE-HELP balance is greater than zero; and
- (c) the *census date for the unit is on or after 1 January 2008; and
- (d) the unit meets the course requirements under clause 45; and
- (e) the unit is, or is to be, undertaken as part of a *VET course of study; and
- (f) the student:
 - (i) enrolled in the unit on or before the census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled; and
- (g) the student *meets the tax file number requirements (see clause 80); and
- (h) the student has, on or before the census date, completed, signed and given to an *appropriate officer of the *VET provider a *request for Commonwealth assistance in relation to the unit or, where the VET course of study of which the unit forms a part is, or is to be, undertaken with the provider, in relation to the VET course of study; and
- (i) the student meets any other requirements set out in the *VET FEE-HELP Guidelines.

Note: Clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

44 Citizenship or residency requirements

- (1) The citizenship or residency requirements for *VET FEE-HELP assistance for a *VET unit of study are that the student in question is:
 - (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit.
- (2) In determining, for the purpose of paragraph (1)(b), whether the student will be resident in Australia for the duration of the unit, disregard any period of residence outside Australia that:
 - (a) cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
 - (b) is required for the purpose of completing a requirement of that unit.

45 Course requirements

- (1) The course requirements for *VET FEE-HELP assistance for a *VET unit of study are that the unit:
 - (a) is being undertaken as part of a *VET course of study that meets any requirements set out in the *VET FEE-HELP Guidelines; and
 - (b) is not being undertaken as part of a VET course of study that:
 - (i) is subject to a determination under subclause (2); or
 - (ii) is with a *VET provider that is subject to a determination under subclause (2).

Note: For the purposes of paragraph (1)(a), clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.

- (1A) For the purposes of paragraph (1)(a), the *VET FEE-HELP Guidelines:
 - (a) may set out different requirements relating to different students undertaking the *VET unit of study; and
 - (b) may set out requirements relating to only some students undertaking the VET unit of study (while not setting out requirements relating to other students undertaking the unit).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 45A

- (2) The Minister may, by legislative instrument, determine that:
 - (a) a specified course provided by a specified *VET provider is a course in relation to which *VET FEE-HELP assistance is unavailable; or
 - (b) all courses provided by a specified VET provider are courses in relation to which VET FEE-HELP assistance is unavailable.
- (3) In deciding whether to make a determination under subclause (2), the Minister must have regard to the effect of the determination on students undertaking the course or courses.
- (4) A determination of the Minister under subclause (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or courses, with the provider.

45A VET unit of study not undertaken as part of VET course of study

For the purposes of paragraphs 43(e) and 45(1)(a), a student is taken not to undertake a *VET unit of study as part of a *VET course of study if undertaking the unit involves the student doing more than he or she needs to do to be awarded whichever of the following the course leads to:

- (a) a *VET diploma;
- (b) a *VET advanced diploma;
- (c) a *VET graduate diploma;
- (d) a *VET graduate certificate.

Subdivision 7-B—FEE-HELP balances

46 Main case of re-crediting a person's FEE-HELP balance

- (1) If clause 51 applies to re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person has received for a *VET unit of study, then this clause does not apply in relation to that unit.

Note: For *FEE-HELP balance*, see section 104-15, and for *FEE-HELP limit*, see section 104-20.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) A *VET provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person received for a *VET unit of study if:
- (a) the person has been enrolled in the unit with the provider;
and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) the provider is satisfied that special circumstances apply to the person (see clause 48); and
 - (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under clause 49; or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.
- Note: A VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-18.
- (3) If the provider is unable to act for one or more of the purposes of subclause (2), or clause 48, 49 or 50, the *Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary.

47 Re-crediting a person's FEE-HELP balance—no tax file number

- (1) A *VET provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person received for a *VET unit of study if:
- (a) the person has been enrolled in the unit with the provider;
and
 - (b) subclause 89(1) applies to the person in relation to the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1A VET FEE-HELP Assistance Scheme

Part 2 VET FEE-HELP assistance

Division 7 Who is entitled to VET FEE-HELP assistance?

Clause 48

Note: A VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-18.

- (2) The *Secretary may re-credit the person's *FEE-HELP balance under subclause (1) if the provider is unable to do so.

48 Special circumstances

For the purposes of paragraph 46(2)(c), special circumstances apply to the person if and only if the *VET provider receiving the application is satisfied that circumstances apply to the person that:

- (a) are beyond the person's control; and
- (b) do not make their full impact on the person until on or after the *census date for the *VET unit of study in question; and
- (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.

49 Application period

- (1) If:
- (a) the person applying under paragraph 46(2)(d) for the re-crediting of the person's *FEE-HELP balance in relation to a *VET unit of study has withdrawn his or her enrolment in the unit; and
 - (b) the *VET provider gives notice to the person that the withdrawal has taken effect;
- the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (2) If subclause (1) does not apply, the application period for the application is the period of 12 months after the period during which the person undertook, or was to undertake, the unit.

50 Dealing with applications

- (1) If:
- (a) the application is made under paragraph 46(2)(d) before the end of the relevant application period; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the *VET provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period; the provider must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision on the application.

(2) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Division 16.

51 Re-crediting a person's FEE-HELP balance if provider ceases to provide course of which unit forms part

(1) A *VET provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person received for a *VET unit of study if:

- (a) the person has been enrolled in the unit with the provider; and
- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
- (c) the *VET tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
- (d) the person chose the option designated under the VET tuition assurance requirements as VET tuition fee repayment in relation to the unit.

Note: A VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see subsection 137-18(4).

(2) The *Secretary may re-credit the person's *FEE-HELP balance under subclause (1) if the provider is unable to do so.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 8—How are amounts of VET FEE-HELP assistance worked out?

52 The amount of VET FEE-HELP assistance for a VET unit of study

The amount of *VET FEE-HELP assistance to which a student is entitled for a *VET unit of study is the difference between:

- (a) the student's *VET tuition fee for the unit; and
- (b) the sum of any *up-front VET payments made in relation to the unit.

Note: A lesser amount may be payable because of clause 54.

53 Up-front payments

- (1) An *up-front VET payment*, in relation to a *VET unit of study for which a student is liable to pay a *VET tuition fee, is a payment of all or part of the student's VET tuition fee for the unit, other than a payment of *VET FEE-HELP assistance under this Part.
- (2) The payment must be made on or before the *census date for the unit.

54 Amounts of VET FEE-HELP assistance and FEE-HELP assistance must not exceed the FEE-HELP balance

Amount of VET FEE-HELP assistance for one unit

- (1) The amount of *VET FEE-HELP assistance to which a student is entitled for a *VET unit of study is an amount equal to the student's *FEE-HELP balance on the *census date for the unit if:
 - (a) there is no other:
 - (i) VET unit of study, with the same census date, for which the student is entitled to VET FEE-HELP assistance; or
 - (ii) unit of study, with the same census date, for which the student is entitled to *FEE-HELP assistance; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the amount of VET FEE-HELP assistance to which the student would be entitled under clause 52 for the unit would exceed that FEE-HELP balance.

Amount of VET FEE-HELP assistance for more than one unit

- (2) If the sum of:
- (a) the amount of *VET FEE-HELP assistance to which a student would be entitled under clause 52 for a *VET unit of study; and
 - (b) any other amounts of:
 - (i) VET FEE-HELP assistance to which the student would be entitled under that clause for other units that have the same *census date as that unit; and
 - (ii) *FEE-HELP assistance to which the student would be entitled under clause 52 for other units that have the same census date as that unit;

would exceed the student's *FEE-HELP balance on the census date for the unit, then, despite subclause (1) of this clause, the total amount of VET FEE-HELP assistance and FEE-HELP assistance to which the student is entitled for all of those units is an amount equal to that FEE-HELP balance.

Example: Kath has a FEE-HELP balance of \$2,000, and is enrolled in 4 units with the same census date. Kath's VET tuition fee for each unit is \$600. The total amount of VET FEE-HELP assistance to which Kath is entitled for the units is \$2,000, even though the total amount of her VET tuition fees for the units is \$2,400.

- (3) If the student has enrolled in the units with more than one *VET provider or higher education provider, the student must notify each provider of the proportion of the total amount of *VET FEE-HELP assistance or *FEE-HELP assistance that is to be payable in relation to the units in which the student has enrolled with that provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 9—How are amounts of VET FEE-HELP assistance paid?

Note: Division 11 also deals with payments by the Commonwealth under this Schedule.

55 Payments

If a student is entitled to an amount of *VET FEE-HELP assistance for a *VET unit of study with a *VET provider, the Commonwealth must:

- (a) as a benefit to the student, lend to the student the amount of VET FEE-HELP assistance; and
- (b) pay the amount lent to the provider in discharge of the student's liability to pay his or her *VET tuition fee for the unit.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Chapter 4.

56 Effect of FEE-HELP balance being re-credited

- (1) If, under subclause 46(2) or 47(1), or clause 51, a person's *FEE-HELP balance is re-credited with an amount relating to *VET FEE-HELP assistance for a *VET unit of study, the provider must pay to the Commonwealth an amount equal to the amount of VET FEE-HELP assistance to which the person was entitled for the unit.

Note: The provider must repay the amount under subclause (1) even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

- (2) Subclause (1) does not apply to the provider if:
 - (a) the person's *FEE-HELP balance was re-credited under subclause 46(2) (main case of re-crediting a person's FEE-HELP balance); and
 - (b) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the *VET tuition assurance requirements.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) The *VET Provider Guidelines may, in setting out the *VET tuition assurance requirements, specify, in relation to the re-crediting of a person's *FEE-HELP balance in circumstances to which subclause (2) applies:
- (a) the amount (if any) that is to be paid to the Commonwealth;
and
 - (b) the person (if any) who is to pay the amounts.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3—Administration

Division 10—Introduction

57 What this Part is about

This Part deals with the following administrative matters:

- payments made by the Commonwealth under this Schedule (see Division 11);
- administrative requirements that are imposed on VET providers (see Division 12);
- electronic communication between VET providers and students (see Division 13);
- protection of VET personal information gained in the administration of Part 2 of this Schedule (see Division 14) and Chapter 4;
- tax file numbers of students (see Division 15);
- reconsideration and administrative review of certain decisions (see Division 16).

58 The VET Administration Guidelines

Administrative matters are also dealt with in the *VET Administration Guidelines. The provisions of this Part may indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The VET Administration Guidelines are made by the Minister under clause 99.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 11—Payments by the Commonwealth

59 What this Division is about

This Division contains general provisions relating to how the Commonwealth makes payments under this Schedule to VET providers.

60 Time and manner of payments

- (1) Amounts payable by the Commonwealth to a *VET provider under this Schedule are to be paid in such a way, including payment in instalments, as the Minister determines.
- (2) Payments of amounts payable by the Commonwealth to a *VET provider under this Schedule are to be made at such times as the *Secretary determines.

61 Advances

- (1) The *Secretary may determine that an advance is to be made to a *VET provider on account of an amount that is expected to become payable under a provision of this Schedule to the provider.
- (2) If the advance exceeds the amount that becomes payable, an amount equal to the excess may be:
 - (a) deducted from any amount that is payable, or to be paid, to the provider under this Schedule; or
 - (b) recovered by the Commonwealth from the provider as a debt due to the Commonwealth.
- (3) If the provider uses the advance for a purpose other than that for which it was given, an amount equal to the advance may be:
 - (a) deducted from any amount that is payable, or to be paid, to the provider under this Schedule; or
 - (b) recovered by the Commonwealth from the provider as a debt due to the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1A VET FEE-HELP Assistance Scheme

Part 3 Administration

Division 11 Payments by the Commonwealth

Clause 62

- (4) The conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.

62 Rounding of amounts

If an amount payable by the Commonwealth under this Schedule is an amount made up of dollars and cents, round the amount down to the nearest dollar.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 12—Administrative requirements on VET providers

63 What this Division is about

This Division imposes a number of administrative requirements on VET providers.

64 Notices

Who gets a notice?

- (1) A *VET provider must give such notices as are required by the *VET Administration Guidelines to a person:
 - (a) who is enrolled with the provider for a *VET unit of study; and
 - (b) who is seeking Commonwealth assistance under this Schedule for the unit.

Contents of notice

- (2) A notice must contain the information set out in the *VET Administration Guidelines as information that must be provided in such a notice.

Date by which notice to be given

- (3) A notice must be given within the period set out in the *VET Administration Guidelines.

Purpose and effect of notice

- (4) A notice under this clause is given for the purpose only of providing information to a person. Any liability or entitlement of a person under this Schedule is not affected by:
 - (a) the failure of a *VET provider to give a notice under this clause; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 65

- (b) the failure of a VET provider to give such a notice by the date required under the *VET Administration Guidelines; or
- (c) the notice containing an incorrect statement.

65 Correction of notices

VET provider to correct notice

- (1) If, after giving a person a notice under clause 64, a *VET provider is satisfied that a material particular in the notice was not, or has ceased to be, correct, the provider must give a further written notice to the person setting out the correct particular.

Person may request correction of notice

- (2) A person who receives a notice from a *VET provider under clause 64 may give to the provider a written request for the notice to be corrected in respect of a material particular if the person considers that the notice was not, or has ceased to be, correct in that particular.
- (3) The request must be given to an *appropriate officer of the provider either:
 - (a) within 14 days after the day the notice was given; or
 - (b) within such further period as the provider allows for the giving of the request.
- (4) The request must:
 - (a) specify the particular in the notice that the person considers is incorrect; and
 - (b) specify the reasons the person has for considering that the particular is incorrect.
- (5) The making of the request does not affect any liability or entitlement of the person under this Schedule.

VET provider to process request

- (6) If a *VET provider receives a request under this clause the provider must, as soon as practicable:
 - (a) determine the matter to which the request relates; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) notify the person in writing of the provider's determination;
and
- (c) if the provider determines that a material particular in the notice was not, or has ceased to be, correct—give a further notice under subclause (1).

66 Charging VET tuition fees

A *VET provider must not require a *domestic student who is enrolling in a unit in circumstances that make it a replacement unit within the meaning of the *VET tuition assurance requirements to pay to the provider the student's *VET tuition fee for the unit.

67 Determining census dates

- (1) A *VET provider must, for each *VET unit of study it provides or proposes to provide during a period ascertained in accordance with the *VET Administration Guidelines, determine for that period a particular date to be the *census date for the unit.

Note: If a VET provider provides the same unit over different periods, the unit is taken to be a different VET unit of study in respect of each period. Therefore the provider will have to determine a separate census date in respect of each period.

- (2) A date determined under subclause (1) must not occur less than 20% of the way through the period during which the unit is undertaken.
- (3) The provider must publish the *census date for the unit by the date ascertained in accordance with, and in the manner specified in, the *VET Administration Guidelines.

Variations

- (4) The provider must not vary the *census date for the unit after publication under subclause (3), unless the provider:
 - (a) does so:
 - (i) before the date ascertained in accordance with the *VET Administration Guidelines; and
 - (ii) in circumstances specified in the VET Administration Guidelines; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 68

- (b) does so with the written approval of the Minister.
- (5) If paragraph (4)(a) applies, the provider must publish the variation by the date ascertained in accordance with, and in the manner specified in, the *VET Administration Guidelines.
- (6) If paragraph (4)(b) applies, the provider must publish the variation by the date, and in the manner, specified by the Minister in the approval.

68 Communications with the Commonwealth concerning students etc.

In communications under, or for the purposes of, this Schedule between the Commonwealth and a *VET provider concerning a person who:

- (a) is enrolled, or seeking to enrol, in a *VET unit of study with the provider; and
- (b) has indicated that the person is seeking Commonwealth assistance under this Schedule for the unit;

the provider must use any identifier for that person that the *Secretary has indicated must be used in such communications.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 13—Electronic communications

69 What this Division is about

Certain documents that this Schedule requires or permits to be given between students and VET providers may be transmitted electronically.

70 Guidelines may deal with electronic communications

- (1) The *VET Administration Guidelines may make provision for or in relation to requiring or permitting information or documents to be given by students to *VET providers, or by VET providers to students, in accordance with particular information technology requirements:
 - (a) on a particular kind of data storage device; or
 - (b) by means of a particular kind of electronic communication.
- (2) The *VET Administration Guidelines may make provision for or in relation to requiring, in relation to an electronic communication from a student to a *VET provider:
 - (a) that the communication contain an electronic signature (however described); or
 - (b) that the communication contain a unique identification in an electronic form; or
 - (c) that a particular method be used to identify the originator of the communication and to indicate the originator's approval of the information communicated.
- (3) The reference in subclause (1) to giving information includes a reference to anything that is *giving information* for the purposes of section 9 of the *Electronic Transactions Act 1999*.
- (4) In this clause:

data storage device has the same meaning as in the *Electronic Transactions Act 1999*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1A VET FEE-HELP Assistance Scheme

Part 3 Administration

Division 13 Electronic communications

Clause 70

electronic communication has the same meaning as in the *Electronic Transactions Act 1999*.

information has the same meaning as in the *Electronic Transactions Act 1999*.

information technology requirements has the same meaning as in the *Electronic Transactions Act 1999*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 14—Protection of VET personal information

71 What this Division is about

<p>A VET officer who discloses, copies or records VET personal information otherwise than in the course of official employment, or causes unauthorised access to or modification of VET personal information, commits an offence.</p>

72 Meaning of *VET personal information*

VET personal information is:

- (a) information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (b) obtained or created by a *VET officer for the purposes of Part 2 of this Schedule and Chapter 4.

73 Use of VET personal information

A *VET officer commits an offence if:

- (a) the officer either:
 - (i) discloses information; or
 - (ii) makes a copy or other record of information; and
- (b) the information is *VET personal information; and
- (c) the information was acquired by the officer in the course of the officer's *official employment; and
- (d) the disclosure did not occur, or the copy or record was not made, in the course of that official employment.

Penalty: Imprisonment for 2 years.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

74 Meanings of *VET officer* etc. and *official employment*

Meaning of VET officer

- (1) A person is a *VET officer* if:
 - (a) the person is or was a *Commonwealth officer (see subsection 179-15(2)); or
 - (aa) the person is or was an *officer of a Tertiary Admission Centre (see subsection 179-15(3B)); or
 - (b) the person is or was an *officer of a *VET provider (see subclause (2)).
- (2) A person is an *officer of a VET provider* if the person is:
 - (a) an officer or employee of the provider; or
 - (b) a person who, although not an officer or employee of the provider, performs services for or on behalf of the provider.

Meaning of official employment

- (3) *Official employment* of a *VET officer is:
 - (a) for a *Commonwealth officer—the performance of duties or functions, or the exercise of powers, under, or for the purposes of, this Schedule; or
 - (aa) for an *officer of a Tertiary Admission Centre—service as such an officer; or
 - (b) for an *officer of a VET provider—service as such an officer.

75 When information is disclosed in the course of official employment

Without limiting the matters that are disclosures that occur in the course of a *VET officer's *official employment for the purposes of paragraph 73(d), the following disclosures are taken to be disclosures that occur in the course of a VET officer's official employment:

- (a) disclosure by a *Commonwealth officer of *VET personal information to another Commonwealth officer to assist that other officer in the other officer's official employment;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) disclosure by a VET officer of VET personal information to the Administrative Appeals Tribunal in connection with a *reviewable VET decision;
- (c) disclosure by a Commonwealth officer of VET personal information to an *officer of a VET provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule;
- (ca) disclosure by a Commonwealth officer of VET personal information to an *officer of a Tertiary Admission Centre to assist the officer of the Tertiary Admission Centre in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule;
- (d) disclosure by an officer of a VET provider of VET personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (e) disclosure by an officer of a VET provider of VET personal information to an officer of a Tertiary Admission Centre to assist the officer of the Tertiary Admission Centre in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule;
- (f) disclosure by an officer of a Tertiary Admission Centre of VET personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (g) disclosure by an officer of a Tertiary Admission Centre of VET personal information to an officer of a VET provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule.

76 Commissioner may disclose information

- (1) Despite anything in an Act of which the *Commissioner has the general administration, the Commissioner, or a person authorised by the Commissioner, may communicate *VET personal information to a *VET officer for use by that officer:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 77

- (a) in the case of a *Commonwealth officer—in the course of the officer's *official employment; or
 - (aa) in the case of an *officer of a Tertiary Admission Centre—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule; or
 - (b) in the case of an *officer of a *VET provider—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Schedule.
- (2) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the *Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this clause applies to a communication of *VET personal information.

77 Oath or affirmation to protect information

- (1) A *VET officer must, if and when required by the *Secretary or the *Commissioner to do so, make an oath or affirmation to protect information in accordance with this Division.
- (2) The *Secretary may determine, in writing:
 - (a) the form of the oath or affirmation that the Secretary will require; and
 - (b) the manner in which the oath or affirmation must be made.
- (3) The *Commissioner may determine, in writing:
 - (a) the form of the oath or affirmation that the Commissioner will require; and
 - (b) the manner in which the oath or affirmation must be made.

78 Unauthorised access to, or modification of, VET personal information

- (1) A person commits an offence if:
 - (a) the person causes any unauthorised access to, or modification of, *VET personal information:
 - (i) that is held in a computer; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) to which access is restricted by an access control system associated with a function of the computer; and
- (b) the person intends to cause the access or modification; and
- (c) the person knows that the access or modification is unauthorised; and
- (d) either of the following apply:
 - (i) the VET personal information is held in a computer of a *VET provider;
 - (ii) the VET personal information is held on behalf of a provider;
 - (iii) the VET personal information is held on a computer of a *Tertiary Admission Centre;
 - (iv) the VET personal information is held on behalf of a Tertiary Admission Centre.

Penalty: 2 years imprisonment.

- (2) Absolute liability applies to paragraph (1)(d).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 15—Tax file numbers

Subdivision 15-A—Introduction

79 What this Division is about

Requirements relating to students' tax file numbers apply to assistance under Part 2 that gives rise to VET FEE-HELP debts.

The Commissioner may notify VET providers of matters relating to tax file numbers.

VET providers have obligations relating to notifying students about tax file number requirements.

VET providers have obligations relating to cancelling the enrolment of students who do not have tax file numbers.

Note: Part VA of the *Income Tax Assessment Act 1936* provides for issuing, cancelling or altering tax file numbers.

Subdivision 15-B—What are the tax file number requirements for assistance under Part 2?

80 Meeting the tax file number requirements

- (1) A student who is enrolled, or proposes to enrol, with a *VET provider in a *VET unit of study ***meets the tax file number requirements*** for assistance under Part 2 if:
 - (a) the student notifies his or her *tax file number to an *appropriate officer of the provider, and the provider is satisfied (in accordance with subclause (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) Compliance by a person with subclause (1) in relation to a *VET course of study is to be ignored in determining whether there has been compliance by the person with subclause (1) in relation to any other VET course of study.
- (2A) If the student is seeking *VET FEE-HELP assistance for a *VET unit of study, he or she does not meet the tax file number requirements for the assistance unless he or she complies with subclause (1) on or before the *census date for the unit.
- (3) A notification under paragraph (1)(a) may be included in a *request for Commonwealth assistance that the student has given to the provider in relation to:
- (a) the *VET unit of study for which the assistance is sought; or
 - (b) the *VET course of study of which the unit forms a part; or
 - (c) any other VET unit of study forming part of that course.
- (4) The *Commissioner may issue guidelines about the circumstances in which a *VET provider is to be, or is not to be, satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(a).
- (5) A certificate under paragraph (1)(b) must be in a form approved by the *Commissioner.
- (6) A guideline issued under subclause (4) is a legislative instrument.

81 Who is an appropriate officer?

An *appropriate officer* of a *VET provider, means a person, or a person included in a class of persons, whom:

- (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider;
- has appointed to be an appropriate officer of the provider for the purposes of this Schedule.

82 Student to notify tax file number when issued

If a student *meets the tax file number requirements for the assistance under paragraph 80(1)(b):

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 83

- (a) the student must notify his or her *tax file number to an *appropriate officer of the *VET provider within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
- (b) the provider must be satisfied (in accordance with subclause 80(4)) that this number is a valid tax file number.

Subdivision 15-C—In what circumstances can VET providers be notified of tax file number matters?

83 When tax file numbers are issued etc.

The *Commissioner may give to a *VET provider written notice of the *tax file number of a student who is enrolled in a *VET course of study with the provider if the Commissioner:

- (a) issues the tax file number to the student; or
- (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.

84 When tax file numbers are altered

- (1) The *Commissioner may give to a *VET provider written notice of the *tax file number of a student who is enrolled in a *VET course of study with the provider if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn.
- (2) That new number is taken to be the number that the student notified to the provider.

85 When tax file numbers are incorrectly notified—students with tax file numbers

- (1) If the *Commissioner is satisfied:
 - (a) that the *tax file number that a student has notified to a *VET provider:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) that the student has a tax file number;
the Commissioner may give to the provider written notice of the incorrect notification and of the student's tax file number.
- (2) That number is taken to be the number that the student notified to the provider.

86 When tax file numbers are incorrectly notified—students without tax file numbers

- (1) If:
- (a) the *Commissioner is satisfied that the *tax file number that a student notified to a *VET provider:
- (i) has been cancelled since the notification was given; or
- (ii) is for any other reason not the student's tax file number;
and
- (b) the Commissioner is not satisfied that the student has a tax file number;
- the Commissioner may give to the provider a written notice informing the provider accordingly.
- (2) The *Commissioner must give a copy of any notice under subclause (1) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subclause (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

87 When applications are refused or tax file numbers are cancelled

- (1) If the *Commissioner:
- (a) refuses a student's application for the issue of a *tax file number; or
- (b) cancels a tax file number issued to a student;
- the Commissioner may give to a *VET provider with which the student is enrolled in a *VET course of study a written notice informing the provider accordingly.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 88

- (2) The *Commissioner must give a copy of any notice under subclause (1) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subclause (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

Subdivision 15-D—Other provisions relating to tax file numbers

88 Giving information about tax file number requirements

Requests for VET FEE-HELP assistance—requirements on VET providers

- (1) A *VET provider must notify a person in writing how to *meet the tax file number requirements if:
- (a) the person is enrolled in a *VET unit of study with the provider; and
 - (b) the person has, on or before the *census date for the unit, completed, signed and given to the *appropriate officer of the provider a *request for Commonwealth assistance in relation to the unit or, where the *VET course of study of which the unit forms a part is undertaken with the provider, in relation to the VET course of study; and
 - (c) in that request, the person requests *VET FEE-HELP assistance for the unit or the course; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2) The provider must notify the person under subclause (1):
- (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives the provider the *request for Commonwealth assistance;
- whichever is earlier.
- (3) A *request for Commonwealth assistance*, in relation to a person enrolling in a *VET unit of study means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit or, where the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- unit forms part of a *VET course of study undertaken with the provider, in relation to the course of study; and
- (b) that is in the form approved by the Minister.

Cases where there is no obligation to notify

- (4) This clause does not apply to the person if the person, in the *request for Commonwealth assistance, requests *VET FEE-HELP assistance but the person is not entitled to the assistance.

89 No entitlement to VET FEE-HELP assistance for students without tax file numbers

- (1) This subclause applies to a person in relation to a *VET unit of study if:
- (a) the person is enrolled with a *VET provider in the unit; and
 - (b) the provider receives notice under clause 86 or 87 to the effect that the person does not have, or no longer has, a *tax file number; and
 - (c) at the end of 28 days after the provider receives that notice, the provider has not been notified of a number that the provider is satisfied (in accordance with subclause (3)) is a valid tax file number; and
 - (d) the person is entitled to *VET FEE-HELP assistance for the unit (ignoring paragraph 43(1)(h)).

Note: The person's FEE-HELP balance in relation to the unit is re-credited: see subclause 47(1).

- (2) A *VET provider must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(d), comply with the guidelines issued by the *Commissioner under subclause 80(4).
- (3) A *VET provider must comply with any requirements, set out in guidelines issued by the *Commissioner, relating to procedures for informing persons of the need to obtain a valid *tax file number where the persons may be affected by subclause (1) applying to them.
- (4) A guideline issued under subclause (3) is a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 16—Review of decisions

Subdivision 16-A—Introduction

90 What this Division is about

Some decisions made under this Schedule are subject to reconsideration and then review by the Administrative Appeals Tribunal.

Subdivision 16-B—Which decisions are subject to review?

91 Reviewable VET decisions etc.

The following table sets out:

- (a) the *reviewable VET decisions* under this Schedule; and
- (b) the *decision maker*, for the purposes of this Division, in respect of each of those decisions.

Reviewable VET decisions			
Item	Decision	Provision under which decision is made	Decision maker
1	Refusal to re-credit a person's *FEE-HELP balance	subclause 46(2)	(a) the *VET provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary

Note: The decisions referred to in item 1 of the table are made by a VET provider on the Secretary's behalf.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

92 Deadlines for making reviewable VET decisions

If:

- (a) this Schedule provides for a person to apply to a *decision maker to make a *reviewable VET decision; and
- (b) a period is specified under this Schedule for giving notice of the decision to the applicant; and
- (c) the decision maker has not notified the applicant of the decision maker's decision within that period;

the decision maker is taken, for the purposes of this Schedule, to have made a decision to reject the application.

93 Decision maker must give reasons for reviewable VET decisions

- (1) If this Schedule requires the *decision maker to notify a person of the making of a *reviewable VET decision, the notice must include reasons for the decision.
- (2) Subclause (1) does not affect an obligation, imposed upon the *decision maker by any other law, to give reasons for a decision.

Subdivision 16-C—How are decisions reconsidered?

94 Reviewer of decisions

- (1) The *reviewer* of a *reviewable VET decision is:
 - (a) if the *decision maker was a *VET provider acting on behalf of the *Secretary—the Secretary; or
 - (b) in any other case—the decision maker, but see subclause (2).
- (2) If:
 - (a) a *reviewable VET decision was made by a delegate of a *decision maker; and
 - (b) the decision is to be reconsidered by a delegate of the decision maker;then the delegate who reconsiders the decision must be a person who:
 - (c) was not involved in making the decision; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 95

- (d) occupies a position that is senior to that occupied by any person involved in making the decision.

Note: The Secretary may delegate to a review officer of a VET provider the power to reconsider reviewable VET decisions made under Part 2: see subclause 98(2).

95 Reviewer may reconsider reviewable VET decisions

- (1) The *reviewer of a *reviewable VET decision may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.
- (2) The *reviewer may reconsider the decision even if:
- (a) an application for reconsideration of the decision has been made under clause 96; or
 - (b) the decision has been confirmed, varied or set aside under clause 96 and an application has been made under clause 97 for review of the decision.
- (3) After reconsidering the decision, the *decision maker must:
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (4) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
- (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (5) The *reviewer must give written notice of the decision on review to the person to whom that decision relates.
- (6) The notice:
- (a) must be given within a reasonable period after the decision is made; and
 - (b) must contain a statement of the reasons for the *reviewer's decision on review.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

96 Reconsideration of reviewable VET decisions on request

- (1) A person whose interests are affected by a *reviewable VET decision may request the *reviewer to reconsider the decision.
- (2) The person's request must be made by written notice given to the *reviewer within 28 days, or such longer period as the reviewer allows, after the day on which the person first received notice of the decision.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the *reviewer must reconsider the decision and:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (6) The *reviewer must give the person written notice of the decision on review.
- (7) The notice:
 - (a) must be given within a reasonable period after the decision on review is made; and
 - (b) must contain a statement of the reasons for the decision on review.
- (8) The *reviewer is taken, for the purposes of this Division, to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 16-D—Which decisions are subject to AAT review?

97 AAT review of reviewable VET decisions

An application may be made to the Administrative Appeals Tribunal for the review of a *reviewable VET decision that has been confirmed, varied or set aside under clause 95 or 96.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4—Miscellaneous

98 Delegations by Secretary

- (1) The *Secretary may, in writing, delegate to an APS employee in the Department all or any of the powers of the Secretary under any Guidelines made under clause 99.

Note: Section 238-5 provides for the Minister to delegate his or her powers under this Act.

- (2) The *Secretary may, in writing, delegate to a *review officer of a *VET provider the Secretary's powers under Subdivision 16-C to reconsider *reviewable VET decisions made by the provider relating to Part 2.
- (3) In exercising powers under the delegation, the delegate must comply with any directions of the *Secretary.

99 VET Guidelines

- (1) The Minister may, by legislative instrument, make Guidelines, specified in the second column of the table, providing for matters:
- (a) required or permitted by the corresponding provisions specified in the third column of the table to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to those provisions.

Guidelines		
Item	Guidelines	Provisions
1	*VET Provider Guidelines	Part 1
2	*VET FEE-HELP Guidelines	Section 137-18 and Part 2
3	*VET Tuition Fee Guidelines	Part 2
4	*VET Administration Guidelines	Part 3

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Clause 99

Indexation

- (2) Guidelines may provide for the indexation of any or all amounts in the Guidelines, using the method of indexation set out in Part 5-6.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1—Dictionary

Note: Section 1-10 describes how asterisks are used to identify terms that are defined in this Act.

1 Definitions

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

accredited course means a course that:

- (a) is a *course of study; and
- (b) is accredited by a *government accreditation authority.

accredited VET course means a course that:

- (a) is a *VET course of study; and
- (b) is accredited by the Commonwealth or by a State or Territory VET Course Accrediting Body listed in the *Australian Qualifications Framework Register; and
- (c) is listed as a current VET Diploma, VET Advanced Diploma, VET Graduate Diploma or VET Graduate Certificate qualification on *NTIS.

accumulated HELP debt has the meaning given by section 140-25.

additional SLE, of a person, means the amount of *Student Learning Entitlement that the person has under section 73-20, as reduced (if applicable) under Division 76.

annual financial reporting period has the meanings given by subsection 19-10(3) and subclause 15(3) of Schedule 1A.

appropriate officer:

- (a) in relation to a higher education provider, has the meaning given by section 187-2; and
- (b) in relation to a *VET provider, has the meaning given by clause 81 of Schedule 1A.

assessing body has the meaning given by section 104-55.

assessing body of a State or Territory has the meaning given by subsection 104-55(3).

assessment statement has the meaning given by section 104-50.

Australian branch, of a *Table C provider, means:

- (a) if that provider conducts its higher education operations in Australia through a branch of the body corporate that is listed in Table C in section 16-23—that branch; or
- (b) otherwise—the body corporate through which that provider conducts its higher education operations in Australia.

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications established by the Council:

- (a) comprised of the Ministers responsible for education, employment, training and youth affairs for the Commonwealth and each State; and
- (b) known as the Ministerial Council on Education, Employment, Training and Youth Affairs;

to give effect to agreed standards in relation to the provision of education in Australia.

Australian Qualifications Framework Register means the Register:

- (a) that is called the Register of Recognised Education Institutions and Authorised Accreditation Authorities in Australia; and
- (b) that is maintained by the advisory board to the *Australian Qualifications Framework.

Australian Quality Training Framework means the arrangements agreed from time to time between the Commonwealth, the States and the Territories to ensure the high quality of vocational education and training (VET) services.

Australian Statistician means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

Australian university means a body corporate:

- (a) that meets the requirements set out in the *National Protocols for entities referred to in the National Protocols as Australian universities; and

- (b) whose name is included, or who owns or controls a business name that is included, in the *Australian Qualifications Framework Register as an Australian university.

available, in relation to the amount of a person's *Student Learning Entitlement, has the meaning given by section 82-5.

AWE has the meaning given by subsection 154-25(2).

basic grant amount has the meaning given in section 33-5.

bridging course for overseas-trained professionals has the meaning given by section 104-45.

census date:

- (a) for a unit of study for a year, means:
- (i) if the student undertaking the unit has not accessed it through *Open Universities Australia—the date determined under section 169-25; and
 - (ii) if the student undertaking the unit has accessed it through Open Universities Australia—the date determined under subsection 104-4(5); and
- (b) for a *VET unit of study for a year, means the date determined under clause 67 of Schedule 1A.

Centrelink means the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*.

Commissioner means the Commissioner of Taxation.

Commonwealth contribution amount means an amount specified in section 33-10.

Commonwealth officer has the meaning given by subsection 179-15(2).

Commonwealth scholarship means a scholarship payable under Part 2-4.

Commonwealth supported student has the meaning given by section 36-5.

compliance requirements are the requirements set out in Subdivision 19-E.

compulsory repayment amount means an amount that:

- (a) is required to be paid in respect of an *accumulated HELP debt under section 154-1; and
- (b) is included in a notice of an assessment made under section 154-35.

consent includes consent that can reasonably be inferred from the conduct of the person concerned.

contribution and fee requirements are the requirements set out in Subdivision 19-F.

corrected basic amount has the meaning given by subsection 33-25(5).

course of study means:

- (a) an *enabling course; or
- (b) a single course leading to a *higher education award; or
- (c) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to 1 or more *higher education awards.

Example: An example of a combined or double course covered by paragraph (c) is a course that leads to the higher education awards of Bachelor of Arts and Bachelor of Laws.

course of study in dentistry means a *course of study, completion of which would satisfy the academic requirements for registration as a dentist by an authority of a State, a Territory or the Commonwealth.

course of study in medicine means a *course of study, completion of which would allow provisional registration as a medical practitioner by an authority of a State, a Territory or the Commonwealth.

course of study in veterinary science means a *course of study, completion of which would satisfy the academic requirements for registration as a veterinary surgeon or veterinary practitioner by an authority of a State, a Territory or the Commonwealth.

covered: Division 82 defines whether a unit of study is covered by a person's *Student Learning Entitlement.

decision maker:

-
- (a) for a *reviewable decision, means the person listed in column 3 of the table in section 206-1, in respect of a decision in column 2 of the table, as the decision maker in respect of that decision; and
 - (b) for a *reviewable VET decision, means the person listed in column 3 of the table in clause 91 of Schedule 1A, in respect of a decision in column 2 of the table, as the decision maker in respect of that decision.

domestic student means a student who is not an *overseas student.

EFTSL has the meaning given by section 73-10.

EFTSL value, of a unit of study, has the meaning given by section 73-15.

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

eligible person has the meaning given by subsection 73-5(3).

eligible scholarship provider has the meaning given by subsection 46-15(3).

employee of Centrelink means an employee within the meaning of the *Commonwealth Services Delivery Agency Act 1997*.

employer contribution amount, for a unit of study, is the amount that an employer has contributed, towards the cost of the unit, for a student enrolled in the unit under a *restricted access arrangement for the *course of study of which the unit forms a part.

employer reserved place means a place, in a *course of study, made available under a *restricted access arrangement for the course.

enabling course means a course of instruction provided to a person for the purpose of enabling the person to undertake a course leading to a *higher education award, but does not include:

- (a) a course leading to a higher education award; or
- (b) any course that the Minister determines is not an enabling course for the purposes of this Act.

enrolled:

- (a) a person *enrolled* in a *course of study includes a person undertaking the course of study; and
- (b) a person *enrolled* in a *VET course of study includes a person undertaking the VET course of study.

exempt foreign income has the meaning given by subsection 154-5(4).

exempt student has the meaning given by section 169-20.

fairness requirements are the requirements set out in Subdivision 19-D.

fee, for a unit of study for a year:

- (a) if the student undertaking the unit has not accessed it through *Open Universities Australia—has the meaning given by section 19-102; and
- (b) if the student undertaking the unit has accessed it through Open Universities Australia—has the meaning given by subsections 104-4(3) and (4).

FEE-HELP assistance means assistance payable under Part 3-3.

FEE-HELP balance has the meaning given by section 104-15.

FEE-HELP debt has the meaning given by section 137-10.

FEE-HELP limit has the meaning given by section 104-20.

financial viability requirements are the requirements set out in Subdivision 19-B.

former accumulated HELP debt has the meaning given by section 140-5.

funding clusters has the meaning given by section 30-15.

government accreditation authority means:

- (a) the Commonwealth; or
- (b) a State or Territory accreditation agency listed in the *Australian Qualifications Framework Register.

HECS-HELP assistance means assistance payable under Part 3-2.

HECS-HELP benefit means a benefit for an *income year that:

-
- (a) if a *compulsory repayment amount is required to be paid—has the effect of reducing the amount actually payable for that year; and
 - (b) if a compulsory repayment amount is not required to be paid—reduces a person's *accumulated HELP debt for that year.

HECS-HELP debt has the meaning given by section 137-5.

HECS-HELP discount has the meaning given by subsection 96-5(4).

HELP debt has the meaning given by section 137-1.

HELP debt indexation factor has the meaning given by section 140-10.

higher education award means:

- (a) a degree, status, title or description of bachelor, master or doctor; or
- (b) an award of graduate diploma or graduate certificate; or
- (c) any other award specified as a higher education award under the *Australian Qualifications Framework.

higher education provider has the meaning given by section 16-1.

income tax has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income tax law has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income year has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

indexation factor has the meaning given by section 198-15.

indexation period has the meaning given by subsection 198-20(7).

index number:

- (a) for the purposes of Part 4-1, has the meaning given by section 140-15; and
- (b) for the purposes of Part 5-6, has the meaning given by section 198-20.

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

life long SLE, of a person, means the amount of *Student Learning Entitlement that the person has under section 73-22, as reduced (if applicable) under Division 76.

listed professional occupation has the meaning given by section 104-60.

listed provider has the meaning given by section 16-10.

maximum OS-HELP amount has the meaning given by section 121-5.

maximum student contribution amount for a place has the meaning given by subsection 93-10(1).

Medicare levy means the Medicare levy imposed by the *Medicare Levy Act 1986*.

meets the tax file number requirements has the meanings given by section 187-1 and clause 80 of Schedule 1A.

Military Rehabilitation and Compensation Commission means the Military Rehabilitation and Compensation Commission established by section 361 of the *Military Rehabilitation and Compensation Act 2004*.

minimum OS-HELP amount means an amount determined under section 121-10.

minimum repayment income has the meaning given by section 154-10.

national priority has the meaning given by section 30-20.

National Protocols means the National Protocols for Higher Education Approval Processes (first endorsed by the Ministerial Council on Employment, Education, Training and Youth Affairs on 31 March 2000), as in force from time to time.

non-award basis: an enrolment in:

- (a) a subject or unit that a person may undertake with a higher education provider as part of a *course of study; or

- (b) a course of instruction with a higher education provider; or
- (c) a tuition and training program with a higher education provider;

is an enrolment on a *non-award basis* if the unit, course or program is not being undertaken as part of a course of study.

non self-accrediting entity means a body corporate (other than an *Australian university or a *self-accrediting entity):

- (a) whose name is included; or
- (b) who owns or controls a business name that is included;

in the *Australian Qualifications Framework Register as a body authorised to offer *courses of study leading to *higher education awards, but not to accredit any of those courses.

NTIS means the National Training Information Service maintained by the Commonwealth in conjunction with the States and Territories.

number of Commonwealth supported places means:

- (a) in relation to an allocation of a number of Commonwealth supported places under section 30-10 in relation to a *funding cluster—the number allocated under that section in relation to that funding cluster; or
- (b) in relation to the provision of a number of Commonwealth supported places—the number worked out under section 33-30.

occupation includes the meaning given by section 104-65.

offering, in relation to an external Territory, has the meaning given by subsection 228-15(2).

officer has the meaning given by subsection 179-15(1).

officer of a higher education provider has the meaning given by subsection 179-15(3).

officer of a Tertiary Admission Centre has the meaning given by subsection 179-15(3B).

officer of a VET provider has the meaning given by subclause 74(3) of Schedule 1A.

officer of Open Universities Australia has the meaning given by subsection 179-15(3A).

official employment has the meanings given by subsection 179-15(4) and subclause 74(3) of Schedule 1A.

Open Universities Australia means Open Universities Australia Pty Ltd (ACN 053 431 888).

operating, in relation to an external Territory, has the meaning given by subsections 228-15(1A) and (1).

ordinary SLE of a person means the amount of *Student Learning Entitlement that the person has under section 73-5, as reduced (if applicable) under Division 76.

OS-HELP assistance means assistance payable under Part 3-4.

OS-HELP debt has the meaning given by section 137-15.

overseas student means a person who:

- (a) is not an Australian citizen; and
- (b) is enrolled, or proposes to become enrolled, in:
 - (i) a *course of study with a higher education provider; or
 - (ii) a unit of study access to which was provided by *Open Universities Australia;

but does not include:

- (c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or
- (d) a New Zealand citizen; or
- (e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse, de facto partner (within the meaning of the *Acts Interpretation Act 1901*) or dependent relative of such a representative.

Note: In relation to paragraph (e) of the definition of **Overseas student**, see also subclause (2).

permanent humanitarian visa holder means the holder of a visa that is, or has at any time been, defined as a permanent humanitarian visa for the purposes of the regulations made under the *Migration Act 1958*.

permanent visa holder means the holder of a permanent visa within the meaning of subsection 30(1) of the *Migration Act 1958*.

personal information has the meaning given by section 179-5.

postgraduate course of study means a *course of study that:

- (a) leads to one or more of the following *higher education awards:
 - (i) a graduate diploma;
 - (ii) a graduate certificate;
 - (iii) a master's degree;
 - (iv) a doctoral degree; and
- (b) does not lead to any other higher education award.

qualified auditor means:

- (a) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
- (b) a person registered as a company auditor or a public accountant under a law in force in a State, the Australian Capital Territory or the Northern Territory; or
- (c) a member of the Institute of Chartered Accountants in Australia, or of the Australian Society of Certified Practising Accountants; or
- (d) a person approved by the Minister in writing as a qualified auditor for the purposes of this Act.

quality and accountability requirements has the meaning given by section 19-1.

quality auditing body, for a higher education provider, means a body listed in the Higher Education Provider Guidelines as a quality auditing body for providers of that kind.

quality requirements are the requirements set out in Subdivision 19-C.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

reference period has the meaning given by subsection 154-25(3).

related body corporate has the meaning given by section 9 of the *Corporations Act 2001*.

Repatriation Commission means the body corporate continued in existence by section 179 of the *Veterans' Entitlements Act 1986*.

repayable debt, for an *income year, has the meaning given by section 154-15.

repayment income has the meaning given by section 154-5.

request for Commonwealth assistance:

- (a) in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit is not provided by *Open Universities Australia)—has the meaning given by subsection 36-40(3); and
- (b) in relation to a person to whom access to a unit of study is provided by Open Universities Australia—has the meaning given by subsection 193-1(2C); and
- (c) in relation to a person enrolling in a *VET unit of study has the meaning given by subclause 88(3) of Schedule 1A.

requirements for entry, to a *listed professional occupation, has the meaning given by section 104-70.

restricted access arrangement, for a *course of study, means an arrangement:

- (a) that was entered into between the higher education provider providing the course and an employer or industry body; and
- (b) that limits or restricts enrolments in some or all of the places in the course.

return means an income tax return within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

reviewable decision means a decision listed in the table in section 206-1.

reviewable VET decision means a decision listed in the table in clause 91 of Schedule 1A.

reviewer has the meanings given by section 209-1 and clause 94 of Schedule 1A.

review officer:

- (a) of a higher education provider—has the meaning given by subsection 19-50(2); and

-
- (b) of **Open Universities Australia*—has the meaning given by subsection 238-1(2B); and
 - (c) of a **VET provider*—has the meaning given by subclause 21(2) of Schedule 1A.

Secretary means the Secretary of the Department.

self-accrediting entity means a body corporate (other than an **Australian university*):

- (a) whose name is included; or
 - (b) who owns or controls a business name that is included;
- in the **Australian Qualifications Framework Register* as a body authorised to accredit **courses of study* leading to **higher education awards*.

SLE means **Student Learning Entitlement*.

student means:

- (a) a person who is enrolled in a **course of study* with a higher education provider, and includes a person who is enrolled in a unit of study access to which was provided by **Open Universities Australia*; or
- (b) a person who is enrolled in a **VET course of study* with a **VET provider*.

student contribution amount has the meaning given by section 93-5.

student contribution amount for a place has the meaning given by subsection 93-5(1).

Student Learning Entitlement has the meaning given by section 73-1.

Table A provider means a body listed in Table A in section 16-15.

Table B provider means a body listed in Table B in section 16-20.

Table C provider means a body listed in Table C in section 16-22.

taxable income has the meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

tax file number: a person's tax file number is a number that the *Commissioner has issued to the person and that is either:

- (a) a number issued under Part VA of the *Income Tax Assessment Act 1936*; or
- (b) a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*; or
- (c) a number that the Commissioner notified to the person as the person's income tax file number.

Tertiary Admission Centre means a person, body or organisation that provides services in relation to student admissions and enrolments on behalf of:

- (a) higher education providers; or
- (b) *VET providers; or
- (c) both higher education providers and VET providers.

tuition assurance requirements means the requirements set out in section 16-30.

tuition fee:

- (a) in relation to a unit of study access to which is not provided by *Open Universities Australia—has the meaning given by section 19-105; and
- (b) in relation to a unit of study access to which is provided by Open Universities Australia—means:
 - (i) if only one fee has been determined for the unit under subsection 104-4(2)—that fee; or
 - (ii) if more than one fee has been determined for the unit under that subsection—the fee determined under that subsection that applies to the person.

undergraduate course of study means a *course of study that is neither an *enabling course nor a *postgraduate course of study.

unit of study means:

- (a) a subject or unit that a person may undertake with a higher education provider as part of a *course of study; or
- (b) a subject or unit made available by a higher education provider:
 - (i) access to which was provided by *Open Universities Australia; and

- (ii) that a person could undertake as part of a course of study leading to a *higher education award; or
- (c) a part of a *bridging course for overseas-trained professionals.

If a higher education provider provides the same such subject or unit in respect of more than one period, the subject or unit is taken to be a different unit of study in respect of each period.

up-front payment, in relation to a unit of study, has the meaning given by section 93-15 or 107-5.

up-front VET payment has the meaning given by subclause 53(1) of Schedule 1A.

VET Administration Guidelines means the VET Administration Guidelines made under clause 99 of Schedule 1A.

VET advanced diploma means a qualification:

- (a) at the level of advanced diploma in the Australian Qualifications Framework; and
- (b) that meets the guidelines for a VET award as set out in the Australian Qualifications Framework Implementation Handbook.

VET compliance requirements means the requirements set out in Subdivision 4-E of Schedule 1A.

VET course of study means a structured and integrated program of vocational education or vocational training, usually consisting of a number of modules (units of study) or shorter programs, and leading to the award of a *VET diploma, a *VET advanced diploma, a *VET graduate diploma or a *VET graduate certificate.

VET credit transfer arrangement means an arrangement for crediting a *VET unit of study or *VET course of study toward a *higher education award.

VET diploma means a qualification:

- (a) at the level of diploma in the Australian Qualifications Framework; and
- (b) that meets the guidelines for a VET award as set out in the Australian Qualifications Framework Implementation Handbook.

VET fairness requirements means the requirements set out in Subdivision 4-D of Schedule 1A.

VET FEE-HELP assistance means assistance payable under Part 2 of Schedule 1A.

VET FEE-HELP debt has the meaning given by subsection 137-18(1).

VET FEE-HELP Guidelines means the VET FEE-HELP Guidelines made under clause 99 of Schedule 1A.

VET fee requirements means the requirements set out in Subdivision 4-F of Schedule 1A.

VET financial viability requirements means the requirements set out in Subdivision 4-B of Schedule 1A.

VET graduate certificate means a qualification:

- (a) at the level of graduate certificate in the Australian Qualifications Framework; and
- (b) that meets the guidelines for a VET award as set out in the Australian Qualifications Framework Implementation Handbook.

VET graduate diploma means a qualification:

- (a) at the level of graduate diploma in the Australian Qualifications Framework; and
- (b) that meets the guidelines for a VET award as set out in the Australian Qualifications Framework Implementation Handbook.

VET officer has the meaning given by subclause 74(1) of Schedule 1A.

VET personal information has the meaning given by clause 72 of Schedule 1A.

VET provider has the meaning given by clause 4 of Schedule 1A.

VET Provider Guidelines means the VET Provider Guidelines made under clause 99 of Schedule 1A.

VET quality and accountability requirements means the meaning given by subclause 13(1) of Schedule 1A.

VET quality requirements are the requirements set out in Subdivision 4-C of Schedule 1A.

VET restricted access arrangement, for a *VET course of study, means an arrangement:

- (a) that was entered into between the *VET provider providing the course and an employer or industry body; and
- (b) that limits or restricts enrolments in some or all of the places in the course.

VET tuition assurance requirements means the requirements set out in clause 7 of Schedule 1A.

VET tuition fee: a person's **VET tuition fee** for a *VET unit of study is the fee determined under subclause 27(2) for the unit that applies to the person.

VET Tuition Fee Guidelines means the VET Tuition Fee Guidelines made under clause 99 of Schedule 1A.

VET unit of study means a subject or unit that a person may undertake with a *VET provider as part of a *VET course of study. If a VET provider provides the same such subject or unit in respect of more than one period, the subject or unit is taken to be a different VET unit of study in respect of each period.

voluntary repayment means a payment made to the *Commissioner in discharge of an *accumulated HELP debt or a *HELP debt. It does not include a payment made in discharge of a *compulsory repayment amount.

work experience in industry means work:

- (a) that is done as a part of, or in connection with, a *course of study undertaken with a higher education provider; and
- (b) in respect of which student learning and performance is not directed by the provider; and
- (c) the purpose of which is to obtain work experience relevant to the course of study; and
- (d) that meets any other requirements specified in the Administration Guidelines.

- (2) For the purposes of paragraph (e) of the definition of ***Overseas student*** in subclause (1), a representative's relatives include (without limitation):
- (a) an exnuptial or adoptive child of the representative, or someone of whom the representative is an exnuptial or adoptive child; and
 - (b) someone who is a child of the representative, or of whom the representative is a child, because of subclause (3); and
 - (c) relatives traced through relationships referred to in paragraphs (a) and (b).
- (3) For the purposes of paragraph (2)(b), one person is the ***child*** of another person because of this subclause if he or she is a child of the other person within the meaning of the *Family Law Act 1975*.

Table of Acts**Notes to the *Higher Education Support Act 2003*****Note 1**

The *Higher Education Support Act 2003* as shown in this compilation comprises Act No. 149, 2003 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Higher Education Support Act 2003</i>	149, 2003	19 Dec 2003	Ss. 1-10–238-15 and Schedule 1: 1 Jan 2004 Remainder: Royal Assent	
<i>Higher Education Legislation Amendment Act 2004</i>	45, 2004	21 Apr 2004	21 Apr 2004	—
<i>Higher Education Legislation Amendment Act (No. 2) 2004</i>	114, 2004	13 July 2004	Schedule 2 (items 39–45, 80): 14 July 2004 Remainder: Royal Assent	Sch. 2 (item 85)
<i>Higher Education Legislation Amendment Act (No. 3) 2004</i>	157, 2004	17 Dec 2004	Schedule 1 (items 1–43, 46–52): Royal Assent Schedule 1 (items 44, 45): (a)	—
<i>Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005</i>	56, 2005	25 May 2005	Schedule 1 and Schedule 2 (items 1, 3–17): Royal Assent Schedule 2 (item 2): (b)	Sch. 2 (items 15–17)
<i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i>	83, 2005	6 July 2005	Schedule 1 (items 1–50): Royal Assent Schedule 1 (items 51–59): 3 Aug 2005 Schedule 1 (items 60, 61): (c)	Sch. 1 (items 2, 12, 35, 47, 49) Sch. 1 (item 23) (am. by 143, 2005, Sch. 7 [item 92])

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005</i>	143, 2005	14 Dec 2005	Schedule 7 (items 50, 92): (see 143, 2005 below)	—
<i>Higher Education Legislation Amendment (Workplace Relations Requirements) Act 2005</i>	139, 2005	18 Nov 2005	19 Nov 2005	Sch. 1 (item 2)
<i>Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005</i>	143, 2005	14 Dec 2005	Schedule 3: 28 Dec 2005 Schedule 6: 23 Nov 2004 Schedule 7 (items 1–6, 8, 10, 12–14, 16–36, 39–43, 45, 46, 48–56, 59–81, 83–91): (d) Schedule 7 (item 7): (d) Schedule 7 (items 9, 11, 15, 37, 38, 57, 58, 82, 92): (d) Schedule 7 (items 44, 47): (d) Remainder: Royal Assent	Sch. 1 (item 11), Sch. 2 (item 3), Sch. 3 (item 3) and Sch. 5 (item 8)
<i>Higher Education Legislation Amendment (2005 Budget Measures) Act 2005</i>	156, 2005	19 Dec 2005	19 Dec 2005	—
<i>Higher Education Legislation Amendment (2005 Measures No. 4) Act 2005</i>	158, 2005	19 Dec 2005	20 Dec 2005	—
<i>Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005</i>	159, 2005	19 Dec 2005	1 Jan 2006	Sch. 1 (item 1A)
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005</i>	161, 2005	19 Dec 2005	19 Dec 2005	Sch. 2 (item 32)
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (item 116) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006</i>	121, 2006	4 Nov 2006	Schedule 1 (items 3–5) and Schedule 2: 1 Jan 2007 Remainder: Royal Assent	Sch. 1 (items 4, 5), Sch. 2 (items 3, 4), Sch. 3 (items 12–14) and Sch. 4 (item 5)
<i>Higher Education Legislation Amendment (2007 Measures No. 1) Act 2007</i>	72, 2007	28 May 2007	Schedule 1: 31 Dec 2007 (see F2007L03553) Schedule 3 (items 2–6): 1 Jan 2008 Remainder: Royal Assent	Sch. 3 (item 6) and Sch. 5 (item 5)
<i>Higher Education Legislation Amendment (2007 Budget Measures) Act 2007</i>	119, 2007	28 June 2007	Schedule 2, Schedule 3 (items 10–17), Schedules 4, 5, 7, 8, 10 and 11: 1 Jan 2008 Remainder: Royal Assent	Sch. 2 (items 3, 4, 6), Sch. 3 (items 9, 17), Sch. 4 (item 5), Sch. 7 (items 3, 7), Sch. 8 (item 20), Sch. 10 (item 2) and Sch. 11 (item 2)
<i>Maritime Legislation Amendment Act 2007</i>	150, 2007	24 Sept 2007	Schedule 1: 1 Jan 2008 (see F2007L04141) Remainder: Royal Assent	—
<i>Higher Education Support Amendment (Extending FEE-HELP for VET Diploma, Advanced Diploma, Graduate Diploma and Graduate Certificate Courses) Act 2007</i>	170, 2007	28 Sept 2007	Schedule 1: 1 Jan 2008 Remainder: Royal Assent	—
<i>Higher Education Support Amendment (VET FEE-HELP Assistance) Act 2008</i>	11, 2008	20 Mar 2008	20 Mar 2008	—
<i>Higher Education Support Amendment (2008 Budget Measures) Act 2008</i>	43, 2008	25 June 2008	25 June 2008	Sch. 1 (item 17) and Sch. 2 (item 13)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 1 (items 28, 29): (e)	—
<i>Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008</i>	89, 2008	20 Sept 2008	20 Sept 2008	Sch. 1 (item 7)
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 5 (items 6–9): 10 Dec 2008	—
<i>Tax Laws Amendment (2009 Measures No. 1) Act 2009</i>	27, 2009	26 Mar 2009	Schedule 3 (items 36–39, 102(1)): 27 Mar 2009	Sch. 3 (item 102(1))
<i>Higher Education Support Amendment (VET FEE-HELP and Providers) Act 2009</i>	39, 2009	23 June 2009	24 June 2009	Sch. 1 (items 2, 4, 6) and Sch. 2 (item 9)
<i>Higher Education Support Amendment (2009 Budget Measures) Act 2009</i>	86, 2009	18 Sept 2009	Schedule 2, Schedule 4 (item 1) and Schedule 5: 1 Jan 2010 Remainder: Royal Assent	Sch. 2 (items 3, 4), Sch. 3 (item 2), Sch. 5 (items 2, 3) and Sch. 6 (item 2)
<i>Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Act 2009</i>	121, 2009	7 Dec 2009	8 Dec 2009	Sch. 1 (items 2, 4, 7, 12)
<i>Higher Education Support Amendment Act 2010</i>	6, 2010	19 Feb 2010	19 Feb 2010	—
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (f)	—
<i>Social Security and Other Legislation Amendment (Income Support for Students) Act 2010</i>	17, 2010	24 Mar 2010	Schedule 2 (items 5–9): 1 Apr 2010	—
<i>Higher Education Support Amendment (University College London) Act 2010</i>	47, 2010	31 May 2010	1 Jan 2010	Sch. 1 (item 2)
<i>Tax Laws Amendment (Transfer of Provisions) Act 2010</i>	79, 2010	29 June 2010	Schedule 1 (items 14–16): 1 July 2010	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Higher Education Support Amendment (Indexation) Act 2010</i>	111, 2010	14 July 2010	1 Jan 2011	Sch. 1 (item 6)
<i>Higher Education Support Amendment (2010 Budget Measures) Act 2010</i>	129, 2010	24 Nov 2010	Schedule 1: 1 Dec 2010 Remainder: Royal Assent	—
<i>Higher Education Support Amendment (FEE-HELP Loan Fee) Act 2010</i>	132, 2010	24 Nov 2010	24 Nov 2010	Sch. 1 (item 2)
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 1 (item 65): Royal Assent	—
<i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i>	14, 2011	12 Apr 2011	Schedule 1 (items 33, 36–54): [see (g), Note 2 and Table A] Schedule 1 (item 34): [see (g) and Note 2] Schedule 1 (item 35): [see (g) and Note 2]	Sch. 1 (item 54)
<i>Human Services Legislation Amendment Act 2011</i>	32, 2011	25 May 2011	Schedule 4 (items 278–281): [see Note 3]	—

Act Notes

(a) Subsection 2(1) (item 3) of the *Higher Education Legislation Amendment Act (No. 3) 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1, items 44 and 45	Immediately after the commencement of items 59 and 61 of Schedule 2 to the <i>Higher Education Legislation Amendment Act (No. 2) 2004</i> .	13 July 2004

(b) Subsection 2(1) (items 4 and 5) of the *Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
4. Schedule 2, item 2	Immediately after the commencement of the provision(s) covered by table item 5.	25 May 2005
5. Schedule 2, items 3 to 17	The day on which this Act receives the Royal Assent.	25 May 2005

(c) Subsection 2(1) (item 4) of the *Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
4. Schedule 1, Part 3	Immediately after the commencement of Schedule 1 to the <i>Higher Education Support Act 2003</i> .	1 January 2004

(d) Subsection 2(1) (items 5–27) of the *Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
5. Schedule 6	23 November 2004.	23 November 2004
6. Schedule 7, items 1 to 6	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004

Act Notes

Provision(s)	Commencement	Date/Details
7. Schedule 7, item 7	Immediately after the commencement of item 6 of Schedule 1 to the <i>Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005</i> . However, if item 6 of Schedule 1 to the <i>Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005</i> does not commence, the provision(s) do not commence at all.	1 January 2006
8. Schedule 7, item 8	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
9. Schedule 7, item 9	Immediately after the commencement of item 18 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 18 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005
10. Schedule 7, item 10	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
11. Schedule 7, item 11	Immediately after the commencement of item 20 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 20 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005
12. Schedule 7, items 12 to 14	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
13. Schedule 7, item 15	Immediately after the commencement of item 24 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 24 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005
14. Schedule 7, items 16 to 36	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004

Act Notes

Provision(s)	Commencement	Date/Details
15. Schedule 7, items 37 and 38	Immediately after the commencement of item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005
16. Schedule 7, items 39 to 43	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
17. Schedule 7, item 44	Immediately after the commencement of item 60 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 60 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	1 January 2004
18. Schedule 7, items 45 and 46	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
19. Schedule 7, item 47	Immediately after the commencement of item 61 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 61 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	1 January 2004
20. Schedule 7, items 48 and 49	Immediately after the commencement of the provisions covered by table item 5.	23 November 2004
21. Schedule 7, items 50 to 56	Immediately after the commencement of the provisions covered by table item 6.	23 November 2004
22. Schedule 7, item 57	Immediately after the commencement of the provisions covered by table item 9. However, if the provisions covered by table item 9 do not commence, the provision(s) do not commence at all.	6 July 2005
23. Schedule 7, item 58	Immediately after the commencement of the provisions covered by table item 11. However, if the provisions covered by table item 11 do not commence, the provision(s) do not commence at all.	6 July 2005

Act Notes

Provision(s)	Commencement	Date/Details
24. Schedule 7, items 59 to 81	Immediately after the commencement of the provisions covered by table item 6.	23 November 2004
25. Schedule 7, item 82	Immediately after the commencement of item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005
26. Schedule 7, items 83 to 91	Immediately after the commencement of the provisions covered by table item 6.	23 November 2004
27. Schedule 7, item 92	Immediately after the commencement of item 23 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> . However, if item 23 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all.	6 July 2005

(e) Subsection 2(1) (item 20) of the *Statute Law Revision Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
20. Schedule 1, items 28 and 29	Immediately after the commencement of section 179-10 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

(f) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

Act Notes

(g) Subsection 2(1) (items 7–10) of the *National Vocational Education and Training Regulator (Consequential Amendments) Act 2011* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
7. Schedule 1, items 18 to 33	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	[see Note 2]
8. Schedule 1, item 34	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> . However, if Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> commences before that time, the provision(s) do not commence at all.	[see Note 2]
9. Schedule 1, item 35	Immediately after the commencement of Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> . However, if section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> commences before that time, the provision(s) do not commence at all.	[see Note 2]
10. Schedule 1, items 36 to 55	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	[see Note 2 and Table A]

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
Division 2	
S. 2-1.....	am. No. 170, 2007
Division 3	
S. 3-1.....	am. No. 170, 2007
Heading to s. 3-5	am. No. 119, 2007
S. 3-5.....	am. Nos. 72 and 119, 2007
S. 3-25.....	rs. No. 72, 2007
S. 3-30.....	ad. No. 170, 2007
Division 5	
Div. 5.....	ad. No. 158, 2005
S. 5-1.....	ad. No. 158, 2005 am. Nos. 119 and 170, 2007
Division 6	
Div. 6.....	ad. No. 170, 2007
S. 6-1.....	ad. No. 170, 2007
Chapter 2	
Heading to Chapt. 2.....	rs. No. 119, 2007
Division 8	
S. 8-1.....	am. Nos. 72 and 119, 2007
Part 2-1	
Division 13	
S. 13-1.....	am. No. 158, 2005; No. 72, 2007
Division 16	
Subdivision 16-A	
S. 16-5.....	am. No. 158, 2005; No. 39, 2009
Subdivision 16-B	
S. 16-15.....	am. Nos. 72 and 150, 2007
S. 16-22.....	ad. No. 158, 2005 am. No. 47, 2010
Subdivision 16-C	
S. 16-25.....	am. No. 114, 2004; No. 56, 2005; No. 72, 2007; No. 6, 2010
S. 16-30.....	am. No. 45, 2004; No. 56, 2005 rs. No. 158, 2005
S. 16-31.....	ad. No. 56, 2005
S. 16-35.....	rep. No. 72, 2007
Heading to s. 16-55	rs. No. 158, 2005
S. 16-55.....	am. No. 158, 2005; No. 39, 2009

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Division 19	
Subdivision 19-C	
S. 19-15.....	am. No. 72, 2007
Heading to s. 19-20	am. No. 72, 2007
S. 19-20.....	am. No. 72, 2007
S. 19-25.....	am. No. 89, 2008
S. 19-27.....	am. No. 89, 2008
S. 19-29.....	ad. No. 89, 2008
Subdivision 19-D	
S. 19-35.....	am. No. 114, 2004; No. 143, 2005
S. 19-37.....	ad. No. 159, 2005
S. 19-40.....	am. No. 56, 2005
S. 19-45.....	am. No. 114, 2004; No. 83, 2005
S. 19-50.....	am. No. 83, 2005
S. 19-60.....	am. No. 83, 2005
Subdivision 19-E	
S. 19-65.....	am. No. 158, 2005
S. 19-77.....	ad. No. 72, 2007
S. 19-80.....	ad. No. 143, 2005
Subdivision 19-F	
S. 19-87.....	ad. No. 45, 2004 am. No. 157, 2004; No. 83, 2005; No. 121, 2006; No. 72, 2007
S. 19-88.....	ad. No. 45, 2004 am. No. 114, 2004 rep. No. 121, 2006
S. 19-90.....	rs. No. 45, 2004 am. No. 83, 2005; No. 121, 2006
S. 19-91.....	ad. No. 45, 2004 am. No. 114, 2004 rep. No. 121, 2006
Heading to s. 19-95	am. No. 45, 2004
S. 19-95.....	am. No. 45, 2004; No. 83, 2005; No. 121, 2006
S. 19-97.....	ad. No. 45, 2004 rep. No. 121, 2006
S. 19-100.....	rs. No. 45, 2004 am. No. 157, 2004
S. 19-101.....	ad. No. 45, 2004 rep. No. 121, 2006
S. 19-102.....	ad. No. 45, 2004 am. No. 143, 2005
S. 19-105.....	rs. No. 45, 2004 am. No. 157, 2004 rs. No. 121, 2006

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
Division 22			
Subdivision 22-A			
S. 22-1.....	am. No. 39, 2009		
Subdivision 22-B			
S. 22-7.....	ad. No. 114, 2004 am. No. 72, 2007		
Heading to s. 22-10	rs. No. 72, 2007		
Subhead. to s. 22-10(1)	rs. No. 72, 2007		
Subhead. to s. 22-10(2)	rs. No. 72, 2007		
Subhead. to s. 22-10(3)	rs. No. 72, 2007		
S. 22-10.....	am. No. 72, 2007; No. 89, 2008		
Subdivision 22-C			
S. 22-30.....	am. No. 72, 2007		
S. 22-32.....	ad. No. 170, 2007		
Heading to s. 22-35	rs. No. 158, 2005		
S. 22-35.....	am. No. 158, 2005		
Subdivision 22-D			
S. 22-40.....	am. No. 72, 2007		
Subdivision 22-E			
Subdiv. 22-E of Div. 22	ad. No. 39, 2009 of Part 2-1		
S. 22-45.....	ad. No. 39, 2009		
Part 2-2			
Division 27			
Note to s. 27-1	ad. No. 158, 2005		
Division 30			
Subdivision 30-A			
S. 30-1.....	am. No. 119, 2007		
S. 30-5.....	am. Nos. 45, 114 and 157, 2004; Nos. 56 and 156, 2005; No. 121, 2006; No. 119, 2007; No. 43, 2008; No. 86, 2009; No. 129, 2010		
Subdivision 30-B			
S. 30-10.....	am. No. 43, 2008		
S. 30-15.....	am. No. 119, 2007; No. 86, 2009		
Subdivision 30-C			
S. 30-25.....	am. No. 157, 2004; No. 119, 2007; No. 43, 2008		
Note to s. 30-25(2).....	am. No. 119, 2007		
Division 33			
Subdivision 33-A			
S. 33-1.....	am. No. 86, 2009		
Subdivision 33-B			
S. 33-5.....	am. No. 43, 2008		
S. 33-10.....	am. No. 121, 2006; No. 119, 2007; No. 86, 2009		

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
S. 33-15.....	am. No. 139, 2005 rep. No. 119, 2007
S. 33-17.....	ad. No. 119, 2007 rep. No. 89, 2008
Subdivision 33-C	
S. 33-20.....	rep. No. 119, 2007
Note to s. 33-20(2).....	ad. No. 159, 2005 rep. No. 119, 2007
Heading to s. 33-25	am. No. 119, 2007
Subhead. to s. 33-25(5).....	ad. No. 119, 2007
S. 33-25.....	am. No. 45, 2004; No. 119, 2007; No. 86, 2009
S. 33-37.....	ad. No. 159, 2005
Division 36	
Subdivision 36-B	
S. 36-5.....	am. No. 157, 2004; No. 143, 2005
Subhead. to s. 36-10(7).....	am. No. 121, 2006
S. 36-10.....	am. No. 157, 2004; No. 143, 2005; No. 121, 2006; No. 72, 2007
S. 36-15.....	am. No. 157, 2004; Nos. 143 and 158, 2005
S. 36-20.....	am. No. 45, 2004; No. 158, 2005
Heading to s. 36-22	am. No. 83, 2005
S. 36-22.....	ad. No. 45, 2004 am. No. 157, 2004; Nos. 83 and 158, 2005; No. 72, 2007
S. 36-22A	ad. No. 158, 2005
S. 36-23.....	ad. No. 83, 2005
Subdivision 36-C	
S. 36-25.....	rs. No. 157, 2004 am. No. 143, 2005
Heading to s. 36-30	rs. No. 43, 2008
Subhead. to s. 36-30(5).....	am. No. 43, 2008
S. 36-30.....	am. No. 143, 2005; No. 43, 2008
S. 36-32.....	ad. No. 72, 2007
S. 36-35.....	am. No. 157, 2004 rep. No. 119, 2007
S. 36-40.....	am. Nos. 45, 114 and 157, 2004; No. 143, 2005
Subdivision 36-D	
S. 36-45.....	am. No. 45, 2004
S. 36-50.....	am. No. 45, 2004
Subdivision 36-E	
S. 36-55.....	am. No. 45, 2004
Subdivision 36-F	
S. 36-70.....	am. No. 119, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Part 2-3	
Division 41	
Note to s. 41-1	ad. No. 158, 2005
S. 41-10.....	am. No. 56, 2005; No. 119, 2007; No. 89, 2008; No. 86, 2009
S. 41-45.....	am. Nos. 45 and 114, 2004; Nos. 56 and 156, 2005; No. 121, 2006; Nos. 72 and 119, 2007; No. 43, 2008; No. 86, 2009; No. 129, 2010
Heading to s. 41-50	rs. No. 158, 2005
S. 41-50.....	am. No. 158, 2005
Part 2-4	
Heading to Part 2-4	rs. No. 119, 2007
Division 46	
Heading to Div. 46 of Part 2-4	rs. No. 119, 2007
S. 46-1.....	am. No. 119, 2007
Note to s. 46-1	ad. No. 158, 2005
S. 46-10.....	am. No. 119, 2007
S. 46-13.....	ad. No. 119, 2007
Heading to s. 46-15	rs. No. 119, 2007
S. 46-15.....	am. No. 114, 2004; No. 119, 2007
Subhead. to s. 46-20(2).....	ad. No. 119, 2007
S. 46-20.....	am. No. 114, 2004; No. 119, 2007; No. 17, 2010
S. 46-25.....	am. No. 119, 2007
S. 46-30.....	am. No. 114, 2004
S. 46-40.....	am. No. 114, 2004; No. 156, 2005; No. 121, 2006; No. 119, 2007; No. 43, 2008; No. 86, 2009; No. 129, 2010
Part 2-5	
Division 51	
Note to s. 51-1	ad. No. 158, 2005
Division 54	
S. 54-5.....	am. No. 159, 2005
Chapter 3	
Part 3-1	
Division 73	
S. 73-10.....	am. No. 45, 2004; No. 143, 2005
Division 76	
S. 76-1.....	am. No. 157, 2004; No. 158, 2005
Division 79	
Subdivision 79-A	
Heading to Subdiv. 79-A..... of Div. 79 of Part 3-1	ad. No. 56, 2005
S. 79-1A	ad. No. 56, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Heading to s. 79-1	rs. No. 56, 2005
S. 79-1.....	am. No. 157, 2004; Nos. 83 and 158, 2005; No. 72, 2007
S. 79-5.....	am. No. 158, 2005
Note to s. 79-5(2).....	am. No. 45, 2004
S. 79-10.....	am. No. 158, 2005
Subdivision 79-B	
Heading to Subdiv. 79-B.....	rs. No. 158, 2005 of Div. 79 of Part 3-1
Subdiv. 79-B of Div. 79.....	ad. No. 56, 2005 of Part 3-1
Heading to s. 79-20	am. No. 158, 2005
S. 79-20.....	ad. No. 56, 2005 am. No. 158, 2005
Subdivision 79-C	
Subdiv. 79-C of Div. 79.....	ad. No. 83, 2005 of Part 3-1
S. 79-25.....	ad. No. 83, 2005 am. No. 158, 2005
Part 3-2	
Division 87	
S. 87-1.....	rs. No. 45, 2004
Note to s. 87-1	
Renumbered Note 1.....	No. 158, 2005
Note 2 to s. 87-1	ad. No. 158, 2005
Division 90	
S. 90-1.....	am. Nos. 45 and 157, 2004
S. 90-5.....	am. No. 114, 2004 rs. No. 72, 2007
Division 93	
S. 93-1.....	am. No. 45, 2004
S. 93-5.....	am. Nos. 45 and 157, 2004; No. 121, 2006
Heading to s. 93-10	rs. No. 45, 2004
S. 93-10.....	am. No. 45, 2004; No. 119, 2007; No. 43, 2008; No. 86, 2009
Note 1 to s. 93-10.....	rs. No. 119, 2007
Note 2 to s. 93-10.....	am. No. 45, 2004
S. 93-15.....	am. No. 45, 2004
Division 96	
S. 96-1.....	am. No. 45, 2004
S. 96-5.....	am. Nos. 45 and 114, 2004
S. 96-10.....	am. No. 45, 2004
Note to s. 96-10.....	am. No. 45, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Part 3-3	
Division 101	
S. 101-1.....	rs. No. 45, 2004 am. No. 114, 2004; No. 143, 2005
Division 104	
Subdivision 104-A	
S. 104-1.....	am. Nos. 114 and 157, 2004; No. 143, 2005
Heading to s. 104-2	am. No. 143, 2005
S. 104-2.....	ad. No. 114, 2004 am. No. 157, 2004; No. 143, 2005
Heading to s. 104-3	am. Nos. 143 and 159, 2005
S. 104-3.....	ad. No. 114, 2004 am. Nos. 143, 158 and 159, 2005
Heading to s. 104-4	am. No. 143, 2005
S. 104-4.....	ad. No. 114, 2004 am. Nos. 83 and 143, 2005; No. 121, 2006
S. 104-5.....	am. No. 114, 2004 rs. No. 72, 2007
S. 104-10.....	am. No. 158, 2005; No. 72, 2007
Subdivision 104-B	
S. 104-15.....	am. No. 121, 2006 rs. No. 170, 2007
S. 104-20.....	rs. No. 121, 2006
Heading to s. 104-25	rs. No. 56, 2005
S. 104-25.....	am. No. 114, 2004; Nos. 56, 143 and 158, 2005
Note to s. 104-25	rep. No. 114, 2004
S. 104-27.....	ad. No. 83, 2005 am. Nos. 143 and 158, 2005
S. 104-30.....	am. No. 114, 2004; No. 143, 2005
S. 104-35.....	am. No. 114, 2004; No. 143, 2005
S. 104-40.....	am. No. 114, 2004; No. 143, 2005
Heading to s. 104-42	am. No. 158, 2005
S. 104-42.....	ad. No. 56, 2005 am. No. 158, 2005
Subdivision 104-C	
S. 104-45.....	am. No. 143, 2005; No. 72, 2007
S. 104-75.....	rep. No. 143, 2005
Division 107	
S. 107-1.....	am. No. 45, 2004
S. 107-5.....	am. No. 45, 2004
S. 107-10.....	am. No. 114, 2004; No. 143, 2005 rs. No. 170, 2007
Example to s. 107-10(2)	rs. No. 45, 2004; No. 170, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 110	
Heading to s. 110-1	rs. No. 114, 2004
S. 110-1.....	am. Nos. 45 and 114, 2004; No. 143, 2005
S. 110-5.....	am. No. 114, 2004; Nos. 56, 83, 143 and 158, 2005
Note to s. 110-5(1).....	ad. No. 121, 2006
Part 3-4	
Division 115	
S. 115-1.....	am. No. 157, 2004
Division 118	
S. 118-1.....	am. No. 157, 2004; No. 83, 2005; No. 72, 2007
S. 118-5.....	am. No. 114, 2004
S. 118-7.....	ad. No. 157, 2004
S. 118-10.....	am. No. 157, 2004; No. 72, 2007
S. 118-15.....	am. No. 157, 2004
Chapter 4	
Division 129	
S. 129-1.....	rs. No. 170, 2007
Part 4-1	
Division 134	
S. 134-1.....	rs. No. 170, 2007
Division 137	
S. 137-1.....	am. No. 170, 2007
S. 137-5.....	am. No. 45, 2004; Nos. 83 and 158, 2005
S. 137-10.....	am. Nos. 45 and 157, 2004; Nos. 56 and 83, 2005; No. 132, 2010
Note to s. 137-10(4).....	ad. No. 121, 2006
S. 137-15.....	am. No. 86, 2009
S. 137-18.....	ad. No. 170, 2007 am. No. 121, 2009
Division 140	
Subdivision 140-A	
S. 140-1.....	am. No. 43, 2008
Subdivision 140-B	
S. 140-5.....	am. No. 121, 2006; No. 170, 2007; No. 43, 2008
Subdivision 140-C	
S. 140-25.....	am. No. 121, 2006; No. 170, 2007
Example to s. 140-25(1)	am. No. 83, 2005
Division 148	
S. 148-1.....	am. No. 43, 2008
S. 148-5.....	ad. No. 43, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Part 4-2	
Division 154	
Subdivision 154-A	
S. 154-1.....	am. No. 43, 2008
S. 154-3.....	ad. No. 43, 2008
S. 154-5.....	am. No. 27, 2009
Subdivision 154-C	
Note to s. 154-35.....	ad. No. 43, 2008
S. 154-40.....	am. No. 43, 2008
S. 154-55.....	am. No. 143, 2005
Subdivision 154-D	
S. 154-60.....	am. No. 79, 2010
Note to s. 154-60.....	rep. No. 79, 2010
S. 154-75.....	rep. No. 101, 2006
S. 154-85.....	ad. No. 43, 2008
Division 157	
Div. 157 of Part 4-2.....	ad. No. 43, 2008
Subdivision 157-A	
S. 157-1.....	ad. No. 43, 2008
S. 157-5.....	ad. No. 43, 2008
S. 157-10.....	ad. No. 43, 2008
Subdivision 157-B	
S. 157-15.....	ad. No. 43, 2008
Subdivision 157-C	
S. 157-20.....	ad. No. 43, 2008
S. 157-25.....	ad. No. 43, 2008
S. 157-30.....	ad. No. 43, 2008
Chapter 5	
Part 5-1	
Division 164	
S. 164-1.....	am. No. 119, 2007
S. 164-10.....	am. No. 157, 2004
Heading to s. 164-15	am. No. 119, 2007
S. 164-17.....	ad. No. 119, 2007
S. 164-18.....	ad. No. 119, 2007
S. 164-25.....	rep. No. 170, 2007
Part 5-2	
Division 169	
S. 169-15.....	am. No. 45, 2004; No. 158, 2005
S. 169-20.....	am. Nos. 45 and 157, 2004
S. 169-25.....	am. No. 114, 2004; No. 83, 2005
S. 169-35.....	ad. No. 72, 2007

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
Part 5-3			
Division 174			
S. 174-5.....	rs. No. 121, 2006		
S. 174-10.....	rep. No. 121, 2006		
S. 174-15.....	rep. No. 121, 2006		
S. 174-20.....	rep. No. 121, 2006		
S. 174-25.....	rep. No. 121, 2006		
Part 5-4			
Division 179			
S. 179-5.....	am. No. 121, 2009		
S. 179-10.....	am. No. 73, 2008		
S. 179-15.....	am. No. 114, 2004; No. 143, 2005; No. 121, 2009		
S. 179-20.....	am. No. 114, 2004; No. 143, 2005; No. 121, 2009		
S. 179-25.....	am. No. 114, 2004; No. 143, 2005; No. 121, 2009		
S. 179-35.....	am. No. 114, 2004; No. 143, 2005; No. 121, 2009		
Part 5-5			
Division 184			
S. 184-1.....	rs. No. 114, 2004 am. No. 143, 2005		
Division 187			
S. 187-1.....	am. No. 114, 2004; Nos. 83 and 143, 2005		
S. 187-2.....	ad. No. 114, 2004 am. No. 143, 2005		
S. 187-5.....	ad. No. 45, 2004 am. No. 114, 2004; No. 143, 2005		
Division 190			
Heading to Div. 190 of Part 5-5	rs. No. 114, 2004; No. 143, 2005		
S. 190-1.....	am. No. 114, 2004; No. 143, 2005		
S. 190-5.....	am. No. 114, 2004; No. 143, 2005		
S. 190-10.....	am. No. 114, 2004; No. 143, 2005		
S. 190-15.....	am. No. 114, 2004; No. 143, 2005		
Note to s. 190-15	am. No. 157, 2004		
S. 190-20.....	am. No. 114, 2004; No. 143, 2005		
Note to s. 190-20	am. No. 157, 2004		
Division 193			
Heading to Div. 193 of Part 5-5	rs. No. 114, 2004; Nos. 83 and 143, 2005		
Subhead. to s. 193-1(1)	am. No. 114, 2004		
Subhead. to s. 193-1(2A).....	am. No. 143, 2005		
S. 193-1.....	am. Nos. 45, 114 and 157, 2004; No. 143, 2005		
Heading to s. 193-5	rs. No. 83, 2005		
S. 193-5.....	am. No. 83, 2005		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 193-10.....	ad. No. 83, 2005 am. No. 143, 2005		
Part 5-6			
Division 198			
Note 2 to s. 198-1	am. No. 83, 2005		
S. 198-5.....	am. No. 45, 2004; No. 159, 2005 rs. No. 111, 2010		
S. 198-10.....	am. No. 83, 2005; No. 111, 2010		
S. 198-20.....	am. No. 86, 2009 rs. No. 111, 2010		
S. 198-25.....	rep. No. 111, 2010		
Part 5-7			
Division 206			
S. 206-1.....	am. Nos. 45 and 114, 2004; Nos. 143 and 158, 2005; No. 72, 2007; No. 43, 2008		
Note to s. 206-1	rep. No. 114, 2004		
Note 1 to s. 206-1	ad. No. 114, 2004 am. No. 83, 2005		
Note 2 to s. 206-1	ad. No. 114, 2004 am. No. 143, 2005		
Division 209			
S. 209-1.....	am. No. 114, 2004; No. 143, 2005		
Note to s. 209-1	rep. No. 114, 2004		
Note 1 to s. 209-1	ad. No. 114, 2004 am. No. 83, 2005		
Note 2 to s. 209-1	ad. No. 114, 2004 am. No. 143, 2005		
S. 209-10.....	am. No. 83, 2005		
Chapter 6			
Division 217			
S. 217-1.....	rs. No. 72, 2007		
S. 217-5.....	ad. No. 121, 2006		
Part 6-1			
Division 222			
S. 222-1.....	rs. No. 72, 2007		
Division 225			
Heading to s. 225-1	am. No. 72, 2007		
S. 225-1.....	am. No. 121, 2006; No. 72, 2007		
S. 225-3.....	ad. No. 72, 2007		
S. 225-5.....	am. No. 114, 2004; No. 121, 2006 rs. No. 72, 2007		
S. 225-7.....	ad. No. 72, 2007		
S. 225-10.....	am. No. 114, 2004; No. 121, 2006; No. 72, 2007		
S. 225-15.....	rs. No. 72, 2007		

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
S. 225-20.....	am. No. 114, 2004; No. 121, 2006 rs. No. 72, 2007
S. 225-25.....	am. No. 121, 2006
Division 228	
Heading to s. 228-1	am. No. 72, 2007
S. 228-1.....	am. No. 72, 2007
S. 228-5.....	am. No. 72, 2007
S. 228-10.....	am. No. 72, 2007
S. 228-15.....	am. No. 72, 2007; No. 8, 2010
Chapter 7	
S. 238-1.....	am. No. 114, 2004; Nos. 83 and 143, 2005
S. 238-10.....	am. Nos. 83 and 158, 2005; No. 121, 2006; No. 43, 2008
S. 238-12.....	ad. No. 170, 2007
Schedule 1A	
Schedule 1A.....	ad. No. 170, 2007
Part 1	
Division 3	
Subdivision 3-A	
C. 5	am. No. 39, 2009
Subdivision 3-B	
C. 6	am. No. 11, 2008; Nos. 39 and 121, 2009; No. 6, 2010
C. 11	am. No. 6, 2010
C. 12.....	am. No. 39, 2009
Division 4	
Subdivision 4-F	
C. 27A	ad. No. 11, 2008
Subhead. to c. 28(1)	ad. No. 11, 2008
C. 28.....	am. No. 11, 2008
Division 5	
Subdivision 5-A	
C. 29.....	am. No. 39, 2009
Subdivision 5-B	
C. 30A	ad. No. 39, 2009
C. 32A	ad. No. 39, 2009
Subdivision 5-E	
Subdiv. 5-E of Div. 5	ad. No. 39, 2009 of Part 1
C. 39A	ad. No. 39, 2009
Part 2	
Division 7	
Subdivision 7-A	
C. 43.....	am. No. 11, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to c. 43.....	ad. No. 39, 2009
C. 45.....	am. No. 11, 2008; No. 121, 2009
Note to c. 45(1).....	ad. No. 39, 2009
C. 45A.....	ad. No. 39, 2009
Part 3	
Division 14	
Cc. 74–76.....	am. No. 121, 2009
C. 78.....	am. No. 121, 2009
Part 4	
C. 98.....	am. No. 5, 2011
C. 99.....	am. No. 121, 2009
Schedule 1	
Schedule 1	am. Nos. 45, 114 and 157, 2004; Nos. 56, 83, 143, 158 and 161, 2005; No. 121, 2006; Nos. 72, 119 and 170, 2007; Nos. 11, 43, 89 and 144, 2008; Nos. 27 and 121, 2009; Nos. 17 and 111, 2010

Note 2

Note 2

National Vocational Education and Training Regulator (Consequential Amendments) Act 2011 (No. 14, 2011)

The following amendments commence immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011*:

Schedule 1

33 Clause 1 of Schedule 1A

Omit “accredited”.

36 Subclause 9(1) of Schedule 1A

Repeal the subclause, substitute:

- (1) A body corporate that is a *registered training organisation may apply, in writing, to the Minister for approval as a *VET provider.

37 After clause 9 of Schedule 1A

Insert:

9A Minister may seek information from relevant VET Regulator

For the purposes of approving a body corporate as a *VET provider, the Minister may seek information from the relevant *VET Regulator that:

- (a) relates to the body corporate’s application for approval as a VET provider; or
- (b) relates to the body corporate’s compliance, or ability to comply, with the *VET quality and accountability requirements.

38 Subclause 17(2) of Schedule 1A

Omit “in the *Australian Quality Training Framework”, substitute “, or referred to, in the *VET Provider Guidelines”.

39 At the end of clause 17 of Schedule 1A

Add:

Note 2

- (3) For the purpose of subclause (2), the *VET Provider Guidelines may provide for different requirements for different classes of *VET providers.
- (4) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the *VET Provider Guidelines may refer to a requirement by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

40 Clause 25 of Schedule 1A

Before “A”, insert “(1)”.

41 At the end of clause 25 of Schedule 1A

Add:

- (2) The notice must be given to the Minister as soon as practicable after the *VET provider becomes aware of an event mentioned in subclause (1).

42 After clause 25 of Schedule 1A

Insert:

25A Copy of notice given to National VET Regulator about material changes

- (1) If a *VET provider gives the *National VET Regulator a notice under section 25 of the *National Vocational Education and Training Regulator Act 2011*, the provider must give a copy of the notice to the Minister.
- (2) A copy of the notice must be given to the Minister at the same time it must be given to the *National VET Regulator.

43 After subclause 26(2) of Schedule 1A

Insert:

- (2A) To avoid doubt, if the Minister makes a determination under subclause (2) in relation to the *National VET Regulator, the determination is not a direction for the purpose of subsection 160(2) of the *National Vocational Education and Training Regulator Act 2011*.

Note 2

44 After clause 29 of Schedule 1A

Insert:

29A Minister to notify relevant VET Regulator of cessation of approval

If a body ceases to be approved as a *VET provider, the Minister must ensure that the relevant *VET Regulator is notified, in writing, of the cessation.

45 Clause 32 of Schedule 1A

Repeal the clause, substitute:

32 Revocation of approval as a provider if body ceases to be a registered training organisation

The Minister may revoke a body's approval as a *VET provider if:

- (a) the body ceases to be listed as a *registered training organisation on the *National Register; and
- (b) the Minister complies with the requirements of clause 34.

46 Paragraph 33(2)(d) of Schedule 1A

Omit “*accredited VET courses”, substitute “*VET courses of study”.

47 Before clause 34 of Schedule 1A

Insert:

34A Minister may seek information from relevant VET Regulator

For the purpose of deciding whether it is appropriate to:

- (a) revoke a body's approval as a *VET provider; or
- (b) determine that a body's approval as a *VET provider is to be suspended;

the Minister may seek information from the relevant *VET Regulator.

48 Subclause 1(1) of Schedule 1 (definition of *accredited VET course*)

Repeal the definition.

49 Subclause 1(1) of Schedule 1

Insert:

National Register has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

50 Subclause 1(1) of Schedule 1

Insert:

National VET Regulator has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

51 Subclause 1(1) of Schedule 1 (definition of NTIS)

Repeal the definition.

52 Subclause 1(1) of Schedule 1

Insert:

registered training organisation has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

53 Subclause 1(1) of Schedule 1

Insert:

VET Regulator has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

The following amendment commences immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011*. However, the amendment may not commence, *see* subsection 2(1) (item 8):

Schedule 1

34 Paragraph 6(c) of Schedule 1A

Repeal the paragraph, substitute:

(c) the body is a *registered training organisation as listed on the *National Register; and

Note 3

The following amendment commences immediately after the commencement of Schedule 1 to the *Higher Education Support Amendment (No. 1) Act 2011* (still a Bill). However, the amendment may not commence, *see* subsection 2(1) (item 9):

Schedule 1

35 Paragraph 6(1)(c) of Schedule 1A

Repeal the paragraph, substitute:

- (c) the body is a *registered training organisation as listed on the *National Register; and

As at 3 June 2011 the amendments are not incorporated in this compilation.

Note 3

Human Services Legislation Amendment Act 2011 (No. 32, 2011)

The following amendments commence on 1 July 2011:

Schedule 4

278 Paragraph 46-20(2)(m)

Omit “or the Chief Executive Officer, or an *employee, of *Centrelink”, substitute “, the *Chief Executive Centrelink or a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*)”.

279 Subclause 1(1) of Schedule 1 (definition of *Centrelink*)

Repeal the definition.

280 Subclause 1(1) of Schedule 1

Insert:

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

281 Subclause 1(1) of Schedule 1 (definition of *employee*)

Repeal the definition.

As at 3 June 2011 the amendments are not incorporated in this compilation.

Table A

Application, saving or transitional provisions

Higher Education Legislation Amendment Act (No. 2) 2004
(No. 114, 2004)

Schedule 2

85 Saving of guidelines

- (1) Guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003* that were in force immediately before the commencement of this item continue to have effect on and after that commencement as if they had been issued under that subsection as in force after that commencement.
- (2) Subitem (1) does not prevent the amendment or revocation of the guidelines.

Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005
(No. 56, 2005)

Schedule 2

15 Application of items 3 and 4

The amendments made by items 3 and 4 of this Schedule apply in relation to bodies corporate that became higher education providers before or after the commencement of this item.

16 Application of item 5

Despite the repeal of subsection 16-30(2) of the *Higher Education Support Act 2003* by item 5 of this Schedule, that subsection continues to apply, in relation to exemptions that are in force immediately before the repeal, as if the repeal had not happened.

Table A

17 Application of items 6 and 7

The amendments made by items 6 and 7 of this Schedule apply in relation to exemptions given after the commencement of this item.

Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005
(No. 83, 2005)

Schedule 1

2 Transitional—section 19-45 of the *Higher Education Support Act 2003*

The amendment of section 19-45 of the *Higher Education Support Act 2003* made by this Part does not affect the continuity of any Higher Education Provider Guidelines made before the commencement of this item.

12 Application of amendments—sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003*

- (1) A higher education provider may, by written notice given to the Secretary, choose to have the amendments of sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2005.
- (2) The choice has effect accordingly.
- (3) The choice cannot be revoked.
- (4) If a higher education provider does not make a choice under subitem (1), the amendments of sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2006.
- (5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

23 Application of amendments—section 104-4 of the *Higher Education Support Act 2003*

- (1) Open Universities Australia may, by written notice given to the Secretary, choose to have the amendments of section 104-4 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study access to which was provided by Open Universities Australia during periods that commence on or after 1 January 2005.
- (2) The choice has effect accordingly.
- (3) The choice cannot be revoked.
- (4) If Open Universities Australia does not make a choice under subitem (1), the amendments of section 104-4 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study access to which was provided by Open Universities Australia during periods that commence on or after 1 January 2006.
- (5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

35 Application of amendments—section 169-25 of the *Higher Education Support Act 2003*

- (1) A higher education provider may, by written notice given to the Secretary, choose to have the amendments of section 169-25 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2005.
 - (2) The choice has effect accordingly.
 - (3) The choice cannot be revoked.
 - (4) If a higher education provider does not make a choice under subitem (1), the amendments of section 169-25 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2006.
 - (5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
-

Table A

**47 Application of amendment—subsection 198-10(3) of the
*Higher Education Support Act 2003***

Subsection 198-10(3) of the *Higher Education Support Act 2003* applies to amounts indexed after the commencement of this item.

**49 Application of amendment—subsections 209-10(5A) and
(5B) of the *Higher Education Support Act 2003***

Subsections 209-10(5A) and (5B) of the *Higher Education Support Act 2003* apply to a decision on review that is made after the commencement of this item.

*Higher Education Legislation Amendment (Workplace Relations Requirements)
Act 2005* (No. 139, 2005)

Schedule 1

2 Saving provision

Despite item 1 of this Schedule, subsection 33-15(1) of the *Higher Education Support Act 2003* as in force immediately before the commencement of this Act is to be taken to continue in force, in relation to a higher education provider's basic grant amount for a grant year before the grant year 2006, as if that subsection had not been amended.

Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005
(No. 143, 2005)

Schedule 1

11 Application

The amendments made by this Schedule only apply to a bridging course for overseas-trained professionals in which a person enrolls on or after the commencement of this Schedule.

Schedule 2

3 Application

The amendments made by this Schedule only apply to the meeting of the fairness requirements on or after the commencement of this Schedule.

Schedule 3

3 Application

The amendments made by this Schedule only apply to the determination of fees after the commencement of this Schedule.

Schedule 5

8 Application

The amendments made by this Schedule only apply to the giving of advice under section 36-5 of the *Higher Education Support Act 2003* after the commencement of this Schedule.

Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005 (No. 159, 2005)

Schedule 1

1A Application provision

Section 19-37 of the *Higher Education Support Act 2003* as amended by this Act does not apply to anything done by a higher education provider before 1 July 2006, unless:

- (a) it is done on or after 1 January 2006; and
 - (b) it relates to a person who is enrolled with, or seeking to enrol with, the provider; and
 - (c) the enrolment is, or will be, for a period of study starting on or after 1 July 2006; and
 - (d) the person is not enrolled with, or seeking to enrol with, the provider for a period of study in 2006 starting before 1 July 2006.
-

Table A

Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005
(No. 161, 2005)

Schedule 2

32 Application

The amendments made by this Schedule apply to things done on or after the later of:

- (a) the day on which this Act receives the Royal Assent; and
- (b) 1 January 2006.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Table A

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006 (No. 121, 2006)

Schedule 1**4 Transitional provision—indexation**

The amount in item 12 of the table in section 33-10 of the *Higher Education Support Act 2003*, as amended by this Schedule, is not to be indexed on 1 January 2007.

5 Transitional provision—adjustment of basic grant amount

For the purposes of working out if and how a higher education provider's basic grant amount for the grant year 2007 or an earlier grant year is to be adjusted under Subdivision 33-C of the *Higher Education Support Act 2003*, disregard the amendment made by item 3 of this Schedule.

Schedule 2**3 Application of amendment of FEE-HELP limit**

Paragraph 104-20(b) of the *Higher Education Support Act 2003*, as amended by this Schedule, applies only in relation to a person who is enrolled in a course of study mentioned in that paragraph on or after 1 January 2007.

Table A

4 Transitional provision

The amounts in section 104-20 of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2007.

Schedule 3

12 Saving provision relating to substitution of subsection 19-90(3) (determination of different tuition fees for different courses)

If, immediately before subsection 19-90(3) of the *Higher Education Support Act 2003* was repealed and substituted by this Schedule, a determination made in accordance with that subsection had effect, the determination is taken to continue in effect as if it had been made in accordance with subsection 19-90(3) of that Act as in force after the commencement of this Schedule.

13 Saving provision for determinations of student contribution amounts for student cohorts

- (1) This item applies to a determination (the *saved determination*) made by a higher education provider under section 19-88 of the *Higher Education Support Act 2003* before that section was repealed by this Schedule.
- (2) Section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by this Schedule.
- (3) The definition, in subsection 93-5(1) of the *Higher Education Support Act 2003*, of a person's *student contribution amount* for a unit is modified, if:
 - (a) the person is in the student cohort to which the saved determination relates; and
 - (b) the saved determination has not been revoked under subitem (4); and
 - (c) the unit forms part of a course of study with the provider who made the saved determination; and
 - (d) the person is undertaking the unit with the provider; and
 - (e) the person satisfies any conditions that apply to the cohort under the saved determination;

Table A

so that the person's *student contribution amount for a place* in the unit is the student contribution amount for the unit specified in the saved determination.

- (4) The provider may revoke the saved determination if the provider:
 - (a) does so:
 - (i) before the date set out in the Higher Education Provider Guidelines; and
 - (ii) in the circumstances (if any) specified in the Higher Education Provider Guidelines; or
 - (b) does so with the written approval of the Minister.
- (5) From the time the provider revokes the saved determination, a determination in effect under section 19-87 starts to apply, according to its terms, to the students who were in the cohort.
- (6) Before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to revoke the determination.
- (7) The Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters:
 - (a) required or permitted by this item to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to this item.
- (8) Expressions used in this item that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.

14 Saving provision for determinations of tuition fees for student cohorts

- (1) This item applies to a determination (the *saved determination*) made by a higher education provider under section 19-91 of the *Higher Education Support Act 2003* before that section was repealed by this Schedule.
- (2) Section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by this Schedule.

Table A

- (3) The definition, in section 19-105 of the *Higher Education Support Act 2003*, of a person's *tuition fee* for a unit is modified, if:
- (a) the person is in the student cohort to which the saved determination relates; and
 - (b) the saved determination has not been revoked under subitem (4); and
 - (c) the unit forms part of a course of study with the provider who made the saved determination; and
 - (d) the person is undertaking the unit with the provider; and
 - (e) the person satisfies any conditions that apply to the cohort under the saved determination;
- so that the person's *tuition fee* for the unit is the fee for the unit specified in the saved determination.
- (4) The provider may revoke the saved determination if the provider:
- (a) does so:
 - (i) before the date set out in the Higher Education Provider Guidelines; and
 - (ii) in the circumstances (if any) specified in the Higher Education Provider Guidelines; or
 - (b) does so with the written approval of the Minister.
- (5) From the time the provider revokes the saved determination, a determination in effect under section 19-90 starts to apply, according to its terms, to the students who were in the cohort.
- (6) Before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to revoke the determination.
- (7) The Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters:
- (a) required or permitted by this item to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to this item.
- (8) Expressions used in this item that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.
-

Schedule 4

5 Application of amendments

The amendments made by this Schedule apply to the calculation of HELP debts incurred on or after 1 January 2005.

Higher Education Legislation Amendment (2007 Measures No. 1) Act 2007
(No. 72, 2007)

Schedule 3

6 Application

The amendments made by items 2 to 5 apply in relation to a *census date that occurs on or after the commencement of this item.

Schedule 5

5 Application

The amendments made by this Schedule apply in relation to a unit of study in which a student enrolls after the commencement of this Schedule.

Higher Education Legislation Amendment (2007 Budget Measures) Act 2007
(No. 119, 2007)

Schedule 2

3 Transitional provision—indexation

Amounts in the table in section 33-10 of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2008.

4 Transitional provision—adjustment of basic grant amount

For the purposes of working out if and how a higher education provider's basic grant amount for the year 2008 or an earlier grant year is to be adjusted under Subdivision 33-C of the *Higher Education Support Act 2003*, disregard the amendment made by item 2 of this Schedule.

Table A

6 Application provision—section 33-17

Section 33-17 of the *Higher Education Support Act 2003* applies in relation to basic grant amounts for 2008 and later years.

Schedule 3

9 Application of amendments made by this Part

The amendments made by this Part apply to funding agreements entered into under subsection 30-25(1) of the *Higher Education Support Act 2003* in relation to grants in respect of 2008 or in respect of a period that includes 2008.

17 Application of amendments made by this Part

The amendments made by this Part apply:

- (a) to funding agreements entered into under subsection 30-25(1) of the *Higher Education Support Act 2003* in relation to grants in respect of 2009 and later years; and
- (b) to funding agreements entered into under subsection 30-25(1) of the *Higher Education Support Act 2003* in respect of each year in a period of 3 years that includes 2008.

Schedule 4

5 Transitional provision

For the purposes of working out if and how a higher education provider's basic grant amount for the year 2008 or an earlier year is to be adjusted under Subdivision 33-C of the *Higher Education Support Act 2003*, disregard the amendments made by this Schedule.

Schedule 7

3 Transitional provision—indexation

Amounts in the table in section 93-10 of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2008.

7 Saving provision—maximum student contribution amounts for old accounting etc. funding cluster

- (1) This item applies in relation to a person if:
- (a) the person started a course of study with a higher education provider before 1 January 2008; and
 - (b) the person was a Commonwealth-supported student in relation to a unit of study in that course; and
 - (c) any of the following apply to the person:
 - (i) the person had not completed the course by 31 December 2007; or
 - (ii) in 2007, the person was undertaking an enabling course; or
 - (iii) the person has completed the related course for an honours course of study and is undertaking the honours course of study; and
 - (d) the person is undertaking a unit that would have been included in the funding cluster Accounting, Administration, Economics, Commerce if the amendments made by Schedule 2 to this Act had not been made; and
 - (e) the period over which the person is undertaking the unit ends on or before 31 December 2012; and
 - (f) if item 1 of Schedule 1 to the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* applies or has applied to the person—the period over which the person is undertaking the unit starts on or after 1 January 2009.
- (2) Despite section 93-10 of the *Higher Education Support Act 2003* as amended by this Schedule, the **maximum student contribution amount for a place** in the unit referred to in paragraph (1)(e) for the person is the amount that would have been the maximum student contribution amount for a place in that unit if the amendment of section 93-10 made by this Schedule had not been made.

Schedule 8

20 Application of amendments

The amendments made by this Schedule apply in relation to payments under Part 2-4 of the *Higher Education Support Act 2003* in respect of the year 2008 or a later year.

Table A

Schedule 10

2 Application of amendment

The amendment made by this Schedule applies to grants under Part 2-3 of the *Higher Education Support Act 2003* in respect of the year 2008 or a later year.

Schedule 11

2 Application of amendment

The amendment made by this Schedule applies to grants under Part 2-3 of the *Higher Education Support Act 2003* in respect of the year 2008 or a later year.

Higher Education Support Amendment (2008 Budget Measures) Act 2008
(No. 43, 2008)

Schedule 1

17 Application

The amendments made by this Schedule apply in respect of the 2008-2009 and later income years.

Schedule 2

13 Application

- (1) The amendments made by items 2 to 5 of this Schedule apply in respect of the year 2009 or a later year.
- (2) The amendments made by items 6 and 7 of this Schedule apply in relation to an enrolment of a person in a unit of study on or after 1 January 2009.
- (3) The amendments made by items 11 and 12 of this Schedule apply in relation to a person's enrolment in a unit of study that forms part of a course of study if:
 - (a) the person commences that course of study on or after 1 January 2009; or

Table A

- (b) that course of study is in natural and physical sciences and the person transfers to that course of study on or after 1 January 2009 from a course of study (other than in natural and physical sciences) that the person did not complete.
- (4) In subitem (3):
- course of study*, in relation to natural and physical sciences, means a course of study in the field of natural and physical sciences, classified as Broad Field 01 by the Australian Bureau of Statistics in the publication known as the Australian Standard Classification of Education (ASCED) 2001 (catalogue number 1272.0), as updated from time to time. This updating takes 2 forms:
- (a) from time to time, a new version of the publication is produced;
- (b) from time to time, material in the current version of the publication is updated by other publications of the Australian Bureau of Statistics.

Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008
(No. 89, 2008)

Schedule 1

7 Application—repeal of section 33-17

The repeal of section 33-17 by item 6 of this Schedule has no effect in relation to a higher education provider's basic grant amount for the grant year 2008.

Table A

Tax Laws Amendment (2009 Measures No. 1) Act 2009 (No. 27, 2009)

Schedule 3

102 Application

- (1) The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2009.

Higher Education Support Amendment (VET FEE-HELP and Providers) Act 2009 (No. 39, 2009)

Schedule 1

2 Application

Paragraph 6(da) of Schedule 1A to the *Higher Education Support Act 2003* applies to decisions about approvals relating to applications made after the commencement of that paragraph.

4 Application

Clause 30A of Schedule 1A to the *Higher Education Support Act 2003* applies to an approval granted before, on or after the commencement of that clause.

6 Application

Clause 32A of Schedule 1A to the *Higher Education Support Act 2003* applies to an approval granted as a result of an application made after the commencement of that clause.

Schedule 2

9 Application and transitional provisions

- (1) The amendments made by this Schedule apply in relation to the following decisions to approve bodies corporate as higher education providers or VET providers:
- (a) decisions that were made on or after the commencement of this Schedule;

Table A

-
- (b) decisions that were made before the commencement of this Schedule, except:
 - (i) decisions that took effect before that commencement; and
 - (ii) decisions, notices of which ceased to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003* before that commencement.
 - (2) However, a decision to approve a body corporate as a higher education provider or VET provider takes effect on the commencement of this Schedule if:
 - (a) notice of the approval was registered under the *Legislative Instruments Act 2003* before that commencement; and
 - (b) apart from this subitem, the decision would have taken effect before that commencement because of the amendments made by this Schedule applying as described in subitem (1).

Higher Education Support Amendment (2009 Budget Measures) Act 2009
(No. 86, 2009)

Schedule 2**3 Transitional provision—indexation**

Amounts in the table in section 33-10 of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2010.

4 Transitional provision

For the purposes of working out if and how a higher education provider's basic grant amount for the year 2010 or an earlier year is to be adjusted under Subdivision 33-C of the *Higher Education Support Act 2003*, disregard the amendments made by this Schedule.

Schedule 3**2 Application**

The amendment made by this Schedule applies to adjustments of basic grant amounts for 2011 and later years.

Table A

Schedule 5

2 Transitional provision—indexation

Amounts in the table in subsection 93-10(1) of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2010.

3 Saving provision—maximum student contribution amounts for old funding clusters

- (1) This item applies in relation to a person if:
- (a) the person started a course of study with a higher education provider before 1 January 2010; and
 - (b) the person was a Commonwealth supported student in relation to a unit of study in that course; and
 - (c) any of the following apply to the person:
 - (i) the person had not completed the course by 31 December 2009;
 - (ii) in 2009, the person was undertaking an enabling course;
 - (iii) the person has completed the related course for an honours course of study and is undertaking the honours course of study; and
 - (d) the person is undertaking a unit that would have been included in:
 - (i) Education in the funding cluster Mathematics, Statistics, Behavioural Science, Social Studies, Education, Computing, Built Environment, Other Health; or
 - (ii) the funding cluster Nursing;if the amendments made by Schedule 2 to this Act had not been made.
- (2) Despite subsection 93-10(1) of the *Higher Education Support Act 2003* as amended by this Schedule, the ***maximum student contribution amount for a place*** in the unit referred to in paragraph (1)(d) of this item for the person is the amount that would have been the maximum student contribution amount for a place in that unit if the amendment of subsection 93-10(1) made by this Schedule had not been made.

Schedule 6

2 Application

The amendment made by this Schedule applies in relation to OS-HELP debts incurred on or after 1 January 2010.

Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Act 2009 (No. 121, 2009)

Schedule 1

2 Application

The amendment of section 137-18 of the *Higher Education Support Act 2003* made by this Schedule applies to VET FEE-HELP debts (incurred before, on or after the commencement of the amendment) relating to VET units of study whose census dates are on or after 1 July 2009.

4 Application

The amendment of clause 6 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule applies in relation to decisions made on or after the commencement of the amendment on applications for approval as a VET provider, whether the applications were made before, on or after that commencement.

7 Application

The amendments of clause 45 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule apply to VET units of study whose census dates are on or after 1 July 2009.

12 Transitional—guidelines made under clause 99 of Schedule 1A to the *Higher Education Support Act 2003*

- (1) Guidelines in force under clause 99 of Schedule 1A to the *Higher Education Support Act 2003* immediately before the commencement of the amendments of that clause by this Schedule have effect after that commencement as if they had been issued under that clause as amended by this Schedule.

Table A

- (2) Subitem (1) does not prevent the repeal or amendment of the guidelines.

Higher Education Support Amendment (University College London) Act 2010
(No. 47, 2010)

Schedule 1

2 Application

- (1) The amendment made by this Schedule applies in relation to units of study offered by the University College London on or after 1 January 2010.
- (2) In this item:
- unit of study* has the same meaning as in the *Higher Education Support Act 2003*.

Higher Education Support Amendment (Indexation) Act 2010
(No. 111, 2010)

Schedule 1

6 Application

The amendments made by this Schedule (other than item 4) apply in respect of the Higher Education Grants Index number published by the Minister in the *Gazette* for the 2012 year and subsequent years.

Table A

Higher Education Support Amendment (FEE-HELP Loan Fee) Act 2010
(No. 132, 2010)

Schedule 1

2 Application

The amendment made by item 1 applies to FEE-HELP debts incurred on or after 1 January 2011 in relation to units of study whose census dates are on or after 1 January 2011.

National Vocational Education and Training Regulator (Consequential Amendments) Act 2011 (No. 14, 2011)

The following provision commences immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011*:

Schedule 1

54 Application

- (1) Clause 9A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) applies in relation to an application for approval made before, on or after this item commences.
- (2) Subclause 17(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) applies in relation to an application for approval made before, on or after this item commences.