

EXPLANATORY STATEMENT

Guidelines issued under section 238-10 of the Higher Education Support Act 2003

Amendment No. 1 to the HECS-HELP Benefit Guidelines No. 1.

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations.

Subject: *Higher Education Support Act 2003
Amendment No. 1 to the HECS-HELP Benefit Guidelines No. 1.*

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines providing for matters required or permitted by the Act necessary or convenient to be provided in order to carry out or give effect to the Act. In particular item 4A of the table at section 238-10 specifies the Minister may make the HECS-HELP Benefit Guidelines to give effect to matters set out in Part 4-2 of the Act.

Purpose and operation

This legislative instrument amends the *HECS-HELP Benefit Guidelines No.1* registered on the Federal Register of Legislative Instruments on 10 March 2010 (see F2010L00630).

Consultation

The Guidelines give effect to 2009-10 Budget measures and reflect the Government's response to the Review of Australian Higher Education. As part of the Review, extensive consultation was undertaken with the higher education sector, including higher education providers, peak bodies, state and territory governments and other key stakeholders.

The Guidelines are to be used by the Commissioner of Taxation in administering the HECS-HELP Benefit. The Australian Taxation Office has been consulted extensively on the amendments to the Guidelines, and has contributed to these amendments.

The amendments focus primarily on the eligibility requirements for Early Childhood Education Teachers. To ensure effective and complete coverage of areas of high need, especially in relation to rural and remote areas, consultation was undertaken with sections in the Higher Education Division in the Department of Industry, Innovation, Science, Research and Tertiary Education, who administer programs which are required to have a similar level of coverage.

Background

The amendments to the HECS-HELP Benefit Guidelines are necessary to expand the scope of the HECS-HELP Benefit for Early Childhood Education Teachers.

Removing the current requirement that an early childhood education teacher spends 50 per cent of the week 'teaching' will allow qualified early childhood education teachers not carrying this level of teaching workload, but are providing pedagogical and mentoring support to other staff, to obtain the Benefit. This is consistent with the aims of the National Quality Framework. It will also result in removing red tape in the Benefit application process, consistent with the aim of removing the regulatory burden under the National Quality Framework.

The expanded Benefit will allow more early childhood education teachers working in areas of high need to apply for the Benefit, including all rural and remote areas and regional cities.

A number of small changes in regard to streamlining the administration of the Benefit have been included, by request from the Australian Tax Office.

Overview of the Amendment No. 1 to the HECS-HELP Benefit Guidelines No. 1.

Division 154 of the Act provides for the discharge of compulsory repayment of HELP debts.

Detail of provisions

Section (i) – Citation

This section specifies the name of the instrument as Amendment No.1 to the HECS-HELP Benefit Guidelines No.1.

Section (ii) – Authority

This section states that the authority to make this instrument from section 238-10 of the Higher Education Support Act 2003.

Section (iii) – Date of Effect

This section provides that the Guidelines as amended by this instrument takes effect on the day after the day on which they are registered in the Federal Register of Legislation Instruments.

Section (iv) – Amendment

This section provides that this instrument amends the HECS – HELP Benefit Guidelines No.1 registered on the Federal Register of Legislative Instruments on 10 March 2010.

Item 1 – Clause 5 – Transitional Arrangements

Item 1 amends the *HECS-HELP Benefit Guidelines No. 1* (the Guidelines) by deleting the current subclause 5(1) and substituting a new subclause 5(1), to provide that the revocation of the Previous Guidelines does not affect the validity of a payment or decision made under the Previous Guidelines.

Item 2 – Section 1.5 - Interpretation

Sub-item 2(a) amends the Guidelines by inserting the definition for the words **Approved form**.

Sub-item 2(b) amends the Guidelines by deleting the current definition of **Early childhood education teacher** and substituting a new definition of **Early Childhood Education Teacher**. The new definition of **Early Childhood Education Teacher** has been amended to remove the requirement that an early childhood education teacher spends 50 per cent of the week ‘teaching’, allowing teachers providing pedagogical support to receive the Benefit.

Sub-item 2(c) amends the Guidelines by deleting the definition of **Form**.

Item 3 – Section 2.15.1.20 – Eligibility requirements for early childhood education teachers

Item 3 amends the Guidelines by deleting the current paragraph 2.15.1.20 and substituting the new paragraph 2.15.1.20. The new paragraph 2.15.1.20 incorporates the current paragraph 2.15.1.25.

Item 4 – Paragraph 2.15.1.25

Item 4 amends the Guidelines by deleting the current paragraph 2.15.1.25. The current paragraph 2.15.1.25 is deleted as it is now incorporated in the new paragraph 2.15.1.20.

Item 5 – Paragraph 2.15.40

Item 5 amends the Guidelines by inserting paragraph 2.15.40 to include a new category of 2011-12 Ongoing Postcode Locations for the 2011-12 and any later income year. No postcodes have been deleted therefore no one will be disadvantaged from the changes.

Item 8 – Chapter 4 – Applying for the HECS-HELP Benefit

Item 8 amends the Guidelines by deleting the current Chapter 4 and substituting a new Chapter 4.

The new section 4.1 specifies, for the purposes of subsection 157-5 of the Act, the manner in which a person must apply to the Commissioner of Taxation for the HECS-HELP Benefit and the time within which an application must be made. The Section has been amended to remove the point “information that must be included in the form”.

The new section 4.5 has been amended to remove reference to the form a person must complete to apply for the Benefit. This amendment is a result of including the definition of *Approved form* in Section 1.5.

The new section 4.10 states that an application must be made using the *Approved form*.

The new section 4.15 states that an application must be submitted no later than two years after the end of the income year for which a person is applying for a HECS-HELP benefit.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Amendment No.1 to the HECS-HELP Benefit Guidelines No.1

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Amendment No.1 to the HECS-HELP Benefit Guidelines No.1 are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act).

The Amendment No.1 to the HECS-HELP Benefit Guidelines No.1 specify the eligibility requirements for the HECS-HELP Benefit, how the amount of an eligible person's HECS-HELP Benefit for an income year is worked out, the form, manner and time within which an eligible person must apply for the HECS-HELP Benefit, and the time within which the Commissioner must notify an applicant of a determination of the person's HECS-HELP Benefit.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator Chris Evans, Minister for Tertiary Education, Skills, Science and Research