

***HIGHER EDUCATION SUPPORT ACT 2003***  
***Overseas Debtors Repayment Guidelines 2017***

**Higher Education (Overseas Debtor  
Repayment) Amendment and Repeal  
Instrument 2018**

**EXPLANATORY STATEMENT**

## PURPOSE

The Higher Education (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018 (the Instrument) amends the *Overseas Debtors Repayment Guidelines 2017* (the Guidelines) to insert a definition of 'ATO Occupation Code'; and substitutes subsection 7(2) with a method for calculating the standard deduction for an occupation by reference to the ATO Occupation Code, published by the ATO in June 2018. The Instrument also repeals the *Higher Education (Occupation and Occupation Standard Deduction) Determination 2017* (the 2017 Determination).

The Guidelines were made by the Minister under subsection 238-10(1) of the *Higher Education Support Act 2003* (HESA), for the purpose of sections 148-3, 154-17 and 154-18 of that Act. The 2017 Determination was made under subsection 7(2) of the Guidelines. The Instrument is made under subsection 238-10(1) of HESA and subsection 7(2) of the Guidelines, as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (which, amongst other things, provides that a power to make an instrument of a legislative character shall be construed as including a power to repeal or amend such an instrument).

## BACKGROUND

Under Subdivision 154-AA of HESA, a person who has an accumulated HELP debt (i.e. a debt to the Commonwealth arising from a student loan made to the person under HESA), and who is a foreign resident during a year (overseas debtor), is liable to pay the Commonwealth a levy. The amount of the levy an overseas debtor has to pay is contingent on the debtor's assessed worldwide income for the year, which is essentially the sum of the debtor's Australian income and foreign-sourced income for the year.

Subsection 154-17(2) of HESA states that the Guidelines may provide the methodology to work out a person's foreign-sourced income for an income year.

The Guidelines provide three methods for working out an overseas debtor's foreign-sourced income. One of these methods, the simple self-assessment method, allows an overseas debtor to advise the ATO of their gross (pre-tax) foreign-sourced income and the occupation from which they derived the majority of that income. The ATO then applies a standard deduction against their gross foreign-sourced income based on the nominated occupation in accordance with its own [Salary and Wages Occupation Code](#). The debtor's foreign-sourced income is simply the difference between their gross foreign-sourced income and the standard deduction that applies to the occupation they nominated.

Subsection 7(2) of the Guidelines allows the Minister, by legislative instrument, to determine a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived. The 2017 Determination was made for this purpose.

The Instrument does two things. First, it takes the content of the 2017 Determination and re-makes that as a provision in the Guidelines (and in doing so, updates a

reference to the ATO's Salary and Wages Occupation Code made in 2017 to that made in June 2018). Second, because the content of the 2017 Determination has been brought into the Guidelines, it repeals the (now redundant) 2017 Determination.

The *Salary and wages occupation codes 2018*, published in June 2018, is publicly available on the ATO web site, at [www.ato.gov.au](http://www.ato.gov.au).

## DETAILED EXPLANATION

### Section 1

This section provides for the name of the Instrument – the *Higher Education (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018*.

### Section 2

This section provides for the Instrument to take effect on 1 July 2018.

### Section 3

This section provides that the Instrument is made under subsection 238-10(1) of the HESA (the amendments to the Guidelines) and subsection 7(2) of the Guidelines (the repeal of the 2017 Determination).

### Section 4

This section provides that each instrument specified in the Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to the Instrument has effect according to its terms.

### Schedule 1

**Item 1** of Schedule 1 to the Instrument inserts the definition of **ATO Occupation code** in subsection 4(1) of the Guidelines as the 'Salary and wage occupation codes 2018 document published by the Australian Taxation Office in June 2018'. This new definition is used in the new subsection 7(2) inserted by item 3. It updates an equivalent definition in the 2017 Guidelines, which referred to the version of the ATO's document published in June 2017.

**Item 2** of Schedule 1 to the Instrument omits the words ", determined by the Minister under subitem (2)," from paragraph 7(1)(b).

**Item 3** of Schedule 1 to the Instrument omits subsection 7(2) of the Guidelines and inserts a new subsection 7(2) with a method for calculating the standard deduction for an occupation by reference to the ATO Occupation Code. Item 3 also provides for how to work out the standard deduction where the occupation is not in the ATO Occupation Code. The new subsection replicates the functions and operation of sections 5 and 6 of the 2017 Determination, rendering that Determination redundant.

**Item 4** of Schedule 1 to the Instrument inserts an application provision which provides that the amendments to the Guidelines made by the Instrument apply in respect of any simple self-assessment method chosen (for working out a person's foreign-sourced income) after the commencement of the Instrument.

**Item 5** of Schedule 1 to the Instrument repeals the 2017 Determination.

## **CONSULTATION**

The amendments made by the Instrument are minor and technical in nature – the lifting and replication of the content of the 2017 Determination into the Guidelines, the updating of a reference to a document, and the consequent repeal of the 2017 Determination – and so no consultation was considered necessary.

## **REGULATION**

The amendments made by the Instrument are minor and technical and have no regulatory impact. (The Regulation Impact Statement for the overseas debt recovery measure has been agreed with the Office of Best Practice Regulation (reference 18482)).

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

## **Higher Education (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018**

The *Higher Education (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018* (the Instrument) is compatible with 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 Overseas Debtor Guidelines Amendment**

Under Subdivision 154-AA of the Higher Education Support Act 2003 (HESA), a person who has an accumulated Higher Education Loan Program debt (i.e. a debt to the Commonwealth arising from a student loan made to the person under HESA), and who is a foreign resident during a year (overseas debtor), is liable to pay the Commonwealth a levy. The amount of the levy an overseas debtor has to pay is contingent on the debtor's assessed worldwide income for the year, which is essentially the sum of the debtor's Australian income and foreign-sourced income for the year.

Subsection 154-17(2) of HESA states that the Overseas Debtors Repayment Guidelines 2017 (the Guidelines) may provide the methodology to work out a person's foreign-sourced income for an income year.

The Guidelines provide three methods for working out an overseas debtor's foreign-sourced income. One of these methods, the simple self-assessment method, allows an overseas debtor to advise the ATO of their gross (pre-tax) foreign-sourced income and the occupation from which they derived the majority of that income. The ATO then applies a standard deduction against their gross foreign-sourced income based on the nominated occupation in accordance with its own [Salary and Wages Occupation Code](#). The debtor's foreign-sourced income is simply the difference between their gross foreign-sourced income and the standard deduction that applies to the occupation they nominated.

Subsection 7(2) of the Guidelines allows the Minister, by legislative instrument, to determine a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived. The Higher Education (Occupation and Occupation Standard Deduction) Determination 2017 (the 2017 Determination) was made for this purpose.

The Minister will now (under subsection 154-17(2) of HESA) determine a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived, in the Guidelines. The Instrument amends the Guidelines to reference the ATO document 'Salary and wage occupation codes 2018' as the list of occupations and the standard deduction for those occupations for

overseas debtors who choose the simple self-assessment method. The Minister will no longer be required to make a determination by a separate legislative instrument; therefore, the Instrument will repeal the 2017 Determination.

The *Salary and wages occupation codes 2018*, published in June 2018, is publicly available on the ATO web site, at [www.ato.gov.au](http://www.ato.gov.au).

### ***Human rights implications***

The Instrument is a both an administrative and technical amendment to insert a definition of 'ATO Occupation Code' in the Guidelines, and specify in those Guidelines that the occupations and method by which the standard deduction is derived, will be by reference to the ATO document 'Salary and wage occupation codes 2018'. The Instrument will remove the need for the Minister to make such a determination by a further legislative instrument, and as such, the 2017 Determination will be repealed.

The Instrument itself does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

### ***Conclusion***

This Instrument is compatible with human rights because it does not engage any of those rights.