

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

HELP Debtor Guidelines (Teachers) 2023

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* (the Act) allows the Minister to make Guidelines required or permitted by a provision in the table in that section, or necessary or convenient to give effect to such a provision. The *HELP Debtor Guidelines (Teachers) 2023* (the Guidelines) are made under item 8AA of this table.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The repeal of the *Very Remote HELP Debtor Guidelines 2019* (the Former Guidelines) by the Guidelines relies on this provision.

PURPOSE AND OPERATION

The purpose of the Guidelines is to repeal and replace the Former Guidelines to make necessary terminology changes following the passage of the *Higher Education Support Amendment (2022 Measures No. 1) Act 2023* (Amendment Act).

Changes to the Guidelines from the Former Guidelines alter eligibility requirements for applicants who were disadvantaged under the Former Guidelines. This includes those who did not meet the 1460 day requirement to be eligible for HELP debt reduction but had taught at an eligible school for four teaching years or experienced exceptional circumstances, as well as those teachers who commute from nearby remote areas to very remote areas. Changes to the Guidelines also make provision for the inclusion of undergraduate degrees that are a direct pre-requisite to an initial teacher education qualification in the amount of HELP debt eligible to be reduced. These changes more closely align with the original policy intention of Division 142 of the Act, to provide HELP debt relief to teachers engaged in face-to-face teaching in very remote areas for a period of four teaching years.

The Amendment Act created a new Division 144 in Part 4-1 of the Act to enable, on application, the partial or complete reduction of outstanding Higher Education Loan Program (HELP) debts for eligible health practitioners. The Amendment Act also made consequential amendments to Division 142 of the Act relating to teachers working in very remote locations. As a result of these amendments, these HELP debtors are now referred to

as 'location-preferred' rather than 'very remote' and the Guidelines are referred to as the *HELP Debtor Guidelines (Teachers)*. It is necessary to repeal and remake the Guidelines to accommodate these changes.

Subsection 142-1(3) of the Act allows for the Guidelines to set out circumstances in which a person is taken, or is taken not, to carry out work as a teacher on a day. The Guidelines replace the phrase 'the person is normally resident in an area that is classified as very remote Australia under the ABS Remoteness Structure' in the Former Guidelines with 'the person conducts that work in a face-to-face manner in an area that is classified as very remote Australia under the ABS Remoteness Structure' which will provide eligibility for teachers who reside in nearby remote areas and commute to very remote areas.

Additionally, subsection 142-5(2) of the Act allows for the Guidelines to specify courses of study that are, or are not, courses of study in education. Sections 11 and 12 in Division 4 of the Guidelines specify that a course of study in education includes an undergraduate qualification that is a direct pre-requisite into an initial teacher education qualification. This provides a legislative basis for inclusion of pre-requisite degrees, and the exclusion of additional education related degrees completed after the initial teacher education qualification from the amount of HELP debt eligible to be reduced by these measures, in line with the original policy intention of Division 142.

Subparagraph 142-15(1)(a)(ii) of the Act allows for the Guidelines to specify requirements that applicants must meet in relation to the completion of four years of teaching to be eligible for the reduction of HELP debt. The Guidelines replace the definition of four years of teaching (1460 days) in the Former Guidelines with 1400 days. Subsections 10(4) and 10(5), which are new in the Guidelines, provide a list of exceptional circumstances that the delegate may consider if an applicant has not reached the 1400 day requirement, but has otherwise met the intention of the policy by teaching for four years in an eligible location. These changes provide benefit to applicants who may have been disadvantaged by the rigid 1460 day requirement that did not reflect the nature of teachers' employment contracts and other extenuating circumstances.

The content of the Guidelines is otherwise the same as the content of the Former Guidelines.

IMPACT ANALYSIS

The Office of Impact Analysis has been consulted and advised that an Impact Analysis is not required for the Guidelines. Measures carried over from the Former Guidelines were previously assessed (OBPR ID No. 24713) and the new measures have been assessed in OBPR23-04169.

COMMENCEMENT

The Guidelines commence the day after they are registered on the Federal Register of Legislation.

CONSULTATION

The new measures in section 10 of the Guidelines have been made in response to feedback from applicants to the program, who have identified that their individual circumstances may prevent them from being eligible based on the requirements regarding when an applicant is considered a location-preferred HELP debtor (teacher), the debt which is eligible to be reduced, and when an applicant has reached the four-year teaching requirement.

The Department of Education has considered this feedback in the drafting of these measures, including any implications for the measures on other applicants who did not provide feedback.

It is on this basis and, having regard to the beneficial nature of these new measures, that no further consultation was undertaken.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

HELP Debtor Guidelines (Teachers) 2023

The *HELP Debtor Guidelines (Teachers) 2023* (the Guidelines) are 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

The purpose of the Guidelines is to repeal and replace the *Very Remote HELP Debtor Guidelines 2019* (the Former Guidelines) to make necessary terminology changes following the passage of the *Higher Education Support Amendment (2022 Measures No. 1) Act 2023* (Amendment Act).

Changes to the Guidelines from the Former Guidelines alter eligibility requirements for applicants who were disadvantaged under the Former Guidelines. This includes those who did not meet the 1460 day requirement to be eligible for HELP debt reduction but had taught at an eligible school for four teaching years or experienced exceptional circumstances, as well as those teachers who commute from nearby remote areas to very remote areas. Changes to the Guidelines also make provision for the inclusion of undergraduate degrees that are a direct pre-requisite to an initial teacher education qualification in the amount of HELP debt eligible to be reduced. These changes more closely align with the original policy intention of Division 142 of the Act, to provide HELP debt relief to teachers engaged in face-to-face teaching in very remote areas for a period of four teaching years.

The Amendment Act created a new Division 144 in Part 4-1 of the Act to enable, on application, the partial or complete reduction of outstanding Higher Education Loan Program (HELP) debts for eligible health practitioners. The Amendment Act also made consequential amendments to Division 142 of the Act relating to teachers working in very remote locations. As a result of these amendments, these HELP debtors are now referred to as 'location-preferred' and the Guidelines are referred to as the *HELP Debtor Guidelines (Teachers)*. It is necessary to repeal and remake the Guidelines to accommodate these changes.

Subsection 142-1(3) of the Act allows for the Guidelines to set out circumstances in which a person is taken, or is taken not, to carry out work as a teacher on a day. The Guidelines replace the phrase 'the person is normally resident in an area that is classified as very remote Australia under the ABS Remoteness Structure' in the Former Guidelines with 'the person conducts that work in a face-to-face manner in an area that is classified as very remote Australia under the ABS Remoteness Structure' which will provide eligibility for teachers who reside in nearby remote areas and commute to very remote areas.

Additionally, subsection 142-5(2) of the Act allows for the Guidelines to specify courses of study that are, or are not, courses of study in education. Sections 11 and 12 in Division 4 of the Guidelines specify that a course of study in education includes an undergraduate qualification that is a direct pre-requisite into an initial teacher education qualification. This provides a legislative basis for inclusion of pre-requisite degrees in the amount of HELP debt eligible to be reduced by these measures, in line with the original policy intention of Division 142.

Subparagraph 142-15(1)(a)(ii) of the Act allows for the Guidelines to specify requirements that applicants must meet in relation to the completion of four years of teaching to be eligible for the reduction of HELP debt. The Guidelines replace the definition of four years of teaching (1460 days) in the previous Guidelines with 1400 days. Subsections 10(4) and 10(5), which are new in the Guidelines, provide a list of exceptional circumstances that the delegate may consider if an applicant has not reached the 1400 day requirement, but has otherwise met the intention of the policy by teaching for four years in an eligible location. These changes provide benefit to applicants who may have been disadvantaged by the rigid 1460 day requirement that did not reflect the nature of teachers' employment contracts and other extenuating circumstances.

The content of the Guidelines is otherwise the same as the content of the Former Guidelines.

Human rights implications

The Guidelines engage the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 13(2)(a) provides that 'primary education shall be compulsory and available free to all.' Article 13(2)(b) provides that 'secondary education in its different forms...shall be made generally available and accessible to all...'

The Guidelines will directly contribute to the fulfilment of this right because they expand and support the system set out in the enabling legislation to support teachers to work in very remote areas. This system is beneficial as it provides an incentive for teachers to work at schools in very remote areas, which disproportionately struggle to recruit compared to metropolitan schools. This can improve information-sharing and access to high-quality primary and secondary education in very remote communities.

Article 13(2)(c) of the ICESCR provides that 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education'.

The Guidelines will directly contribute to this requirement as they promote the availability of the Location-preferred HELP Debtors (Teachers) measures, allowing more individuals to access a reduction of their accumulated HELP debt for teaching in a very remote area,

especially where exceptional circumstances may have prevented them from completing the full program period.

Conclusion

The Guidelines are compatible with human rights because they support and engage the right to education.

Minister for Education, The Hon Jason Clare MP

HELP DEBTOR GUIDELINES (TEACHERS) 2023

EXPLANATION OF PROVISIONS

Division 1 – Preliminary

Section 1: Name

1. This is a formal provision specifying the name of the *HELP Debtor Guidelines (Teachers) 2023* (Guidelines).

Section 2: Commencement

2. This section provides that the Guidelines commence the day after they are registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Guidelines are made under section 238-10 of the *Higher Education Support Act 2003* (the Act).

Section 4: Definitions

4. This section defines terms used in the Guidelines.
5. In particular, this section defines a very remote school as a school located in an area that is classified as very remote Australia under the ABS Remoteness Structure, copying the language from paragraph 142-1(1)(a) of the Act.
6. Other terminology used in the Guidelines – for example, “school” and “ABS Remoteness Structure” – has the same meaning in the Guidelines as it does in the Act (see paragraph 13(1)(b) of the *Legislation Act 2003*).

Section 5: Schedules

7. This is a technical provision that explains that the instrument that is specified in the Schedule to the Guidelines is repealed as set out in the applicable item in the Schedule.

Division 2 – Location-preferred HELP debtors (teachers) – reducing indexation

Section 6: Purpose of Division

8. Paragraph 142-1(1)(a) of the Act provides that one of the criteria for a person to be a location-preferred HELP debtor (teacher) on a day is that they carry out work as a teacher on that day in an area that is classified as very remote Australia under the ABS Remoteness Structure (i.e. at a very remote school). Section 6 of the Guidelines provides that the purpose of Division 2 of the Guidelines is to set out circumstances relevant to working out whether a person is a location-preferred HELP debtor (teacher) on a day.

Section 7: Days on which a person is a location-preferred HELP debtor (teacher) – full-time and part-time teachers in very remote schools

9. Under subsection 140-10(1A) of the Act, the indexation factor of a location-preferred HELP debtor (teacher)'s former accumulated HELP debt is reduced by the proportion of the previous calendar (school) year that the person spent teaching in very remote schools. Hence the number of days in that calendar year that the person spent teaching in very remote schools needs to be worked out, and is included in a determination by the Secretary under subsection 142-10(2) of the Act. Section 7 of the Guidelines sets out how to work out the number of days that a person engaged as a full-time or part-time teacher was a location-preferred HELP debtor (teacher).
10. Subsections 7(1) and 7(2) deal with the circumstance where a person is engaged to work as a full-time or part-time teacher in very remote schools for a specified period, for example, a month, one or more school terms, or the whole school year, and during that period, they are conducting that work in a face-to-face manner.
11. Subsection 7(1) provides that the person is taken to be carrying out work as a teacher at a very remote school for every day during the whole period of that engagement.
12. Subsection 7(2) makes it clear that the person can be taken to be carrying out work as a teacher at a very remote school on a day even if the day is not a day on which the person is actually carrying out work (such as a weekend, public holiday, leave day, or rostered day off), and even if the person is not physically located in a very remote location on the day (for example, because the person is travelling to or from a very remote location, is on leave outside a very remote location, or is undertaking professional duties, such as undertaking continuing professional training, at another location).
13. The purpose of subsections 7(1) and 7(2) is to ensure that, where a full-time or part-time teacher has been specifically engaged to teach at one or more very remote schools for a defined period and, during that period, conducts that work in a face-to-face manner, that they obtain the benefit of HELP debt indexation reduction for every day they are so engaged, even if on particular days in that period they are not actually teaching in a very remote school.
14. Subsections 7(3) and 7(4) deal with the circumstance where a person is engaged to work as a full-time or part-time teacher in very remote schools (whether or not for a

specified period) and is located in a very remote location because of that engagement.

15. Subsection 7(3) provides that the person is taken to be carrying out work as a teacher at a very remote school for every day during the period the person is located in a very remote location for the purpose of teaching in very remote schools. Subsection 7(4) makes it clear that the person can be taken to be carrying out work as a teacher at a very remote school on a day even if the day is not a day on which the person is actually carrying out work (such as a weekend, public holiday, leave day, or rostered day off).
16. The purpose of subsections 7(3) and 7(4) is to ensure that where a full-time or part-time teacher has been engaged to teach at one or more very remote schools temporarily, and in order to undertake that teaching, is located in a very remote location for a period, that they obtain the benefit of HELP debt indexation reduction for every day they are located in the very remote location, even if on particular days in that period they are not actually teaching in a very remote school

Section 8: Days on which a person is a location-preferred HELP debtor (teacher) – casual teachers

17. Section 8 of the Guidelines sets out how to work out the number of days that a person engaged as a casual teacher was a location-preferred HELP debtor (teacher). Subsections 8(1) and (2) operate in a similar fashion in relation to casual teachers as subsections 7(1) and (2) do in relation to full-time and part-time teachers.
18. In essence, each day that a casual teacher is located in a very remote location for the purposes of working in a very remote school (whether or not they actually work as a teacher on the day) is counted as a day that they are taken to carry out work as a teacher at a very remote school.

Division 3 – Location-preferred HELP debtors (teachers) – reducing HELP debts

Section 9: Purpose of Division

19. Subparagraph 142-15(1)(a)(i) of the Act provides that one of the criteria for a person to have their accumulated HELP debt reduced is that the person has been a location-preferred HELP debtor (teacher) for a period of four years, or for periods within a continuous six year period that total four years. Section 9 of the Guidelines provides that the purpose of Division 3 of the Guidelines is to set out circumstances relevant to working out whether a person has been a location-preferred HELP debtor (teacher) for the purposes of subparagraph 142-15(1)(a)(i) of the Act.

Section 10: Period for which a person has been a location-preferred HELP debtor (teacher)

20. Subsection 10(1) provides that a person has been a location-preferred HELP debtor (teacher) for a period of four years, or for periods within a continuous six year period that total four years, at a time during a given year if the number of days that the person has been a location-preferred HELP debtor (teacher), and has been contracted to work as a teacher in the period of six continuous years ending immediately before that year, equals or exceeds 1400.
21. For example, at any time in 2025 a person will have been a location-preferred HELP debtor (teacher) for a period of four years, or for periods within a continuous six year period that total four years, if in the period from 1 January 2019 to 31 December 2024 inclusive, the number of days the person was a location-preferred HELP debtor (teacher) is at least 1400.
22. Subsection 10(2) provides that, in order to work out the number of days that a person was a location-preferred HELP debtor (teacher) for the purposes of subsection 10(1), regard is to be had to the operation of Division 2 of the Guidelines.
23. Under section 7 (in Division 2), a part-time teacher is taken to have been a location-preferred HELP debtor (teacher) on each day in a period that they were resident or located in a very remote location, whether or not they were teaching on the day. Nevertheless, subsection 10(3) states that, in working out the number of days that contribute to a part-time teacher's total of days for the purposes of subsection 10(1), the number of days worked out under section 7 needs to be multiplied by the proportion of full-time work that the part-time teacher was engaged to work during the relevant period, rounded up to the nearest whole number.
24. For example, if a teacher was engaged to work for a full year (365 days), but part-time hours equal to 0.625 of full-time hours (e.g. 25 hours per week of a 40-hour full-time workload), the number of days in that period that count towards the 1400 day requirement in subsection 10(1) will be 0.625×365 (rounded up), or 229 days.
25. Subsection 10(4) clarifies that a person may be taken to be a location-preferred HELP debtor (teacher) for the purposes of subsection 10(1), notwithstanding that the actual number of days that the person has been a location-preferred HELP debtor (teacher) is less than 1400, if the Secretary's delegate considers that exceptional circumstances apply to that person that prevented the person teaching for 1400 days.
26. The types of exceptional circumstances that the Secretary may consider for the purposes of subsection 10(4) are set out in subsection 10(5). The list of exceptional circumstances is not exhaustive and includes circumstances where the person has completed a minimum of 800 days of teacher duty over a period of six years but has not been contracted for 1400 days due to periods of part time work, or employment gaps during school holiday periods, and where the person incurs an injury, or experiences a recurrence of chronic illness, that prevents the person from teaching.

Division 4 – Course of study in education

Section 11: Purpose of Division

27. Subsection 142-5(2) of the Act provides that the Guidelines may specify courses of study that are, or are not, courses of study in education. Section 11 of the Guidelines provides that the purpose of Division 4 of the Guidelines is to set out courses that are courses of study in education for the purposes of subsection 142-5(2).

Section 12: Courses of study in education

28. Section 12 of the Guidelines provides that a course of study in education includes initial teacher education qualifications and any pre-requisites for those qualifications, but does not include additional courses which have been completed after the initial teacher education qualification. This ensures that only courses contributing to the completion of a teaching qualification are eligible for HELP debt reduction.
29. Section 12 includes examples of where an undergraduate qualification which is a direct pre-requisite to entry into an initial teacher qualification will be a course of study in education, and where a course completed after the initial teacher education qualification will not be a course of study in education, even if relevant to teaching.

Schedule 1 – Repeals

30. Item 1 of Schedule 1 repeals the *Very Remote HELP Debtor Guidelines 2019*, which the Guidelines replace.