

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Universities Accord (Student Support and Other Measures) Act 2024

Universities Accord (Student Support and Other Measures) Transitional Rules 2024

AUTHORITY

Subitem 1(1) of Schedule 6 to the *Universities Accord (Student Support and Other Measures) Act 2024* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act.

PURPOSE AND OPERATION

Schedule 1 to the Act amends the *Higher Education Support Act 2003*, the *Australian Apprenticeship Support Loans Act 2014*, the *Social Security Act 1991*, the *Student Assistance Act 1973* and the *VET Student Loans Act 2016* (together, the Relevant Acts), to provide that the calculation of a person's accumulated HELP debt and other study or income contingent loans set out in the Relevant Acts will take into account changes to the Consumer Price Index (CPI) and the Wage Price Index, instead of just CPI.

Part 5 of Schedule 1 to the Act then provides that those amendments apply for the purpose of working out a person's debt under those Relevant Acts for the financial year ending on 30 June 2023 and each subsequent financial year. The Act makes clear that for the purposes of applying these amendments to the debts for the financial years ending 30 June 2023 and 30 June 2024, those debts are to be recalculated. The Act also makes clear that the transitional rules made under Schedule 6 to the Act may specify how a recalculation is to occur.

The *Universities Accord (Student Support and Other Measures) Transitional Rules 2024* (the Instrument) sets out transitional rules that specify how recalculations of debts under the Relevant Acts are to occur, where the person who has the debt had received a waiver of an amount attributable to the indexation of a person's debt (relevant waiver) under the Relevant Acts for the financial years ending 30 June 2023 and 30 June 2024.

The purpose of the Instrument is to provide that any reduction of the debts owing when those debts are recalculated, will take into account the amount of any relevant waiver that was provided, so that a person does not receive an additional benefit where they have already received a waiver of an amount attributable to the indexation of a person's debt (whether in full or in part).

IMPACT ANALYSIS

The Office of Impact Analysis has been consulted and advised that no Impact Analysis is required for the Instrument (ID: OIA24-07102).

COMMENCEMENT

The Instrument commences immediately after it is registered on the Federal Register of Legislation.

CONSULTATION

Consultation on the Instrument was undertaken across relevant Australian Government agencies, including the Australian Taxation Office, the Department of Employment and Workplace Relations and the Department of Social Services. None of those agencies raised any concerns with the content of the Instrument.

Consultation on the policy to change how indexation is calculated occurred as part of the development of the Act, with the Explanatory Memorandum for that Act detailing the consultation on the broader measure. Noting that as consultation on the broader policy was already undertaken as part of the development of the Act, and because the Instrument only makes technical transitional rules to clarify any uncertainty about how debts should be recalculated if a person had received a waiver of an amount attributable to indexation of a person's debt for the relevant period, it was considered unnecessary to undertake any further additional consultation outside the relevant Australian Government departments in relation to the Instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Universities Accord (Student Support and Other Measures) Transitional Rules 2024

The *Universities Accord (Student Support and Other Measures) Transitional Rules 2024* (the 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

Schedule 1 to the *Universities Accord (Student Support and Other Measures) Act 2024* (the Act) amends the *Higher Education Support Act 2003*, the *Australian Apprenticeship Support Loans Act 2014*, the *Social Security Act 1991*, the *Student Assistance Act 1973* and the *VET Student Loans Act 2016* (together, the Relevant Acts), to provide that the calculation of a person's accumulated HELP debt and other study or income contingent loans set out in the Relevant Acts will take into account changes to the Consumer Price Index (CPI) and the Wage Price Index, instead of just CPI.

Part 5 of Schedule 1 to the Act then provides that those amendments apply for the purpose of working out a person's debt under those Relevant Acts for the financial year ending on 30 June 2023 and each subsequent financial year. The Act makes clear that for the purposes of applying these amendments to the debts for the financial years ending 30 June 2023 and 30 June 2024, those debts are to be recalculated. The Act also makes clear that the transitional rules made under Schedule 6 to the Act may specify how a recalculation is to occur.

The *Universities Accord (Student Support and Other Measures) Transitional Rules 2024* (the Instrument) sets out transitional rules that specify how recalculations of debts under the Relevant Acts are to occur, where the person who has the debt had received a waiver of an amount attributable to the indexation of a person's debt under the Relevant Acts for the financial years ending 30 June 2023 and 30 June 2024.

The purpose of the Instrument is to provide that any reduction of the debts owing when those debts are recalculated, will take into account the amount of any relevant waiver that was provided, so that a person does not receive an additional benefit where they have already received a waiver of an amount attributable to the indexation of a person's debt (whether in full or in part).

Human rights implications

The Explanatory Memorandum to the Act sets out the human rights implications for the measure set out in Schedule 1 of the Act (to which this Instrument relates).

The purpose of the Instrument is to make technical transitional rules to clarify any uncertainty about how debts should be recalculated if a person with a debt under a

Relevant Act had received a waiver of an amount attributable to indexation of a person's debt for the relevant period. These technical rules do not engage any human rights and freedoms.

Conclusion

The Instrument is compatible with human rights because it does not raise any human rights issues.

Minister for Education, the Hon Jason Clare MP

UNIVERSITIES ACCORD (STUDENT SUPPORT AND OTHER MEASURES) TRANSITIONAL RULES 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the *Universities Accord (Student Support and Other Measures) Transitional Rules 2024* (the Instrument).

Section 2: Commencement

2. This provision provides that the Instrument commences immediately after the Instrument is registered on the Federal Register of Legislation.

Section 3: Authority

3. This provision provides that the Instrument is made under subitem 1(1) of Schedule 6 to the *Universities Accord (Student Support and Other Measures) Act 2024* (the Act).

Section 4: Definitions

4. This section defines the terms used in the Instrument and provides that any other expression used in the Instrument that is used in the Act has the same meaning in the Instrument as it has in the Act.
5. Relevantly, this section defines the following terms:
 - a. 'new law' means a relevant Act as in force upon commencement of the Act;
 - b. 'old law' means a relevant Act as in force immediately before commencement of the Act;
 - c. ' $RA_{new\ law}$ ' means what a relevant amount would have been for the financial year if it had been calculated under the relevant new law without taking into account this Instrument and on the basis that there had not been a relevant waiver;
 - d. ' $RA_{old\ law}$ ' means what a relevant amount would have been for the financial year if it had been calculated under the relevant old law without taking into account this Instrument and on the basis that there had not been a relevant waiver;
 - e. 'relevant Act' means the *Higher Education Support Act 2003*, the *Australian Apprenticeship Support Loans Act 2014*, the *Social Security Act 1991*, the *Student Assistance Act 1973* and the *VET Student Loans Act 2016*;
 - f. 'relevant amount' means a person's accumulated HELP debt, a person's accumulated AASL debt, a person's accumulated FS debt, the amount outstanding under a person's FS contract, a person's accumulated SSL debt, a

person's accumulated ABSTUDY SSL debt and a person's accumulated VETSL debt under the relevant Acts; and

- g. 'relevant waiver (RW)' means, in relation to a relevant amount and a financial year, an amount attributable to the indexation of a person's relevant amount that was waived under section 63 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) in relation to that financial year.

Section 5: Transitional rules for the recalculation of debts or amounts owing where a person received a waiver or partial waiver of that debt or amount

6. Section 5 sets out the transitional rules for the recalculation of debts or amounts owing where a person received a waiver or partial waiver of a debt or amount.
7. Subsection 5(2) provides that, if a person had a 'relevant waiver' in relation to a 'relevant amount' and the financial year ending on 30 June 2023 or the financial year ending on 30 June 2024, the person's recalculated debt or amount for that financial year is worked out using the formulas in paragraphs (2)(a) and (b).
8. This means that a person's debt or amount is only recalculated under subsection 5(2) where a person received a waiver under section 63 of the PGPA Act, of an amount attributable to the indexation of a person's relevant amount (that is, a relevant debt or an amount outstanding under a person's FS contract), in relation to the financial years ending on 30 June 2023 and 30 June 2024.
9. Paragraph 5(2)(a) provides that, if, for the financial year, a person's 'relevant waiver' is more than the amount of the person's debt calculated under the old law ($RA_{old\ law}$) minus the person's debt calculated under the new law ($RA_{new\ law}$) then the person's debt or amount should be recalculated by taking the person's 'relevant waiver' away from their debt amount calculated under the old law ($RA_{old\ law}$).
10. Paragraph 5(2)(b) provides that, if, for the relevant financial year, a person's 'relevant waiver' is less than or equal to, the amount of the person's debt calculated under the old law ($RA_{old\ law}$) minus the person's debt calculated under the new law ($RA_{new\ law}$), then the person's debt or amount should be recalculated by determining the person's debt or amount under the relevant new law ($RA_{new\ law}$).
11. The recalculation of the person's debt or amounts under paragraphs 5(2)(a) and (b) is taken to have included a person's relevant waiver. A person's relevant waiver will not need to be taken into account or subtracted from the person's recalculated debt or amounts owing once that recalculation has occurred.
12. Subsection 5(3) clarifies that if a person had a relevant waiver in relation to the financial year ending on 30 June 2023 and the financial year ending on 30 June 2024, the recalculation of a person's debt is to first occur in relation to the financial year ending on 30 June 2023.
13. The following examples explain how the recalculation of a person's debt or amounts under paragraphs 5(2)(a) and (b) are intended to be worked out in relation to HELP debts. The effect of the rule in the context of other relevant amounts covered by the rule, such as VET Student Loans, would be the same as set out in the examples below.

Example 1: Juanita

14. Juanita had an accumulated HELP debt of \$10,000 on 1 June 2023, and made no repayments and accrued no further HELP debt that financial year.
15. Her debt was indexed on 1 June 2023 at a rate of 7.1 per cent, which increased her HELP debt by \$710 to \$10,710 (the relevant amount under the old law).
16. Juanita received a relevant waiver of \$710 for the 2023 financial year under section 63 of the PGPA Act that reduced her debt to \$10,000.
17. If Juanita's debt had been indexed on 1 June 2023 at a rate of 3.2 per cent under the new law, her original HELP debt would have increased by \$320 to \$10,320 (the relevant amount under the new law).
18. The difference between Juanita's relevant amount under the old law and relevant amount under the new law is \$390 (\$10,710 minus \$10,320). The amount of Juanita's relevant waiver (\$710) is greater than \$390.
19. Therefore, to recalculate Juanita's accumulated HELP debt for the financial year ending on 30 June 2023, \$710 (the relevant waiver) is subtracted from \$10,710 (the relevant amount under the old law). This means Juanita's recalculated accumulated HELP debt as of 30 June 2023 is \$10,000.
20. The application of the transitional rules to the recalculation of Juanita's 2023 HELP debt reflects that since Juanita received a relevant waiver attributable to the full amount of indexation of Juanita's 2023 HELP debt, her recalculated 2023 HELP debt should be the amount of her HELP debt under the old law minus the relevant waiver (since the amount of recalculated HELP debt under the new law takes into account the changes to indexation that applied to HELP debts and Juanita's HELP debt was not affected by indexation in that year due to the application of the relevant waiver).

Example 2: Hassan

21. Hassan had an accumulated HELP debt of \$50,000 on 1 June 2024, and made no repayments and accrued no further HELP debt that financial year.
22. His debt was indexed on 1 June 2024 at a rate of 4.7 per cent, which increased his HELP balance by \$2,350 to \$52,350 (the relevant amount under the old law).
23. Hassan received a relevant waiver of \$100 for the 2024 financial year under section 63 of the PGPA Act and reduced his debt to \$52,250.
24. If Hassan's debt had been indexed on 1 June 2024 at a rate of 4.0 per cent under the new law, his HELP balance would have increased by \$2,000 to \$52,000 (the relevant amount under the new law).
25. The difference between Hassan's relevant amount under the old law and relevant amount under the new law is \$350 (\$52,350 minus \$52,000). The amount of Hassan's relevant waiver (\$100) is lower than \$350.
26. Therefore, the recalculation of Hassan's accumulated HELP debt for the financial year ending on 30 June 2024 is equal to what his relevant amount would have been under the new law, or \$52,000.
27. The application of the transitional rules to the recalculation of Hassan's 2023 HELP debt reflects that since Hassan received a relevant waiver attributable to only a partial amount of indexation of Hassan's 2023 HELP debt that was less than the

difference between Hassan's relevant amount under the old law and relevant amount under the new law, his recalculated 2023 HELP debt should be the amount of his HELP debt under the new law. This reflects that Hassan's recalculated HELP debt should be the relevant amount under the new law, since that is more beneficial for Hassan than recalculating his HELP debt under the old law taking into consideration the relevant waiver (as in Example 1).