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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (2007 MEASURES NO. 1)  
BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training,  
the Honourable Julie Bishop MP)

# HIGHER EDUCATION LEGISLATION AMENDMENT (2007 MEASURES NO. 1) BILL 2007

## OUTLINE

The Bill will revise the maximum funding amounts in section 41-45 of the *Higher Education Support Act 2003* (HESA) to provide funding to support the implementation of the Research Quality Framework (RQF).

The Bill will amend the HESA to reflect changes to the *National Protocols for Higher Education Approval Processes*. The National Protocols were first approved by the Ministerial Council on Education, Employment, Training and Youth Affairs in 2000, and regulate the recognition of new universities, the operation of overseas universities in Australia and the accreditation of courses offered by higher education institutions. Ministers have approved revised National Protocols to take effect from 31 December 2007, and legislative changes are required in all jurisdictions. These changes to the HESA will:

- align key definitions with those used in the revised National Protocols and the Australian Qualifications Framework;
- reflect new arrangements for the National Protocols to apply to all new and existing higher education institutions (the Protocols previously applied only to new institutions);
- allow for approval and regulation of the new types of higher education institutions, as defined in the revised National Protocols, as Higher Education Providers;
- align the definition of 'to operate' with that used in the revised National Protocols; and
- allow for new types of higher education institutions, as defined in the revised Protocols, to apply for approval to operate in the External Territories.

The Bill includes a number of measures which will improve the administration of the Higher Education Loan Programme (HELP) and arrangements for Commonwealth supported students, including amendments to:

- clarify the overseas study requirements in relation to eligibility for OS-HELP assistance;
- clarify that nothing requires a provider to advise students that they are Commonwealth supported at a particular campus of the provider;
- clarify the residency requirements in relation to Commonwealth support and HECS-HELP and FEE-HELP assistance for study undertaken offshore; and
- allow providers to advise students that they will be Commonwealth supported for cross-institutional study where one or both of the higher education providers are not Table A providers.

The Bill will also amend the *Higher Education Support Act 2003* (HESA), the *Higher Education Funding Act 1988* (HEFA) and the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* (TCA) to limit the time for students to claim an entitlement to Commonwealth support. The HESA will be amended to allow students six weeks from the census date to correct information so as to establish an entitlement to Commonwealth assistance. The HEFA will be amended to clarify that students can no longer establish entitlement to assistance provided under the Act. The TCA will be amended to allow students six weeks from the census date to correct information so as to establish an entitlement to Commonwealth assistance. The commencement date for these amendments will be 1 January 2008 in order to allow sufficient lead time to inform students and higher education providers of these time limits.

Finally, the Bill makes a range of minor technical amendments which will improve the operation of the HESA by:

- ensuring persons undertaking a bridging course for overseas-trained professionals with Open Universities Australia may be entitled to FEE-HELP assistance;
- providing for the suspension of higher education providers approved under the HESA to be a legislative instrument which can be registered on the Federal Register of Legislative Instruments (FRLI); and
- reflecting the name change of Victoria University of Technology to Victoria University.

## **FINANCIAL IMPACT**

In relation to the *Higher Education Support Act 2003*, the Bill increases the overall appropriation by \$40.8 million (in current year prices) for the period 1 July 2007 to 31 December 2010, by varying the maximum payments for Other Grants under Part 2-3 of the Act.

The Bill will have no financial impact on the *Higher Education Funding Act 1988* or the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

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**NOTES ON CLAUSES**

**Clause 1 - Short title**

Provides for the Act to be cited as the *Higher Education Legislation Amendment (2007 Measures No, 1) Act 2007*.

**Clause 2 - Commencement**

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table, and any other statement in column 2 has effect according to its terms.

The table provides for:

- sections 1 to 3, item 1 of Schedule 3 and Schedules 2 and 4 to 10 to commence on Royal Assent;
- items 2 to 6 of Schedule 3 to commence on 1 January 2008; and
- Schedule 1 to commence on a single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

**Clause 3 - Schedule(s)**

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

## **Schedule 1— Approval and accreditation of higher education providers and entities**

### ***Higher Education Support Act 2003***

The following amendments are required to give effect to the revised *National Protocols for Higher Education Approval Processes* (the National Protocols) which were agreed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) in July 2006. The National Protocols were first agreed by MCEETYA in 2000, and regulate the recognition of new universities, the operation of overseas universities in Australia and the accreditation of courses offered by providers of higher education. The Commonwealth, along with all the States and Territories have undertaken to amend their legislation so that the National Protocols take effect from the end of 2007.

Key changes in the National Protocols are:

- provision for a wider range of universities including specialist institutions conducting teaching and research in one or two fields of study only and university colleges in the form of new universities undertaking teaching and research in a limited number of fields during an establishment phase;
- a pathway for institutions other than universities to become authorised to accredit their own courses (“self-accrediting”) where they demonstrate a strong track record in quality assurance and reaccreditation; and
- application of the Protocols to both new and existing higher education institutions, with compliance to be assessed through the standard quality assurance processes.

This schedule implements these new arrangements in relation to the approval and accreditation of higher education entities in the External Territories (Chapter 6) as well as those higher education entities that are higher education providers under Part 2-1.

#### **Items 1, 2 and 3 - Subsection 3-5(2), sections 8-1 and 13-1**

**Items 1, 2 and 3** make technical amendments to reflect the changes in terminology introduced by the amendments to section 16-25 made by items 5 and 6. Items 1 and 2 delete the words “self-accrediting providers or non self-accrediting providers” from subsection 3-5(2) and section 8-1 respectively and replaces those words with the words “self-accrediting entities or non self-accrediting entities”. Item 3 deletes the words “self-accrediting providers” from section 13-1 and replaces those words with the words “self-accrediting entities”.

#### **Item 4 - Subsection 16-25(1)**

**Item 4** is a technical amendment which deletes “(1)” from section 16-25, to reflect the repeal of subsections 16-25(2), (3) and (4) made by item 7.

### **Item 5 - Paragraph 16-25(1)(b)**

Subdivision 16-C sets out how bodies are approved as higher education providers. Section 16-25 deals with the circumstances in which the Minister may approve a body corporate as a higher education provider.

**Item 5** deletes and replaces paragraph 16-25(1)(b). The effect of this amendment is that the Minister may approve a body corporate as a higher education provider if the body satisfies the other conditions in section 16-25 and the body is:

- an Australian university; or
- a self-accrediting entity; or
- a non self-accrediting entity.

Each of the terms listed above in the dot points above are separately defined in the dictionary at Schedule 1 to the Act. The terms reflect the types of institutions which government accreditation authorities can approve to offer higher education awards under the National Protocols.

### **Item 6 - Paragraph 16-25(1)(d)**

**Item 6** repeals paragraph 16-25(1)(d) and replaces it with new paragraphs 16-25(d), (da), (db) and (dc). The changes also incorporate the provisions of existing section 16-35 which is being repealed at item 8. The effect of this amendment is that the Minister may approve a body corporate as a higher education provider if the body satisfies the other conditions in section 16-25 and:

- the body is in a State or Territory that the Minister is satisfied has legislation that complies with the National Protocols; and
- the body offers at least one course of study that leads to a higher education award; and
- if the body is a self-accrediting entity the body is authorised by a government accreditation authority to accredit that course, or the course is an accredited course; and
- if the body is a non self-accrediting entity—the course is an accredited course.

### **Items 7 and 8 - Subsections 16-25(2), (3) and (4) and section 16-35**

**Items 7 and 8** delete subsections 16-25(2), 16-25(3) and 16-25(4) and section 16-35. The work formerly done by those provisions has been incorporated into the amendments made by items 5 and 6 of Schedule 1.

### **Item 9 - Paragraphs 19-15(2)(a) and (b)**

Subdivision 19-C sets out the quality requirements that higher education providers must comply with. Section 19-15 specifies how a provider is to maintain quality.

**Item 9** repeals paragraphs 19-15(2)(a) and (b) and replaces them with proposed new paragraphs 19-15(2)(a), (b) and (c). Subsection 19-15(2) now provides that 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:

- the provider meets the requirements of section 19-20 (providers must comply with the National Protocols); and
- if the provider is not a Table A provider—the provider meets the requirements of section 19-25 (quality assurance requirements for providers other than Table A providers); and
- if the provider is a Table A provider—the provider meets the requirements of section 19-27 (quality assurance requirements for Table A providers).

The effect of this amendment is to give effect to the requirement in the National Protocols that all providers must comply with the National Protocols and the relevant quality assurance requirements (depending on whether the provider is a Table A provider or another provider).

### **Item 10 - Section 19-20**

Section 19-20 currently requires providers (other than Table A providers) to comply with the National Protocols. **Item 10** amends section 19-20 by deleting the words “(other than a Table A provider)”. This has the effect of requiring all providers to comply with the National Protocols.

A note at the end of item 10 clarifies that the heading to section 19-20 is altered by deleting the words “(other than Table A provider)”.

### **Item 11 - Paragraph 19-20(a)**

**Item 11** repeals paragraph 19-20(a) and replaces it with proposed new paragraph 19-20(a). The effect of this amendment is to require a higher education provider to be assessed, by a government accreditation authority, which is defined as being listed on the Australian Qualifications Framework Register, as meeting the requirements set out in the National Protocols and the other requirements listed at paragraphs 19-20(b) and (c).

The intention of this amendment is to reflect the changes to the National Protocols.



### **Item 12 - Paragraph 19-20(b)**

**Item 12** is a technical amendment which deletes the words “listed on the Australian Qualifications Framework Register” from paragraph 19-20(b) to reflect the fact that the definition of a government accreditation authority will indicate it must be listed on the Australian Qualifications Framework Register.

### **Item 13 - After section 19-75**

**Item 13** inserts proposed new section 19-77 after section 19-75. Proposed new section 19-77 requires a provider to notify the Minister of any event affecting:

- the provider; or
- a related body corporate of the provider;

that relates to:

- the provider’s authority to accredit courses of study leading to higher education awards; or
- the accreditation by a government accreditation authority, of such courses offered by the provider.

### **Item 14 - Paragraph 22-7(b)**

**Item 14** is a technical amendment which replaces reference to paragraph “16-25(1)(aa)” with a reference to paragraph “16-25(aa)”, as a consequence of amendments made by items 4 and 7 of Schedule 1.

### **Items 15, 16 and 51 - Paragraphs 22-10(1)(a), 22-10(1)(b) and Clause 1 of Schedule 1**

The National Protocols define ‘Australian university’ as distinct from use of the more general term ‘university’ which may refer to both Australian and/or overseas universities.

**Items 15 and 16** are technical amendments to reflect changes to the definitions in Clause 1 of Schedule 1 to the Act made by items 51 and 62. Items 15 and 16 delete the words “a university” and replace those words with the words “an Australian university”.

Two notes are inserted at the end of item 15 to assist the readers. Note 1 clarifies that the heading to section 22-10 is replaced by the heading “Revocation of approval if status or accreditation changes”. Note 2 clarifies that the heading to subsection 22-10(1) is replaced by the heading “Bodies that cease to be Australian universities”.

**Item 51** inserts a new definition of *Australian University* into Clause 1 of Schedule 1 to the Act.

## **Items 17, 18, 20 and 21 - Paragraphs 22-10(2)(a), 22-10(2)(b), 22-10(3)(a) and 22-10(3)(b)**

**Items 17, 18, 20 and 21** are technical amendments made necessary by items 5 and 6 of Schedule 1. Items 17 and 20 delete the word “provider” (first occurring) and replace the word with “entity”. Items 18 and 21 delete the word “provider” and replace the word with “entity”.

A note at the end of item 17 is inserted to assist the reader and clarifies that the heading to subsection 22-10(2) is replaced by the heading “Bodies that cease to be self-accrediting entities”.

A note at the end of item 20 is inserted to assist the reader and clarifies that the heading to subsection 22-10(3) is replaced by the heading “Bodies that cease to be non self-accrediting entities”.

## **Item 19 - After subsection 22-10(2)**

Currently section 22-10 deals with revocation of approval as a provider if the body ceases to be a university or other accredited provider. **Item 19** inserts proposed new subsection 22-10(2A) which provides that the Minister may revoke a body’s approval as a higher education provider if:

- the body was a self-accrediting entity at the last time the body became a higher education provider; and
- 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
- the Minister complies with the requirements of section 22-20 (the process for revoking approval as a provider for loss of status or a breach).

This amendment provides an additional ground on which the Minister may revoke a body’s approval if the body was a self accrediting entity. While 22-10 (2) provides for revocation of approval if the entity loses all self-accrediting authority, 22-10 (2A) provides for revocation if the entity loses self-accrediting authority for a course, but retains self-accrediting authority for some other courses.

## **Item 22 - At the end of section 22-10**

Section 22-10 deals with the revocation of approval as a provider if the body ceases to be a university or other accredited provider. **Item 22** inserts proposed new subsection 22-10(4) which provides that the Minister may revoke a body’s approval as a higher education provider if:

- 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
- a course of study offered by the body that was an accredited course ceases to be an accredited course; and
- the Minister complies with the requirements of section 22-20 (the process for revoking approval as a provider for loss of status or a breach).

This amendment provides a new ground on which the Minister may revoke a body’s approval if the body offers courses that cease to be accredited courses.

### **Item 23 - Paragraph 104-10(1)(b)**

Section 104-10 deals with the course requirements for FEE-HELP assistance for a unit of study.

**Item 23** repeals and replaces paragraph 104-10(1)(b). Section 104-10 now provides that the course requirements for FEE-HELP assistance for a unit of study include the requirement at paragraph 104-10(1)(a) and that 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.

The effect of this provision is that the course must be an accredited course wherever the provider is not authorised by a government accreditation authority to accredit the course itself. The changes to the National Protocols mean that some self-accrediting entities will have limits on their self-accrediting authority and may offer courses outside these limits that need to be accredited by a government accreditation authority.

### **Item 24 - Section 206-1 (table items 5 to 10)**

Division 206 sets out which decisions are subject to review. **Item 24** deletes table items 5 to 10 at section 206-1 and replaces them with proposed new table item 5.

The effect of this amendment is to set out in summary the decisions which are reviewable under Division 225 and that the decision maker is the Minister. The amendment clarifies that a decision under section 225-25 (the fees that may be set by the Higher Education in External Territories Guidelines) are not reviewable. Decisions made under section 225-25 were not previously reviewable.

### **Item 25 - Section 217-1**

**Item 25** deletes and replaces the information box at section 217-1 which provides an explanation on what Chapter 6 is about. Chapter 6 is about the provision of higher education in the external territories.

### **Item 26 - Section 222-1**

**Item 26** deletes and replaces the information box at section 222-1 which provides an explanation on what Part 6-1 is about. Part 6-1 is about the approval as self-accrediting entities or for the accreditation of courses of study in the external territories. These changes reflect changes in the National Protocols for the approval to operate as a higher education entity and for the accreditation of courses.

### **Item 27 - Subsection 225-1(1)**

Section 225-1 deals with applications for approval and accreditation in the external territories.

**Item 27** repeals and replaces subsection 225-1(1). Proposed new subsection 225-1(1) provides that 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 for any of the following:

- approval to operate as a university in relation to that Territory;
- approval to operate as a self-accrediting entity in relation to that Territory;
- approval to operate as a non self-accrediting entity in relation to that Territory; and
- 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.

The effect of this amendment is that a person can apply to the Minister in writing for approval to operate as a university, self-accrediting entity or non-self-accrediting entity and for accreditation. This reflects the different types of higher education entities which can be approved to operate by government accreditation authorities under the National Protocols.

A note at the end of subsection 225-(1) is inserted to assist the reader by referring the reader to Division 228 which 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 Part 6-1.

A note at the end of the item is inserted to assist the reader and clarify that the heading to section 225-1 is altered by omitting “as self-accrediting entity or for accreditation of course” and substituting “and accreditation”.

### **Item 28 - After subsection 225-1(2)**

**Item 28** inserts proposed new subsection 225-1(2A) which provides that the Minister may request an applicant to give the Minister specified additional information to enable the Minister to decide the application.

### **Item 29 - After section 225-1**

**Item 29** inserts proposed new subsections 225-3(1) and (2) which deal with approving a person to operate as a university in relation to an external Territory.

Proposed new subsection 225-3(1) provides that the Minister may approve a person to operate as a university in relation to an external Territory if:

- the person applies for approval, under section 225-1, to operate as a university; and
- 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

- the person's principal purpose is either or both of to provide education and or to conduct research.

A note at the end of subsection 225-3(1) assists the reader by providing that a refusal to approve a person to operate as a university is reviewable under Part 5-7.

Proposed new subsection 225-3(2) provides that if the Minister approves a person to operate as a university in relation to an external Territory under subsection 225-3(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 the word "university" or the words "university college" or any like word or words for the purpose of identifying the person in the person's operation in the external Territory or identifying the person's operation in the external Territory.

The National Protocols allow an institution to be approved to operate as a university, a university college (newly established university) or specialised university (offering courses in one or two fields of study only). University colleges may not shorten their title to 'university'. Specialised universities may use a modified form of university title reflecting their discipline of specialisation (eg: Perth University of Agricultural Sciences), and may not shorten their title to 'university'.

### **Item 30 - Section 225-5**

Section 225-5 deals with approving a person to operate as a self-accrediting entity in relation to an external territory. **Item 30** repeals the section and inserts proposed new subsections 225-5(1), (2), (3) and (4).

Proposed new subsection 225-5(1) provides that the Minister may approve a person to operate as a self-accrediting entity in relation to an external Territory if:

- the person applies for approval, under section 225-1, to operate as a self-accrediting entity in relation to that Territory; and
- 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
- the person's principal purpose is either or both of the following to provide education and or to conduct research.

A note at the end of subsection 225-5(1) assists the reader by providing that a refusal to approve a person to operate as a self-accrediting entity is reviewable under Part 5-7.

Proposed subsection 225-5(2) provides that 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:

- 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

- the nature of any such limitation.

This change reflects the provision in the National Protocols for self-accrediting authority to be limited by field and/or level of qualification.

Two notes are inserted at the end of subsection 225-5(2) to assist the reader. Note 1 provides that an authority may be limited, for example, by reference to a field of study or level of qualification. Note 2 provides that a decision to limit an authority is reviewable under Part 5-7.

Proposed new subsection 225-5(3) provides that if the Minister proposes to:

- approve under subsection (1) a person to operate as a self-accrediting entity in relation to an external Territory; and
- 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.

The purpose of this amendment is to allow the Minister to accredit courses that person is not authorised to self-accredit.

Proposed new subsection 225-5(4) provides that the Minister may only accredit a course of study under subsection 225-5(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.

A note at the end of subsection 225-5(4) is inserted to assist the reader by clarifying that a decision not to accredit a course of study under subsection 225-5(3) is reviewable under Part 5-7.

### **Item 31 - After section 225-5**

**Item 31** inserts proposed new subsection 225-7 which provides that the Minister may approve a person to operate as a non self-accrediting entity in relation to an external Territory if:

- the person applies under section 225-1 for approval to operate as a non self-accrediting entity in relation to that Territory or approval to operate as a self-accrediting entity in relation to that Territory; and
- the Minister is satisfied, following an assessment made having regard to the National Protocols and the Higher Education in External Territories Guidelines, that:
  - if 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 (see subparagraph 225-5(2)(a)(ii)); and
  - 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
- the person's principal purpose is either or both of the following to provide education and or to conduct research.

A note at the end of section 225-7 is inserted to assist the readers by providing that a 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.

The National Protocols require applicants seeking to become higher education institutions to apply for non self-accrediting, self accrediting or university status. The purpose of this amendment is to allow the Minister to approve a person to operate as a non self-accrediting entity in relation to an external Territory even if the person had applied to operate as a self-accrediting entity.

### **Item 32 - Paragraph 225-10(b)**

**Item 32** is a technical amendment which deletes the words “award; and” and replaces those words with the word “award.” to reflect the repeal of paragraph 225-10(c) by item 33.

### **Item 33 - Paragraph 225-10(c)**

**Item 33** repeals paragraph 225-10(c) which is provided for in new paragraph 225-7(c).

### **Item 34 - Section 225-15**

Section 225-15 deals with the duration of approval and accreditation in the external territories. **Item 34** repeals and replaces section 225-15 to provide that an approval or accreditation under Part 6-1 remains in force for the period that the Minister determines and is subject to any conditions that the Minister imposes.

A note at the end of section 225-15 is inserted to assist the reader by providing that 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.

### **Item 35 - Section 225-20**

Section 225-20 deals with amending or revoking an approval, authorisation or accreditation in relation to an external Territory.

**Item 35** repeals and replaces section 225-20 with proposed new subsections 225-20(1), (2), (3), (4), (5) and (6). The purpose of these amendments is to expand the grounds on which the Minister can amend or revoke an approval, authorisation or accreditation in relation to an external territory and to reflect the new definitions of self-accrediting entity and non self-accrediting entity.

**Proposed new subsections 225-20(1) – (6)** allow for amendment and revocation of approval: to operate as a university, use the term ‘university’, operate as a self-accrediting entity, operate as a non self-accrediting entity; of course accreditation; and in cases where false or misleading information has been provided as part of an application. The changes reflect the circumstances in which the National Protocols allow for government accreditation authorities to amend or revoke approval or accreditation under the National Protocols.

**Proposed new subsection 225-20(1)** deals with amending or revoking an approval to operate as a university. The proposed new subsection provides that 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:

- the person has breached a condition to which the person’s approval is subject; or
- 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
- the person’s circumstances have changed so that it no longer satisfies paragraph 225-3(1)(c) (the person’s principal purpose is not longer either or both of providing education or conducting research).

A note at the end of subsection 225-20(1) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval to operate as a university in an external territory is reviewable under Part 5-7.

**Proposed new subsection 225-20(2)** deals with amending or revoking an approval to use a word or words in an external territory. The proposed new subsection provides that 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:

- the person has breached a condition to which the person’s approval was subject; or
- 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
- the person’s approval under section 225-3 to operate as a university in relation to that Territory has been amended or revoked.

A note at the end of subsection 225-20(2) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval to use a word or words is reviewable under Part 5-7.

**Proposed new subsection 225-20(3)** deals with amending or revoking an approval to operate as a self-accrediting entity in an external territory. The proposed new subsection provides that 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:

- the person has breached a condition to which the person’s approval is subject; or



- 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 authorised to accredit any courses of study in relation to that Territory; or
  - 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
- the person's circumstances have changed so that it no longer satisfies paragraph 225-5(1)(c) (the person's principal purpose is not longer either or both of providing education or conducting research).

A note at the end of subsection 225-20(3) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval to operate as a self-accrediting entity is reviewable under Part 5-7.

**Proposed new subsection 225-20(4)** deals with amending or revoking an approval to operate as a non self-accrediting entity in an external territory. The proposed new subsection provides that 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:

- the person has breached a condition to which the person's approval is subject; or
- 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
- the person's circumstances have changed so that it no longer satisfies paragraph 225-7(c) (the person's principal purpose is no longer either or both of providing education or conducting research).

A note at the end of subsection 225-20(4) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval to operate as a non self accrediting entity in an external territory is reviewable under Part 5-7.

**Proposed new subsection 225-20(5)** deals with amending or revoking an accreditation of a course of study in an external territory. The proposed new subsection provides that 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:

- the person offering the course has breached a condition to which the accreditation is subject; or
- 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

- the person’s approval under section 225-5 (approval to operate as a self-accrediting entity in an external territory) or 225-7 (approval to operate as a non self-accrediting entity in an external territory) has been amended or revoked.

A note at the end of subsection 225-20(5) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval an accreditation of a course of study in an external territory is reviewable under Part 5-7.

**Proposed new subsection 225-20(6)** deals with amending or revoking an approval or accreditation because of false or misleading information provided in application in relation to an external territory. The proposed new subsection provides that the Minister may amend or revoke an approval or accreditation under Part 6-1 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.

A note at the end of subsection 225-20(6) is inserted to assist the reader by clarifying that a decision to amend or revoke an approval of an accreditation because of false or misleading information provided in an application in relation to an external territory, is reviewable under Part 5-7.

The purpose of this subsection is to cover information given in relation to an application which will cover information given if the Minister requests further information under proposed section 225-1(2A).

#### **Items 36 and 45 - Subparagraph 228-1(1)(a)(i) and paragraph 228-15(1)(a)**

**Items 36 and 45** delete the word “\*university” and replace that word with the word “university” to reflect the amendment made by item 62 which deletes the definition of *university*. In Chapter 6, the term ‘university’ may refer to either an Australian or overseas university.

#### **Item 37 - Paragraphs 228-1(1)(c) and (d)**

Division 228 sets out the limitations upon the operation of certain persons in the external territories. Section 228-1 makes it an offence for persons to operate as universities or other provider in external territories without approval.

**Item 37** repeals paragraphs 228-1(1)(c) and (d) and replaces them with proposed new paragraph 228-1(1)(c). Subsection 228-1(1) will now provide that a person commits an offence if the person:

- Operates or purports to operate as a university providing courses of study leading to higher education awards;
- The operation or purported operation is in an external territory;
- the person is not an Australian university or a self-accrediting entity or approved to operate in that Territory by the Minister under section 225-3 or 225-7.

This provides for consistency with the National Protocols. A note at the end of item 37 is inserted to assist the reader and clarify that the heading to section 228-1 is amended by deleting the word “accreditation” and replacing the word with “approval”.

#### **Item 38 - Subsection 228-1(2)**

**Item 38** repeals and replaces subsection 228-1(2) and provides that a person who contravenes subsection 228-1(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. The effect of this amendment is to make the offence under subsection 228-1(1) a continuing offence. This means that for each day a person commits an offence the penalty of 40 penalty units will apply. The purpose of making the penalties payable each day is to ensure that the total penalty is commensurate with the financial advantage a person would obtain from offering the courses without approval.

#### **Item 39 - Paragraph 228-5(1)(a)**

**Item 39** amends paragraph 228-5(1)(a) by inserting the words “the whole or a part of” after the word “offer,”. This is to clarify that an offence under section 228-5(1) may be committed even if a person only offers or purports to offer, part of a course of study leading to a higher education award.

#### **Item 40 - Paragraphs 228-5(1)(c) and (d)**

Subsection 228-5(1) makes it an offence for a person to offer courses of study leading to higher education awards in external territories without accreditation.

**Item 40** repeals and replaces paragraphs 228-5(1)(c) and (d) with proposed new paragraphs 228-5(1)(c), (d) and (e). Subsection 228-5(1) now provides that a person commits an offence if a person offers or purports to offer a course of study leading to a higher education award and the offer or purported offer is in an external territory and:

- the person is not an Australian university or approved under section 225-3 to operate in relation to that Territory as a university; and
- if the person is a self-accrediting entity—the person is not authorised by a government accreditation authority to accredit the course; and
- the course is not accredited by the Minister under section 225-5 (approving a person to operate as a self-accrediting entity in relation to an external territory) or 225-10 (accrediting a course of study) in relation to that Territory.

The purpose of this amendment is to reflect the new definitions of Australian university and self-accrediting entity in the National Protocols.

#### **Item 41 - Paragraphs 228-5(2)(c) and (d)**

Subsection 228-5(2) makes it an offence for a person to offer higher education awards in external territories without accreditation.

**Item 41** repeals and replaces paragraphs 228-5(2)(c) and (d) so that subsection 228-5(2) now provides that a person commits an offence if a person offers or purports to offer a higher education award and the offer or purported offer is in an external territory and:

- the person is not an Australian university; and
- 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.

The purpose of this amendment is to make it an offence for a person to offer an award that does not require a student to complete a course of study or complete any study in order to get the award. This provides for consistency with the National Protocols.

#### **Item 42 - Subsection 228-5(3)**

**Item 42** repeals and replaces subsection 228-5(3) to provide that a person who contravenes subsection 228-5(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.

The effect of this amendment is to make an offence under either subsection 228-5(1) or (2) a continuing offence. This means that for each day a person commits an offence the penalty of 40 penalty units will apply. The purpose of making the penalties payable each day is to ensure that the total penalty is commensurate with the financial advantage a person would obtain from offering the courses or higher education awards without accreditation.

#### **Item 43 - Paragraphs 228-10(1)(b) and (c)**

Subsection 228-10(1) makes it an offence for persons to describe themselves as universities in external Territories without accreditation.

**Item 43** repeals and replaces paragraphs 228-10(1)(b) and (c) with the proposed new paragraphs. Subsection 228-10(1) now provides that a person commits an offence if the person uses the word “university”, “university college” or any like words to identify the person in the person’s operation or purported operation or the person’s operation or purported operation in the external territory and:

- the person, or the person’s operation or purported operation, as so identified, is not an Australian university; and
- the Minister has not approved the use of that word or those words under subsection 225-3(2) (the Minister’s approval of the word in the external territory) or section 233-1 (the requirement that the Minister must give written approval for the use of the word in the external territory despite a law in force in that territory which allows the company or business name using the word) in relation to that Territory.

The purpose of the amendment is to require persons other than Australian universities to obtain the Minister's approval to use those words in the external territory, otherwise a person commits an offence. This reflects the National Protocols' requirement on government accreditation authorities to protect use of the title 'university' and 'university college'.

#### **Item 44 - Subsection 228-10(2)**

**Item 44** repeals and replaces subsection 228-10(2) to provide that a person who contravenes subsection 228-10(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.

The effect of this amendment is to make the offence under subsection 228-10(1) a continuing offence. This means that for each day a person commits an offence the penalty of 40 penalty units will apply. The purpose of making the penalties payable each day is to ensure that the total penalty is commensurate with the financial advantage a person would obtain from describing themselves as universities in the external Territories. This reflects the National Protocols' requirement on government accreditation authorities to impose significant financial penalties for breaching legislation which protects the titles 'university and 'university college'.

#### **Item 46 - Before subsection 228-15(1)**

Section 228-15 deals with the meanings of *operating* and *offering* in an external territory. **Item 46** inserts proposed new subsection 228-15(1A) to provide that a reference to a person *operating*, or purporting to operate, in an external Territory:

- as a university, or part of a university, providing courses of study leading to higher education awards; or
- as another provider of courses of study leading to higher education awards;

includes a reference to a person:

- offering, providing, or conducting a business of offering or providing the whole or a part of such courses of study in relation to that Territory or such awards in relation to that Territory; or
- using premises for the purposes of operating as such a provider in relation to that Territory.

The intention of this amendment is to ensure that the meaning of *operating* or purporting to operate in the external territories includes offering parts of courses (as well as wholes courses), providing or conducting a business of offering or providing the whole or a part of such courses and related components of those courses (for example delivery and assessment). The change is to provide consistency with the National Protocols definition of 'operating and purporting to operate'.

**Item 47 - Subsection 228-15(1)**

**Item 47** is a technical amendment which deletes from subsection 228-15(1) the words “by means of any of the following telecommunication devices” and replaces those words with the words “by any of the following means”.

**Item 48 - Before paragraph 228-15(1)(c)**

**Item 48** is a technical amendment which inserts proposed new paragraph 228-15(1)(ca) to deal with persons operating, or purporting to operate, in an external territory by means of a postal or other like service. The change is to provide consistency with the National Protocols definition of ‘operating and purporting to operate’.

**Item 49 - Subsection 228-15(2)**

**Item 49** is a technical amendment which deletes from subsection 228-15(2) the words “by means of any of the telecommunication devices” and replaces those words with the words “by any of the means”. This amendment is related to the amendment made by item 47.

**Item 50 - Clause 1 of Schedule 1 (paragraph (b) of the definition of *accredited course*)**

Schedule 1 to the Act is the dictionary.

**Item 50** amends the definition of *accredited course* by deleting and replacing paragraph (b) of the definition to reflect the new definition of a *government accreditation authority* provided for at item 52.

**Items 51, 52, 56 and 60 - Clause 1 of Schedule 1 (definitions – new)**

**Items 51, 52, 56 and 60** insert new definitions of *Australian university*, *government accreditation authority*, *non self-accrediting entity*, *self-accrediting entity* which provides for consistency with terms used in the National Protocols

**Items 58 and 59 – Clause 1 of Schedule 1 (definitions – replaced)**

**Items 58 and 59** repeal the definitions of *offering* and *operating* and insert new definitions. The change is to provide consistency with the National Protocols definition of ‘operating and purporting to operate’.

**Items 53, 54, 55, 57, 61 and 62 - Clause 1 of Schedule 1 (definitions - repealed)**

**Items 53, 54, 55, 57, 61 and 62** repeal the superseded definitions of *listed self-accrediting entity*, *National Protocol 1*, *National Protocol 3*, *non self-accrediting provider*, *self-accrediting provider* and *university*.

## **Schedule 2—Overseas study requirements for OS-HELP assistance**

### ***Higher Education Support Act 2003***

#### **Item 1 - After paragraph 118-1(1)(h)**

Section 118-1 deals with entitlement to OS-HELP assistance for periods of study with overseas higher education institutions.

**Item 1** amends section 118-1 by inserting proposed new paragraph 118-1(1)(ha) which is an additional eligibility requirement before a student is entitled to OS-HELP assistance in relation to a period of 6 months.

The proposed new paragraph requires the student to apply to the home provider for receipt of OS-HELP assistance in relation to the period.

#### **Item 2 - Subsection 118-1(2)**

Subsection 118-1(2) deals with when a student is not entitled to OS-HELP assistance. **Item 2** deletes and replaces the subsection with new subsections 118-1(2) and (3), which clarify when a student is not entitled to OS-HELP assistance.

Proposed subsection 118-1(2) provides that the student is not entitled to OS-HELP assistance in relation to that period if:

- another higher education provider has granted OS-HELP assistance to the student in relation to:
  - that period; or
  - a period that overlaps with that period; or
- the student applies to the home provider for the assistance after the student has completed the study in relation to the period.

Proposed subsection 118-1(3) clarifies that the student may be outside Australia when the student applies to the home provider for receipt of OS-HELP assistance.

The purpose of this amendment is to clarify that a student is eligible for OS-HELP if the student is already overseas when applying but is not eligible for OS-HELP assistance if the student has completed the overseas study, regardless of whether the student is still overseas or has returned to Australia.

#### **Items 3 and 4 - Subparagraph 118-10(a)(iii) and after paragraph 118-10(a)**

Section 118-10 specifies the overseas study requirements for OS-HELP assistance.

**Item 3** deletes subparagraph 118-10(a)(iii). **Item 4** inserts the words deleted by item 3 after paragraph 118-10(a). This has the effect of creating a third condition for overseas study. The requirements are that:

- the student is enrolled in full-time study with an overseas higher education provider and will be outside Australia while undertaking the study;
- the study commences on or after 1 January 2005; and
- 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.

**Item 5 - Paragraph 118-10(c)**

**Item 5** is a technical amendment which deletes the word “student’s” from paragraph 118-10(c).



## Schedule 3—Corrections to information affecting entitlements

### *Higher Education Funding Act 1988*

#### Item 1 - After section 110A

**Item 1** inserts proposed new subsection 110B which provides that despite any other provision of the *Higher Education Funding Act 1988*, the Commonwealth is not, and is taken never to have been, liable to:

- lend an amount to a person under the *Higher Education Funding Act 1988*; or
- apply any amount in making a payment to an institution under the *Higher Education Funding Act 1988* in discharge of a liability of the person;

because of information given to an institution by the person after the commencement of section 1 to the *Higher Education Legislation Amendment (2007 Measures No. 1) Act 2007*.

The intention of this amendment is to clarify that students can no longer establish entitlement to assistance provided under the *Higher Education Funding Act 1988*.

### *Higher Education Support Act 2003*

#### Item 2 - At the end of Division 169

Division 169 sets out the administrative requirements on higher education providers.

**Item 2** inserts proposed new section 169-35 which deals with the 6 week cut off for corrections affecting entitlement to Commonwealth assistance.

Proposed section 169-35 provides that if:

- more than 6 weeks after the census date for a unit of study undertaken with a higher education provider, a person gives 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
- 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.

The purpose of this amendment is to allow a person to be eligible for assistance that was not available on the basis of the original request for Commonwealth assistance only if the corrected information is provided, in writing to their provider, within 6 weeks after the census date for a unit of study.

The Act previously assumed that if further information establishes that a person is entitled to a particular form of assistance (when previously the person was not entitled to any assistance), or a different form of assistance (when previously the person was entitled to another form of assistance), then that is the assistance the person is entitled to. Proposed new section 169-35 modifies this assumption so that a person cannot establish an entitlement to Commonwealth assistance on the basis of information provided more than 6 weeks after the census date.

The other assumption underlying this amendment is that if further information establishes that the person is not entitled to assistance, then the person is not entitled to any assistance at all.

The reason for the delayed commencement of this item is to allow the Department of Education, Science and Training sufficient time to advise the higher education sector and other relevant bodies of the changes and to allow sufficient time to update the respective administrative requirements.

### ***Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003***

#### **Item 3 - After subitem 1(2) of Schedule 1**

**Item 3** inserts subitem 1(2A) which provides that a person cannot establish for the purposes of subitem 1(1) that he or she is a contributing student within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*, or not an excepted student, more than 6 weeks after the census date for the unit.

#### **Item 4 - Item 6 of Schedule 1**

**Item 4** is a technical amendment to reflect the insertion of subitem 6(2) by item 5.

#### **Item 5 - At the end of item 6 of Schedule 1**

Adds a new subitem 6(2) which provides that a person cannot establish for the purposes of subitem 6(1) that he or she is an eligible student, within the meaning of section 98B of the *Higher Education Funding Act 1988*, more than 6 weeks after the census date for the unit.

The purpose of items 3 and 5 is to allow students six weeks from the census date to correct information so as to establish an entitlement to Commonwealth assistance.

#### **Item 6 - Application**

**Item 6** is an application provision which provides that 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 4—Commonwealth supported study at particular campus**

### ***Higher Education Support Act 2003***

#### **Item 1 - After section 36-30**

Division 36 deals with the conditions for receiving a grant under the Commonwealth Grant Scheme, while Subdivision 36-C specifies the conditions that relate to enrolment.

**Item 1** inserts proposed new subsection 36-32 which provides that 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.

## **Schedule 5—Residency requirements for Commonwealth assistance**

### ***Higher Education Support Act 2003***

#### **Item 1 - Paragraph 36-10(1)(c)**

Subsection 36-10(1) deals with when a provider must not advise that a person is a Commonwealth supported student.

**Item 1** is a technical amendment to reflect the amendments made by item 2 of Schedule 5 below. Item 1 deletes and replaces paragraph 36-10(1)(c).

The effect of this amendment is that 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 the other requirements in subsection 36-10(1) are met and the person meets the citizenship or residency requirements for the purposes of this proposed paragraph 36-10(1)(c). The citizenship or residency requirements are set out in proposed new subsections 36-10(2) and 36-10(2A).

#### **Item 2 - Subsection 36-10(2)**

**Item 2** deletes and replaces subsection 36-10(2) and inserts new proposed subsections 36-10(2A) and 36-10(2B).

Proposed new subsection 36-10(2) provides that a person meets the citizenship or residency requirements for the purposes of paragraph 36-10(1)(c) if the person is:

- an Australian citizen; or
- a citizen of New Zealand who will be resident within Australia for the duration of the unit; or
- a permanent visa holder who will be resident within Australia for the duration of the unit.

Proposed new subsection 36-10(2A) provides that in determining, for the purposes of subparagraph 36-10(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:

- it cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
- it is required for the purpose of completing a requirement of that unit.

Proposed new subsection 36-10(2B) provides that despite subsections 36-10(2) and (2A), a person does not meet the citizenship or residency requirements under paragraph 36-10(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.

The intention of item 2 is to clarify that a person is not eligible for Commonwealth support or assistance for a unit of study if the provider can reasonably expect that the student will not be residing in Australia for the duration of any units of study contributing to the course of study in which they are enrolled.

However, if a person will not be residing in Australia because it is a requirement of the unit of study that they be overseas, then that person may have access to Commonwealth support and assistance for that unit of study.

### **Item 3 - Section 90-5**

Division 90 deals with who is entitled to HECS-HELP assistance. Section 90-5 deals with the citizenship or residency requirements for HECS-HELP assistance.

**Item 3** deletes and replaces section 90-5.

Proposed new subsection 90-5(1) provides that a student meets the citizenship or residency requirements under this section in relation to a unit of study if the student is:

- an Australian citizen; or
- a permanent humanitarian visa holder who will be resident in Australia for the duration of the unit.

Proposed new subsection 90-5(2) provides that in determining, for the purpose of paragraph 90-5(1)(b), whether the student will be resident in Australia for the duration of the unit, any period of residence outside Australia that cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of that unit or is required for the purpose of completing a requirement of that unit, is to be disregarded.

Proposed new subsection 90-5(3) provides that despite subsections 90-5(1) and 90-5(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.

The intention of item 3 is to clarify that a person is not eligible for HECS-HELP assistance for a unit of study if the provider can reasonably expect that the student will not be residing in Australia for the duration of any units of study contributing to the course of study in which they are enrolled.

However, if a person will not be residing in Australia because it is a requirement of the unit of study that they be overseas, then that person may have access to HECS-HELP assistance for that unit of study.

#### **Item 4 - Section 104-5**

Division 104 deals with who is entitled to FEE-HELP assistance. Section 104-5 deals with the citizenship or residency requirements for FEE-HELP assistance.

**Item 4** deletes and replaces section 104-5.

Proposed new subsection 104-5(1) provides that a student meets the citizenship or residency requirements under section 104-5 in relation to a unit of study if the student is:

- an Australian citizen; or
- a permanent humanitarian visa holder who will be resident in Australia for the duration of the unit; or
- 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.

Proposed new subsection 104-5(2) provides that in determining, for the purpose of paragraph 104-5(1)(b) or (c), whether the student will be resident in Australia for the duration of the unit, any period of residence outside Australia that cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit or is required for the purpose of completing a requirement of that unit, is to be disregarded.

Proposed new subsection 104-5(3) provides that 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.

The intention of item 4 is to clarify that a person is not eligible for FEE-HELP assistance for a unit of study (or a unit that is part of a bridging course for overseas-trained professionals) if the provider can reasonably expect that the student will not be residing in Australia for the duration of the unit of study in which they are enrolled.

However, if a person will not be residing in Australia because it is a requirement of the unit of study that they be overseas, then that person may have access to FEE-HELP assistance for that unit of study.

#### **Item 5 - Application**

**Item 5** is an application provision which provides that the amendments made by Schedule 5 apply in relation to a unit of study in which a student enrolls after the commencement of the Schedule, which is on Royal Assent.

## **Schedule 6—Bridging courses provided by Open Universities Australia**

### ***Higher Education Support Act 2003***

#### **Item 1 - Subsection 104-45(1)**

Subdivision 104-C deals with bridging courses for overseas-trained professionals for the purposes of FEE-HELP assistance. Section 104-45 deals with the meaning of *bridging course for overseas-trained professionals* and subsection 104-45(1) deals with courses consisting of subjects or units.

The amendments made by Schedule 6 are to reflect that subjects or units of study for bridging courses for overseas trained professionals may be provided by Open Universities Australia as well as by higher education providers.

**Item 1** amends subsection 104-45(1) to insert the words “, or to which access is provided by Open Universities Australia,” after the words “higher education provider”.

#### **Item 2 - Paragraph 104-45(1)(c)**

**Item 2** deletes and replaces paragraph 104-45(1)(c). Proposed new paragraph 104-45(1)(c) now provides that one or more subjects or units of study in which a person is enrolled are together a *bridging course for overseas-trained professionals* if the person meets the other requirements listed in subsection 104-45(1) and (paragraph 104-45(1)(c)) undertakes, or proposes to undertake, those additional studies by:

- enrolling, or proposing to enrol, on a non-award basis, in those subjects or units with the provider; or
- accessing, or proposing to access, those subjects or units through Open Universities Australia.

#### **Items 3, 6 and 9 - Paragraphs 104-45(1)(d), 104-45(2)(d) and 104-45(3)(d)**

**Items 3, 6 and 9** make consequential amendments to reflect the amendments made by item 1. Items 3, 6 and 9 amend paragraphs 104-45(1)(d), 104-45(2)(d) and 104-45(3)(d) respectively by deleting the words “provider’s opinion” and replacing those words with the words “opinion of the provider or Open Universities Australia”.

#### **Item 4 - Subsection 104-45(2)**

**Item 4** is a further consequential amendment of item 1. Item 4 amends subsection 104-45(2) by inserting the words “, or to which access is provided by Open Universities Australia,” after the words “higher education provider”.

### **Item 5 - Paragraph 104-45(2)(c)**

Subsection 104-45(2) deals with courses consisting of occupation-related courses of instruction.

**Item 5** deletes and replaces paragraph 104-45(2)(c). Proposed new paragraph 104-45(2)(c) provides that one or more occupation-related courses of instruction in which a person is enrolled are together a *bridging course for overseas-trained professionals* if the person meets the other requirements listed in subsection 104-45(2) and the person prepares, or proposes to prepare, for those examinations by:

- enrolling, or proposing to enrol, on a non-award basis, in those occupation-related courses of instruction with the provider; or
- accessing, or proposing to access, those occupation-related courses of instruction through Open Universities Australia.

### **Item 7 - Subsection 104-45(3)**

**Item 7** amends subsection 104-45(3) by inserting the words “, or to which access is provided by Open Universities Australia,” after the words “higher education provider”.

### **Item 8 - Paragraph 104-45(3)(c)**

Subsection 104-45(3) deals with courses consisting of tuition and training programs.

**Item 8** deletes and replaces paragraph 104-45(3)(c). Proposed new paragraph 104-45(3)(c) provides that a tuition and training program in which a person is enrolled is a *bridging course for overseas-trained professionals* if the person meets the other requirements listed in subsection 104-45(3) and the person undertakes, or proposes to undertake, such a program by:

- enrolling, or proposing to enrol, on a non-award basis, in a tuition and training program with the provider; or
- accessing, or proposing to access, a tuition and training program through Open Universities Australia.



## **Schedule 7—Changed name of Victoria University**

### ***Higher Education Support Act 2003***

#### **Item 1 - Subsection 16-15(1) (table item dealing with Victoria University of Technology)**

Subsection 16-15 lists the Table A providers.

**Item 1** deletes the words “of Technology” from the table item dealing with Victoria University of Technology. This has the effect of amending the list of Table A Higher Education Providers in the Act to reflect the name change of the Victoria University of Technology to Victoria University.

## **Schedule 8—Commonwealth support for cross-institutional study**

### ***Higher Education Support Act 2003***

#### **Item 1 - Paragraph 19-87(1)(b)**

Section 19-87 deals with determining student contribution amounts for all places in units of study as part of the quality and accountability requirements placed on higher education providers.

**Item 1** deletes and replaces paragraph 19-87(1)(b) which has the effect of providing that section 19-87 applies to a unit of study that a higher education provider provides or proposes to provide during a certain period determined by the Higher Education Provider Guidelines and in relation to which the provider may advise a person that he or she is Commonwealth supported.

This amendment is a technical amendment to support item 2 of Schedule 8 below.

#### **Items 2, 3 and 4 - Paragraphs 36-10(1)(b), 36-22(1)(aa) and 79-1(1)(aa)**

Section 36-10 deals with providing advice on whether a person is a Commonwealth supported student.

Section 36-22 deals with when providers are to repay amounts etc for units wholly consisting of work experience in industry (special circumstances).

Section 79-1 deals with the main case of re-crediting a person's Student Learning Entitlement.

**Items 2, 3 and 4** amend paragraphs 36-10(1)(b), 36-22(1)(aa) and 79-1(1)(aa) respectively by deleting the words “the provider or, where the provider is a Table A provider, with another Table A provider”, and replacing them with the words “that provider or another higher education provider”.

The effect of item 2 is to allow a higher education provider to advise a student undertaking cross-institutional study that they are Commonwealth supported regardless of whether either of the home or host institutions is a non-Table A higher education provider.

The amendments at items 3 and 4 are technical amendments to support the amendment at item 2 of Schedule 8.

## **Schedule 9—Funding for implementation of the Research Quality Framework**

### ***Higher Education Support Act 2003***

#### **Item 1 - Subsection 41-45(1) (table items 3 to 6)**

Repeals items 3-6 of the table in subsection 41-45(1) to vary the maximum payments for Other Grants under Part 2-3 for the years 2007, 2008, 2009 and 2010, to reflect the provision of funding for the Research Quality Framework.

## **Schedule 10—Registration of suspensions of higher education providers**

### ***Higher Education Support Act 2003***

#### **Item 1 - Subsection 22-30(1)**

Section 22-30 deals with the suspension of a provider's approval as a higher education provider. **Item 1** amends subsection 22-30(1) to clarify that a determination made by the Minister to suspend a provider's approval as a higher education provider is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The words "may determine in writing", have been deleted from subsection 22-30(1) and replaced with "may, by legislative instrument, determine".

#### **Item 2 - After subsection 22-40(3)**

Section 22-40 deals with the revocation of a provider's approval as a higher education provider on application from the provider. **Item 2** inserts proposed new subsection 22-40(3A) which provides that a notice of revocation under subsection 22-40(3) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.