

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT
SERVICES AND AMENITIES) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations, the Senator the Honourable Chris Evans MP)

HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010

OUTLINE

This Bill will amend the *Higher Education Support Act 2003* to allow higher education providers to charge a compulsory student services and amenities fee. The fee will be capped at \$250 per student per annum (indexed to \$254 in 2011, and thereafter indexed annually). The Bill provides for the establishment of a new component of the Higher Education Loan Program (HELP): Services and Amenities-HELP (SA-HELP), which will provide eligible students with an option to access a loan for the fee through SA-HELP if they wish. In addition, the Bill will require higher education providers that receive funding for student places under the Commonwealth Grant Scheme, to comply with new benchmarks from 2011 onwards, for the provision of information on and access to basic student support services of a non-academic nature; and requirements to ensure the provision of student representation and advocacy.

FINANCIAL IMPACT

The estimated financial impact of SA-HELP over the period 2010-11 to 2013-14 is -\$50.498 million on fiscal balance.

HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010

NOTES ON CLAUSES

Clause 1 – Short title

Provides for the Act to be cited as the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2010*.

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 has the effect of providing for sections 1-3 and any provision not covered elsewhere in the table, to commence on Royal Assent; for Schedule 1 to commence on a day to be fixed by Proclamation, or for any provisions which have not commenced within six months of the Act receiving Royal Assent, the day after the six month period expires.

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.

For ease of description, this explanatory memorandum uses the following abbreviation:

‘the Act’ means the *Higher Education Support Act 2003*.

Schedule 1 – Student services and amenities

Higher Education Support Act 2003

Items 1 and 2 – paragraph 3-10(c), after paragraph 3-10(c)

Insert new paragraph (d) into section 3-10. Section 3-10 lists the assistance provided to students contained in Chapter 3 of the Act. New paragraph (d) adds SA-HELP assistance to the list of assistance provided under Chapter 3 of the Act.

Item 3 – Subsection 5-1(2) (after table item 5)

Amends the table titled ‘Application of Act to Table C providers’ contained in subsection 5-1(2) to include a reference to new Part 3-5 regarding SA-HELP assistance. This is a consequential amendment.

Item 4 – At the end of section 19-37

Inserts new subsections 19-37(4), (5) and (6) into section 19-37. Section 19-37 contains rules concerning higher education providers requiring membership of certain organisations or the payment of certain amounts.

Subsection 19-37(2) provides that a higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service. New subsection 19-37(4) provides an exception to subsection (2) and allows an education provider to require the payment of a ‘student services and amenities fee.’

New subsection 19-37(5) defines *student services and amenities fee*. A *student services and amenities fee* is:

- a fee imposed by a higher education provider on a person enrolled, or seeking to enrol with the provider to pay for a period on or after 1 January 2011 to support the provision to students of amenities and services not of an academic nature,
- determined by the provider in accordance with the Administration Guidelines;
- payable on a day determined by the provider in accordance with the Administration Guidelines; and
- an amount of not more than \$250 if the fee is for a calendar year starting on or after 1 January 2011 (note the first year of indexation will apply in 2011 altering the maximum fee for 2011 to \$254) and is worked out in accordance with the Administration Guidelines.

There are three notes at the end of new subsection 19-37(5).

Note 1 provides that the Administration Guidelines are made by the Minister under section 238-10 of the Act.

Note 2 provides that the maximum amount of the fee as prescribed in new paragraph (5)(e) as \$250 is indexed in accordance with Part 5-6 of the Act (commencing 2011).

Note 3 makes a reference to paragraph 19-102(3)(b) of the Act which prevents a student services and amenities fee from being a fee defined in section 19-102 of the Act.

New subsection (6) imposes obligations on higher education providers who require the payment of a student services and amenities fee. New subsection (6) requires providers to:

- publish, in accordance with the Administration Guidelines, enough information for a person liable to pay the fee to work out the amount of the fee, and notice of the day on which the fee is payable; and
- on request by a person who is, or may become, liable to pay a fee, inform the person of the amount of the fee and the day it is or would be payable.

Item 5 – After section 19-37

Inserts new section 19-38. This new section will limit the way higher education providers can spend the student services and amenities fees they receive.

New subsection (1) prevents a provider from spending an amount paid to them to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (2) requires that, where a higher education provider pays a person or organisation an amount paid to a provider as a student services and amenities fee, the provider must make the payment on condition that none of the payment will be spent by the person or organisation to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (3) provides that a higher education provider must not spend any amounts received as student services and amenities fees for purposes other than those specified in the new subsection (4).

The effect of new subsection (4) is to require higher education providers to only spend amounts received as student services and amenities fees on the following services:

- providing food or drink to students on a campus of the higher education provider
- supporting a sporting or other recreational activity by students
- supporting the administration of a club most of whose members are students
- caring for children of students
- providing legal services to students
- promoting the health or welfare of students
- helping students secure accommodation

- helping students obtain employment or advice on careers
- helping students with their financial affairs
- helping students obtain insurance against personal accidents
- supporting debating by students
- providing libraries and reading rooms (other than those provided for academic purposes) for students
- supporting an artistic activity by students
- supporting the production and dissemination to students of media whose content is provided by students
- helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled
- advising on matters arising under the higher education provider's rules
- advocating students' interests in matters arising under the higher education provider's rules
- giving students information to help them in their orientation
- helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

A note at the end of new subsection (4) gives the following examples of allowable expenditure under subsection (4):

- expenditure by the higher education provider itself where it directly provides the service in question
- expenditure by the higher education provider where it arranges for someone else to provide the service, or the provider subsidises that person's provision of the service
- expenditure by the higher education provider on infrastructure for the provision of the service.

The effect of new subsection (5) is to provide that, for the purposes of new paragraph 19-38(4)(d), a child of a student includes (but is not limited to) a child of a person within the meaning of the *Family Law Act 1975*.

New subsection (6) ensures that the provisions limiting the expenditure of the student services and amenities fee contained in new subsection 19-38 will apply to advances made to higher education providers on account of SA-HELP assistance.

New subsection (7) provides that subsection (6) does not limit subsection 164-10(2). Subsection 164-10(2) provides that where an advance on account is made, the conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.

Item 6 – After section 19-65

Inserts new section 19-67. New subsection 19-67(1) provides a higher education provider that receives a grant under Part 2-2 of the Act must, in each calendar year starting in 2012, comply with the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as they were in force on 30 June just before the year.

New subsection 19-67(2) prescribes what may be contained in the Student Services, Amenities, Representation and Advocacy Guidelines.

New subsection 19-67(3) prevents the Student Services, Amenities, Representation and Advocacy Guidelines from requiring a provider to fund an organisation of students, or of students and other persons.

New subsection 19-67(4) prescribes that subsection 19-65(1) does not apply to the Student Services, Amenities, Representation and Advocacy Guidelines.

Items 7, 8 and 9 – Section 65-1

These amendments are consequential amendments to include references to the new SA-HELP assistance in the Table contained in section 65-1. This Table summarises Chapter 3 of the Act which contains the provisions relating to assistance to students.

Item 10 – At the end of Chapter 3

Inserts new Part 3-5. New Part 3-5 contains the substantive provisions relating to SA-HELP assistance.

New Division 125 provides a description of new Part 3-5.

New Division 126 provides eligibility criteria for SA-HELP assistance. A student is entitled to SA-HELP assistance where the student:

- meets the citizenship or residency requirements under new section 126-5;
- is enrolled in a course of study with the provider or a bridging course for overseas-trained professionals on a day on which the fee is payable;
- meets the tax file number requirements; and
- has, on or before the day on which the fee is payable, completed, signed and given to an appropriate officer of the provider a request for Commonwealth assistance in relation to the fee.

New subsection 126-1(2) defines a *request for Commonwealth assistance* in relation to a student services and amenities fee. This is defined as a document in which a person requests the Commonwealth to provide assistance under the Act in relation to the student assistance and amenities fee for the period (and any student services and amenities fee imposed for a later period during which the person is enrolled in the course of study or bridging course for overseas-trained professionals) and is on a form approved by the Minister.

The citizenship or residency requirements contained in new section 126-5 require a student, on the day the fee is payable, to be either an Australian citizen or a permanent humanitarian visa holder resident in Australia. New subsection 126-5(2) provides that a permanent humanitarian visa holder does not meet the citizenship or residency requirements where the provider reasonably expects that the visa holder will not undertake in Australia any units of study with the provider.

New Division 127 provides how the amount of SA-HELP assistance to which a student is entitled is worked out. The amount of SA-HELP assistance to which an eligible student is entitled is the difference between the fee and the sum of any payments of the fee made on or before the day on which the fee is payable.

New Division 128 sets out how amounts of SA-HELP are paid. New section 128-1 provides that where a student is entitled to SA-HELP assistance the Commonwealth must lend the amount of SA-HELP assistance to the student and pay the higher education provider the amount lent.

New section 128-5 provides that a provider must repay an amount of SA-HELP assistance to the Commonwealth if new subsection 193-15(1) applies to the student. See Item 36 for new subsection 193-15(1).

Note 1 provides that subsection 193-15(1) applies to a person who does not have a tax file number.

Note 2 provides that the SA-HELP debt will be remitted if the higher education provider must repay the amount under section 128-5.

Item 11 – Section 134-1

Amends section 134-1 to include a reference to SA-HELP assistance. This is a consequential amendment.

Item 12 – After paragraph 137-1(c)

Amends paragraph 137-1(c). This amendment includes SA-HELP debts in the definition of HELP debts.

Item 13 – After section 137-15

Inserts new section 137-16. New section 137-16 provides for when SA-HELP debts occur.

New subsection 137-16(1) provides that a person incurs an SA-HELP debt where the Commonwealth makes a loan to the person and uses the amount lent to make a payment of the person's student services and amenities fee.

New subsection 137-16(2) provides that the amount of the SA-HELP debt is an amount equal to the loan.

New subsection 137-16(3) provides that an SA-HELP debt is incurred by a person immediately after the day on which the student services and amenities fee to which the loan relates is payable, whether or not the Commonwealth has made a payment in respect of the fee.

New subsection 137-16(4) provides that a person's SA-HELP debt is remitted if the provider must repay the Commonwealth the amount the Commonwealth paid the provider in relation to the fee.

Items 14 and 15 – Subsection 140-5(1)

Insert references to SA-HELP assistance into subsections 140-5(1) and 140-25(1A) respectively. These are consequential amendments relating to Item 13.

Items 16 and 17 – Subsection 140-25(1A)

Inserts references to SA-HELP assistance into subsection 140-25(1A). These are consequential amendments relating to Item 13.

Items 18, 19 and 20 – Paragraph 154-55(1)(a)

Are technical amendments relating to Item 21.

Item 21 – At the end of paragraph 154-55(1)(a)

Inserts new subparagraph 154-55(1)(a)(iii) to include a reference to SA-HELP assistance into paragraph 154-55(1)(a). This amendment extends the provisions which require higher education providers to give information in their possession relating to students to the Commissioner (if asked by the Commissioner) to information in their possession relating students who have applied for SA-HELP assistance.

Item 22 – Subparagraph 169-5(1)(b)(i)

Amends subparagraph 169-5(1)(b)(i) to insert a reference to the student services and amenities fee. Subsection 169-5(1) currently provides that a higher education provider must give notices, as required by the Administration Guidelines, to a person who is:

- enrolled with the provider for a unit of study and;
- who is seeking Commonwealth assistance under the Act for the unit or is a Commonwealth supported student for the unit.

This amendment will require higher education providers to also give notices as required by the Administration Guidelines in relation to student services and amenities fees.

Item 23 – Section 169-30

Is a technical amendment relating to Item 22.

Item 24 – At the end of section 169-30

Inserts new subsection 169-30(2). This new subsection provides that, in communications under (or for the purposes of) the Act between the Commonwealth and a higher education provider concerning a person who has had a student services and amenities fee imposed on them and has indicated they are seeking SA-HELP for the fee, then the provider must use any identifier for that person that the Secretary has indicated must be used in such communications. This amendment mirrors a provision which currently exists regarding other Commonwealth assistance.

Items 25 and 26 – Section 169-35, at the end of paragraph 169-35(b)

Amends section 169-35 to insert a reference to SA-HELP assistance. These are technical amendments relating to Item 27.

Item 27 – At the end of section 169-35

Inserts new subsection 169-35(2). This new subsection has the effect of limiting the period, during which a person can correct the information provided in the request for Commonwealth assistance made in relation to a student services and amenities fee where the effect of correcting the information gives rise to an entitlement to SA-HELP, to six weeks after the day on which a student services and amenities fee imposed on a person by a higher education provider was payable. This amendment mirrors the provisions which currently exist for other forms of Commonwealth assistance contained in the Act.

Items 28 and 29 – Subsections 187-1(1) and (1A), subsection 187-1(3)

Amends subsections 187-1(1), (1A) and 1(3). These are technical amendments relating to Item 30.

Item 30 – After subsection 187-1(3A)

Inserts new subsections 187-1(3B), (3C), (3D) and (3E). These subsections contain the tax file number requirements for obtaining SA-HELP assistance.

New subsection 187-1(3B) provides that a student will satisfy the tax file number requirements in one of two ways. Either by providing their tax file number to an appropriate officer of the provider and the provider being satisfied that the number is a valid tax file number or by giving the officer a certificate from the Commissioner of Taxation which states that they have applied for a tax file number.

New subsection 187-1(3C) provides that compliance by a person with the tax file number requirements in relation to the person's actual or proposed enrolment in a course of study or bridging course for overseas-trained professionals under subsection (3B) must be ignored in determining whether the person has complied with subsection

(3B) in relation to his or her actual or proposed enrolment in another such course or bridging course.

New subsection 187-1(3D) provides that a student does not meet the tax file number requirements for SA-HELP unless they comply with these requirements on or before the day the fee is payable.

New subsection 187-1(3E) provides that a student may include a notification under paragraph (3B)(a) in any request for Commonwealth assistance relating to a student services and amenities fee in connection with their enrolment in the course of study or bridging course for overseas-trained professionals.

Item 31 – Paragraph 187-1(4)(a)

Amends paragraph 187-1(4)(a) to insert a reference to new paragraph 187-1(3B)(a). Subsection 187-1(4) provides that the Commissioner may issue guidelines about the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number for the purposes of paragraph 187-1(1)(a) or (3B)(a). This amendment will extend these guidelines to include SA-HELP assistance.

Item 32 – Transitional – guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003*

Inserts transitional provisions regarding the guidelines made under subsection 187-1(4) relating to the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number.

Subitem (1) provides that any guidelines made under subsection 187-1(4) prior to commencement of the amendments to that subsection will remain in force after commencement of the amendments.

Subitem (2) provides that subitem (1) does not prevent the repeal or amendment of the guidelines.

Item 33 – Subsection 187-1(5)

Amends subsection 187-1(5) to insert a reference to new paragraph (3B)(b). Subsection 187-1(5) provides that a certificate issued by the Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student must be in a form approved by the Commissioner. This amendment will extend the requirement in subsection 187-1(5) to include SA-HELP assistance.

Item 34 – After subsection 193-1(4)

Inserts new subsections 193-1(4A) and (4B). New subsection 193-1(4A) provides that a higher education provider must notify a person in writing how to meet the tax file number requirements if:

- the person is enrolled in a course of study or bridging course with the provider; and
- the provider has imposed a student services and amenities fee on the person; and
- the person has (on or before the day on which the fee is payable) completed and signed a request for Commonwealth assistance in relation to a student services and amenities fee imposed for a period during which the person is enrolled in the course or bridging course; and
- in that request, the person requests SA-HELP assistance for the student services and amenities fee; and
- the request does not include a number that purports to be the person's tax file number.

New subsection 193-1(4B) provides that the provider must notify the person under new subsection 193-1(4A) either:

- on or before the day the student services is payable; or
 - within seven days after the person gives the provider the request for Commonwealth assistance;
- whichever is earlier.

Item 35 – Paragraph 193-1(5)(a)

Amends paragraph 193-1(5)(a) to insert a reference to SA-HELP assistance. Subsection 193-1(5) provides that section 193-1 does not apply to a person if the person (in the request for Commonwealth assistance) requests HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, but the person is not entitled to the assistance. This amendment will extend these provisions to include SA-HELP assistance. That is, the tax file number requirements in section 193-1 will not apply to a person where they have applied for SA-HELP assistance but are not entitled to the assistance.

Item 36 – At the end of Division 193

Inserts new section 193-15. New section 193-15 provides circumstances in which there is no entitlement to SA-HELP assistance for students without valid tax file numbers. New subsection 193-15(1) provides that subsection 193-15(1) applies to a person if:

- a higher education provider has imposed a student services and amenities fee on a person; and
- the provider receives a notice under section 190-15 or 190-20 of the Act that the person does not have or no longer has a tax file number; and
- 28 days after the provider receives the notice the person does not have a tax file number, the provider has not been notified of a tax file number which the provider is satisfied is valid; and

- the person is entitled to SA-HELP assistance for the fees.

New subsection 193-15(2) provides that in deciding whether a tax file number is valid for the purposes of paragraph (1)(c) the provider must comply with the guidelines issued by the Commissioner under subsection 187-1(4).

New subsection 193-15(3) provides that where persons may be affected by subsection (1) applying to them, a higher education provider must comply with any requirements set out in guidelines issued by the Commissioner, relating to procedures for informing persons of the need to obtain a valid tax file number.

New subsection 193-15(4) provides that the guidelines issued under subsection (3) are legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 37 – Section 198-5 (before table item 1)

Amends the table in section 198-5. This table sets out the amounts under the Act that are to be indexed and lists the first year of indexation. This amendment adds the student services and amenities fee as an amount that is to be indexed and lists 2011 as the first year of indexation.

Item 38 – Subsection 238-10(1) (table item 1, column headed “Chapter/Part/section”)

Amends item 1 of the table in subsection 238-10(1) to insert “Section 19-37;” before “Chapter 5” in the third column. The effect of this amendment is to allow the Administration Guidelines to provide for matters concerning the student services and amenities fee in addition to matters concerning Chapter 5.

Item 39 – Subsection 238-10(1) (after table item 10)

Inserts reference to the Student Services, Amenities, Representation and Advocacy Guidelines into the Table in section 238-10. This section provides that the Minister may, by legislative instrument, make Guidelines specified in the Table. This amendment provides the legislative basis for the Minister to make the Student Services, Amenities, Representation and Advocacy Guidelines.

Item 40 – Subclause 1(1) of Schedule 1 (after paragraph (b) of the definition of *request for Commonwealth assistance*)

Inserts paragraph (ba) into the definition of *request for Commonwealth Assistance* contained in Clause 1 of Schedule 1. This amendment includes the student services and amenities fee in the definition of *request for Commonwealth assistance*.

Items 41, 42 and 43 – Subclause 1(1) of Schedule 1

Inserts definitions of *SA-HELP assistance*, *SA-HELP debt* and *student services and amenities fee* into subclause 1(1) of Schedule 1. These are consequential amendments.

Income Tax Assessment Act 1936

Item 44 – Paragraph 202(c)

Amends paragraph 202(c).

Section 202 provides the objects of Part IVA of the Act and includes, at paragraph (c), the establishment of a system of tax file numbers to facilitate the administration of legislation under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respects of the costs of courses of study provided by higher education institutions. This amendment will extend the coverage of paragraph 202(c) to include the provision of benefits to students in respect of ‘costs of other services and amenities available to students in connection with [higher education] institutions.’ This amendment will include the student services and amenities fee under this section.

Normally an amendment to sections 8WA and 8WB of the *Taxation Administration Act 1953* (TAA 1953) is required to ensure that a person does not commit an offence when carrying out his or her duties with tax file numbers in respect of certain legislated purposes. This would entail excluding certain paragraphs of section 202 of the *Income Tax Assessment Act 1936* (ITAA 1936) from the offence provisions in the above mentioned sections of the TAA 1953. The amendment of section 202 merely extends the existing purposes of paragraph 202(c) of the ITAA 1936. The extended wording of paragraph 202(c) is automatically included in the exceptions to the offence provisions.

The purpose of the Schedule is to introduce a student services and amenities fee and to give students the option of deferring payment of the cost of other services and amenities connected with their education at institutions of higher education (SA-HELP). In order to facilitate the deferral and repayment of those debts the tax file number is to be used in a similar manner to that used under the HECS-HELP. This is consistent with other benefits provided by government where the tax file number is used to verify the identity of the debtor/recipient of a benefit and to facilitate the repayment of the debt/overpayment.