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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION SUPPORT AMENDMENT (ASIAN CENTURY) BILL
2013**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Science and Research, Minister for Small Business, The Honourable Chris Bowen, MP)

HIGHER EDUCATION SUPPORT AMENDMENT (ASIAN CENTURY) BILL 2013

The amendments to the *Higher Education Support Act 2003* (HESA) in Schedule 1 of the Bill are made with respect to OS-HELP assistance. OS-HELP is a loan program to assist eligible students to pay expenses associated with undertaking overseas study as part of their higher education.

The purpose of the Bill is to amend Part 3-4 of HESA to expand eligibility for OS-HELP assistance and provide additional incentives for university students to undertake part of their course of study in Asia from 1 January 2014.

The Bill removes the requirement that a student must be enrolled in an undergraduate course of study to be entitled to OS-HELP assistance. This will allow postgraduate Commonwealth supported students to be eligible for OS-HELP assistance.

The Bill removes the requirement that a student must be enrolled at an overseas campus of an Australian higher education provider or with an overseas higher education institution to be eligible for OS-HELP. The study undertaken outside Australia will continue to need to count towards the course requirements of the course of study that the student is enrolled in with the home provider. This will allow students to undertake activities such as clinical placements and internships.

The amount of study that a student must have remaining upon completion of their overseas study will be reduced, from 0.5 Equivalent Full Time Student Load (EFTSL) units to 0.125 EFTSL. This will increase eligibility for OS-HELP assistance, particularly for students who follow a non-traditional pattern of study or who wish to undertake short periods of study overseas.

As part of the Government's response to the Australia in the Asian Century White Paper, the Bill contains additional assistance for students to undertake overseas study in Asia. The Bill increases the maximum OS-HELP loan amount for students studying in Asia to \$7,500. The Bill also provides that the OS-HELP Guidelines may specify whether overseas study undertaken at a particular place is undertaken in Asia.

The Bill further provides for a supplementary loan of up to \$1000 for students who undertake intensive study in an Asian language in preparation for undertaking overseas study in Asia. A student must be selected for an OS-HELP (overseas study) loan for study in Asia in order to be eligible for the supplementary loan. The Bill provides that the OS-HELP Guidelines may specify circumstances in which a student undertakes intensive study in an Asian language in preparation for undertaking overseas study in Asia.

As the increased amounts and expanded entitlements contained in the Bill will take place from 1 January 2014, in order to allow students to begin applying for OS-HELP assistance as amended by the Bill in anticipation for their study in the year 2014, the application provisions provide that:

- the amendments made to Part 3-4 of HESA apply to OS-HELP Assistance paid to a student on or after January 2014 if the student is selected by a home provider on or after 1 January 2014 for an amount for overseas study or a

- supplementary amount for Asian language study and the study to which the assistance relates is completed on or after 1 January 2014; and
- the maximum loan amounts for OS-HELP for overseas study and OS-HELP for Asian language study will be indexed under Part 5-6 of HESA. As these amounts will not be paid until after 1 January 2014, the Bill will provide that they will not be indexed until 1 January 2015.

FINANCIAL IMPACT

The amendments result in an expense of \$10.59 million over four years (2013-14 to 2016-17).

2013-14	2014-15	2015-16	2016-17
\$1.55 m	\$3.15 m	\$3.08 m	\$2.82 m

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill amends the *Higher Education Support Act 2003* to expand eligibility for OS-HELP assistance and provides additional incentives for university students to undertake part of their course of study in Asia. OS-HELP is a loan program to assist eligible students to pay expenses associated with undertaking overseas study as part of their higher education.

This Bill expands eligibility for OS-HELP by:

- extending eligibility to postgraduate Commonwealth supported students;
- reducing the Equivalent Full Time Student Load (EFTSL) units that a student must have remaining on the completion of the study outside Australia from 0.5 to 0.125 units; and
- removing the requirement to be enrolled with an overseas higher education institution, or at an overseas campus of a home provider. This will allow students to undertake activities which may not otherwise be considered as being enrolled in one of these institutions, such as clinical placements and internships.

The Bill increases the maximum OS-HELP loan amount for students studying in Asia to \$7,500.

The Bill further provides for a supplementary loan of up to \$1000 for students who undertake intensive study in an Asian language in preparation for undertaking overseas study in Asia.

Human rights implication

Right to education

Schedule 1 of the Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

By expanding eligibility for the OS-HELP scheme and increasing assistance for students undertaking part of their course of study overseas, the Bill will provide further incentive for undertaking higher education overseas, particularly in Asia. This will enhance Australian students' access to education, including the kind of education students can receive as the Bill will allow students to undertake clinical placements and internships overseas.

While increasing assistance for students undertaking part of their course of study overseas, the maximum loan amounts for OS-HELP are capped having regard to reasonable, proportionate and necessary constraints on public spending.

Conclusion

The Bill is compatible with human rights as these amendments further advance the right to education.

HIGHER EDUCATION SUPPORT AMENDMENT (ASIAN CENTURY) BILL 2013

NOTES ON CLAUSES

Clause 1 – Short title

This clause provides that the Bill, when it is enacted, is to be cited as the *Higher Education Support Amendment (Asian Century) Act 2013*.

Clause 2 – Commencement

This clause inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill 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 clauses 1 to 3 and any other provisions of the Bill not otherwise covered by the table to commence on Royal Assent.

The table also provides that Schedule 1 of the Bill commences on the day after Royal Assent.

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

Clause 3 – Schedules

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

For ease of description, this Explanatory Memorandum uses the following abbreviations:

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

Schedule 1—OS-HELP assistance for study in Asia

Part 1—Amendments

Summary

These amendments seeks to broaden the entitlement requirements of OS-HELP assistance, increase the maximum amount of OS-HELP assistance for students undertaking overseas study in Asia and to provide a supplementary payment for students studying an Asian language in preparation for their overseas study in Asia.

Explanation of the changes

Item 3 makes amendments to current paragraph 118-1(1)(b) to ensure students will be entitled to OS-HELP assistance if the student has not received OS-HELP assistance in relation to more than one other period of 6 months.

Given **Item 7** provides for a supplementary amount for Asian language study, this amendment has been made to make it clear that a student will be still be eligible for both an OS-HELP assistance amount for overseas study and an amount for language study even if they have received either of these amounts in one other period of 6 months.

Item 4 makes amendments to current paragraph 118-1(1)(c) in order to allow a student to be entitled to OS-HELP assistance if the student is enrolled in *a course of study*, rather than *an undergraduate course of study*. The effect of this amendment is to expand the entitlement of OS-HELP assistance to students undertaking postgraduate courses.

Item 6 amends current paragraph 118-1(1)(f) by reducing the required Equivalent Full Time Student Load (EFTSL) remaining in a student's course of study upon returning from overseas from 0.5 EFTSL to 0.125 EFTSL. The effect of this amendment is to expand the entitlement of OS-HELP assistance so that a student may still be entitled to OS-HELP assistance if they have 0.125 EFTSL (generally the equivalent of one unit of study) to complete after the study outside of Australia.

Item 7 inserts new section 118-2 entitled “Entitlement to supplementary amount for Asian language study” which provides a series of requirements that a student must meet in order to be entitled to a supplementary amount for Asian language study. In relation to a period of six months, a student will be entitled to a supplementary amount if the student is otherwise entitled to OS-HELP assistance, the assistance is for overseas study in Asia and the student undertakes an intensive study in an Asian language in preparation for undertaking that overseas study. In addition, the student will be required to apply to a home provider for a supplementary amount and the home provider will also have to select the student for receipt of a supplementary amount in order for the student to be entitled to a supplementary amount.

Please note that if a student is entitled to a supplementary amount for Asian language study this will be in addition to the OS-HELP assistance the student may receive for overseas study.

New section 118-2 also provides that a student is not entitled to a supplementary amount of Asian language study in relation to a period of 6 months if the student applies to the home provider for the assistance after the student has already completed the intensive study in an Asian language. Please note that this will not prohibit a student from being eligible for a supplementary amount for Asian language study if the student is currently enrolled and undertaking a course at the time the application is made.

New section 118-2 further provides that the OS-HELP Guidelines may specify circumstances in which a student undertakes intensive study in an Asian language in preparation for undertaking overseas study in Asia.

Item 8 makes an amendment to current subparagraph 118-10(a)(i) by removing the requirement that a student be enrolled with an overseas higher education institution or at an overseas campus of a higher education provider in full time study. This amendment is to allow students to meet the overseas study requirements by undertaking activities which may not otherwise be considered as being enrolled in one of these institutions, such as undertaking overseas work placements. Instead, students will be required to be undertaking full time study and fulfil the other requirements of current section 118-10 by undertaking study outside Australia that counts towards the course requirements of the course of study that the student is enrolled in with the home provider.

Current section 118-15 contains provisions in relation to the selection of students for receipt of OS-HELP assistance. **Items 10, 11, 12 and 13** make the necessary amendments to current section 118-15 so that these provisions will apply to the selection of students for a supplementary amount for Asian language study as well as to the selection of students for receipt of OS-HELP assistance.

Item 14 repeals current section 121-1 and substitutes new section 121-1. The purpose of new section 121-1 is to replicate the provisions in current section 121-1 with respect to determining an amount of OS-HELP assistance for overseas study as well as the amount of OS-HELP assistance for a supplementary amount for Asian language study. For both forms of OS-HELP assistance the amount determined by the higher education provider must not exceed the amounts specified in the student's application or the maximum OS-HELP (overseas study) or maximum OS-HELP (Asian language study) amount, depending on which form of assistance is applied for.

Depending on which form of assistance is applied for, new section 121-1 also provides that the determination must also not be less than the higher education provider's minimum OS-HELP (overseas study) amount or minimum OS-HELP (Asian language study) amount, if the provider has a minimum OS-HELP (overseas study) amount or a minimum OS-HELP (Asian language study) amount.

Item 15 repeals current section 121-5 and substitutes new section 121-5. This amendment provides that the maximum OS-HELP (overseas study) amount for a

period of 6 months is \$7,500 for study undertaken in Asia and \$6,250 for overseas study in all other locations. A higher maximum amount for study in Asia is provided for under this amendment to ensure that students are given greater assistance and incentive to undertake study in Asia. The maximum OS-HELP (overseas study) amount will be indexed under Part 5-6 of HESA.

New section 121-5 further provides that the OS-HELP Guidelines may specify whether overseas study undertaken at a particular place is undertaken in Asia. It is envisaged that the OS-HELP Guidelines will reflect the classifications used by the Australian Bureau of Statistics' Standard Australian Classification of Counties.

Please note that the \$6,250 payment for OS-HELP (overseas study) in all other locations replicates current section 121-5 which provides that the maximum OS-HELP amount for a period of six months is \$5,000 which is indexed under Part 5-6 of HESA. The sum of \$6,250 is an estimate of the value of \$5,000 as indexed under Part 5-6 of HESA on 1 January 2014.

Items 16 and 17 amend current section 121-10 so that this provision applies specifically to OS-HELP (overseas study) amounts. This amendment will provide that a higher education provider may determine in writing its minimum OS-HELP (overseas study) amount and that this determination has effect until it is replaced by a later determination or is revoked.

Item 18 inserts new sections 121-15 and 121-20 in order to provide for the maximum OS-HELP (Asian language study) amount and the minimum OS-HELP (Asian language study) amount respectively.

New section 121-15 provides that the maximum OS-HELP (Asian language study) amount for a period of 6 months is \$1,000. The maximum OS-HELP (Asian language study) amount is indexed under Part 5-6 of HESA. Please note that new section 121-15 replicates current section 121-5 but with respect to the maximum OS-HELP (Asian language study) amount.

New section 121-20 provides that a higher education provider may determine, in writing its minimum OS-HELP (Asian language study) amount and that the determination will have effect until it is replaced by a later determination or is revoked. Please note that new section 121-20 replicates current section 121-10 but with respect to the minimum OS-HELP (Asian language study) amount.

Item 19 inserts new subsection 124-1(2A) which provides that the OS-HELP Guidelines may provide that a student who is entitled to a supplementary amount for Asian language study may be paid an amount for that language study, and an amount for the overseas study at different times determined in accordance with the OS-HELP Guidelines.

As the required Asian language study must occur in preparation for overseas study in Asia, this new subsection has been inserted given that the costs for the two different types of study may occur at different times. This new subsection allows the OS-HELP Guidelines to allow for these payments to occur at different times.

This clause also inserts new subsection 124-1(2B) which provides that if a student receives both an amount for overseas study and an amount for language study then these amounts will be taken to be a separate loan for the purposes of current section 137-15. In this circumstance, a student will incur two debts in relation to OS-HELP assistance, where the debt will be incurred on the day which the higher education provider pays an amount lent to the student (as per current subsection 137-15(3)).

Item 23 amends the table in current subsection 198-5(1) to provide that the maximum OS-HELP (overseas study) amount and the maximum OS-HELP (Asian language study) amount are amounts that are to be indexed under Part 5-6 of HESA.

Items 1 and 2 make consequential amendments to section 65-1 and 115-1 respectively due to the amendments contained in **Item 8**.

Items 5, 21 and 22 make consequential amendments to sections 118-1, 140-5 and 140-25 respectively due to the amendments contained in **Item 4**.

Item 9 inserts a note at the end of section 118-10 which provides an explanation of the amendment contained in **Item 8**.

Item 20 inserts a note at the end of subsection 137-15(1) which refers the reader to subsections 124-1(2A) and (2B) draw the reader's attention to the amendment made in **Item 19**.

Items 24 to 28 make the necessary amendments to the definitions contained in Schedule 1 by repealing redundant definitions or inserting new definitions as a result of the amendment made in Part 1 of Schedule 1 of the Bill.

Part 2—Application of amendments

Summary

Part 2 of Schedule 1 of the Bill contains provisions relating to the application of the amendments contained within the Bill as well as provisions relating to the indexation of the maximum OS-HELP (Asian language study) amount and the maximum OS-HELP (overseas study) amount.

Explanation of the changes

Sub-item 29(1) provides that Part 3-4 of HESA, as amended by Part 1 of Schedule 1 of the Bill, only applies in relation to OS-HELP assistance paid to a student if the assistance is paid and the student is selected for receipt of assistance on or after 1 January 2014. In addition, the amendment will only apply if the student has not completed the overseas study (or the Asian language study, in the case that the student applies for the supplementary amount) before 1 January 2014. This is to ensure that while the additional assistance and expanded entitlements are not intended to commence until 1 January 2014, the Bill will still allow students to apply for the additional assistance and expanded entitlements in anticipation of receiving the assistance on or after 1 January 2014. This will ensure students can benefit from the amendments contained in Part 1 of Schedule 1 of the Bill immediately on or after 1 January 2014.

Sub-item 29(2) provides that to avoid doubt, **sub-item 29(1)** applies even if the student applied for OS-HELP assistance before 1 January 2014, the period of 6 months to which the assistance relates started before 1 January 2014, or the student started to undertake the overseas study to which assistance relates, or intensive study in an Asian language before, 1 January 2014. Please note, however, that as per **sub-item 27(1)**, if the overseas or intensive Asian language study is completed by 1 January 2014, the student will be eligible to OS-HELP assistance as it currently operates in HESA, rather than as it will operate under the amendments contained in the Bill.

Sub-item 30(1) provides that indexation, under Part 5-6 of HESA, will not apply to the maximum OS-HELP (Asian language study) amount and the maximum OS-HELP (overseas study) amount on 1 January 2014. As these amounts have been amended in Part 1 of Schedule 1 of the Bill to reflect values that are appropriate for 1 January 2014, indexation is not required for these amounts.

Sub-item 30(2) provides that despite Part 5-6 of HESA, the maximum OS-HELP amount for a period of 6 months under section 121-5 of HESA, as in force immediately before the commencement of **Item 30** is taken to be \$6,250 for a student who is paid OS-HELP assistance on or after 1 January 2014 and either is selected for receipt of OS-HELP assistance before 1 January 2014 or completes the overseas study in respect of the period before 1 January 2014.

The effect of this sub-item is to ensure that in circumstances where the amendments contained in Part 1 of the Bill do not apply to assistance paid to a student, the maximum OS-HELP amount is taken to be \$6,250.

The reason for this sub-item is that if the student is precluded from OS-HELP assistance as amended by the Bill due to the application requirements in **Item 29**, then the student's assistance will be determined by the OS-HELP assistance provisions as it currently operates in HESA. Under current section 121-5, the student may be eligible for OS-HELP assistance up to \$5,000 as indexed under Part 5-6 of HESA. The maximum OS-HELP (overseas study) amount overseas study in all other locations is \$6,250 (as inserted by **Item 15**) and operates to reflect the maximum OS-HELP amount under current section 121-5. As the \$6,250 amount is a current estimate of the value of \$5,000 as indexed under Part 5-6, to avoid inconsistency of payments between students to which the amendments do and do not apply, this sub-item deems that the maximum OS-HELP amount for students to which the amendments do not apply is \$6,250.