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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT
(MISCELLANEOUS MEASURES) BILL 2015**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for Education and Training,
Senator the Honourable Simon Birmingham)**

HIGHER EDUCATION LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2015

OUTLINE

Schedule 1 of the Bill will allow certain New Zealand citizens who are Special Category Visa holders to be eligible for Higher Education Loan Programme (HELP) assistance from 1 January 2016. Schedule 1 extends access to HELP to a specific group of New Zealand citizens who have been long-term residents of Australia since childhood.

Schedule 2 will amend the list of Table B providers in section 16-20 of the *Higher Education Support Act 2003* (HESA) to enable Torrens University Australia to be eligible for equivalent funding support as all other private Australian universities, including research block grant funding under Part 2-3 (such as the Research Training Scheme and the Sustainable Research Excellence in Universities Scheme) and postgraduate research Commonwealth scholarships funding under Part 2-4.

Schedule 3 will update the name of the University of Ballarat to Federation University Australia to recognise the passage of the *University of Ballarat Amendment (Federation University Australia) Act 2013* by the Victorian Parliament.

Schedule 4 inserts a provision that confirms the relevant heads of constitutional power that Part 2-3 (Other Grants) of HESA relies upon, in addition to the effect that Part 2-3 otherwise has.

Schedule 5 makes consequential amendments to corporate reporting requirements under the *Tertiary Education Quality and Standards Agency Act 2011* following passage of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Schedule 6 amends the *Australian Research Council Act 2001* (ARC Act) to apply indexation against appropriations for existing schemes and includes additional forward estimate amounts for the financial years starting on 1 July 2017 and 1 July 2018. The amendments are essential as the ARC Act is the legislative basis that supports the financial operations of ARC grants programmes through special appropriation mechanisms which must occur each financial year. These programmes fund the high-quality research needed to address current challenges, support improved quality of life, and to support Australian businesses to become more innovative and remain competitive in the global knowledge economy.

Schedule 6 also repeals Division 1 of Part 6 of the ARC Act to remove the requirement for the ARC to prepare corporate plans, as section 35 of the PGPA Act now requires the ARC to prepare and publish corporate plans in accordance with the Rule made under the PGPA Act.

The amendments do not alter the substance of the ARC Act or increase departmental funds.

FINANCIAL IMPACT STATEMENT

Schedule 1 - Access to HELP for certain New Zealand citizens

The measure is estimated to lead to additional costs of \$12.3 million from 2015–16 to 2018–19, in fiscal balance terms.

Schedule 6 - Research funding

The amendments in Schedule 6 of the Bill will allow for additional spending of up to \$1,538.9 million from 2015–16 to 2018–19.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

HIGHER EDUCATION LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2015

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

Schedule 1 amends the eligibility conditions for tertiary students to access the Higher Education Loan Programme (HELP) in the *Higher Education Support Act 2003* (HESA). This will enable certain New Zealand citizens who are Special Category Visa holders to be eligible for HELP assistance from 1 January 2016. This includes access to HECS-HELP, FEE-HELP, VET FEE-HELP, OS-HELP and SA-HELP loans.

Schedule 2 amends the list of Table B providers in section 16-20 of HESA to enable Torrens University Australia to be eligible for equivalent funding support as all other private Australian universities, including research block grant funding under Part 2-3 (such as the Research Training Scheme and the Sustainable Research Excellence in Universities Scheme) and postgraduate research Commonwealth scholarships funding under Part 2-4.

Schedule 3 updates HESA to change the name of the University of Ballarat to Federation University Australia. This recognises the passage of the *University of Ballarat Amendment (Federation University Australia) Act 2013* by the Victorian Parliament.

Schedule 4 inserts a provision that confirms the relevant heads of constitutional power that Part 2-3 (Other Grants) of HESA relies upon, in addition to the effect that Part 2-3 otherwise has.

Schedule 5 makes consequential amendments to corporate reporting requirements under the *Tertiary Education Quality and Standards Agency Act 2011* following passage of the *Public Governance, Performance and Accountability Act 2013*.

Schedule 6 amends the *Australian Research Council Act 2001* (ARC Act) to update appropriation amounts by applying indexation to existing funding caps and inserting new funding caps for the last two years of the forward estimates (the financial years commencing on 1 July 2017 and 1 July 2018).

The amendments in Schedule 6 support the financial assistance for approved research programmes administered by the Australian Research Council (ARC).

The ARC Act provides a maximum cap for financial assistance for approved research programmes. These programmes fund the high-quality research Australia needs to address the great challenges of our time, to improve the quality of people's lives, to support Australian businesses to become more innovative and to remain competitive in the global knowledge economy.

The ARC supports the highest quality fundamental and applied research and research training through funding schemes under the National Competitive Grants Programmes (NCGP). The NCGP comprises two main programmes—Discovery and Linkage. Funding awarded under the NCGP:

- is allocated on the basis of a competitive peer review process involving national and international assessors
- supports research across all disciplines (with the exception of a range of medical and dental research).

The amendments in Schedule 6 also repeal Division 1 of Part 6 of the ARC Act to remove the requirement for the ARC to prepare corporate plans, as section 35 of the PGPA Act contains a similar requirement for the ARC to prepare and publish corporate plans in accordance with the Rule made under the PGPA Act.

The amendments do not alter the substance of the ARC Act, the obligations required of the ARC, or increase departmental funds.

Analysis of human rights implications

Schedules 2-6 do not have human rights implications.

The only measure with potential human rights implications is Schedule 1. This is potentially relevant to the following international covenants.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 13: Right to education

This Bill engages with Article 13(2)(c) of the ICESCR which states that “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”.

Schedule 1 of the Bill expands access to higher education by allowing certain New Zealand citizens, who hold a Special Category Visa, to access the Australian Government's HELP loans scheme from 1 January 2016. Residency requirements for this measure will ensure that only New Zealand citizens with a demonstrated commitment to living in Australia will be eligible for a HELP loan.

This measure is designed to allow access to the HELP scheme to New Zealand citizens, who are long-term residents of Australia but are not able to access traditional routes to Australian citizenship that are available to citizens of other countries.

International Covenant on Civil and Political Rights

Article 26: Right to equality and non-discrimination

Schedule 1 of the Bill expands access to higher education by allowing certain New Zealand citizens, who hold a Special Category Visa and have been long-term residents of Australia since childhood, to access the Australian Government's HELP loans scheme from 1 January 2016. New Zealand citizens in these circumstances often perceive themselves as Australians and view their inability to access HELP loans as discriminatory. This change will address this perceived inequity.

Conclusion

The Bill is compatible with human rights.

HIGHER EDUCATION LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2015

NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the Act to be cited as the *Higher Education Legislation Amendment (Miscellaneous Measures) Act 2015*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in 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 the following commencement times:

Matters to commence on the day the Act receives the Royal Assent:

- sections 1 to 3 and anything else in the Act not otherwise covered by the table.

Matters to commence on the day after the Act receives the Royal Assent:

- Schedules 2 to 6.

Matters to commence on 1 January 2016:

- Schedule 1.

Clause 3 - schedule(s)

Subclause 3(1) provides that any legislation 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.

Subclause 3(2) makes it clear that any instrument amended by the Bill (e.g. by savings or transitional clauses) does not prevent that instrument, as amended, from subsequently being amended or repealed by the Minister.

List of abbreviations

ARC	Australian Research Council
ARC Act	<i>Australian Research Council Act 2001</i>
HELP	Higher Education Loans Programme
HESA	<i>Higher Education Support Act 2003</i>
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule</i>
TEQSA	Tertiary Education Quality and Standards Agency
TEQSA Act	<i>Tertiary Education Quality and Standards Agency Act 2011</i>

Schedule 1 *New Zealand Citizens*

Summary

Schedule 1 of the Bill will allow certain New Zealand citizens who are Special Category Visa holders to be eligible for HELP assistance from 1 January 2016.

Schedule 1 amends the citizenship or residency requirements for HELP loans to allow New Zealand citizens who are Special Category Visa holders (as defined by section 32 of the *Migration Act 1958*) to be eligible for HELP, providing they:

- first entered Australia:
 - as a dependent minor; and
 - at least 10 years before applying for HELP:
 - have been physically present in Australia for at least eight of the previous 10 years at the time of application for HELP; and
 - have been physically present in Australia for at least 18 months out of the last two years at the time of application for HELP; and
- are otherwise eligible for the loan.

The intent is that current students who meet these criteria on 1 January 2016 will be eligible for HELP, and also that future cohorts of students who meet the criteria from this date will be eligible.

Background

Eligibility for the various HELP schemes is currently restricted to Australian citizens and permanent humanitarian visa holders (in addition, permanent visa holders can receive FEE-HELP if they are undertaking a bridging course for overseas trained professionals).

Detailed explanation

Higher Education Support Act 2003

Chapter 3 of HESA deals with the kinds of HELP assistance that the Commonwealth provides to students (HECS-HELP; FEE-HELP; OS-HELP; and SA-HELP).

There are certain eligibility criteria governing access to HELP assistance. This includes citizenship or residency requirements, which restrict access to HELP assistance to the following categories of student:

- Australian citizens;
- permanent humanitarian visas holders resident in Australia; and
- permanent visa holders resident in Australia who are undertaking a bridging course for overseas-trained professionals.

Division 7 of Schedule 1A of HESA deals with the entitlement to VET FEE-HELP assistance. Again, there are certain eligibility criteria governing access to VET FEE-HELP assistance including requirements that the person be an Australian citizen, or a permanent humanitarian visa holder who will be resident in Australia for the duration of the VET unit of study.

This Schedule amends these requirements to enable certain New Zealand citizens who are Special Category Visa holders to access all HELP assistance and VET FEE-HELP assistance.

Item 3

Currently, section 104-1 provides that a student is entitled to FEE-HELP assistance for a unit of study if he or she meets certain criteria, including that the student meets the citizenships or residency requirements in section 104-5. Under subsection 104-5(1), a student will meet the citizenship or residency requirements if he or she is:

- an Australian citizen; or
- a permanent humanitarian visa holder who will be resident in Australia for the duration of the unit; or
- a permanent visa holder resident in Australia for the duration of the unit, which is being undertaken (or is to be undertaken) as part of a bridging course for overseas-trained professionals.

This item adds new subsections 104-5(2A) and (2B).

New subsection 104-5(2A) provides that a student will also meet the citizenship or residency requirements for a unit of study if he or she:

- is a New Zealand citizen; and
- holds a special category visa under the *Migration Act 1958*; and
- both first began to be usually resident in Australia at least 10 years before the **test day** (see new subsection 104-5(2B)) and was a dependent child when he or she first began to be usually resident in Australia; and
- has been present in Australia for a period or periods totalling 8 out of the last 10 years immediately before the test day; and
- has been present in Australia for a period or periods totalling 18 months out of the last 2 years immediately before the test day.

New subsection 104-5(2B) provides that the **test day** (for the purposes of subsection 104-5(2)) is the earlier of the following:

- if the student has previously made a successful request for Commonwealth assistance under Chapter 3 in respect of a unit of study that formed part of the same course of study – the day that the person first made the request; or
- otherwise – the day when the student made the request for Commonwealth assistance with respect to the unit.

Item 1

This item inserts the amendments to be made to section 104-5 into section 90-5(2) as new subsections 90-5(2A) and (2B).

This will enable the extension of HECS-HELP assistance to certain New Zealand citizens who are Special Category Visa holders to commence from 1 January 2016, which is when Schedule 1 will commence.

Items 2 and 4

These items make minor consequential renumbering amendments to sections 90-5 and 104-5.

Items 6, 7 and 10

Section 118-5 sets out the citizenship or residency requirements governing the entitlement to OS-HELP assistance (which provides assistance to students for periods when they study overseas). Section 126-5 sets out the citizenship or residency requirements governing the entitlement to SA-HELP assistance (which provides assistance for the student and amenities fee).

These items will make amendments to sections 118-5 and 126-5 and clause 44 of Schedule 1A in similar forms to those that apply in the case of HECS-HELP assistance, which enables certain New Zealand citizens who are Special Category Visa holders to access OS-HELP assistance, SA-HELP assistance and VET FEE-HELP assistance (as long as the person meets other applicable requirements).

Items 5 and 8

These items make minor consequential renumbering amendments to sections 118-5 and 126-5.

Item 11

This item adds a definition of ***dependent child*** into the Dictionary at Schedule 1 of HESA. Under this definition, a child of a person is a dependent child if the child:

- is aged under 18 years old; and
- does not have a spouse or de facto partner (which has the meaning provided for in the *Acts Interpretation Act 1901*).

Item 12

This item is an application provision, the effect of which would apply the Schedule 1 amendments to units of study with a census date on or after Schedule 1 commences (i.e. 1 January 2016).

Schedule 2 *Torrens University Australia*

Summary

Schedule 2 amends the list of Table B providers in section 16-20 of HESA to enable Torrens University Australia to be eligible for equivalent funding support as all other private Australian universities, including research block grant funding under Part 2-3 (such as the Research Training Scheme and the Sustainable Research Excellence in Universities Scheme) and postgraduate research Commonwealth scholarships funding under Part 2-4.

Background

Torrens University Australia is a new Australian university, registered by TEQSA on 29 January 2012 and commenced its operations on 1 January 2014.

Torrens University Australia is the only TEQSA registered private Australian University not listed on Table B of HESA. As a result, it is currently not eligible for the same research funding support as other private Australian universities.

Detailed explanation

Higher Education Support Act 2003

Item 1

Section 16-20 contains a table specifying those higher education providers that are **Table B providers**. This item amends that table to add Torrens University Australia as a Table B provider.

Schedule 3 *University name change*

Summary

Schedule 3 amends HESA to recognise the passage of the *University of Ballarat Amendment (Federation University Australia) Act 2013* by the Victorian Parliament, by updating the name of the University of Ballarat to Federation University Australia. This would take effect from the day after the Bill, once enacted, receives the Royal Assent. This measure would take the name change into account, and amend the list of approved providers in HESA to reflect the new name.

Background

The University of Ballarat is currently listed as a Table A provider in HESA.

Detailed explanation

Higher Education Support Act 2003

Items 1 and 2 amend the list of 'Table A providers' in section 16-15 of HESA to reflect the change of name of the University of Ballarat to Federation University Australia.

Schedule 4 *Constitutional bases for other grants*

Summary

Schedule 4 amends HESA to insert a provision that confirms the relevant heads of constitutional power that Part 2-3 (Other Grants) of HESA relies upon, in addition to the effect that Part 2-3 otherwise has.

Background

Part 2-3 of HESA provides for grants to be payable to higher education providers and other eligible bodies for a variety of purposes. These include:

- grants to promote equality of opportunity in higher education
- grants to support the capital development projects of higher education providers
- grants to support research by, and the research capability of higher education providers
- grants to support the development of systemic infrastructure used by higher education providers.

Detailed explanation

Higher Education Support Act 2003

Item 1

This item inserts a new section 41-95 at the end of Part 2-3 of HESA that sets out the alternative constitutional bases underpinning Part 2-3.

Schedule 5 *TEQSA operational plans*

Summary

Schedule 5 amends the TEQSA Act to remove the requirement for the Commissioners to prepare annual operational plans, as section 35 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires the Commissioners of TEQSA to prepare and publish corporate plans in accordance with the PGPA Rule.

Background

TEQSA is a **Commonwealth entity** for the purposes of the PGPA Act and its Commissioners are its 'accountable authority' (see subsection 132(3) of the TEQSA Act). Under section 35 of the PGPA Act, the Commissioners must prepare and give the Minister and the Finance Minister corporate plans prepared in accordance with the PGPA Rule. Amongst other things, the PGPA Rule requires a corporate plan to include an introduction, purposes, the relevant operating environment, performance matters, capability matters and risk oversight and management information. The PGPA Rule also requires corporate plans to be published and to cover at least four reporting periods of the entity.

Sections 160 and 161 of the TEQSA Act provide for the Minister's approval of corporate plans prepared under section 35 of the PGPA Act and for variations of these corporate plans.

Detailed explanation

Tertiary Education Quality and Standards Agency Act 2011

Item 5

This item repeals Subdivision B of Division 7 of the TEQSA Act (annual operational plans) which consists of the following sections:

- section 162 (developing annual operational plans)
- section 163 (approving annual operations plans)
- section 164 (varying annual operational plans).

Items 1, 2 and 4

These items make consequential amendments consequent upon the repeal of the annual operation plan provisions by item 5.

Item 1 repeals the definition of **annual operation plan** in section 5 of the TEQSA Act.

Item 2 removes a redundant heading to Subdivision A of Division 7 (as Division 7 will only relate to corporate plans).

Item 4 repeals subsection 161(2) which requires the Commissioners, when they give the Minister a proposed variation of a corporate plan, to also give the Minister a proposal for any consequential variation to an annual operational plan.

Item 3

Subsection 160(1) of the TEQSA Act requires the Commissioners to provide a copy of the corporate plan they prepare under section 35 of the PGPA Act to the Minister for approval by 31 January prior to the first reporting period to which the plan relates (or such later date as the Minister allows). Item 3 changes this date to 30 April, which will allow the Commissioners sufficient time to prepare the plan in alignment with the relevant Portfolio Budget Statements, whilst still ensuring that the Minister has the opportunity to properly consider the plan prior to its commencement on 1 July each year.

Item 6

Item 6 is an application provision, the effect of which is to provide that the amendment made by item 5 to subsection 160(1) will only apply to a corporate plan prepared on or after the amendment commences (i.e. the day after this Bill, once enacted, receives the Royal Assent).

Schedule 6 *Research funding*

Summary

Schedule 6 amends the ARC Act to update appropriation amounts by applying indexation to existing funding caps and inserting new funding caps for the last two years of the forward estimates (the financial years starting on 1 July 2017 and 1 July 2018).

Schedule 6 also repeals Division 1 of Part 6 of the ARC Act (sections 42-45) to remove the requirement for the ARC to prepare corporate plans, as section 35 of the PGPA Act now requires the ARC to prepare and publish corporate plans in accordance with the PGPA Rule.

Background

Currently, under sections 42-45 of the ARC Act, the CEO of the ARC is required annually to give the Minister, for the Minister's approval, a corporate plan prepared under section 35 of the PGPA Act.

The ARC is a **Commonwealth entity** for the purposes of the PGPA Act (see subsection 5(2) of the ARC Act) and its CEO, as the ARC's 'accountable authority' (see subsection 5(3) of the ARC Act), is required by section 35 of the PGPA Act to prepare and give the Minister and the Finance Minister corporate plans prepared in accordance with the PGPA Rule. Amongst other things, the PGPA Rule requires a corporate plan to include an introduction, purposes, the relevant operating environment, performance measures, capability matters and risk oversight and management information. The PGPA Rule also requires corporate plans to be published and to cover at least four reporting periods of the entity.

Detailed explanation

Australian Research Council Act 2001

Item 1

Item 1 changes the heading of Part 6 of the ARC Act from 'Planning and reporting' to 'Reporting'.

Item 2

Item 2 repeals Division 1 of Part 6 of the ARC Act (corporate plans) consisting of the following sections:

- section 42 (Corporate plans)
- section 43 (Ministerial approval of corporate plans)
- section 44 (Variation of corporate plans)

- section 45 (Annual report to include assessment of CEO's performance using performance indicators in corporate plan).

Item 3

Item 3 makes a consequential amendment due to the repeal of the corporate plan provisions by item 2 by removing the redundant heading to Division 2 (Annual report). The effect of the amendment made by item 2 is that Part 6 will consist of a single provision – section 46 (annual report). There will no longer be a need for separate divisions or a separate heading for section 46.

Item 4

Division 1 of Part 7 of the ARC Act provides for financial assistance for approved research programmes. Section 48 sets out the years to which this Division applies.

Item 4 inserts new paragraphs (n) and (o) into subsection 48(2), the effect of which is to provide that Division 1 of Part 7 also applies to the financial years starting on 1 July 2017 and 1 July 2018.

Item 5

Section 49 of the ARC Act specifies the annual funding caps for the purposes of Division 1 of Part 7 (financial assistance for approved research programmes).

Item 5 repeals paragraphs 49(p) and 49(q) and inserts new paragraphs 49(p), (q), (r) and (s) so that approved annual funding caps must not exceed the following amounts:

- \$815,521,000 for the financial year starting on 1 July 2015
- \$734,868,000 for the financial year starting on 1 July 2016
- \$748,345,000 for the financial year starting on 1 July 2017
- \$739,587,000 for the financial year starting on 1 July 2018.