



Higher Education Legislation Amendment Act (No. 2) 2004

No. 114, 2004

**An Act to amend higher education legislation, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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No. 114, 2004

An Act to amend higher education legislation, and for related purposes

[Assented to 13 July 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation
Amendment Act (No. 2) 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	13 July 2004
2. Schedule 1	The day on which this Act receives the Royal Assent.	13 July 2004
3. Schedule 2, items 1 to 38	The day on which this Act receives the Royal Assent.	13 July 2004
4. Schedule 2, items 39 to 45	The day after this Act receives the Royal Assent.	14 July 2004
5. Schedule 2, items 46 to 79	The day on which this Act receives the Royal Assent.	13 July 2004
6. Schedule 2, item 80	The day after this Act receives the Royal Assent.	14 July 2004
7. Schedule 2, items 81 to 85	The day on which this Act receives the Royal Assent.	13 July 2004
8. Schedule 3	The day on which this Act receives the Royal Assent.	13 July 2004
9. Schedule 4	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Part 4 of Schedule 2 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	13 July 2004 (paragraph (a) applies)
10. Schedule 5	The day on which this Act receives the Royal Assent.	13 July 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Higher Education Funding Act 1988

1 Paragraph 17(p)

Repeal the paragraph, substitute:

(p) in the case of the year 2004—\$3,010,199,000.

2 Paragraphs 110A(2)(a), (b) and (c)

Repeal the paragraphs, substitute:

(a) for the year 2005—\$21,989,000; and

(b) for the year 2006—\$9,609,000; and

(c) for the year 2007—\$7,548,000.

Schedule 2—Amendment of the Higher Education Support Act 2003

Part 1—Amendments

1 After paragraph 16-25(1)(a)

Insert:

- (aa) the body's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research; and

2 At the end of section 19-35

Add:

- (4) A higher education provider that receives any payment under section 110-1 on account of amounts of *FEE-HELP assistance for a unit of study must have open, fair and transparent procedures that, in the provider's view, are based on merit for making decisions about:
 - (a) the selection, from among the persons who seek to enrol with the provider in that unit of study, of persons to enrol; and
 - (b) the treatment of students undertaking that unit of study.
- (5) Subsection (4) does not prevent a higher education provider taking into account, in making decisions mentioned in that subsection, educational disadvantages that a particular student has experienced.

3 Subsection 19-45(2)

Repeal the subsection, substitute:

- (2) Except where the provider is a *Table A provider, the grievance procedures referred to in paragraphs (1)(a) and (b) must comply with the requirements of the Higher Education Provider Guidelines.

4 At the end of section 19-88

Add:

- (5) However, the provider may only determine conditions under subsection (4) of the kind or kinds specified for the purposes of that subsection in the Higher Education Provider Guidelines.

5 At the end of section 19-91

Add:

- (5) However, the provider may only determine conditions under subsection (4) of the kind or kinds specified for the purposes of that subsection in the Higher Education Provider Guidelines.

6 After section 22-5

Insert:

22-7 Revocation of approval if providing education and/or conducting research ceases to be the body's principal purpose

The Minister may revoke a body's approval as a higher education provider if:

- (a) at the last time the body became a higher education provider, the body's principal purpose was either or both of the following:
- (i) to provide education;
 - (ii) to conduct research; and
- (b) since that time, the body's circumstances have changed so that it no longer satisfies paragraph 16-25(1)(aa); and
- (c) the Minister complies with the requirements of section 22-20.

7 Paragraphs 30-5(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) for the year 2005—\$3,065,478,000; or
- (b) for the year 2006—\$3,200,319,000; or
- (c) for the year 2007—\$3,342,929,000; or
- (d) for the year 2008—\$3,406,337,000.

8 Subsection 36-40(3)

Repeal the subsection, substitute:

- (3) A *request for Commonwealth assistance*, in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit was not provided by *Open Learning Australia), means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit, or in relation to the *course of study of which the unit forms a part; and
 - (b) that is in the form approved by the Minister; and
 - (c) that the person gives to an *appropriate officer of the provider on or before the person's enrolment in the unit.

9 Subsection 41-45(1) (table)

Repeal the table, substitute:

Maximum payments for other grants under this Part		
Item	Year	Amount
1	2005	\$1,535,064,000
2	2006	\$1,657,147,000
3	2007	\$1,623,834,000
4	2008	\$1,645,505,000

10 At the end of section 46-15

Add:

- (3) A provider that is eligible to receive a grant under subsection (1) or (2) is an *eligible scholarship provider*.

11 Paragraph 46-20(2)(f)

Repeal the paragraph, substitute:

- (f) how the amounts of grants to an *eligible scholarship provider are to be determined;

12 Section 46-30

Omit "a *Table A or *Table B provider", substitute "an *eligible scholarship provider".

13 Section 46-40 (table)

Repeal the table, substitute:

Maximum payments for Commonwealth Scholarships		
Item	Year	Amount
1	2004	\$124,212,000
2	2005	\$151,452,000
3	2006	\$176,382,000
4	2007	\$201,628,000
5	2008	\$209,787,000

14 Paragraph 90-5(1)(b)

Repeal the paragraph, substitute:

- (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit.

15 Subsection 96-5(4)

Omit “if the sum of those payments is \$500 or more”.

16 Section 101-1

After “higher education provider”, insert “or, if the student accesses units through Open Learning Australia, that body,”.

17 Subsection 104-1(1)

Omit “A student is entitled”, substitute “Subject to sections 104-2, 104-3 and 104-4, a student is entitled”.

18 Subsection 104-1(2)

Repeal the subsection.

19 After section 104-1

Insert:

104-2 Failure by a student to complete previous units accessed through Open Learning Australia

A student is not entitled to *FEE-HELP assistance for a unit of study if:

- (a) the student has already undertaken 8 or more other units of study, access to which was provided by *Open Learning Australia; and
- (b) the student did not successfully complete at least 50% of those other units.

104-3 Failure by Open Learning Australia to comply with FEE-HELP Guidelines

- (1) The Minister may determine, in writing, that there is to be no entitlement to *FEE-HELP assistance for a specified year for units of study to which access is provided by *Open Learning Australia, if the Minister is satisfied that Open Learning Australia has, during the 2 years immediately preceding the specified year, failed to comply with the FEE-HELP Guidelines.
- (2) Without limiting the generality of what may be included in the FEE-HELP Guidelines, they may include any or all of the following:
 - (a) requirements relating to the financial viability of *Open Learning Australia;
 - (b) requirements relating to the quality of tuition accessed through Open Learning Australia;
 - (c) requirements relating to fairness in the treatment of persons accessing, or seeking to access, tuition through Open Learning Australia;
 - (d) requirements relating to compliance with this Act, the regulations and other Guidelines made under this Act;
 - (e) requirements relating to *tuition fees for units of study accessed through Open Learning Australia;
 - (f) requirements relating to the provision of information to the Commonwealth by Open Learning Australia that is relevant in any way to the provision of *FEE-HELP assistance to students accessing units of study through Open Learning Australia, or the repayment of the *HELP debts of those students;
 - (g) administrative requirements of the kinds imposed on higher education providers under Parts 5.2 and 5.3 of this Act.
- (3) A student is not entitled to *FEE-HELP assistance for a unit of study if:

- (a) access to the unit is provided by *Open Learning Australia;
and
 - (b) the Minister has made a determination under subsection (1)
in relation to the year during which the unit is accessed; and
 - (c) the determination was made before 1 July in the year
immediately preceding that year.
- (4) A determination under subsection (1) is a disallowable instrument
for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**104-4 Failure by Open Learning Australia to set tuition fees and
census date**

- (1) This section applies to a unit of study access to which is provided
by *Open Learning Australia during a year.

Tuition fees

- (2) *Open Learning Australia must determine a *fee for the unit that is
to apply to all students to whom Open Learning Australia provides
access to the unit during the year.
- (3) A *fee* includes any tuition, examination or other fee payable to
*Open Learning Australia by those students in relation to the unit.
- (4) A *fee* does not include a fee:
- (a) payable in respect of an organisation of students, or of
students and other persons; or
 - (b) payable in respect of the provision to students of amenities or
services that are not of an academic nature; or
 - (c) payable in respect of residential accommodation.

Census date

- (5) *Open Learning Australia must set a particular date to be the
*census date for the unit for the year.

Consequence of failure to set tuition fees and census date

- (6) If *Open Learning Australia does not:
- (a) determine a *fee in accordance with subsection (2) for the
unit for the year; or

(b) determine a *census date in accordance with subsection (5) for the unit for the year;
no student to whom Open Learning Australia provides access to the unit for that year is entitled to *FEE-HELP assistance for the unit.

20 Paragraph 104-5(1)(b)

Repeal the paragraph, substitute:

(b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit; or

21 After paragraph 104-25(a)

Insert:

(aa) access to the unit was not provided by *Open Learning Australia; and

22 Section 104-25 (note)

Repeal the note.

23 At the end of section 104-25

Add:

- (2) *Open Learning Australia must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study if:
- (a) access to the unit was provided by Open Learning Australia; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) Open Learning Australia is satisfied that special circumstances apply to the person (see section 104-30); and
 - (d) the person applies in writing to Open Learning Australia for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 104-35; or

- (ii) Open Learning Australia waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-10.

24 Subsection 104-30(1)

Omit “paragraph 104-25(c)”, substitute “paragraph 104-25(1)(c)”.

25 At the end of section 104-30

Add:

- (3) For the purposes of paragraph 104-25(2)(c), special circumstances apply to the person if and only if *Open Learning Australia is satisfied that circumstances apply to the person that:
 - (a) are beyond the person’s control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.

26 Paragraph 104-35(1)(a)

Omit “paragraph 104-25(d)”, substitute “104-25(1)(d)”.

27 After subsection 104-35(1)

Insert:

(1A) If:

- (a) the person applying under paragraph 104-25(2)(d) for the re-crediting of the person’s *FEE-HELP balance in relation to a unit of study has withdrawn from the unit; and
- (b) *Open Learning Australia gives notice to the person that the withdrawal has taken effect;

the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.

28 Subsection 104-35(2)

Omit “subsection (1) does not ”, substitute “subsections (1) and (1A) do not”.

29 Paragraph 104-40(1)(a)

Repeal the paragraph, substitute:

- (a) the application is made under paragraph 104-25(1)(d) before the end of the relevant application period; or

30 After subsection 104-40(1)

Insert:

(1A) If:

- (a) the application is made under paragraph 104-25(2)(d) before the end of the relevant application period; or
- (b) *Open Learning Australia waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;

Open Learning Australia must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision of the application.

31 Subsection 107-10(3)

After “one higher education provider,” insert “and access to none of the units was provided by *Open Learning Australia,”.

32 At the end of section 107-10

Add:

- (4) If access to some, but not all, of the units of study was provided by *Open Learning Australia, the student must:
 - (a) notify Open Learning Australia of the proportion of the total amount of *FEE-HELP assistance that is to be payable in relation to units access to which was provided by Open Learning Australia; and
 - (b) notify each higher education provider at which the student is enrolled in a unit access to which was not provided by Open Learning Australia, of the proportion of the total amount of FEE-HELP assistance that is to be payable in relation to that unit.

33 Section 110-1

After “higher education provider,”, insert “and access to the unit was not provided by *Open Learning Australia,”.

Note: The heading to section 110-1 is replaced by the heading “**Payments**”.

34 At the end of section 110-1

Add:

- (2) If a student is entitled to an amount of *FEE-HELP assistance for a unit of study and access to the unit was provided by *Open Learning Australia, the Commonwealth must:
 - (a) as a benefit to the student, lend to the student the amount of FEE-HELP assistance; and
 - (b) pay the amount lent to Open Learning Australia in discharge of the student’s liability to pay his or her *tuition fee for the unit.

35 Section 110-5

Omit “under section 104-25”, substitute “under subsection 104-25(1)”.

36 At the end of section 110-5

Add:

- (2) If, under subsection 104-25(2), *Open Learning Australia re-credits a person’s *FEE-HELP balance with an amount relating to *FEE-HELP assistance for a unit of study, Open Learning Australia must pay to the Commonwealth an amount equal to the amount of FEE-HELP assistance to which the person was entitled for the unit.

37 Paragraph 118-5(b)

Repeal the paragraph, substitute:

- (b) a *permanent humanitarian visa holder.

38 Subsection 169-25(3)

Repeal the subsection, substitute:

- (3) The provider must publish:
 - (a) the *census date for the unit by the date, and in the manner, specified in the Administration Guidelines; and

- (b) the *EFTSL value for the unit by the date, and in the manner, specified in the Administration Guidelines.
- (4) The provider must not vary the *census date for the unit, or the *EFTSL value for the unit, after publication under subsection (3), unless the provider has the written approval of the Minister to do so. The provider must publish the variation by the date and in the manner specified by the Minister in the approval.

39 At the end of subsection 179-15(1)

Add:

- ; or (c) the person is or was an *officer of Open Learning Australia (see subsection (3A)).

40 After subsection 179-15(3)

Insert:

- (3A) A person is an *officer of Open Learning Australia* if the person is:
- (a) an officer or employee of *Open Learning Australia; or
 - (b) a person who, although not an officer or employee of Open Learning Australia, performs services for or on behalf of Open Learning Australia.

41 At the end of subsection 179-15(4)

Add:

- ; or (c) for an *officer of Open Learning Australia—service as such an officer.

42 After paragraph 179-20(c)

Insert:

- (ca) disclosure by a Commonwealth officer of personal information to an *officer of Open Learning Australia to assist *Open Learning Australia in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;

43 At the end of section 179-20

Add:

- ; (e) disclosure by an officer of Open Learning Australia of personal information to a Commonwealth officer to assist the

Commonwealth officer in the Commonwealth officer's official employment;

- (f) disclosure by an officer of Open Learning Australia of personal information to an officer of a higher education provider to assist the provider's officer in performing duties or functions or in exercising powers, under, or for the purposes of, this Act;
- (g) disclosure by an officer of a higher education provider of personal information to an officer of Open Learning Australia to assist the officer of Open Learning Australia in performing duties or functions or in exercising powers, under, or for the purposes of, this Act.

44 At the end of subsection 179-25(1)

Add:

- ; or (c) in the case of an *officer of Open Learning Australia—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act.

45 Paragraph 179-35(1)(d)

Repeal the paragraph, substitute:

- (d) one or more of the following apply:
 - (i) the personal information is held in a computer of a higher education provider;
 - (ii) the personal information is held on behalf of a provider;
 - (iii) the personal information is held in a computer of *Open Learning Australia;
 - (iv) the personal information is held on behalf of Open Learning Australia.

46 Section 184-1

Repeal the section, substitute:

184-1 What this Part is about

Requirements relating to students' tax file numbers apply to assistance under Chapter 3 that gives rise to HELP debts.
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The Commissioner may notify higher education providers, or where appropriate Open Learning Australia, of matters relating to tax file numbers.

Higher education providers, and where appropriate Open Learning Australia, have obligations relating to notifying students about tax file number requirements.

Higher education providers have obligations relating to cancelling the enrolment of students who do not have tax file numbers.

Note: Part VA of the *Income Tax Assessment Act 1936* provides for issuing, cancelling or altering tax file numbers.

47 Subsection 187-1(1)

After “with a higher education provider”, insert “in a unit of study access to which was not provided by *Open Learning Australia”.

48 After subsection 187-1(1)

Insert:

- (1A) A student who accesses, or proposes to access, a unit of study through *Open Learning Australia, ***meets the tax file number requirements*** for assistance under Chapter 3 if:
- (a) the student notifies his or her *tax file number to an *appropriate officer of Open Learning Australia, and Open Learning Australia is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.

49 Subsection 187-1(2)

After “subsection (1)”, insert “or (1A) (as the case requires)”.

50 After subsection 187-1(3)

Insert:

- (3A) A notification under paragraph (1A)(a) may be included in a *request for Commonwealth assistance that the student has given to

*Open Learning Australia in relation to the unit of study for which the assistance is sought, or any other unit of study.

51 Subsection 187-1(4)

Repeal the subsection, substitute:

- (4) The *Commissioner may issue guidelines about the circumstances in which:
- (a) a higher education provider is to be, or is not to be, satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(a); and
 - (b) *Open Learning Australia is to be, or is not to be, satisfied that a number is a valid tax file number for the purposes of paragraph (1A)(a).

52 At the end of section 187-1

Add:

- (6) A certificate under paragraph (1A)(b) must be in a form approved by the *Commissioner.

53 After section 187-1

Insert:

187-2 Who is an appropriate officer?

- (1) An *appropriate officer* of a higher education provider, means a person, or a person included in a class of persons, whom:
- (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider;
- has appointed to be an appropriate officer of the provider for the purposes of this Act.
- (2) An *appropriate officer* of *Open Learning Australia, means a person, or a person included in a class of persons, whom:
- (a) the chief executive officer of Open Learning Australia; or
 - (b) a delegate of the chief executive officer of Open Learning Australia;
- has appointed to be an appropriate officer of Open Learning Australia for the purposes of this Act.

54 At the end of section 187-5

Add:

- (2) If a student *meets the tax file number requirements for assistance under paragraph 187-1(1A)(b):
 - (a) the student must notify his or her *tax file number to an *appropriate officer of *Open Learning Australia within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
 - (b) Open Learning Australia must be satisfied (in accordance with subsection 187-1(4)) that this number is a valid *tax file number.

55 Division 190 of Part 5-5 of Chapter 5 (heading)

Repeal the heading, substitute:

Division 190—In what circumstances can higher education providers and Open Learning Australia be notified of tax file number matters?

56 At the end of section 190-1

Add:

- (2) The *Commissioner may give to *Open Learning Australia written notice of the *tax file number of a student to whom Open Learning Australia provides access to a unit of study if the Commissioner:
 - (a) issues the tax file number to the student; or
 - (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.

57 At the end of section 190-5

Add:

- (3) The *Commissioner may give to *Open Learning Australia written notice of the *tax file number of a student to whom Open Learning Australia provides access to a unit of study if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn.

- (4) That new number is taken to be the number that the student notified to *Open Learning Australia.

58 At the end of section 190-10

Add:

- (3) If the *Commissioner is satisfied:
- (a) that the *tax file number that a student has notified to *Open Learning Australia:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and
 - (b) that the student has a tax file number;
- the Commissioner may give to Open Learning Australia written notice of the incorrect notification and of the student's tax file number.
- (4) That number is taken to be the number that the student notified to *Open Learning Australia.

59 After subsection 190-15(1)

Insert:

- (1A) If:
- (a) the *Commissioner is satisfied that the *tax file number that a student notified to *Open Learning Australia:
 - (i) has been cancelled since the notification was given; or
 - (ii) is for any other reason not the student's tax file number; and
 - (b) the Commissioner is not satisfied that the student has a tax file number;
- the Commissioner may give Open Learning Australia a written notice informing Open Learning Australia accordingly.

60 Subsection 190-15(2)

After "subsection (1)", insert "or (1A)".

61 After subsection 190-20(1)

Insert:

(1A) If the *Commissioner:

- (a) refuses a student's application for the issue of a *tax file number; or
 - (b) cancels a tax file number issued to a student;
- the Commissioner may, if access to a unit of study is provided to the student by *Open Learning Australia, give to Open Learning Australia written notice informing Open Learning Australia accordingly.

62 Subsection 190-20(2)

After "subsection (1)", insert "or (1A)".

63 Division 193 of Part 5-5 of Chapter 5 (heading)

Repeal the heading, substitute:

Division 193—What are the requirements on higher education providers and Open Learning Australia relating to tax file numbers?

64 After subsection 193-1(2)

Insert:

Requests for FEE-HELP assistance—requirements on Open Learning Australia

- (2A) *Open Learning Australia must notify a person in writing how to *meet the tax file number requirements if:
- (a) Open Learning Australia provides access to a unit of study to the person; and
 - (b) the person has, on or before the *census date for the unit, completed and signed a *request for Commonwealth assistance in relation to the unit; and
 - (c) in that request, the person requests *FEE-HELP assistance for the unit; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2B) *Open Learning Australia must notify the person under subsection (2A):

- (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives Open Learning Australia the *request for Commonwealth assistance;
- whichever is earlier.

(2C) A *request for Commonwealth assistance*, in relation to a person to whom *Open Learning Australia provides access to a unit of study, means a document:

- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit; and
- (b) that is in the form approved by the Minister; and
- (c) that the person gives to an *appropriate officer of Open Learning Australia on or before the person's enrolment in the unit.

Note: The heading to subsection 193-1(1) is altered by adding at the end “—requirements on higher education providers”.

65 Section 206-1 (cell at table item 2, column headed “Provision under which decision is made”)

Repeal the cell, substitute:

subsection 104-25(1)

66 Section 206-1 (after table item 2)

Insert:

2A	Refusal to re-credit a person's FEE-HELP balance	subsection 104-25(2)	*Open Learning Australia
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67 Section 206-1 (note)

Repeal the note, substitute:

- Note 1: The decisions referred to in items 1 and 2 of the table are made by a higher education provider on the Secretary's behalf.
- Note 2: The decisions referred to in item 2A of the table are made by Open Learning Australia on the Secretary's behalf.

68 Paragraph 209-1(1)(b)

Repeal the paragraph, substitute:

- (b) if the *decision maker was *Open Learning Australia acting on behalf of the *Secretary—the Secretary; or

- (c) in any other case—the decision maker, but see subsection (2).

69 Section 209-1 (note)

Repeal the note, substitute:

- Note 1: The Secretary may delegate to a review officer of a higher education provider the power to reconsider reviewable decisions made under Chapter 3: see subsection 238-1(2).
- Note 2: The Secretary may also delegate to a review officer of Open Learning Australia the power to reconsider reviewable decisions made under Chapter 3: see subsection 238-1(2A).

70 At the end of section 225-5

Add:

- ; and (c) the person's principal purpose is either or both of the following:
- (i) to provide education;
 - (ii) to conduct research.

71 At the end of section 225-10

Add:

- ; and (c) the person's principal purpose is either or both of the following:
- (i) to provide education;
 - (ii) to conduct research.

72 Paragraph 225-20(1)(b)

Repeal the paragraph, substitute:

- (b) following a reassessment of the person's approval made having regard to the *National Protocols—the person's circumstances have so changed that it is no longer appropriate that the person be empowered to issue its own qualifications; or
- (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-5(c).

73 Paragraph 225-20(2)(b)

Repeal the paragraph, substitute:

- (b) following a reassessment of the course accreditation made having regard to the *National Protocols—the content of, or manner of providing, the course has so changed that it is no longer appropriate to the award; or
- (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-10(c).

74 After subsection 238-1(2)

Insert:

(2A) The *Secretary may, in writing, delegate to a *review officer of *Open Learning Australia the Secretary's powers under Division 209 to reconsider *reviewable decisions made by Open Learning Australia relating to Chapter 3.

(2B) A *review officer* of *Open Learning Australia is a person, or a person included in a class of persons, whom:

- (a) the chief executive officer of Open Learning Australia; or
- (b) a delegate of the chief executive officer of Open Learning Australia;

has appointed to be a review officer of Open Learning Australia for the purposes of reviewing decisions made by it relating to assistance under Chapter 3.

75 Clause 1 of Schedule 1 (definition of *appropriate officer*)

Repeal the definition, substitute:

appropriate officer has the meaning given by section 187-2.

76 Clause 1 of Schedule 1 (definition of *census date*)

Repeal the definition, substitute:

census date, for a unit of study for a year, means:

- (a) if the student undertaking the unit has not accessed it through *Open Learning Australia—the date determined under section 169-25; and
- (b) if the student undertaking the unit has accessed it through Open Learning Australia—the date determined under subsection 104-4(5).

77 Clause 1 of Schedule 1 (definition of *course of study*)

Repeal the definition, substitute:

course of study means:

- (a) an *enabling course; or
- (b) a single course leading to a *higher education award; or
- (c) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to 1 or more *higher education awards.

Example: An example of a combined or double course covered by paragraph (c) is a course that leads to the higher education awards of Bachelor of Arts and Bachelor of Laws.

78 Clause 1 of Schedule 1

Insert:

eligible scholarship provider has the meaning given by subsection 46-15(3).

79 Clause 1 of Schedule 1 (definition of fee)

Repeal the definition, substitute:

fee, for a unit of study for a year:

- (a) if the student undertaking the unit has not accessed it through *Open Learning Australia—has the meaning given by section 19-102; and
- (b) if the student undertaking the unit has accessed it through Open Learning Australia—has the meaning given by subsections 104-4(3) and (4).

80 Clause 1 of Schedule 1

Insert:

officer of Open Learning Australia has the meaning given by subsection 179-15(3A).

81 Clause 1 of Schedule 1

Insert:

permanent humanitarian visa holder means the holder of a visa that is, or has at any time been, defined as a permanent humanitarian visa for the purposes of the regulations made under the *Migration Act 1958*.

82 Clause 1 of Schedule 1 (definition of *request for Commonwealth assistance*)

Repeal the definition, substitute:

request for Commonwealth assistance:

- (a) in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit is not provided by *Open Learning Australia)—has the meaning given by subsection 36-40(3); and
- (b) in relation to a person to whom access to a unit of study is provided by Open Learning Australia—has the meaning given by subsection 193-1(2C).

83 Clause 1 of Schedule 1 (definition of *review officer*)

Repeal the definition, substitute:

review officer:

- (a) of a higher education provider—has the meaning given by subsection 19-50(2); and
- (b) of *Open Learning Australia—has the meaning given by subsection 238-1(2B).

84 Clause 1 of Schedule 1 (definition of *tuition fee*)

Repeal the definition, substitute:

tuition fee:

- (a) in relation to a unit of study access to which is not provided by *Open Learning Australia—has the meaning given by section 19-105; and
- (b) in relation to a unit of study access to which is provided by Open Learning Australia—means a fee determined under subsection 104-4(2).

Part 2—Transitional provision

85 Saving of guidelines

- (1) Guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003* that were in force immediately before the commencement of this item continue to have effect on and after that commencement as if they had been issued under that subsection as in force after that commencement.
- (2) Subitem (1) does not prevent the amendment or revocation of the guidelines.

Schedule 3—Amendment of the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003

1 Item 5 of Schedule 1

Repeal the item, substitute:

5 Meaning of *institution*

In this Schedule:

institution has the meaning given by section 4 of the *Higher Education Funding Act 1988*.

Schedule 4—Amendment of the Australian National University Act 1991

Part 1—Amendments

1 Section 3 (paragraph (b) of the definition of *ex officio* member)

Repeal the paragraph.

2 Paragraph 10(1)(b)

Repeal the paragraph.

3 Paragraph 10(1)(q)

Omit “6”, substitute “7”.

4 Paragraph 12(2)(b)

Repeal the paragraph, substitute:

- (b) if the Pro-Chancellor is a member of the Council—he or she is present;

5 Subsection 12(3)

After “Pro-Chancellor”, insert “(if he or she is a member of the Council)”.

6 Subsection 13(1)

After “Pro-Chancellor”, insert “(if he or she is a member of the Council)”.

7 Subsection 13(3)

Omit “The”, substitute “Subject to subsection (4), the”.

8 At the end of subsection 13(3)

Add “(if he or she is a member of the Council)”.

9 Subsection 13(4)

Repeal the subsection, substitute:

- (4) If the proposed resolution deals with whether a member of the Council has breached his or her duties under section 18A, 18B, 18C, 18D, 18E or 18F as a member of the Council, the resolution is passed if each of at least a two-thirds majority of the members of the Council eligible to vote on that resolution:
- (a) signs a document containing the text of the resolution; and
 - (b) returns it to the Chancellor or Pro-Chancellor (if he or she is a member of the Council).
- (5) For the purposes of this section, a member of the Council is not eligible to vote on a resolution if:
- (a) the resolution relates to a matter in which the member has a direct or indirect pecuniary interest; or
 - (b) if the resolution deals with whether a member of the Council has breached his or her duties under section 18A, 18B, 18C, 18D, 18E or 18F as a member of the Council—he or she is the member to whom the resolution relates.

10 Paragraph 15(1)(k)

After “opinion”, insert “formed by resolution passed as mentioned in subsection (1A) or subsection 13(4)”.

11 After subsection 15(1)

Insert:

- (1A) For the purposes of paragraph (1)(k), the Council forms its opinion by resolution passed at a meeting of the Council if the resolution is passed at the meeting by at least a two-thirds majority of the members of the Council.

12 Subsection 15(2)

Omit “, (b)”.

13 Paragraph 15(2)(b)

Repeal the paragraph.

14 At the end of subsection 32(1)

Add “The appointee must not be a student or an employee of the University.”.

15 After subsection 32(1)

Insert:

- (1A) The Chancellor ceases to hold office as Chancellor if he or she becomes a student or an employee of the University.

16 Subsection 32(2)

After “Subject to”, insert “subsection (1A) and”.

17 At the end of subsection 33(1)

Add “The appointee must be a member of the Council appointed by the Minister under paragraph 10(1)(q).”.

18 After subsection 33(1)

Insert:

- (1A) The Pro-Chancellor may hold that office for a period that is shorter than the period of his or her office as a member of the Council. However, if:
- (a) the period of his or her office as a member of the Council ends at a particular time; or
 - (b) his or her office as a member of the Council becomes vacant under section 15 at a particular time;
- he or she also ceases to hold office as Pro-Chancellor at that time.

19 Subsection 33(2)

After “Subject to”, insert “subsection (1A) and”.

Part 2—Transitional provisions

20 Definition

In this Part:

Principal Act means the *Australian National University Act 1991*.

21 Amendments relating to the Chancellor

The amendments of section 32 of the Principal Act made by this Act apply to each person holding office as Chancellor under that section on or after the commencement of this item, whether that person was appointed to that office before, on or after that commencement.

22 Amendments relating to the Pro-Chancellor

- (1) This item applies to a person who holds office as Pro-Chancellor immediately before the commencement of this item.
- (2) The appointment of the person as Pro-Chancellor continues in force after the commencement of this item as if it had been made under section 33 of the Principal Act as amended by this Act.
- (3) For the purposes of the Principal Act as amended by this Act, the person is taken, on the commencement of this item:
 - (a) to have been appointed to the Council by the Minister under paragraph 10(1)(q) of the Principal Act on the recommendation of the Nominations Committee of Council; and
 - (b) to have been so appointed for a period equal to the remainder of the period of his or her office as Pro-Chancellor if no amendment of section 33 of the Principal Act had been made by this Act.

Schedule 5—Amendment of the Income Tax Assessment Act 1936

1 Paragraph 202F(1)(fa)

After “subsection 190-15(1)”, insert “or (1A)”.

2 Paragraph 202F(1)(fb)

After “subsection 190-20(1)”, insert “or (1A)”.

*[Minister’s second reading speech made in—
House of Representatives on 22 June 2004
Senate on 23 June 2004]*

(101/04)
