



Higher Education Funding Act 1988

No. 2, 1989 as amended

Compilation start date: 29 June 2013

Includes amendments up to: Act No. 103, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

The compiled Act

This is a compilation of the *Higher Education Funding Act 1988* as amended and in force on 29 June 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 26 August 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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**An Act relating to the funding of certain
institutions of higher education and associated
bodies, and for related purposes**

Chapter 1—Introductory

1 Short title

This Act may be cited as the *Higher Education Funding Act 1988*.

2 Commencement

- (1) Chapters 1, 2, 3, 4, 6 and 7 commence on the day on which this Act receives the Royal Assent.

2A Objects of Act

The objects of this Act are:

- (a) to support a higher education system that:
 - (i) is characterised by quality, diversity and equity of access; and
 - (ii) contributes to the development of cultural and intellectual life in Australia; and
 - (iii) is appropriate to meet Australia's social and economic needs for a more highly educated and skilled population; and
- (b) to strengthen Australia's knowledge base and enhance the contribution of Australia's research capabilities to national economic development and international competitiveness and the attainment of social goals.

Section 3

3 Definitions

In this Act, unless the contrary intention appears:

Aboriginal means a member of the Aboriginal race of Australia, and includes a descendant of the indigenous inhabitants of the Torres Strait Islands.

approved form means a form approved by the Minister.

building project means any of the following:

- (a) the purchase of land with or without buildings;
 - (b) the designing, erection or extension of a building or other facilities;
 - (c) the development or preparation of land for building or other purposes;
 - (d) the installation of water, electricity or other services;
- and includes:
- (e) in the case of the erection or extension of a building—the provision of furnishings or equipment for the building, or for the extensions of the building, as the case may be; and
 - (f) a renovation project.

capital expenditure means expenditure on a capital project.

capital project means a building project (other than a minor building project), or a non-building capital project.

co-operative multimedia centre means a body corporate established, ordinarily by a consortium of persons or organisations with interests that relate to the multimedia industry, for purposes that include:

- (a) arranging for, or providing services relating to, education and training; and
 - (b) undertaking other activities; and
 - (c) research and development;
- that will assist in the development of that industry.

course of study, in relation to an institution, means a course the completion of which leads to the granting of a degree, diploma, associate diploma or other award of the institution and includes a course of instruction provided by the institution for the purpose of enabling persons to undertake a course of study provided by the institution or by another institution but does not include a course of vocational education and training.

course of vocational education and training means a course that is identified as a course of vocational education and training in accordance with guidelines issued by the Minister for the purposes of this definition.

educational profile means an educational profile referred to in section 14.

electronic communication has the meaning given by the *Electronic Transactions Act 1999*.

fees, in relation to an institution, means tuition, examination or other fees payable to the institution by a student enrolled at, or applying for enrolment at, the institution in connection with a course of study or attendance at the institution, and includes fees payable to the institution in respect of the granting of a degree, diploma, associate diploma or other award but does not include:

- (a) fees the payment of which is voluntary;
- (b) fees payable in respect of an organisation of students, or of students and other persons, or in respect of the provision to students of amenities or services that are not of an academic nature;
- (c) fees payable in respect of residential accommodation;
- (d) fees imposed in accordance with guidelines issued by the Minister for the imposition of fees in respect of overseas students and students who are New Zealand citizens because of the operation of section 29 of the *Citizenship Act 1977* of New Zealand;
- (e) fees payable in respect of studies (other than a course of instruction provided by the institution for the purpose of enabling persons to undertake a course of study provided by the institution) that are not required or permitted to be

Section 3

undertaken for the purpose of obtaining a degree, diploma, associate diploma or other award of the institution;

- (f) fees payable, in accordance with guidelines issued by the Minister, by persons who attend or otherwise participate in courses of study but do not enrol for those courses, other than persons whose attendance at, or participation in, those courses is, or is to be, credited towards a degree, diploma, associate diploma or other award of another institution by arrangement between the institutions concerned;
- (g) fees of a kind that are incidental to studies that may be undertaken at institutions and that the Minister has notified each institution to be fees of a kind to which this paragraph applies; or
- (h) contributions payable under Chapter 4.

information system has the meaning given by the *Electronic Transactions Act 1999*.

institution, except in Chapters 4 and 5B, has the meaning given by section 4.

instrument, in relation to the Minister, means a determination, specification, approval, declaration, direction, requirement, guideline or notification made, issued or given by the Minister under, or for the purposes of, this Act.

limited operating purposes, in relation to an institution, means:

- (a) the general teaching purposes of the institution in connection with courses of study provided by or at the institution, including preparatory work in connection with proposed courses of study to be provided by or at the institution;
- (b) the purchase of equipment for the institution for purposes referred to in paragraph (a); and
- (c) minor building projects of the institution for purposes referred to in paragraph (a).

minor building project, in relation to an institution, means a building project of the institution that is determined by the institution to be a minor building project.

multimedia industry means the industry concerned with all aspects of the presentation of information through a single format by making co-ordinated use of a range of different means of communication.

non-building capital project, in relation to an institution, means a project that satisfies the criteria set out in guidelines issued by the Minister under section 26.

open learning organisation means a body corporate established by one or more institutions for the purposes of providing access, by clients of the organisation to tertiary education courses, or units of study, for which particular institutions or other tertiary education providers undertake to grant credit towards accredited tertiary awards.

operating purposes, in relation to an institution, means:

- (a) the general teaching purposes of the institution in connection with courses of study provided by or at the institution, including preparatory work in connection with proposed courses of study to be provided by or at the institution;
- (b) the general research purposes of the institution;
- (c) the provision by the institution of courses of continuing education;
- (ca) capital project of the institution for purposes referred to in paragraph (a), (b) or (c);
- (d) the purchase of equipment for the institution for purposes referred to in paragraph (a), (b) or (c); and
- (e) minor building projects of the institution for purposes referred to in paragraph (a), (b) or (c).

overseas student means a person who:

- (a) is not an Australian citizen; and
- (b) is enrolled, or proposes to become enrolled, in a course of study of an institution;

but does not include:

- (c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or
- (d) a New Zealand citizen; or

Section 3

- (e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse or dependent relative of such a representative.

permanent resident has the same meaning as in the *Australian Citizenship Act 2007*.

permanent visa has the same meaning as in the *Migration Act 1958*.

previous Assistance Act means the *States Grants (Tertiary Education Assistance) Act 1987*.

qualified accountant means:

- (a) a person registered as a company auditor or a public accountant under a law in force in a State or Territory;
- (b) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Certified Practising Accountants; or
- (c) a person approved by the Minister as a qualified accountant for the purposes of this Act.

qualified auditor means:

- (a) the Auditor-General of a State; or
- (b) a qualified accountant.

renovation project means either of the following:

- (a) the renovation or alteration of a building or other facilities, including the provision of furnishings or equipment for the renovated or altered parts of the building or other facilities;
- (b) the installation of water, electricity or other services.

Secretary means the Secretary of the Department.

State includes the Australian Capital Territory and the Northern Territory.

teaching hospital, in relation to an institution, includes a hospital in which students enrolled in the Faculty of Medicine, or School of Medicine, of the institution receive clinical instruction.

this Act does not include Chapter 7.

year means a calendar year.

year to which this Chapter applies means:

- (a) in Chapter 4—the year 1989 or any subsequent year up to and including the year 2004; or
- (aa) in Chapter 4A—the year 2002 or any subsequent year up to and including the year 2004; or
- (ab) in Chapter 5—the year 1994 or any subsequent year up to and including the year 2004; or
- (b) otherwise—the year 1989 or any subsequent year up to and including the year 2004.

4 Institutions

- (1) Subject to this section, in this Act, unless the contrary intention appears:

institution means any of the institutions of higher education specified in the following tables:

Table A

Australian Catholic University
Charles Sturt University
Southern Cross University
Macquarie University
The University of New England
The University of New South Wales
The University of Newcastle
The University of Sydney
University of Technology, Sydney
University of Western Sydney
University of Wollongong
Deakin University
La Trobe University
Monash University
Royal Melbourne Institute of Technology

Section 4

Table A

Swinburne University of Technology
The University of Melbourne
University of Ballarat
Victoria University of Technology
Central Queensland University
Griffith University
James Cook University
Queensland University of Technology
The University of Queensland
University of Southern Queensland
University of the Sunshine Coast
Curtin University of Technology
Edith Cowan University
Murdoch University
The University of Western Australia
The Flinders University of South Australia
The University of Adelaide
University of South Australia
University of Tasmania
Batchelor Institute of Indigenous Tertiary Education
Northern Territory University
Australian Maritime College
The Australian National University
University of Canberra
The University of Notre Dame Australia

Table B

Avondale College
Carnegie Mellon University, a non-profit organisation
established under Pennsylvania law
Australian College of Theology Council Incorporated
Australian Lutheran College

Table B

Christian Heritage College
Harvest Bible College Inc
Moore Theological College Council
Perth Bible College
Tabor College Incorporated (trading as Tabor Adelaide)
Tabor College (NSW) Incorporated
Wesley Institute
Adelaide College of Divinity Incorporated
Campion Institute Limited
Australian College of Physical Education
Brisbane College of Theology
Sydney College of Divinity Ltd
Tabor College Tasmania
Tabor College Victoria
Australian College of Applied Psychology Pty Ltd
Australian Guild of Music Education Incorporated
Australian Institute of Public Safety Pty Ltd
Blue Mountains International Hotel Management School Pty Ltd
Box Hill Institute of Technical and Further Education
East Coast Gestalt Training Incorporated
Institute of Counselling Incorporated
International College of Management Sydney Pty Ltd
JMC Pty Ltd
North Melbourne Institute of TAFE
Harvest West Bible College Inc
Adelaide Central School of Art Incorporated
The Cairnmillar Institute School of Counselling and Psychotherapy Pty Ltd
William Angliss Institute of TAFE
Holmes Commercial Colleges (Melbourne) Ltd
Melbourne Institute of Technology Pty Ltd
Think: Colleges Pty Ltd

Section 5

Table B

Gordon Institute of TAFE
Melbourne Institute for Experiential and Creative Arts
Therapy
Alphacrucis College Limited

- (2) The Minister may declare that a Table in subsection (1) is amended in the manner specified in the declaration and, where such a declaration is made, the declaration has effect accordingly.
- (3) For the purposes of section 8 of the *Acts Interpretation Act 1901*, a declaration under subsection (2) that amends a Table in subsection (1) by way of repealing part of that Table shall be taken to be an Act that repeals that part of that Table.

5 References to payments and Acts

For the purposes of this Act:

- (a) the Minister is to be taken to have paid money to an institution that is not a body corporate if he or she has paid money to the body administering the institution; and
- (b) an institution that is not a body corporate shall be taken to have done any act or thing that is required or permitted by this Act to be done if the body administering the institution has done that act or thing.

6 Proposed institutions

Where:

- (a) a State proposes to establish an institution;
- (b) the name of the proposed institution is referred to in an instrument signed by the Minister; and
- (c) an institution under that name has not been established or a body has not been established to administer the proposed institution;

then, for the purposes of this Act:

- (d) an institution under that name shall be taken to be in existence;

- (e) the Minister is taken to have paid money to the institution if he or she has paid the money to a person or body determined by the Minister to be the appropriate authority in relation to the institution for the purposes of this Act; and
- (f) the institution shall be taken to have done any act or thing that is required or permitted by this Act to be done if the appropriate authority in relation to the institution has done that act or thing.

7 Provision for superannuation, long service leave or workers' compensation

Where, for operating purposes or for limited operating purposes, an institution which has yet to adopt full accrual accounting principles makes provision, not inconsistent with actuarial principles, in the accounts (including the journals and ledgers) of the institution for future or contingent liabilities in respect of superannuation payments, long service leave or workers' compensation, the institution shall be taken, for the purposes of this Act, to have spent the amount of that provision for operating purposes or for limited operating purposes, as the case requires, in respect of the year in which that provision is made.

8 Special fund for Table A institutions

If:

- (a) an institution specified in Table A in subsection 4(1) transfers an amount of money into a special fund in the institution's accounts; and
- (b) the money in the fund is to be used only for future expenditure on the following items:
 - (i) capital projects of the institution;
 - (ii) equipment of the institution;
 - (iii) minor building projects of the institution;

the institution is to be taken, for the purposes of this Act, to have spent the amount for operating purposes in respect of the year in which the amount was transferred.

Section 8A

8A Special fund for Table B institutions

If:

- (a) an institution specified in Table B in subsection 4(1) transfers an amount of money into a special fund in the institution's accounts; and
- (b) the money in the fund is to be used only for future expenditure on the following items:
 - (i) equipment of the institution;
 - (ii) minor building projects of the institution;

the institution is to be taken, for the purposes of this Act, to have spent the amount for limited operating purposes in respect of the year in which the amount was transferred.

9 Making and variation of determinations etc.

- (1) Any determination, specification, approval, declaration, direction, requirement, guideline or notification made, issued or given by the Minister under, or for the purposes of, this Act must be made, issued or given in writing.
 - (1A) The issue of a guideline must be notified in the *Gazette*.
 - (1B) The notification must set out the address of the place from which copies of the guideline may be obtained.
- (2) Where a matter specified in an instrument signed by the Minister has been varied by another such instrument, a reference in this Act to that matter is a reference to that matter as so varied.

10 References to the Australian Capital Territory and the Northern Territory

The express references in this Act to the Australian Capital Territory or the Northern Territory do not imply that references in this Act to a State do not include references to that Territory.

11 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Section 12

Chapter 2—Grants for Higher Education Assistance

Part 2.1—Preliminary

12 Institutions to which provisions apply

The Minister may specify the institutions to which the several provisions of this Chapter respectively apply.

13 Undergraduate and post-graduate fees

- (1) The Minister may issue guidelines in relation to the provision by institutions of undergraduate or post-graduate courses for which fees may be charged.
- (2) A person undertaking a course provided in accordance with guidelines issued under subsection (1) may be charged fees in respect of the undertaking of that course.
- (3) Guidelines issued under subsection (1) must ensure that, on an equivalent full-time student unit basis, the number of domestic students who may be charged fees for a particular undergraduate course does not exceed 25% of the total number of places available for domestic students in that course.
- (4) Guidelines issued under subsection (1) must:
 - (a) require an institution not to charge a domestic student any fees for any undergraduate course in a year unless the institution meets the undergraduate target that applies for the purpose of calculating grants to the institution under section 15 or 16 for that year; and
 - (b) specify the amount that is applicable for the purposes of section 108 in respect of a breach of the requirement referred to in paragraph (a) of this subsection.
- (5) In this section, **domestic student** means a student who is not an overseas student.

Section 14

14 Educational profiles

- (1) Each institution shall provide to the Minister an educational profile in an approved form describing activities of the institution and may from time to time provide to the Minister variations of that profile.
- (2) An institution that has provided to the Minister an educational profile under this section may at any time provide to the Minister a new educational profile in an approved form in substitution for the previous educational profile or for the previous educational profile as varied, as the case may be.
- (3) The approved form of an educational profile to be submitted by an institution under this section shall be determined by the Minister after consultation with the institution.

Section 15

Part 2.2—Operating and other grants

15 Grants for expenditure for operating purposes

There is payable to an institution to which this section applies specified in Table A in subsection 4(1), for the purpose of financial assistance in relation to the expenditure of the institution for operating purposes in respect of a year to which this Chapter applies, such amount as the Minister determines having regard to the educational profile of the institution.

16 Grants for expenditure for limited operating purposes

There is payable to an institution to which this section applies specified in Table B in subsection 4(1), for the purpose of financial assistance in relation to the expenditure of the institution for limited operating purposes in respect of a year to which this Chapter applies, such amount as the Minister determines having regard to the educational profile (if any) of the institution.

17 Maximum grants

The total of the amounts that are payable under sections 15 and 16 in respect of a year shall not exceed:

- (a) in the case of the year 1989—\$2,213,382,000;
- (b) in the case of the year 1990—\$2,441,844,000;
- (c) in the case of the year 1991—\$2,599,025,000;
- (d) in the case of the year 1992—\$2,733,557,000; and
- (e) in the case of the year 1993—\$2,943,153,000; and
- (f) in the case of the year 1994—\$3,520,163,000; and
- (g) in the case of the year 1995—\$3,652,019,000; and
- (h) in the case of the year 1996—\$3,803,406,000; and
- (i) in the case of the year 1997—\$3,855,623,000; and
- (j) in the case of the year 1998—\$3,857,921,000; and
- (k) in the case of the year 1999—\$3,459,627,000; and
- (l) in the case of the year 2000—\$3,425,879,000; and

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- (m) in the case of the year 2001—\$2,756,161,000; and
- (n) in the case of the year 2002—\$2,847,634,000; and
- (o) in the case of the year 2003—\$2,904,491,000; and
- (p) in the case of the year 2004—\$3,010,199,000.

18 Conditions of grants

- (1) Financial assistance is granted to an institution under section 15 or 16 in respect of a year on the conditions that:
 - (b) the institution will spend each amount of financial assistance received by it only in accordance with the educational profile of the institution provided to the Minister as at the time of the making of the determination under section 15 or 16 that resulted in the payment; and
 - (c) the sum of the amounts spent by the institution for operating purposes or for limited operating purposes, as the case may be, in respect of that year is not less than the sum of the following amounts:
 - (i) the amount determined by the Minister under the section concerned in relation to the institution in respect of that year;
 - (ii) any amounts paid to the institution by students under subparagraph 41(1)(a)(i), paragraph 41(1A)(a) or 56(b) in that year less any amounts paid to students by the institution under paragraph 56(a) in that year;
 - (iii) any amounts paid to the institution by the Commonwealth under subsection 57(2) or (3) in that year; and
 - (d) subject to subsection (2), the institution does not charge any student fees in respect of that year or a part of that year except as provided by section 13; and
 - (g) the institution gives to the Minister, not later than such date as the Minister specifies, such statistical and other information as the Minister requires from the institution in respect of the provision of higher education by the institution during that year.
- (2) Paragraph (1)(d) does not apply in relation to:

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- (aa) The University of Notre Dame Australia; or
- (b) a course of study at Avondale College that is not funded in whole or in part by the Commonwealth.

19 Grants for restructuring and rationalisation programs

- (1) The Minister may determine, in respect of a year, an amount of financial assistance for an institution to which section 15 applies if the Minister is satisfied that the assistance will contribute towards restructuring and rationalising activities of the institution.
- (2) The Minister may make a determination under subsection (1) subject to conditions.
- (3) If the Minister determines an amount of financial assistance for an institution in respect of a year under subsection (1), the amount payable under section 15 to the institution in respect of the year is to be increased, from 1 January in that year, by the amount of the determination.
- (4) A determination under subsection (1) must be made in accordance with guidelines issued by the Minister.

20 Grants for superannuation expenses

- (1) The Minister may determine, for the purposes of this section, that expenditure of a specified kind by institutions to which this section applies, being expenditure in relation to the provision of superannuation benefits for staff of such institutions whose salaries are funded from grants provided under this Act for operating purposes or limited operating purposes, is to be relevant superannuation expenditure.
- (2) Where the Minister is satisfied that an institution has incurred, or will incur, relevant superannuation expenditure, the Minister may determine an amount of additional financial assistance payable to the institution in respect of a year to which this Chapter applies, and, subject to subsection (3), as from 1 January in that year, the amount determined under section 15 or 16, as the case requires, in relation to the institution in respect of that year shall be taken to be increased by the first-mentioned amount.

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- (3) The total of the amounts determined under subsection (2) in respect of a year shall not exceed:
- (a) in the case of the year 1989—\$108,829,000;
 - (b) in the case of the year 1990—\$104,931,000;
 - (c) in the case of the year 1991—\$40,979,000;
 - (d) in the case of the year 1992—\$53,191,000; and
 - (e) in the case of the year 1993—\$54,065,000; and
 - (f) in the case of the year 1994—\$78,613,000; and
 - (g) in the case of the year 1995—\$69,037,000; and
 - (h) in the case of the year 1996—\$102,027,000; and
 - (i) in the case of the year 1997—\$102,027,000; and
 - (j) in the case of the year 1998—\$108,673,000; and
 - (k) in the case of the year 1999—\$112,664,000; and
 - (l) in the case of the year 2000—\$118,297,000; and
 - (m) in the case of the year 2001—\$100,000,000; and
 - (n) in the case of the year 2002—\$112,793,000; and
 - (o) in the case of the year 2003—\$121,497,000; and
 - (p) in the case of the year 2004—\$124,340,000.

20A Grants for special purposes

- (1) There is payable to an institution, as financial assistance in respect of a year, in relation to expenditure of the institution for such purposes as the Minister determines, such amount (the *special purpose grant*) as the Minister determines.
- (2) The Minister may grant financial assistance to an institution under subsection (1) on such conditions (if any) as the Minister determines.
- (3) The total of the special purpose grants in respect of a year must not exceed the amount set out in section 17 in respect of the following year.
- (4) If the Minister determines a special purpose grant for an institution in respect of a year, then the amounts determined to be payable to the institution under section 15 or 16 in respect of:
 - (a) the year next following that year; or

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- (b) the 2 years next following that year; or
 - (c) the 3 years next following that year;
- are reduced by amounts that equal in total the amount of the special purpose grant.
- (5) Determinations under subsections (1) and (2), and reductions under subsection (4), must be made in accordance with guidelines issued by the Minister.

20B Grant to Marcus Oldham College

- (1) There is payable to Marcus Oldham College, in respect of the year 2004, such amount as the Minister determines.
- (2) The amount payable under this section must not exceed \$2,095,000.

21 Proposals and grants for projects of national priority etc.

- (1) The Minister may approve a proposal for expenditure as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies if:
 - (a) the proposal is for expenditure by an institution to which this section applies or by another incorporated body; and
 - (b) the proposal is for expenditure:
 - (i) upon a project relating to a matter of national priority in higher education; or
 - (ii) that will be used to maintain or enhance innovation in, or the quality of, higher education provided by an institution.
- (2) The Minister may give approval under subsection (1), subject to such conditions as he or she determines.
- (3) If the Minister approves a proposal under subsection (1) in respect of a year, then, subject to section 23C:
 - (a) the Minister must determine an amount as the estimated total expenditure on the proposal for the year; and
 - (b) the Minister must determine an amount of approved expenditure in relation to the proposal for the year; and

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- (c) the amount of approved expenditure on the proposal for the year must not be greater than the amount of estimated total expenditure on the proposal for the year.
- (4) If the Minister determines an amount in relation to a proposal for expenditure by an institution in respect of a year, the amount specified in a determination under section 15 or 16, as the case requires, in relation to the institution in respect of that year is taken to be increased by the amount of the approved expenditure.
- (5) If the Minister determines an amount in relation to a proposal for expenditure by a body other than an institution in respect of a year, there is payable to the body in connection with the proposal in respect of that year an amount equal to the amount determined by the Minister.

21A Conditions on certain grants under section 21

- (1) A body other than an institution is granted financial assistance under section 21 in relation to an approved proposal of the body in respect of a year on the condition set out in this section.
- (2) The total amount spent by the body in connection with the proposal during the year must not be less than the total amount of the financial assistance paid to the body under section 21 in relation to the proposal.
- (3) For the purposes of subsection (2), the total amount spent by the body during the year includes amounts spent by the body after the end of the year in respect of commitments entered into before the end of the year.

21B Grants in relation to innovation in, or quality of, higher education

- (1) Subject to section 23C, the Minister may determine an amount of financial assistance for an institution to which this section applies in respect of a year to which this Chapter applies if the Minister is satisfied that the assistance will be used to maintain or enhance innovation in, or the quality of, higher education provided by the institution.

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- (2) The Minister may make a determination under subsection (1) subject to conditions.
- (3) If the Minister determines an amount of financial assistance for an institution in respect of a year under subsection (1), the amount payable under section 15 or 16, as the case requires, in relation to the institution in respect of the year is to be increased from 1 January in that year by the amount of the determination.

22 Promotion of equality of opportunity

- (1) In this section:

equal opportunity project means a project designed to promote equality of opportunity in respect of higher education.

- (2) The Minister may approve a proposal for expenditure by an institution to which this section applies on an equal opportunity project as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies subject to such conditions as the Minister determines.
- (3) Where the Minister approves a proposal for expenditure by an institution in respect of a year, the Minister is (subject to section 23C) to determine an amount, not exceeding the estimated expenditure on the proposal in that year, as the amount of the approved expenditure in relation to the proposal and as from 1 January in that year, the amount specified in a determination under section 15 or 16, as the case requires, in relation to the institution in respect of that year is to be taken to be increased by the amount of the approved expenditure.

22A Grants to open learning organisations

- (1) The Minister may approve a proposal for expenditure by an open learning organisation for purposes connected with the provision of tertiary courses and units of study.
- (2) The Minister may approve a proposal for expenditure by all or any of the following:
 - (a) an open learning organisation;

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- (b) an institution;
 - (c) another incorporated body;for the purpose of providing teaching and learning assistance:
 - (d) to clients of an open learning organisation; or
 - (e) to such other persons as are identified, in accordance with subsection (2A), by the Minister in the notice approving the proposal for expenditure.
 - (2A) The Minister may identify persons for the purposes of paragraph (2)(e) in respect of a proposal for expenditure only if the Minister is satisfied that provision of teaching and learning assistance to those persons under that proposal:
 - (a) accords with national tertiary education priorities; and
 - (b) will foster open learning approaches in the provision of tertiary education services.
 - (3) If the Minister approves a proposal under subsection (1) or (2) in respect of a year, then, subject to subsection (5):
 - (a) the Minister must determine an amount as the estimated total expenditure on the proposal for the year; and
 - (b) the Minister must determine an amount of approved expenditure in relation to the proposal for the year; and
 - (c) the amount of approved expenditure on the proposal for the year must not be greater than the amount of estimated total expenditure on the proposal for the year.
 - (4) There is payable to an open learning organisation under subsection (1) or to an open learning organisation, institution or other body under subsection (2) an amount equal to the approved expenditure determined by the Minister under subsection (3) in respect of that agency or that organisation, institution or other body, as the case requires.
 - (5) The total of the amounts of approved expenditure determined by the Minister under subsection (3) in respect of proposals approved under subsections (1) and (2) must not exceed:
 - (a) for the year 1993—\$10,945,000; and
 - (b) for the year 1994—\$11,680,000; and
 - (c) for the year 1995—\$12,675,000; and
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- (d) for the year 1996—\$12,632,000;
 - (e) for the year 1997—\$215,000; and
 - (f) for the year 1998—\$218,000; and
 - (g) for the year 1999—\$221,000; and
 - (h) for the year 2000—\$225,000; and
 - (i) for the year 2001—\$230,000; and
 - (j) for the year 2002—\$235,000; and
 - (k) for the year 2003—\$241,000; and
 - (l) for the year 2004—\$247,000.
- (6) Financial assistance is granted to an open learning organisation in respect of a proposal approved under subsection (1) on condition that the organisation enter into an agreement with the Commonwealth that sets out the terms on which money is provided by the Commonwealth and accepted by the organisation.
- (7) Financial assistance is granted to an open learning organisation, institution or other body in respect of a proposal approved under subsection (2) on condition that the organisation, institution or other body enter into an agreement with the Commonwealth setting out the terms on which money is provided by the Commonwealth and accepted by the organisation, institution or other body.

23 Special research assistance

- (1) The Minister may, subject to such conditions as the Minister determines, approve a proposal, whether by an institution or otherwise, for expenditure by an institution to which this section applies on:
- (a) a research program; or
 - (b) a program that supports:
 - (i) research training; or
 - (ii) the conduct of research programs;
- as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies.
- (1A) The Minister may approve a proposal for expenditure by a body, other than an institution, on:
- (a) a research program; or

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- (b) a program that supports:
 - (i) research training; or
 - (ii) the conduct of research programs;to be undertaken by the body as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies subject to such conditions as the Minister determines.
- (1B) A proposal for expenditure by an institution or body cannot be approved under subsection (1) or (1A) in relation to the year starting on 1 January 2001 or a later year unless:
 - (a) there is an approved research and research training management plan for the institution or body and the year (see subsection (1C)); and
 - (b) the institution or body is an accredited higher education institution or body (see subsection (1D)); and
 - (c) the institution or body is listed in Schedule 1.
- (1C) For the purposes of paragraph (1B)(a), there is an approved research and research training management plan for an institution or body and a year if (and only if):
 - (a) the institution or body has, in writing, submitted a plan to the Minister that covers the year; and
 - (b) the Minister has, in writing, declared that he or she is satisfied that the plan meets the requirements in force under subsection (1E).
- (1D) For the purposes of paragraph (1B)(b), an institution or body is an accredited higher education institution or body if (and only if) the institution or body is included as a higher education institution on both of the following registers (as in force when the relevant expenditure proposal is being considered by the Minister):
 - (a) the Australian Qualifications Framework Register of Authorities empowered by Government to Accredit Post-Compulsory Education and Training Courses;
 - (b) the Australian Qualifications Framework Register of Bodies with Authority to Issue Qualifications.

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- (1E) The Minister may, by instrument in writing, determine requirements to be satisfied for a plan to be approved under paragraph (1C)(b).

Note: A determination under this subsection is a legislative instrument—see paragraph 110(b).

- (2) If the Minister approves a proposal under subsection (1) or (1A) in respect of a year, then, subject to section 23C:
- (a) the Minister must determine an amount as the estimated total expenditure on the proposal for the year; and
 - (b) the Minister must determine an amount of approved expenditure in relation to the proposal for the year; and
 - (c) the amount of approved expenditure on the proposal for the year must not be greater than the amount of estimated total expenditure on the proposal for the year.
- (3) There is payable to an institution or another body to which an approved proposal relates, for the purpose of financial assistance in respect of expenditure incurred or to be incurred by the institution or other body in connection with the approved proposal in respect of the year to which the proposal relates, an amount equal to the amount of the approved expenditure in relation to the proposal.
- (5) Financial assistance is granted to an institution or another body under subsection (3) in relation to an approved proposal of the institution or body in respect of a year on the condition that:
- (a) the sum of the amounts spent by the institution or other body in connection with the proposal in respect of that year, being amounts spent before the end of that year or spent after that year in respect of commitments entered into before the end of that year;
- is not less than:
- (b) the sum of the amounts of financial assistance paid to the institution or body under this section in relation to the proposal.

Section 23A

23A Grants for advanced engineering centres

- (1) The Minister may approve a proposal for expenditure as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies if:
 - (a) the proposal is for expenditure by an institution to which this section applies; and
 - (b) the proposal is for expenditure upon a centre that, in the opinion of the Minister, is an advanced engineering centre.
- (2) In forming his or her opinion under paragraph (1)(b), the Minister must have regard to the following matters:
 - (a) the quality of the undergraduate and post-graduate training courses offered by the proposed centre;
 - (b) whether the functions of the proposed centre include the provision of:
 - (i) specialist engineering short courses for persons engaged in industry; or
 - (ii) continuing education and retraining in engineering; or
 - (iii) short courses in engineering for post-secondary teachers, including teachers of technical and further education;
 - (c) the extent to which the proposed centre is able and willing to provide, under contract, engineering research and design services for industry;
 - (d) the degree of support which industry is prepared to provide to the proposed centre.
- (3) The Minister may give approval under subsection (1) subject to conditions.
- (4) If the Minister approves a proposal in respect of a year, then, subject to section 23C:
 - (a) the Minister must determine an amount as the estimated total expenditure on the proposal for the year; and
 - (b) the Minister must determine an amount of approved expenditure in relation to the proposal for the year; and

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- (c) the amount of approved expenditure on the proposal for the year must not be greater than the amount of estimated total expenditure on the proposal for the year.
- (5) There is payable to an institution to which an approved proposal relates an amount equal to the amount of approved expenditure determined by the Minister in relation to the proposal.
- (6) The amount payable to an institution under subsection (5) is for financial assistance in respect of expenditure incurred or to be incurred by the institution:
 - (a) in connection with the proposal; and
 - (b) in respect of the year to which the proposal relates.

23B Conditions of grants for advanced engineering centres

- (1) An institution is granted financial assistance under section 23A in relation to an approved proposal of the institution in respect of a year on the condition set out in this section.
- (3) The total amount spent by the institution in connection with the proposal during the year must not be less than the total amount of the financial assistance paid to the institution under section 23A in relation to the proposal.
- (4) For the purposes of subsection (3), the total amount spent by the institution includes amounts spent by the institution after the end of the year in respect of commitments entered into before the end of the year.

23BA Grants to co-operative multimedia centres

- (1) The Minister may approve a proposal for expenditure by a co-operative multimedia centre if the Minister is satisfied that the purposes of the proposal include:
 - (a) arranging for, or providing services related to, education and training; and
 - (b) undertaking other activities;that will assist in the development of the multimedia industry.

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- (2) If the Minister approves a proposal under subsection (1), the Minister must, subject to section 23C, determine an amount of approved expenditure in respect of the proposal in respect of the year commencing on the date of the approval and each of the 2 succeeding years.
- (3) Financial assistance is granted to a co-operative multimedia centre in respect of a proposal approved under subsection (1) on condition that the centre enters into an agreement with the Commonwealth that sets out the terms on which money is provided by the Commonwealth and accepted by the centre.
- (4) After the start of the third year of funding of a co-operative multimedia centre the Minister must arrange for a review of the operations of the centre to be conducted. The review is to be completed not later than 6 months before the end of the third year of funding.
- (5) If the Minister is satisfied, on the basis of the review, that the multimedia centre has substantially assisted in the development of the multimedia industry, the Minister may approve a further proposal for expenditure by the centre that meets the criteria specified in subsection (1).
- (6) If the Minister approves a further proposal under subsection (5), the Minister must determine an amount of approved expenditure in respect of the proposal in respect of each of the 4 years following the end of the third year of funding or in respect of each of such lesser number of years as the Minister thinks appropriate.
- (7) Financial assistance is granted to a co-operative multimedia centre in respect of a further proposal approved under subsection (5) on condition that the centre enters into a further agreement with the Commonwealth that sets out the terms on which money is provided by the Commonwealth and accepted by the centre.
- (8) There is payable to a co-operative multimedia centre in respect of a year an amount equal to the approved expenditure determined by the Minister under subsection (2) or (6) in respect of that centre and that year.

Section 23C

23C Limit on total funds available for certain grants

- (1) In any year, the total of:
- (a) the amount determined by the Minister under section 21 (Proposals and grants for projects of national priority etc.); and
 - (b) the amounts determined by the Minister under section 21B (Grants in relation to innovation in or the quality of higher education); and
 - (c) the amounts determined by the Minister under section 22 (Promotion of equality of opportunity); and
 - (d) the amounts determined by the Minister under section 23 (Special research assistance); and
 - (e) the amounts determined by the Minister under section 23A (Grants for advanced engineering centres); and
 - (f) the amounts determined by the Minister under section 23BA (Grants for co-operative multimedia centres);
- must not exceed the consolidated amount prescribed for that year.
- (2) For the purposes of subsection (1), the following consolidated amounts are prescribed:
- (a) for the year 1994—\$431,919,000; and
 - (b) for the year 1995—\$432,147,000; and
 - (c) for the year 1996—\$496,250,000; and
 - (d) for the year 1997—\$477,793,000; and
 - (e) for the year 1998—\$481,163,000; and
 - (g) for the year 1999—\$461,839,000; and
 - (h) for the year 2000—\$472,820,000; and
 - (i) for the year 2001—\$977,318,000; and
 - (j) for the year 2002—\$1,065,435,000; and
 - (k) for the year 2003—\$1,121,399,000; and
 - (l) for the year 2004—\$1,077,028,000.

24 Grants in respect of teaching hospitals

- (1) In this section:
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appropriate costs, in relation to a teaching hospital of an institution, means:

- (a) expenditure (other than expenditure on building projects) incurred by the hospital in relation to:
 - (i) parts of the hospital used exclusively by students enrolled in the Faculty of Medicine, or School of Medicine, of the institution, by students enrolled in the Faculty of Medicine, or School of Medicine, of any other institution in relation to which that hospital is a teaching hospital and by their teachers; and
 - (ii) facilities and equipment so used in connection with those parts of the hospital; and
 - (b) expenditure incurred in the purchase of books and periodicals for the medical library of the hospital.
- (2) Subject to subsection (3), there is payable to an institution to which this section applies, for the purpose of financial assistance in respect of contributions by the institution towards the appropriate costs, in respect of a year to which this Chapter applies, of the teaching hospital or teaching hospitals of the institution, such amount as the Minister determines.
- (3) The total of the amounts determined under subsection (2) in respect of a year shall not exceed:
- (a) in the case of the year 1989—\$3,815,000;
 - (b) in the case of the year 1990—\$4,029,000;
 - (c) in the case of the year 1991—\$4,258,000;
 - (d) in the case of the year 1992—\$4,421,000; and
 - (e) in the case of the year 1993—\$4,494,000; and
 - (f) in the case of the year 1994—\$4,592,000; and
 - (g) in the case of the year 1995—\$4,647,000; and
 - (h) in the case of the year 1996—\$4,738,000; and
 - (i) in the case of the year 1997—\$4,819,000; and
 - (j) in the case of the year 1998—\$4,896,000; and
 - (k) in the case of the year 1999—\$4,972,000; and
 - (l) in the case of the year 2000—\$5,058,000; and
 - (m) in the case of the year 2001—\$5,168,000; and
 - (n) in the case of the year 2002—\$5,287,000; and

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- (o) in the case of the year 2003—\$5,412,000; and
 - (p) in the case of the year 2004—\$5,539,000.
- (4) Financial assistance is granted to an institution under subsection (2) in respect of a year on the condition that:
 - (a) the sum of the amounts spent by the institution in making contributions towards the appropriate costs, in respect of that year, of the teaching hospital or teaching hospitals of the institution;is not less than:
 - (b) the sum of the amounts of financial assistance paid to the institution under subsection (2) in relation to the institution in respect of that year.

25 Grants in respect of drug and alcohol education in teaching hospitals

- (1) There is payable to an institution to which this section applies, for the purpose of financial assistance in relation to the review of, and research in connection with, the undergraduate medical curriculum of the institution in so far as it is concerned with matters relating to the abuse of alcohol and drugs, in respect of the year 1989 or the year 1990, such amount as the Minister determines.
- (2) The total of the amounts determined under subsection (1) in respect of a year shall not exceed:
 - (a) in the case of the year 1989—\$584,000; and
 - (b) in the case of the year 1990—\$618,000.
- (3) Financial assistance is granted to an institution under subsection (1) in respect of a year on the condition that:
 - (a) the sum of the amounts spent by the institution for the purpose of the review and research referred to in subsection (1) in the institution in respect of that year;is not less than:
 - (b) the sum of the amounts of financial assistance paid to the institution under subsection (1) in respect of that year.

Section 25A

25A Grants to support student organisations—payments to institutions

- (1) If, in respect of a year, the Minister is satisfied that a State has taken, or refused or failed to reverse, action having the effect, directly or indirectly, of preventing or hindering:
 - (a) the imposition, by the governing body of an institution, of fees for an organisation that represents the interests generally of students at the institution; or
 - (b) the collection of fees so imposed;the Minister may authorise payment to that institution in respect of that year for that organisation of such an amount by way of financial assistance as the Minister determines to be appropriate.
- (2) The total of the amounts determined by the Minister in subsection (1) for payment to an institution for an organisation in respect of a year must not exceed an amount that the Minister has determined would have been imposed, or imposed and collected, by that institution for that organisation in respect of that year were it not for that action of the State, or that refusal or failure by the State to reverse action already taken.
- (3) Financial assistance is granted to an institution for an organisation under subsection (1) in respect of a year on the conditions that:
 - (a) the institution will pay each amount of that financial assistance received by it to the student organisation concerned without undue delay; and
 - (b) the institution will give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an appropriate form, as to the amounts so paid to the organisation.

25B Grants to support student organisations—direct payments

- (1) If, in respect of a year, the Minister is satisfied that a State has taken, or refused or failed to reverse, action that has or would have the effect, directly or indirectly, of preventing or hindering:
 - (a) acceptance by an institution, or payment by an institution to a student organisation, of such amount of financial assistance

Section 25B

- as the Minister determines, or proposes to determine, under subsection 25A(1); or
- (b) the application, for one or more permitted purposes, by the institution or student organisation of fees imposed, or imposed and collected, on behalf of a student organisation; the Minister may authorise payment to that student organisation in respect of that year of such an amount, by way of financial assistance, as the Minister determines to be appropriate.
- (2) The total amount determined by the Minister under subsection (1) for payment to the student organisation must not exceed:
- (a) if paragraph (1)(a) applies—an amount that the Minister determines would have been imposed, or imposed and collected, by the institution for the student organisation in respect of that year; or
- (b) if paragraph (1)(b) applies—an amount that the Minister determines would have been available for application by the institution or the student organisation in respect of permitted purposes in respect of that year;
- but for that action of the State, or that refusal or failure by the State to reverse action already taken.
- (3) Financial assistance is granted to the student organisation under subsection (1) in respect of a year on the conditions that the student organisation:
- (a) uses the financial assistance for permitted purposes; and
- (b) gives to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an appropriate form, certifying that the financial assistance was used in accordance with paragraph (a).
- (4) The student organisation may accept and use the financial assistance for permitted purposes.
- (5) This section has effect despite the provisions of any law, whether written or unwritten, of a State to the contrary.

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(6) In this section:

permitted purposes means:

- (a) the purposes of providing benefits to students within the meaning of paragraph 51(xxiiiA) of the Constitution; or
- (b) purposes that otherwise further the objects of a student organisation;

being lawful purposes.

student organisation means an organisation that has as one of its objects or purposes the furthering of the interests generally of students at an institution and that is:

- (a) a financial corporation or trading corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) an incorporated body or an unincorporated body of any other kind.

26 Guidelines for non-building capital projects

The Minister may issue guidelines setting out criteria that are to be applied in deciding whether a proposal is a proposal for a non-building capital project.

27 Guidelines for special capital projects

The Minister may issue guidelines setting out criteria that are to be applied in deciding whether a proposal for expenditure is a proposal for expenditure on a special capital project.

27A Grants for special capital projects

- (1) The Minister may approve a proposal for expenditure as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies if:
 - (a) the proposal is for expenditure by an institution to which this section applies; and
 - (b) the proposal is for expenditure upon a capital project which, in the opinion of the Minister, is a special capital project within the meaning of guidelines issued under section 27.

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- (2) The Minister may give approval under subsection (1) subject to conditions.
 - (3) If the Minister approves a proposal in respect of a year:
 - (a) the Minister must determine an amount as the estimated maximum Commonwealth contribution towards the project; and
 - (b) the Minister must determine an amount of approved expenditure on the project in respect of that year; and
 - (c) the amount of approved expenditure determined under paragraph (b) must not be greater than the amount determined as the estimated maximum Commonwealth contribution towards the project.
 - (4) Subject to subsections (5) and (6), there is payable to an institution to which an approved proposal relates an amount equal to the amount of approved expenditure determined by the Minister for that year in relation to the proposal.
 - (5) If an amount has been determined under paragraph (3)(a) as the estimated maximum Commonwealth contribution towards a special capital project of an institution, the total of the amounts payable to the institution in relation to that capital project under this Act must not exceed the estimated maximum Commonwealth contribution towards the project as determined, or last determined, under paragraph (3)(a).
 - (6) The total of the amounts of approved expenditure approved by the Minister under subsection (3) must not exceed:
 - (a) for the year 1994—\$35,537,000; and
 - (b) for the year 1995—\$36,328,000; and
 - (c) for the year 1996—\$36,927,000; and
 - (d) for the year 1997—\$37,556,000; and
 - (e) for the year 1998—\$38,158,000; and
 - (f) for the year 1999—\$38,751,000; and
 - (g) for the year 2000—\$39,423,000; and
 - (h) for the year 2001—\$40,275,000; and
 - (i) for the year 2002—\$41,209,000; and
 - (j) for the year 2003—\$49,489,000; and
-

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- (k) for the year 2004—\$43,170,000.
- (7) If the Minister approves a proposal for expenditure on a special capital project under subsection (3), the Minister may direct that specified information be given to the Minister in respect of the project at such time and in such manner as is specified in the direction.
- (8) In this section:
- maximum Commonwealth contribution*, in relation to a special capital project, means the proportion of the amount estimated by the Minister to be the total cost of the project that the Minister considers to be the appropriate Commonwealth contribution under this section towards the project.

27B Minister may give directions in relation to special capital projects

If:

- (a) information relating to a special capital project of an institution is given to the Minister in accordance with a direction under subsection 27A(7); and
- (b) the Minister has considered the information;
- the Minister may, for the purposes of this Chapter, give directions to the institution with respect to the manner in which the project is carried out.

27C Conditions attaching to special capital grants

Financial assistance is granted to an institution under section 27A in relation to a special capital project of an institution in respect of a year on the conditions that:

- (a) the sum of the amounts spent by the institution in relation to work carried out before the end of that year in connection with the project will be not less than the sum of the amounts paid to the institution in relation to the project under this Chapter; and

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- (b) the institution will provide information relating to the project to the Minister in accordance with any relevant direction under subsection 27A(7); and
- (c) the project will be carried out in accordance with any relevant direction under section 27B; and
- (d) if the Minister so requests, the institution will give to the Minister, by such date as the Minister specifies, such particulars as are specified by the Minister concerning the progress or expected progress of the work or matter constituting the project.

27D Expenditure on international marketing and promotion

- (1) The Minister may determine, in respect of a year, an amount that is to be available for expenditure by the Commonwealth on the international marketing and promotion of Australian education and training services.
- (2) The amount determined under subsection (1) in respect of a year must not exceed:
 - (a) in the case of the year 1998—\$1,016,000; and
 - (b) in the case of the year 1999—\$2,468,000; and
 - (c) in the case of the year 2000—\$3,883,000; and
 - (d) in the case of the year 2001—\$4,947,000; and
 - (e) in the case of the year 2002—\$5,285,000; and
 - (f) in the case of the year 2003—\$5,410,000; and
 - (g) in the case of the year 2004—\$5,537,000.
- (3) In this section:

Australian education and training services means education and training provided by institutions.

Part 2.4—Transitional

28 Adjustments where estimated 1988 enrolments not equal to actual enrolments

- (1) In this section:

actual enrolment number, in relation to a relevant higher education institution in respect of the year 1988, means the actual number of relevant enrolments at the institution in respect of that year.

estimated enrolment number, in relation to a relevant higher education institution in respect of the year 1988, means the number of relevant enrolments at the institution estimated by the Minister under section 5 of the previous Assistance Act.

- (2) In this section, ***relevant enrolment*** and ***relevant higher education institution*** have the same meanings as in section 3 of the previous Assistance Act.
- (3) If the actual enrolment number in relation to a relevant higher education institution in a State in respect of the year 1988 is less than the estimated enrolment number in relation to the institution in respect of that year, there is payable to the State in relation to the institution the amount ascertained in accordance with the formula:

$$\frac{90(E - A)C}{100}$$

- (4) Payment of an amount to a State under Part 2.2 in relation to a relevant higher education institution in respect of the year 1989 is subject to the additional condition that, if the estimated enrolment number in relation to the institution in respect of the year 1988 is less than the actual enrolment number in relation to the institution in respect of that year, the State will pay to the Commonwealth the amount ascertained in accordance with the formula

$$\frac{90(E - A)C}{100}$$

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- (5) For the purposes of the formulae in subsections (3) and (4):

A is the actual enrolment number in relation to the institution in respect of the year 1988;

E is the estimated enrolment number in relation to the institution in respect of that year; and

C is the amount of charge applicable to that year under section 4D of the *States Grants (Tertiary Education Assistance) Act 1984*.

- (6) An amount payable to a State under subsection (3) in relation to a relevant higher education institution may be added to a grant to the State in relation to that institution in respect of the year 1989.
- (7) An amount payable by a State to the Commonwealth in accordance with the condition referred to in subsection (4) may be deducted from a grant to the State in respect of the year 1989 in relation to the institution in relation to which the amount became payable.
- (8) Where the Minister is satisfied that:
- (a) 2 or more relevant higher education institutions that existed as separate institutions in the year 1988 have amalgamated before or during the year 1989 so as to form a new relevant higher education institution; or
 - (b) a relevant higher education institution that existed as a separate institution in the year 1988 has been incorporated in another relevant higher education institution before or during the year 1989;
- the Minister may give a direction in accordance with subsection (9) or (10), as the case requires.
- (9) The Minister may direct that an amount that would have been payable to a State under subsection (3) in relation to either or any of the institutions first referred to in paragraph (8)(a) or the institution first referred to in paragraph (8)(b), if the institution concerned had continued to exist as a separate institution, continues to be payable to the State and may be added to a grant to the State in relation to the new institution referred to in paragraph (8)(a) or the other institution referred to in paragraph (8)(b), as the case may be, in respect of the year 1989.

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- (10) The Minister may direct that an amount that would have been payable by a State to the Commonwealth in accordance with the condition referred to in subsection (4) in relation to either or any of the institutions first referred to in paragraph (8)(a) or the institution first referred to in paragraph (8)(b), if the institution concerned had continued to exist as a separate institution, continues to be payable and may be deducted from a grant to the State in relation to the new institution referred to in paragraph (8)(a) or the other institution referred to in paragraph (8)(b), as the case may be, in respect of the year 1989.

Chapter 4—Higher Education Contribution Scheme

Part 4.1—Preliminary

34 Interpretation

- (1) In this Chapter, unless the contrary intention appears:

annual Band amount has the meaning given by section 40A.

annual course contribution has the meaning given by section 40.

appropriate officer, in relation to an institution, means a person, or a person included in a class of persons, appointed by, or by a delegate of, the chief executive officer of the institution to be an appropriate officer of the institution for the purposes of this Chapter.

Band has the meaning given by section 40A.

census date, in relation to a course of study undertaken by a student at an institution in a semester, means:

- (a) in the case of a course undertaken in a period that is taken to be a semester by virtue of subsection 37(2) or (3):
 - (i) if the course is of not less than 6 weeks duration—the date that is 14 days after the date on which the student starts to undertake the course of study; or
 - (ii) if the course is of less than 6 weeks duration—the date on which the student starts to undertake the course of study; or
- (b) in any other case—such date as is specified for the purposes of this definition by the Minister, by notice published in the *Gazette*, in relation to courses of study undertaken in that semester.

Commissioner means the Commissioner of Taxation.

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contributing student, in relation to a designated course of study at an institution, means a student, other than an exempt student, in relation to that course of study.

contribution means a contribution payable under this Chapter.

designated course of study, in relation to an institution, means a course of study at that institution other than:

- (b) a course of study provided in accordance with guidelines issued by the Minister under:
 - (i) subsection 13(1); or
 - (iv) subsection 32(5) of the *Maritime College Act 1978*;
- (c) a course of instruction provided to persons for the purpose of enabling them to undertake a course of study; or
- (d) a course provided at Avondale College, being a course that is not funded in whole or in part by the Commonwealth.

exempt student has the meaning given by section 35.

HEC assessment debt means an amount that is required to be paid in respect of an accumulated HEC debt under section 106Q and is included in a notice of an assessment made under section 106T.

HEC semester debt has the meaning given by section 106J.

post-graduate award student, in relation to a post-graduate course of study at an institution in respect of a year, means a student who holds an award, granted in accordance with guidelines issued by the Minister for the purposes of this definition, in respect of that course of study in respect of that year.

semester means a semester in a year to which this Chapter applies.

standard student load has a meaning affected by subsection 39(2).

student means a person who proposes to undertake on or after 1 January 1989, or is undertaking or has undertaken on or after that date, a course of study at an institution and, when used in relation to a particular course of study at an institution, means a person who proposes to undertake on or after 1 January 1989, or is undertaking or has undertaken on or after that date, that course of study at that institution.

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student load, in relation to a course of study undertaken by a student, has a meaning affected by section 36.

tax file number, in relation to a person, means a number issued to the person by the Commissioner, being a number that is either:

- (a) a number issued to the person under section 44 or under any provisions of another Act that correspond to that section; or
 - (b) a number notified by the Commissioner to the person as the person's income tax file number.
- (2) Expressions used in this Chapter that are defined in the *Income Tax Assessment Act 1936* have in this Chapter, unless the contrary intention appears, the same meanings as in that Act.
- (3) For the purposes of this Chapter, the payment of an amount to an institution by a person other than a student in respect of a contribution payable by the student to the institution shall be taken to constitute payment of that amount to the institution by the student.
- (4) In this Chapter, **institution** means any of the following institutions of higher education:
- (a) the institutions referred to in section 4;
 - (b) Australian Defence Force Academy;
 - (f) National Institute of Dramatic Art;
 - (h) The Australian Film, Television and Radio School.

35 Exempt students

- (1) This section has effect for the purposes of this Chapter.
- (2) A post-graduate award student in relation to a post-graduate course of study at an institution in respect of a semester is an exempt student in relation to that course of study in respect of that semester.
- (3) A person who proposes to attend or participate in but not to enrol for, is attending or participating in but is not enrolled for, or has attended or participated in but was not enrolled for, a course of study is, and shall be taken to have been at all times, an exempt student in relation to that course of study.

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- (4) An overseas student in relation to a course of study at an institution in respect of a semester is an exempt student in relation to that course of study in respect of that semester.
- (4A) A student of The University of Notre Dame Australia who pays fees for a course of study at that University in respect of a semester is an exempt student in relation to that course of study in respect of that semester.
- (5) A student is an exempt student in relation to a course of study in respect of a semester if:
 - (a) all of the places in that course of study in respect of that semester are fully funded by an employer within the meaning of subsection (6); and
 - (b) at least some of the places so funded are funded to assist the institution providing the course to meet the needs of the employer; and
 - (c) the student will occupy one of those fully funded places whether or not the student is an employee of the employer.
- (5A) A student is an exempt student in relation to a course of study in respect of a semester if:
 - (a) the student will occupy a place in that course of study in respect of that semester; and
 - (b) that place is jointly funded by an employer within the meaning of subsection (6) and by the Commonwealth; and
 - (c) the student is, in accordance with guidelines issued by the Minister for the purposes of this section, declared by the institution providing the course of study to be an exempt student.
- (5B) The Minister may make guidelines for the purposes of subsection (5A) setting out the circumstances in which an institution may declare that a student occupying a place in a course of study in respect of a semester:
 - (a) that is provided by that institution; and
 - (b) that is jointly funded by an employer within the meaning of subsection (6) and by the Commonwealth;is an exempt student.

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- (6) In subsections (5), (5A) and (5B), **employer** means a person who pays, or is liable to pay, salary or wages and includes:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) any instrumentality of the Commonwealth, a State or a Territory.
- (7) A student is an exempt student in relation to a course of study at an institution in respect of a semester if:
 - (a) the institution has awarded the student a merit-based equity scholarship for the course; and
 - (b) the institution awarded the scholarship in accordance with guidelines issued by the Minister for the purposes of this subsection.
- (8) A student is an exempt student in relation to a course of study in respect of a semester if:
 - (a) the student is a New Zealand citizen because of the operation of section 29 of the *Citizenship Act 1977* of New Zealand; and
 - (b) the student's study is being sponsored or funded by the Australian International Development Assistance Bureau; and
 - (c) fees in respect of the student for the course of study are to be charged under guidelines issued under paragraph (d) of the definition of **fees** in section 3.

36 Student load not to include work experience in industry

- (1) If:
 - (a) a student is undertaking a course of study at an institution; and
 - (b) the student does work outside the institution as part of, or in connection with, that course of study; and
 - (c) the work is not supervised by a member of the institution's staff or by a person who is paid by the institution to do such supervision; and
 - (d) the purpose of doing the work is to obtain work experience in industry;

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then, for the purposes of this Chapter, the student's student load for that course does not include that work.

- (2) Section (1) applies whether or not the work forms part of the standard student load for that course.
- (3) The Minister may issue guidelines setting out criteria that the institution must apply in deciding whether the requirements in paragraphs (1)(a), (b), (c) and (d) are satisfied.

37 Semesters

- (1) If a year to which this Chapter applies in which an institution provides a course of study is not divided into semesters for the purposes of the institution, the Minister may, after consulting the institution, determine that, subject to this section, that year is, in relation to that course of study at that institution, to be taken for the purposes of this Chapter to be divided into 2 semesters and specify the dates on which those semesters respectively start and end.
- (2) Where an institution provides a course or courses of study during a period that starts during or after the period that would, but for this subsection, be the last semester to end at the institution in a year to which this Chapter applies and ends before the period that would, but for this subsection, be the first semester at the institution in the next following year, the first-mentioned period shall be taken for the purposes of this Chapter to be a separate semester for the purposes of the institution and to occur in that last-mentioned year.
- (3) Where an institution provides a course or courses of study during a period that does not fully coincide with a period that is otherwise, for the purposes of this Chapter a semester for the purposes of the institution, that period is taken for the purposes of this Chapter (other than subsection (2)) to be a separate semester for the purposes of the institution.

Part 4.2—Contributions

Division 1—Additional condition of grant of financial assistance

38 Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution referred to in section 4 on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting the operation of subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Division 2—Imposition and payment of contributions

39 Requirement to pay contributions

- (1) An institution shall, in respect of each semester, require each contributing student who is undertaking a designated course of study at the institution on the census date in respect of that course of study in respect of that semester to pay to the institution in respect of that semester a contribution, ascertained in accordance with this section, towards the cost of the provision of that course of study.
- (2) Each institution shall determine, in accordance with guidelines issued by the Minister, in respect of each designated course of study that may be undertaken at the institution in a year to which this Chapter applies, a standard student load that represents an equivalent full time student unit.

Amount of contribution for pre-1997 student

- (3) The contribution for a pre-1997 student is worked out using the formula:

Annual course contribution \times Student load

where:

annual course contribution means the annual course contribution for the year in which the semester occurs.

student load means the student's student load for the course in the semester, expressed as a proportion of the standard student load for the course in the year in which the semester occurs.

- (4) For the purposes of this section, a student is a **pre-1997 student** in relation to a course of study if:
 - (a) the student commenced the course before 1997, as a contributing student; or

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- (b) the institution that provides the course has determined that the student is to be treated as a pre-1997 student in relation to the course, and that determination is made in accordance with guidelines issued by the Minister for the purposes of this subsection.

Amount of contribution for other students

- (5) The contribution for a student (other than a pre-1997 student) is the total of the amounts worked out under subsection (6) for each of the Bands.
- (6) The amount for a Band is worked out using the formula:

Annual Band amount \times Student load for the Band

where:

annual Band amount means the annual Band amount for the Band for the year in which the semester occurs.

student load for the Band means the student's student load for the course in the semester, for units of study in the Band, expressed as a proportion of the standard student load for the course in the year in which the semester occurs.

Cents to be disregarded

- (7) If an amount worked out under subsection (3) or (5) includes any cents, the cents must be disregarded.

40 Annual course contribution

- (1) The annual course contribution for the purposes of this Chapter in respect of the year 1992 is \$2,250.
- (2) The annual course contribution for the purposes of this Chapter in respect of a year (in this subsection called the **relevant year**) subsequent to the year 1992 is:

- (a) subject to paragraph (b), the amount ascertained by multiplying the annual course contribution in respect of the year immediately preceding the relevant year by the factor ascertained in accordance with subsection (3) in relation to the relevant year; or
 - (b) if an amount calculated under paragraph (a) consists of a number of whole dollars and a number of cents—the amount so calculated disregarding the cents.
- (3) The factor to be ascertained for the purposes of subsection (2) in relation to a year is:
 - (a) the number, calculated to 3 decimal places, ascertained by dividing the index number for the September quarter in the immediately preceding year by the index number for the September quarter in the year that next preceded that preceding year; or
 - (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so ascertained increased by 0.001.
- (4) Subject to subsection (6), the index number for the September quarter in the year 1991 is 100.00.
- (5) The Minister shall, before the end of the year 1992 and before the end of each subsequent year:
 - (a) determine the index number for the September quarter in the year concerned; and
 - (b) cause to be published in the *Gazette* a notice specifying the index number so determined and specifying the amount of the annual course contribution for the purposes of this Part in respect of the next following year.
- (6) If at any time, whether before or after the commencement of this section, the Minister has changed or changes the reference base for the Higher Education Operating Grants Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

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(7) In this section:

index number, in relation to the September quarter in a year being the year 1992 or a subsequent year, means the Higher Education Operating Grants Index number for that quarter published by the Minister in the *Gazette*, being a number that takes into account changes in costs incurred by institutions since the September quarter in the immediately preceding year.

40A Annual Band amounts that apply from 1997

(1) Each institution must allocate each relevant unit of study to one of the following Bands, in accordance with guidelines issued by the Minister:

- (a) Band 3;
- (b) Band 2;
- (c) Band 1.

For this purpose, ***relevant unit of study*** means any unit of study that may be undertaken at the institution as part of a designated course of study in a year to which this Chapter applies.

(2) The annual Band amounts for 1997 are:

- (a) \$5,500 for Band 3; and
- (b) \$4,700 for Band 2; and
- (c) \$3,300 for Band 1.

(3) The annual Band amount for a Band for a later year is worked out by:

- (a) multiplying the annual Band amount for that Band for the year before that later year by the factor that applies to the later year under subsection 40(3); and
- (b) disregarding any cents.

(4) For each year from 1998 onwards, the Minister must:

- (a) work out the annual Band amounts for the year concerned; and
- (b) before the start of the year, publish a notice in the *Gazette* specifying those annual Band amounts and the factor that was used to work them out.

41 Requirements before enrolment or undertaking course

- (1) An institution shall not permit a contributing student who is not an excepted student to enrol for, or undertake, a designated course of study in a semester unless:
- (a) the student:
 - (i) has paid to the institution 75% (or such greater percentage as the student chooses) of the contribution that the institution assesses will be payable by the student in respect of the course of study in respect of that semester if the student is undertaking the course of study as a contributing student on the census date in respect of the course of study in respect of that semester; and
 - (ii) has given to the appropriate officer of the institution a document in the approved form, signed by the student, stating that the student requests the Commonwealth, in the event of the student undertaking the course of study as a contributing student on the census date in respect of the course of study in respect of any semester and paying at least 75% of the contribution payable by the student in respect of the course of study in respect of the semester concerned, to pay to the institution the remainder (if any) of that contribution in discharge of the student's liability to pay that remainder of that contribution; or
 - (b) the student has given to the appropriate officer of the institution a document in the approved form, signed by the student:
 - (i) stating that the student asks the Commonwealth, if the student is undertaking the course of study as a contributing student on the census date for the course of study for any semester without having paid at least \$500 or at least 75% of the contribution payable by the student for the course of study for the semester concerned (providing that this amount is less than \$500):
 - (A) to lend to the student an amount equal to the unpaid part of the contribution; and

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- (B) to apply the amount lent in discharge of the student's liability to pay the unpaid part of the contribution; and
 - (ii) acknowledging that, if the Commonwealth complies with the request, the student will be liable to make payments in accordance with Chapter 5A; or
 - (c) subsection (1A) applies to the student.
- (1A) This subsection applies to the student if the student:
 - (a) has made a student payment (see subsection (1B)) to the institution in respect of a course of study in a semester; and
 - (b) has made the student payment on or before the census date in respect of the course in respect of that semester; and
 - (c) has given to the appropriate officer of the institution a document in the approved form, signed by the student:
 - (i) stating that the student asks the Commonwealth, if the student is undertaking the course as a contributing student on the census date for the course for a semester and has made a student payment for the course:
 - (A) to lend to the student an amount (the *formula amount*) worked out using the following formula:
$$\text{Assessed contribution} - \left(\text{Student payment} \times \frac{4}{3} \right)$$
 - (B) to apply the money lent in paying to the institution, in discharge of the student's liability to pay the remainder of the assessed contribution (see subsection (1B)), the amount of that assessed contribution outstanding after deducting from that assessed contribution the amount of the student payment; and
 - (ii) stating that the student asks the Commonwealth if, having made one or more student payments in respect of the course, the student is undertaking the course in a later semester as a contributing student on the census date for the course without having made a student

payment in respect of the course in that semester on or before the census date for the course for that semester:

- (A) to lend to the student an amount equal to the unpaid part of the assessed contribution; and
 - (B) to apply the amount lent in discharge of the student's liability to pay the unpaid part of the assessed contribution; and
- (iii) acknowledging that, if the Commonwealth complies with a request, the student will be liable to make payments in accordance with Chapter 5A.

Example: If the student's assessed contribution for the course of study is \$2,350 and the student makes a payment of \$1,000, the amount that the Commonwealth will lend to the student is \$1,017, ie:

$$\$2,350 - \left(\$1,000 \times \frac{4}{3} \right)$$

This amount is the *formula amount* (see sub-subparagraph (1A)(c)(i)(A)).

The amount that the Commonwealth will pay to the institution to discharge the student's liability is \$1350, ie:

$$\$2,350 - \$1,000$$

The value to the student of the discount for making the student payment of \$1,000 is \$333 (this amount forms part of the amount the Commonwealth pays to the institution to discharge the student's liability), ie:

$$\$1,350 - \$1,017$$

(1B) For the purposes of subsection (1A):

assessed contribution, in relation to a course of study, means the contribution that an institution assesses will be payable by a student in respect of the course at the institution in respect of a semester, if the student is undertaking the course as a contributing student on the census date in respect of that course in respect of that semester.

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student payment means an amount of \$500 or more that is less than 75% of the assessed contribution payable by the student in respect of a course of study.

- (1C) If an amount worked out by using the formula in subsection (1A) is an amount made up of dollars and cents, then:
- (a) if the amount of cents in the amount is 50—the amount is to be rounded up to the nearest dollar; and
 - (b) in any other case—the amount is to be rounded up or down to the nearest dollar.
- (2) An institution must not permit a contributing student who is an excepted student to enrol for, or undertake, a designated course of study in a semester unless the student has paid to the institution the total amount of the contribution that the institution assesses will be payable by the student in respect of the course of study in respect of that semester if the student is undertaking the course of study as a contributing student on the census date in respect of the course of study in respect of that semester.
- (3) In subsections (1) and (2), ***excepted student***, in relation to a designated course of study in respect of a semester, means:
- (a) a student who, on the day (***enrolment day***) on which he or she completes enrolment for the course in respect of that semester, is a New Zealand citizen, other than a New Zealand citizen who:
 - (i) is also an Australian citizen; or
 - (ii) is the holder of a permanent visa and:
 - (A) does not, on enrolment day, satisfy the prescribed residency requirements; or
 - (B) if, on enrolment day, he or she satisfies the prescribed residency requirements—first satisfied those requirements on a day within the period of 12 months immediately preceding enrolment day; or
 - (b) a student (other than a New Zealand citizen) who:
 - (i) is a permanent resident; and
 - (ii) on enrolment day satisfies the prescribed residency requirements; and

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- (iii) first satisfied the prescribed residency requirements on a day more than one year before enrolment day; or
- (c) a student (other than a New Zealand citizen) who:
 - (i) is a permanent resident; and
 - (ii) will be resident outside Australia for the duration of a course in that semester for a reason other than a requirement of the course;but does not include a student who has been granted an approval to become an Australian citizen under section 24 of the *Australian Citizenship Act 2007* and who has yet to make the pledge referred to in section 26 of that Act.
- (4) For the purposes of subsection (3), the ***prescribed residency requirements*** for a person on a particular day are that the person:
 - (a) should have been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than one year during the period of 2 years immediately preceding that day; and
 - (b) should have been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than 2 years during the period of 5 years immediately preceding that day.
- (5) In determining, for the purpose of subparagraph (3)(c)(ii), whether a person will be resident outside Australia for the duration of the designated course in a semester, any period of residence in Australia that cannot reasonably be regarded as indicating an intention to reside in Australia for the duration of the course in that semester must be disregarded.

41A Institutions to give students certain information on enrolment

- (1) If:
 - (a) a contributing student has given an institution a document as mentioned in paragraph 41(1)(b) or (1A)(c); and
 - (b) the document does not include a number that purports to be the student's tax file number;the institution must notify the student in writing of the requirements of section 41B.

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- (2) The institution must notify the student within 7 days after the student gives the institution the document.

41B Certain students to give tax file number information by census date

- (1) This section applies if:
- (a) a contributing student has given an institution a document as mentioned in paragraph 41(1)(b) or (1A)(c) in respect of a designated course of study; and
 - (b) the document does not include a number that purports to be the student's tax file number; and
 - (c) the institution has enrolled the student for, or permitted the student to undertake, the course in a semester.
- (2) The student must, on or before the census date for the semester:
- (a) notify the appropriate officer of the institution in writing of a number that the institution is satisfied (in accordance with guidelines issued by the Commissioner) is the student's tax file number; or
 - (b) give to that officer a certificate (in a form approved by the Commissioner) stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.

41C Student must be excluded from course if tax file number information not provided

If, as at the census date for the semester, a student:

- (a) has not notified the appropriate officer of the institution of a number that the institution is satisfied (in accordance with guidelines issued by the Commissioner) is the student's tax file number; and
 - (b) has not complied with paragraph 41B(2)(b);
- the institution must cancel the student's enrolment in the course, and must not permit the student to undertake the course in that semester.

42 Power of Commissioner to inform institution concerning tax file number

(1) Where:

- (a) the Commissioner receives an application referred to in paragraph 41B(2)(b) asking for the issue of a tax file number; and
- (b) the Commissioner has issued or issues a tax file number to the student;

the Commissioner may give to the institution concerned written notice of the tax file number.

(2) If the Commissioner is satisfied:

- (a) that the tax file number notified by a student to an institution:
 - (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 the institution concerned written notice of the incorrect notification and of the student's tax file number, and that number shall be taken to be the number notified by the student.

(2A) If the Commissioner issues a new tax file number to a student in place of a tax file number that has been withdrawn, the Commissioner may give to the institution concerned written notice of the student's tax file number, and that number is taken to be the number notified by the student.

(3) If:

- (a) the Commissioner is satisfied that the tax file number notified by a student to an institution:
 - (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, by written notice given to the institution, inform the institution accordingly.

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- (4) The Commissioner shall give a copy of any notice under subsection (3) to the student concerned, together with a written statement of the reasons for the decision to give the notice.
- (5) If the Commissioner:
 - (a) refuses an application by a student for the issue of a tax file number; or
 - (b) cancels a tax file number issued to a student;the Commissioner may, by written notice given to the institution in which the student is enrolled, inform the institution accordingly.

42A Institution to cancel enrolment of student without tax file number

- (1) If:
 - (a) an institution receives notice under subsection 42(3) or (5) to the effect that a student enrolled at the institution does not have, or no longer has, a tax file number; and
 - (b) at the end of 28 days after the institution receives that notice, the institution has not been notified of a number that the institution is satisfied (in accordance with guidelines issued by the Commissioner) is the student's tax file number;the institution must cancel the student's enrolment and must not permit the student to undertake the course for which the student was enrolled.
- (2) The regulations may set out procedures for institutions to notify students who may be affected by subsection (1) of the need to obtain a valid tax file number.

43 Application for issue or notification of tax file number

- (1) A student may apply to the Commissioner for the issue or notification of a tax file number.
- (2) The application shall be in a form approved by the Commissioner.
- (3) The application may be lodged at, or posted to, the office of a Deputy Commissioner of Taxation.

44 Issuing of tax file numbers

- (1) Subject to section 49, if, on an application for the issue of a tax file number made by a student, the Commissioner is satisfied that the applicant's identity has been established, the Commissioner shall issue a tax file number to the applicant.
- (2) If, on such an application, the Commissioner is not satisfied as to the applicant's true identity, the Commissioner may refuse the application.
- (3) The Commissioner shall issue a tax file number to a student by giving to the student a written notice of the number.
- (4) The Commissioner shall refuse an application by a student for a tax file number by giving to the student a written notice of the refusal and of the reasons for the refusal.

45 Current tax file number

On the issue under section 44 of a tax file number to a student, any tax file number previously issued to the student and not already cancelled or withdrawn ceases to have effect.

46 Deemed refusal by Commissioner

- (1) If the Commissioner has not decided an application by a student for a tax file number within 28 days after the application was made, the student may, at any time, give to the Commissioner written notice that the student wishes to treat the application as having been refused.
- (2) Where a student gives notice under subsection (1), the Commissioner shall be taken, for the purposes of sections 50 and 51, to have refused the application for a tax file number on the day on which the notice was given.

47 Cancellation of tax file numbers

- (1) Where the Commissioner concludes that a tax file number was issued to a student under an identity that is not the student's true

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identity, the Commissioner may, by written notice given to the student, cancel the tax file number.

- (2) The Commissioner shall set out in the notice the reasons for the Commissioner's conclusion.

48 Alteration of tax file numbers

The Commissioner may, at any time, by written notice given to a student who has a tax file number:

- (a) withdraw that number; and
- (b) issue to the student a new tax file number in place of the withdrawn number.

49 Notification of issued tax file numbers

If, on an application for the issue or notification of a tax file number made by a student, the Commissioner is satisfied that the student already has a tax file number, the Commissioner shall give to the student a written notice of the number.

50 Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner:
 - (a) to give a notice under subsection 42(3);
 - (b) refusing an application for the issue of a tax file number under section 44 (including a decision that is to be taken to have been made by virtue of section 46); or
 - (c) to cancel a tax file number under section 47.
- (2) Where an application has been made to the Tribunal for review of a decision referred to in paragraph (1)(b), the orders that may be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* include an order that the Commissioner issue a tax file number to the applicant pending the determination of the application for review.

- (3) A tax file number issued in accordance with an order referred to in subsection (2) ceases to have effect when the application is finally disposed of.
- (4) When a tax file number ceases to have effect under subsection (3), this Chapter (other than this section) applies as if the number had been cancelled.

51 Statements to accompany notification of decisions

- (1) Where notice in writing of a decision of a kind referred to in section 50 is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

52 Unauthorised requirement etc. that tax file number be quoted

- (1) A person must not require or request a student to quote the student's tax file number.

Penalty: \$10,000 or imprisonment for 2 years, or both.

- (1A) Subsection (1) does not apply if:
 - (a) provision is made by or under this Chapter or another law of the Commonwealth for the student to quote the number to the person; or
 - (b) the person requires or requests the number to be quoted in connection with the person acting on the student's behalf in the conduct of the student's affairs.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

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- (2) Nothing in subsection (1) prohibits a person from requesting the production of a document, or a copy of a document, on which a student's tax file number is recorded if the student is not prevented from removing the tax file number from the document.
- (3) For the purposes of this section, a person who makes to a student a statement that the student could reasonably understand to mean that the student is required or requested to quote the student's tax file number shall be taken to require or request the student to quote the number.
- (4) Nothing in this section shall be taken to impose on a person an obligation to require or request a student to quote a tax file number.

53 Unauthorised recording etc. of tax file number

- (1) A person must not:
 - (a) record a student's tax file number or maintain such a record; or
 - (b) use a student's tax file number in a manner connecting it with the student's identity; or
 - (c) divulge or communicate a student's tax file number to another person.

Penalty: \$10,000 or imprisonment for 2 years, or both.

- (1A) Subsection (1) does not apply to the extent required or permitted by, or reasonably necessary in order to comply with an obligation imposed by, this Chapter or another law of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

- (1B) Subsection (1) does not apply in connection with the person acting on the student's behalf in the conduct of the student's affairs.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

- (2) Without affecting any obligation imposed by or under a law of the Commonwealth other than this section, nothing in subsection (1) shall be taken to impose on a person an obligation to do an act referred to in paragraph (1)(a), (b) or (c).

54 Notice by institution

- (1) An institution shall give to each student who is undertaking a designated course of study at the institution on the census date in respect of that course of study in respect of a semester a written notice:
- (a) setting out particulars of so much of that course of study as is being undertaken by the student in that semester;
 - (b) stating whether the student is a contributing student or an exempt student in relation to that course of study in respect of that semester;
 - (c) setting out the student's student load in respect of that course of study in that semester expressed as a proportion of the standard student load in respect of that course of study in the year in which that semester occurs; and
 - (d) if the student is a contributing student in relation to that course of study in respect of that semester, specifying:
 - (i) the amount of the contribution payable by the student in respect of that course of study in respect of that semester under section 39; and
 - (ii) if the student has made a payment in respect of the contribution in accordance with subparagraph 41(1)(a)(i) or paragraph 41(1A)(a):
 - (A) the amount of that payment; and
 - (B) if any amount is payable to the student under paragraph 56(a) or, if the student requests, under paragraph 56(b)—that amount.
- (1A) However, an institution is not required to give a student a notice under subsection (1) in relation to a course of study in respect of a semester if:
- (a) the student is an overseas student in relation to the course of study in respect of the semester; and
 - (b) the student pays fees for the course of study in respect of the semester.
- (2) A notice to a student under subsection (1) in relation to a semester shall be given not later than a date specified by the Minister by

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notice published in the *Gazette* in relation to that semester for the purposes of this section.

- (3) If, after giving a notice to a student under subsection (1) or this subsection, an institution is satisfied that a material particular in the notice was not, or has ceased to be, correct, the institution shall give a further written notice to the student setting out the correct particular.
- (4) A notice to a student under this section is given for the purpose only of providing information to the student, and the liability of a student to pay a contribution to an institution is not affected by a failure of the institution to give such a notice or to give such a notice by the specified date or by any incorrect statement in such a notice.
- (5) A notice given to a student under this section shall set out the effect of subsections 55(1) and (2).

55 Requests for correction of notices

- (1) If a student who receives a notice from an institution under section 54 considers that the notice was not, or has ceased to be, correct in a material particular, the student may, within 14 days after the date on which the notice is sent, or within such further period as the appropriate officer of the institution allows, give to that officer a written request for the notice to be corrected in respect of that particular.
- (2) A request shall specify the particular that is considered to be incorrect and shall set out the grounds on which the student considers that particular to be incorrect.
- (3) The making of a request does not affect the liability of the student to pay the contribution.
- (4) Where a request is received by an institution, the institution shall, as soon as practicable, consider the matter to which the request relates and notify the student of its decision on the request and, if it is satisfied that a material particular in the notice under section 54 was not, or has ceased to be, correct, give a further notice under subsection 54(3).

56 Overpayment of contribution

Where a student has made a payment to an institution in accordance with subparagraph 41(1)(a)(i) or paragraph 41(1A)(a) in respect of the contribution that the institution assessed would be payable by the student in respect of a course of study in respect of a semester under section 39:

- (a) if no contribution is payable by the student, the institution shall, as soon as practicable and in any event not later than 14 days after giving notice to the student under section 54 in respect of the course of study in respect of the semester, pay to the student an amount equal to the amount paid by the student; or
- (b) if the amount of the payment exceeds 75% of the amount of the contribution payable by the student and the student requests the repayment of the whole or a part of the excess, the institution shall, as soon as practicable after receiving the request, pay to the student an amount equal to the excess or that part of the excess, as the case may be.

56A Institution to refund student payment if enrolment cancelled under section 41C

If:

- (a) a student's enrolment in a course of study in respect of a semester has been cancelled under section 41C; and
- (b) the student has made a payment to the institution under subsection 41(1A) in respect of the contribution that the institution assessed would be payable by the student in respect of the course of study in respect of a semester;

the institution must, as soon as practicable, pay to the student an amount equal to the amount of the payment made by the student.

56B Institution to refund student payment if enrolment cancelled under section 42A

If:

- (a) a student's enrolment in a course of study in respect of a semester has been cancelled under section 42A; and

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- (b) the student has made a payment to the institution under subsection 41(1A) in respect of the contribution that the institution assessed would be payable by the student in respect of the course of study in respect of the semester in which the student's enrolment in the course of study was cancelled;

the institution must, as soon as practicable, and in any event not later than 14 days after giving notice to the student of the cancellation, pay to the student an amount equal to the amount of the payment made by the student.

56C Electronic communications from students to institutions

- (1) This section applies in relation to a document, notice, certificate or request that:
 - (a) is described in one of the following provisions:
 - (i) subparagraph 41(1)(a)(ii);
 - (ii) paragraph 41(1)(b);
 - (iii) paragraph 41(1A)(c);
 - (iv) paragraph 41B(2)(a);
 - (v) paragraph 41B(2)(b);
 - (vi) section 55; and
 - (b) is required or permitted by the provision to be given by the student to the appropriate officer of the institution.
- (2) The student complies with the provision, so far as it requires or permits the student to give the document, notice, certificate or request to the officer, if the student gives the document, notice, certificate or request to the officer:
 - (a) by electronic communication using an information system:
 - (i) that is declared by an appropriate officer of the institution to be a system that may be used by any student to give to an appropriate officer of the institution such a document, notice, certificate or request; and
 - (ii) that is declared by the Minister to meet guidelines relating to information systems that may be used to give such a document, notice, certificate or request; and

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- (b) at a time when section 9 of the *Electronic Transactions Act 1999* does not apply to the requirement or permission because of regulations made under that Act.
- (3) This section does not limit the ways in which the student may comply with the provision.

Declaration by appropriate officers of institution

- (4) An appropriate officer of an institution may declare, in writing given to the Minister, that a specified information system may be used by any student to give to an appropriate officer of the institution a document, notice, certificate or request required or permitted by a provision mentioned in paragraph (1)(a) to be given by a student to an appropriate officer of the institution.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Declarations by Minister

- (5) The Minister may declare, in writing given to an institution, that a specified information system meets the guidelines relating to information systems that may be used by a student to give to an appropriate officer of the institution a document, notice, certificate or request that the student is required or permitted by a provision mentioned in paragraph (1)(a) to give.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Guidelines

- (6) The Minister may issue written guidelines relating to information systems that may be used to give documents, notices, certificates or requests that students are required or permitted by a provision mentioned in paragraph (1)(a) to give.

Note: Guidelines under this subsection may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

56D Electronic signature of communications by students

- (1) This section applies in relation to a document that:
-

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- (a) is described in one of the following provisions:
 - (i) subparagraph 41(1)(a)(ii);
 - (ii) paragraph 41(1)(b);
 - (iii) paragraph 41(1A)(c); and
 - (b) is required by the provision to be signed by the student who gives it to the appropriate officer of an institution.
- (2) The student complies with the requirement if the student's identity and approval of the document are made apparent in connection with the document:
- (a) by a method:
 - (i) that is declared by an appropriate officer of the institution to be a method that may be used in connection with such a document; and
 - (ii) that is declared by the Minister to meet guidelines relating to methods of identifying students, and indicating their approval of documents, in connection with such documents; and
 - (b) at a time when section 10 of the *Electronic Transactions Act 1999* does not apply to the requirement because of regulations made under that Act.
- (3) This section does not limit the ways in which the student may comply with the requirement.

Declarations by appropriate officers of institutions

- (4) An appropriate officer of an institution may declare, in writing given to the Minister, that a specified method may be used, in connection with a document required by a provision mentioned in paragraph (1)(a) to be signed by a student, to indicate the student's identity and approval of the document.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Declarations by Minister

- (5) The Minister may declare, in writing given to an institution, that a specified method meets the guidelines relating to methods of identifying students, and indicating their approval of documents, in

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connection with documents required by a provision mentioned in paragraph (1)(a) to be signed by students.

Note: A declaration under this subsection may be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Guidelines

- (6) The Minister may issue written guidelines relating to methods of identifying students, and indicating their approval of documents, in connection with documents that students are required by a provision mentioned in paragraph (1)(a) to sign.

Note: Guidelines under this subsection may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

56E Electronic communications from institutions to students

- (1) This section applies to a notice that is described in section 41A or 54 and given by an institution to a student by electronic communication using an information system to which the student has access provided by the institution in accordance with guidelines about access to information systems used to give notices described in that section.
- (2) For the purposes of paragraph 9(1)(a) of the *Electronic Transactions Act 1999*, it is reasonable to expect that the notice will be readily accessible so as to be useable for subsequent reference.
- (3) For the purposes of paragraph 9(1)(d) of the *Electronic Transactions Act 1999*, the student is taken to consent to the giving of the notice by electronic communication.

Note: This section has the effect that subsection 9(1) of the *Electronic Transactions Act 1999* will treat the electronic communication of the notice as meeting the requirement in section 41A or 54 of this Act to give the notice.

- (4) The Minister may issue written guidelines about institutions providing students with access to information systems used by institutions to give students notices described in section 41A or 54.

Note: Guidelines issued under this section may be revoked or varied. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Division 3—Discharge by Commonwealth of students' liabilities for contributions

57 Commonwealth to discharge students' liabilities

- (1) Where a student in relation to a course of study at an institution is liable to pay a contribution to the institution in respect of that course of study in respect of a semester, the following provisions of this section apply.
- (2) If the student has made a payment in respect of the contribution in accordance with subparagraph 41(1)(a)(i) and has complied with subparagraph 41(1)(a)(ii), the Commonwealth shall, as a benefit to the student, pay to the institution an amount equal to the remainder (if any) of the contribution in discharge of the student's liability to pay that remainder of the contribution.
- (3) If the student has not made a payment in respect of the contribution in accordance with subparagraph 41(1)(a)(i) but has complied with paragraph 41(1)(b) and section 41B, the Commonwealth shall, as a benefit to the student, lend to the student an amount equal to the unpaid part of the contribution and apply the amount so lent in making a payment to the institution in discharge of the student's liability to pay the unpaid part of the contribution.
- (3A) If the student has not:
 - (a) made a payment in respect of a contribution in accordance with subparagraph 41(1)(a)(i); or
 - (b) complied with paragraph 41(1)(b);but the student has:
 - (c) made a payment in respect of the contribution in accordance with paragraph 41(1A)(a) (the *student payment*); and
 - (d) complied with section 41B;the Commonwealth must, as a benefit to the student:

- (e) lend to the student an amount worked out using the formula in sub-subparagraph 41(1A)(c)(i)(A) (the **formula amount**) and apply the amount so lent in making a payment to the institution in partial discharge of the student's liability to pay the unpaid part of the contribution; and
- (f) pay to the institution, in discharge of the remainder of the student's liability, an amount (the **discount amount**) worked out using the following formula:

$$\text{Contribution payable by student for course} - \left(\text{Student payment} + \text{Formula amount} \right)$$

Example: If the student's contribution for the course of study is \$2,350 and the student makes a payment of \$1,000, the amount that the Commonwealth will lend to the student is \$1,017, ie:

$$\$2,350 - \left(\$1,000 \times \frac{4}{3} \right)$$

This amount is the **formula amount** (see paragraph (3A)(e)).
The amount that the Commonwealth will pay to the institution to discharge the student's liability is \$1,350, ie:

$$\$2,350 - \$1,000$$

The amount that the Commonwealth will pay to the institution comprises the sum of the amount the Commonwealth will lend to the student, ie \$1,017 (the formula amount) and the student discount that the student receives for making the student payment (\$333).

The value of the discount to the student for making the student payment is calculated as follows:

$$\$1,350 - \$1,017$$

This amount is the **discount amount** (see paragraph (3A)(f)).

(3B) If:

- (a) the student has made a student payment as provided for in subsection (3A); and

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- (b) the student continues undertaking the course of study and, in a later semester, does not make a student payment in respect of the later semester as provided for in subparagraph 41(1A)(c)(ii), the Commonwealth must, as a benefit to the student:
 - (i) lend to the student an amount equal to the unpaid part of the contribution; and
 - (ii) apply the amount so lent in making a payment to the institution in discharge of the student's liability to pay the unpaid part of the contribution.
- (3C) If an amount worked out by using the formula in subsection (3A) is an amount made up of dollars and cents, then:
 - (a) if the amount of cents in the amount is 50—the amount is to be rounded up to the nearest dollar; and
 - (b) in any other case—the amount is to be rounded up or down to the nearest dollar.
- (4) The Commonwealth may make advances to an institution on account of an amount that is expected to become payable by the Commonwealth to the institution under this section.

58 Institutions to provide information to Minister

An institution shall give to the Minister, if and when required by the Minister to do so, such information in its possession relating to students in relation to designated courses of study at the institution in a semester (not being information as to the name or address of a student) as the Minister reasonably requires for the purposes of this Part.

Part 4.4—Repayment of loans

Division 5—Miscellaneous

78 Secrecy

- (1) In this section:

Commissioner includes a Second Commissioner of Taxation and a Deputy Commissioner of Taxation.

officer means a person:

- (a) who is or has been appointed or employed by the Commonwealth and who, because of the appointment or employment or in the course of the performance of the duties of the appointment or in the course of the employment, may acquire or has acquired confidential information;
 - (b) to whom powers or functions have been delegated by the Commissioner and who, because of, or in the course of the exercise of powers or the performance of functions under, the delegation, may acquire or has acquired confidential information; or
 - (c) who is or has been an officer of, or employed by, an institution and who, because of the office or employment or in the course of the performance of the duties of the office or in the course of the employment, may acquire or has acquired confidential information.
- (2) A reference in this section to the acquisition by a person of confidential information is a reference to the acquisition of information in relation to the affairs of another person disclosed or obtained under or for the purposes of this Chapter.
- (3) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.

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- (4) An officer who, either directly or indirectly, and either while the person is, or after the person ceases to be, an officer:
- (a) makes a record of any information in relation to the affairs of a second person; or
 - (b) divulges or communicates to a second person any information in relation to the affairs of a third person; being information disclosed or obtained under or for the purposes of this Chapter and acquired by the person;
 - (c) because of the person's appointment or employment by the Commonwealth or in the course of such employment;
 - (d) because of the delegation to the person of powers or functions by the Commissioner or in the course of the exercise of such powers or performance of such functions; or
 - (e) because of the person's office in or employment by an institution or in the course of the performance of the duties of such an office or in the course of such employment;
- as the case may be, is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both.

- (4A) Subsection (4) does not apply to the extent that the person makes the record of the information, or divulges or communicates the information, for the purposes of this Chapter or in the performance of the person's duties as an officer.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4A), see subsection 13.3(3) of the *Criminal Code*.

- (4B) For the purposes of an offence against subsection (4), strict liability applies to the physical element of circumstance, that the information was disclosed or obtained under or for the purposes of this Chapter.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) Except when it is necessary to do so for the purpose of carrying into effect the provisions of this Chapter, an officer shall not be required:
- (a) to produce in court any document made or given under or for the purposes of this Chapter; or

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- (b) to divulge or communicate to a court a matter or thing in relation to information disclosed or obtained under or for the purposes of this Chapter;
being a document or information acquired by the person:
 - (c) because of the person's appointment or employment by the Commonwealth or in the course of such employment;
 - (d) because of the delegation to the person of powers or functions by the Commissioner or in the course of the exercise of such powers or the performance of such functions; or
 - (e) because of the person's office in or employment by an institution or in the course of the performance of the duties of such an office or in the course of such employment;as the case may be.
 - (6) Nothing in subsection (4) shall be taken to prohibit the Commissioner, or a person authorised by the Commissioner, from communicating any information to the Administrative Appeals Tribunal in connection with proceedings under this Act or any Act of which the Commissioner of Taxation has the general administration.
 - (7) Nothing in an Act of which the Commissioner of Taxation has the general administration shall be taken to prohibit the Commissioner, or a person authorised by the Commissioner, from communicating any information to a person performing, as an officer, duties arising under this Chapter for the purpose of enabling the person to perform those duties.
 - (8) Nothing in subsection (4) shall be taken to prohibit a person referred to in paragraph (a) or (b) of the definition of *officer* in subsection (1) from communicating any information to an officer of the Department for the purpose of the provision by that officer of assistance to the person in the performance of duties arising under this Chapter.
 - (9) For the purposes of subsection (4), an officer shall be taken to have communicated information to another person in contravention of that subsection if the officer communicates the information to any Minister.
-

Chapter 4 Higher Education Contribution Scheme

Part 4.4 Repayment of loans

Division 5 Miscellaneous

Section 78

- (10) An officer shall, if and when required by the Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in accordance with the provisions of this section.

Part 4.5—Abolition of Higher Education Administration Charge

Division 4—Canberra Institute of the Arts

96 Charges not to be imposed

The Canberra Institute of the Arts shall not impose a higher education administration charge or any similar charge in respect of the year starting on 1 January 1989 or any subsequent year.

Section 98A

Chapter 4A—Post-graduate education loan scheme

Part 4A.1—Preliminary

98A Definitions

- (1) In this Chapter, unless the contrary intention appears:

appropriate officer of an institution means:

- (a) a person who is an appropriate officer of the institution for the purposes of Chapter 4; or
- (b) if the institution is an eligible private institution—a person, or a person included in a class of persons, appointed by the chief executive officer of the institution or the chief executive officer's delegate to be an appropriate officer of the institution for the purposes of this Chapter.

eligible post-graduate course of study at an institution means a course of study at the institution that:

- (a) is a post-graduate course for which fees may be charged; and
- (b) is not a post-graduate research award course of study; and
- (c) if the institution is a non-self accrediting private institution:
 - (i) is a course that is accredited by a State or Territory accreditation agency listed in the Australian Qualifications Framework Register of Bodies with Authority to Issue Qualifications; and
 - (ii) is a course which the Minister is satisfied meets the criteria in place in the National Protocol for the Accreditation of Higher Education Courses to be offered by non-self accrediting providers, based on the advice of the State or Territory accreditation agency listed in the Australian Qualifications Framework Register of Bodies with Authority to Issue Qualifications.

For the purposes of paragraph (c), a part of an agency is taken to be an agency in its own right.

Section 98A

eligible private institution has the meaning given by section 98AA.

eligible student, for a semester, has the meaning given by section 98B.

institution means:

- (a) an institution referred to in section 4; or
- (b) an eligible private institution.

National Protocols means the ***National Protocols for Higher Education Approval Processes*** (first endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000), as in force from time to time.

non-self accrediting private institution is an eligible private institution which appears in column 2 of the table in subsection 98AA(1).

semester means a semester in a year to which this Chapter applies, and has a meaning affected by subsection (3).

student means:

- (a) a person who proposes to undertake on or after 1 January 2002, or is undertaking or has undertaken on or after that date, an eligible post-graduate course of study at an institution (other than an eligible private institution); and
- (b) when used in relation to a particular eligible post-graduate course of study at an institution (other than an eligible private institution)—a person who proposes to undertake on or after 1 January 2002, or is undertaking or has undertaken on or after that date, the eligible post-graduate course of study at that institution; and
- (c) a person who proposes to undertake on or after 1 January 2003, or is undertaking or has undertaken on or after that date, an eligible post-graduate course of study at an eligible private institution; and
- (d) when used in relation to a particular eligible post-graduate course of study at an eligible private institution—a person who proposes to undertake on or after 1 January 2003, or is undertaking or has undertaken on or after that date, the eligible post-graduate course of study at that institution.

Section 98AA

- (2) Expressions used in this Chapter that are defined in Chapter 4 have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4.
- (3) For the purposes of subsection (2), section 37 and subsection 39(2) apply in relation to the expressions ***semester*** and ***standard student load*** in this Chapter in the same way that they apply in relation to those expressions in Chapter 4, as if:
 - (a) the references in section 37 and subsection 39(2) to institution were references to institution within the meaning of Chapter 4A; and
 - (b) the reference in subsection 39(2) to each designated course of study were a reference to each eligible post-graduate course of study.
- (3A) For the purposes of this Chapter, the definition of ***census date*** in subsection 34(1) applies as if the reference in that definition to institution were a reference to institution within the meaning of Chapter 4A.
- (4) Section 36 does not affect the meaning of the expression ***student load*** in this Chapter.
- (5) Expressions used in this Chapter that are defined in the *Income Tax Assessment Act 1936* have in this Chapter, unless the contrary intention appears, the same meanings as in that Act.
- (6) For the purposes of this Chapter, the payment of an amount to an institution by a person other than a student in respect of fees payable by the student to the institution is taken to constitute payment of that amount to the institution by the student.

98AA Eligible private institution

- (1) For the purposes of this Chapter, an ***eligible private institution*** is an institution of higher education specified in the following table:

Section 98AA

Eligible private institutions	
Column 1	Column 2
self-accrediting private institutions	non-self accrediting private institutions
Bond University	Christian Heritage College
Melbourne College of Divinity	Tabor College (South Australia)

Amendment of table

- (2) The Minister may declare that the table in subsection (1) is amended in the manner specified in the declaration and, if such a declaration is made, the declaration has effect accordingly.
- Note 1: A declaration under this subsection is to be in writing—see subsection 9(1).
- Note 2: A declaration under this subsection is a legislative instrument—see paragraph 110(a).
- (3) The Minister must not make a declaration under subsection (2) that would result in an institution becoming an eligible private institution.
- (4) For the purposes of section 8 of the *Acts Interpretation Act 1901*, a declaration under subsection (2) that amends the table in subsection (1) by way of repealing part of that table is taken to be an Act that repeals that part of the table.

Minister may have regard to breaches of this Chapter

- (5) In deciding whether to make a declaration under subsection (2) that would result in an institution ceasing to be an eligible private institution, the Minister may have regard to:
- (a) whether the institution has breached a requirement of this Chapter; and
 - (b) such other matters (if any) as the Minister considers relevant.

Section 98B

98B Eligible student

- (1) A student is an *eligible student* for a semester if on the day (the *enrolment day*) on which the person completes his or her enrolment for the semester, the student is:
- (a) an Australian citizen; or
 - (b) a person who has been granted an approval to become an Australian citizen under section 24 of the *Australian Citizenship Act 2007* and who has yet to make the pledge referred to in section 26 of that Act; or
 - (c) a New Zealand citizen who is the holder of a permanent visa, is present in Australia and:
 - (i) does not satisfy the residency test in subsection (2); or
 - (ii) if, on enrolment day, he or she satisfies that test—first satisfied that test on a day within the 12 months immediately preceding the enrolment day; or
 - (d) a person (other than a New Zealand citizen) who is a permanent resident, is present in Australia and:
 - (i) does not satisfy the residency test in subsection (2); or
 - (ii) if, on enrolment day, he or she satisfies that test—first satisfied that test on a day within the 12 months immediately preceding the enrolment day;
- unless subsection (3) applies to the student.
- Note: If subsection (3) applies to the student, then the student is not an eligible student.
- (2) A person satisfies the residency test on a particular day if the person:
- (a) has been present in Australia as a permanent resident for a period of, or for periods totalling, not less than one year during the period of 2 years immediately preceding that day; and
 - (b) has been present in Australia as a permanent resident for a period of, or for periods totalling, not less than 2 years during the period of 5 years immediately preceding that day.
- (3) This subsection applies to a student in relation to a course of study for a semester if, on the enrolment day, the student:
- (a) is covered by paragraph (1)(c) or (d); and

Section 98B

- (b) will be resident outside Australia for the duration of the course in that semester for a reason other than a requirement of the course.
- (4) In determining, for the purpose of paragraph (3)(b), whether a student will be resident outside Australia for the duration of a course in a semester, any period of residence in Australia that cannot reasonably be regarded as indicating an intention to reside in Australia for the duration of the course in that semester must be disregarded.

Section 98C

**Part 4A.2—Additional condition of grant of
financial assistance**

98C Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting the operation of subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Part 4A.3—Applications for and grants of PELS loans

Division 1—Application for PELS loan

98D Making an application for a PELS loan

- (1) A person may make an application under this section if he or she:
 - (a) has enrolled in or proposes to enrol in an eligible post-graduate course of study for a semester at an institution; and
 - (b) is or will be an eligible student for the semester.
 - (2) The application must be made on or before the census date for the course of study for the semester.
 - (3) The application must state that the applicant asks the Commonwealth if:
 - (a) on the census date for the eligible post-graduate course of study for any semester the applicant:
 - (i) is an eligible student for that semester; and
 - (ii) is enrolled in the course of study for that semester at the institution; and
 - (iii) has not paid the full amount of the fees charged by the institution for so much of the course of study as is being undertaken by the student for that semester, leaving part of those fees outstanding; and
 - (b) that census date is on or after the date on which the application is made;to lend to the applicant the amount of those fees outstanding and to use the amount so lent to pay the fees outstanding on behalf of the applicant.
- Note: The applicant makes only one application for each course of study.
- (4) The application must also acknowledge that if the Commonwealth complies with the request the applicant will be liable to make payments under Chapter 5A.

Section 98E

- (5) The application must be in the approved form, signed by the applicant and given to an appropriate officer of the institution.

98E Tax file number of student

Sections 41A, 41B, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 apply in relation to the tax file number of a student as if:

- (a) any references in those sections to student were references to student within the meaning of Chapter 4A; and
- (aa) any references in those sections to institution were references to institution within the meaning of Chapter 4A; and
- (aaa) any references in those sections to appropriate officer were references to appropriate officer within the meaning of Chapter 4A; and
- (b) the references in paragraphs 41A(1)(a) and 41B(1)(a) to a contributing student were references to an eligible student; and
- (c) the references in paragraphs 41A(1)(a) and 41B(1)(a) to giving a document as mentioned in paragraph 41(1)(b) or (1A)(c) were references to making an application under section 98D; and
- (d) the references in paragraph 41A(1)(b), subsection 41A(2) and paragraph 41B(1)(b) to the document were references to the application; and
- (e) the reference in paragraph 41B(1)(a) to a designated course of study were a reference to an eligible post-graduate course of study; and
- (f) the references in subsection 50(4), paragraph 52(1A)(a) and subsection 53(1A) to this Chapter were references to Chapter 4A.

98F Notice by institution

- (1) An institution must give a written notice under this subsection to each student who:
- (a) is enrolled in an eligible post-graduate course of study at the institution on the census date for that course of study for a semester; and

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- (b) has made an application under section 98D on or before that date in relation to that course of study.
- (2) The notice must:
 - (a) set out particulars of so much of that course of study as is being undertaken by the student for that semester; and
 - (b) state whether the student is an eligible student for that semester; and
 - (c) set out the student's student load in respect of that course of study for that semester expressed as a proportion of the standard student load for that course of study in the year in which that semester occurs; and
 - (d) specify the full amount of the fees charged by the institution for so much of that course of study as is being undertaken by the student for that semester; and
 - (e) specify the amount of those fees that has been paid by the student on or before the census date for that course of study for that semester; and
 - (f) specify the amount of those fees outstanding in respect of the student immediately after the census date for that course of study for that semester.
- (3) A notice to a student under subsection (1) in relation to a semester must be given not later than a date specified by the Minister by notice published in the *Gazette* in relation to that semester for the purposes of this section.
- (4) If, after giving a notice to a student under subsection (1) or this subsection, the institution is satisfied that a material particular in the notice was not, or has ceased to be, correct, the institution must give a further written notice to the student setting out the correct particular.
- (5) A notice under this section is given for the purpose only of providing information to a student, and the liability of a student to pay fees charged by the institution is not affected:
 - (a) if the institution fails to give a notice or to give a notice by the specified date; or
 - (b) if there is an incorrect statement in the notice.

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- (6) A notice under this section must set out the effect of subsections 55(1) and (2), as applied in relation to the notice by subsection (7).
- (7) Section 55 applies in relation to a notice under this section as if:
 - (a) any references in that section to student were references to student within the meaning of Chapter 4A; and
 - (aa) any references in that section to institution were references to institution within the meaning of Chapter 4A; and
 - (aaa) any references in that section to appropriate officer were references to appropriate officer within the meaning of Chapter 4A; and
 - (b) the references in subsections 55(1) and (4) to section 54 were references to section 98F; and
 - (c) the reference in subsection 55(3) to the liability of the student to pay the contribution were a reference to the liability of the student to pay fees charged by the institution; and
 - (d) the reference in subsection 55(4) to subsection 54(3) were a reference to subsection 98F(4).

Division 2—Discharge by Commonwealth of students' liability for fees

98G Commonwealth to discharge students' liabilities

- (1) This section operates if an eligible student for a semester:
 - (a) has made an application under section 98D before the census date for the student's eligible post-graduate course of study for the semester, being the course specified in the application; and
 - (b) is enrolled in the eligible post-graduate course of study for the semester at the institution, as specified in the application; and
 - (c) has not, on or before the census date for the course of study for the semester, paid the full amount of the fees charged by the institution for so much of the course of study as is being undertaken by the student for the semester, leaving part of those fees outstanding.
- (2) The Commonwealth must, as a benefit to the student:
 - (a) lend to the student an amount equal to the amount of the fees outstanding immediately after the census date; and
 - (b) apply the amount so lent in making a payment to the institution in discharge of the student's liability to pay the amount of the fees outstanding.
- (3) The Commonwealth may make advances to the institution on account of an amount that is expected to become payable by the Commonwealth to the institution under this section.

Section 98H

98H Commonwealth not liable where person does not have a tax file number

- (1) This section operates if:
 - (a) the institution receives notice under subsection 42(3) or (5) as applied by section 98E to the effect that a person who has made an application under section 98D does not have, or no longer has, a tax file number; and
 - (b) at the end of 28 days after the institution receives that notice, the institution has not been notified of a number that the institution is satisfied (in accordance with guidelines issued by the Commissioner) is the person's tax file number.
- (2) The Commonwealth is not liable, and is taken never to have been liable:
 - (a) to lend an amount to the person under paragraph 98G(2)(a); or
 - (b) to apply any amount in making a payment to the institution under paragraph 98G(2)(b) in discharge of a liability of the person.
- (3) The regulations may set out procedures for the institution to notify persons who may be affected by subsection (2).

98J Institution to provide information to Minister about post-graduate students

An institution must give to the Minister, if and when required by the Minister to do so, any statistical and other information relating to students in relation to eligible post-graduate courses of study (not being information as to the name or address of a student) that the Minister reasonably requires for the purposes of this Part.

98JA Eligible private institution to report information

- (1) The Minister must, as soon as practicable after 31 December in each year, require each eligible private institution that offers an eligible post-graduate course of study to report to the Minister, in an approved form, information regarding their operations during that year.

Section 98JA

- (2) The eligible private institution must comply with a requirement under subsection (1) as soon as practicable.
- (3) The information provided under subsection (1) must include (but is not limited to):
 - (a) information consistent with that required of any institution to which similar financial assistance is granted under this Act; and
 - (b) further information consistent with that required of any institution under this Act, as determined by the Minister.

Note 1: Section 108 requires any institution to which financial assistance is granted to provide a financial statement, together with an auditor's report.

Note 2: The Minister may require statistical and other information under paragraph 18(1)(g). The Minister may also require further information relating to students in designated courses of study at the institution under section 58.

- (4) The Minister must be satisfied that the eligible private institutions have met these requirements and must table the relevant information in each House of the Parliament as soon as practicable after receipt.

Section 98K

Part 4A.4—Miscellaneous

98K Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if the section were included in this Chapter.

98L Annual statement

The chief executive officer of an institution must give to the Minister, on or before 31 December in each year up to and including the year 2004, a statement:

- (a) as to whether the institution has complied with the requirements of this Chapter in respect of the year ending on that 31 December; and
- (b) if the institution has not complied with such a requirement in respect of that year, setting out particulars of the non-compliance.

98M Electronic communications between students and institutions

- (1) Sections 56C, 56D and 56E apply for the purposes of this Chapter as if a reference in those sections to a person, thing or provision mentioned in the second column of an item of the table were a reference to the person, thing or provision mentioned in the third column of the item.

How sections 56C, 56D and 56E apply		
Item	Person, thing or provision mentioned in section 56C, 56D or 56E	Equivalent person, thing or provision for this Chapter
1	Student	Student (within the meaning of Chapter 4A), person or applicant
2	Institution	Institution within the meaning of Chapter 4A

Section 98M

How sections 56C, 56D and 56E apply

Item	Person, thing or provision mentioned in section 56C, 56D or 56E	Equivalent person, thing or provision for this Chapter
3	Document	Application
4	Paragraph 41(1)(b)	Section 98D
5	Section 54	Section 98F

- (2) This section does not affect the way in which sections 56C, 56D and 56E apply apart from this section.

Chapter 4B—Bridging for overseas-trained professionals (BOTP) loan scheme

Part 4B.1—Introduction

98N Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up a scheme for the Commonwealth to make loans to overseas-trained professional people who do not meet the requirements for entry to their professions in Australia.
- The loans will be applied to pay fees for bridging courses (***BOTP courses***) which will enable those people to meet those entry requirements.
- To be eligible for a loan, an overseas-trained professional person must:
 - (a) meet certain citizenship/residency requirements; and
 - (b) obtain an ***assessment statement*** from a relevant assessing body; and
 - (c) enrol in a course that relates to the assessment statement.
- An ***assessment statement*** is a statement to the effect that, if the person were to successfully undertake further studies, be successful in one or more examinations or successfully undertake a tuition and training program, the person would meet the requirements for entry to that profession in Australia.

Section 98NA

98NA No financial assistance payable

No financial assistance is payable under this Chapter to an institution referred to in section 4 after 31 December 2004.

98P Definitions

- (1) In this Chapter, unless the contrary intention appears:

appropriate officer of an institution means a person who is an appropriate officer of the institution for the purposes of Chapter 4.

assessment statement has the meaning given by section 98T.

BOTP course has the meaning given by section 98U.

BOTP loan means a loan under subsection 98ZA(2).

census date, in relation to so much of a BOTP course as is undertaken by a student for a study period, means:

- (a) in the case of a BOTP course that is covered by subsection 98U(2) or (3):
 - (i) if the study period is of not less than 6 weeks duration—the date that is 14 days after the date on which the student starts to undertake the course of instruction or the tuition and training program concerned; or
 - (ii) if the study period is of less than 6 weeks duration—the date on which the student starts to undertake the course of instruction or the tuition and training program concerned; or
- (b) in the case of a BOTP course that is covered by subsection 98U(1), where the study period is a semester because of subsection 37(2) or (3) as applied by subsection (4) of this section:
 - (i) if the study period is of not less than 6 weeks duration—the date that is 14 days after the date on which the student starts to undertake the subject unit concerned; or
 - (ii) if the study period is of less than 6 weeks duration—the date on which the student starts to undertake the subject unit concerned; or

Section 98P

- (c) in the case of a BOTP course that is covered by subsection 98U(1), where the study period is a semester otherwise than because of subsection 37(2) or (3) as applied by subsection (4) of this section—such date as is specified for the purposes of this definition by the Minister, by notice published in the *Gazette*, in relation to BOTP courses undertaken in that semester.

citizenship/residency requirements has the meaning given by section 98V.

fees, in relation to a BOTP course at an institution, means tuition, examination or other fees payable to the institution by a student enrolled at, or applying for enrolment at, the institution in connection with the BOTP course, but does not include:

- (a) fees the payment of which is voluntary; or
- (b) fees payable in respect of an organisation of students, or of students and other persons, or in respect of the provision to students of amenities or services that are not of an academic nature; or
- (c) fees payable in respect of residential accommodation; or
- (d) fees of a kind that are incidental to studies that may be undertaken at institutions and that the Minister has notified each institution to be fees of a kind to which this paragraph applies.

For the purposes of paragraph (b), the expression ***student*** has its ordinary meaning.

institution has the meaning given by section 4 (despite subsection (2) of this section).

listed professional occupation has the meaning given by section 98S.

non-award basis, in relation to enrolment in:

- (a) a subject unit at an institution; or
- (b) a course of instruction at an institution; or
- (c) a tuition and training program at an institution;

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means the basis that the completion of the unit, course or program will not lead to the granting of a degree, diploma, associate diploma or other award of the institution.

occupation has a meaning affected by section 98Q.

relevant assessing body, in relation to a listed professional occupation, has the meaning given by section 98S.

requirements for entry to a listed professional occupation has the meaning given by section 98R.

semester has a meaning affected by subsection (4).

student means:

- (a) a person who proposes to undertake on or after 1 July 2002, or is undertaking or has undertaken on or after that date, a BOTP course at an institution; and
- (b) when used in relation to a particular BOTP course at an institution—a person who proposes to undertake on or after 1 July 2002, or is undertaking or has undertaken on or after that date, the BOTP course at that institution.

student load has a meaning affected by subsection (3).

study period, in relation to a BOTP course, means:

- (a) in the case of a BOTP course that is covered by subsection 98U(1)—a semester; or
- (b) in the case of a BOTP course that is covered by subsection 98U(2) and that consists of 2 or more courses of instruction—a period during which such a course of instruction is undertaken; or
- (c) in any other case—the period during which the course is undertaken.

subject unit, in relation to an institution, means a subject unit that is ordinarily offered by the institution as part of a course of study at the institution, but that is also offered, on a non-award basis, to persons who are not undertaking that course of study.

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Expressions defined in Chapter 4

- (2) Expressions used in this Chapter that are defined in Chapter 4 have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4.

Student load

- (3) For the purposes of subsection (2), section 36 applies in relation to the expression ***student load*** in this Chapter in the same way as it applies in relation to that expression in Chapter 4, as if:
- (a) the references in section 36 to student were references to student within the meaning of Chapter 4B; and
 - (b) the references in section 36 to institution were references to institution within the meaning of Chapter 4B; and
 - (c) the references in section 36 to course of study were references to subject unit, course of instruction or tuition and training program.

Semester

- (4) For the purposes of subsection (2), section 37 applies in relation to the expression ***semester*** in this Chapter in the same way as it applies in relation to that expression in Chapter 4, as if:
- (a) the references in section 37 to institution were references to institution within the meaning of Chapter 4B; and
 - (b) the references in section 37 to course of study were references to subject unit.

Expressions defined in the Income Tax Assessment Act 1936

- (5) Expressions used in this Chapter that are defined in the *Income Tax Assessment Act 1936* have in this Chapter, unless the contrary intention appears, the same meanings as in that Act.

Payment by a person other than a student

- (6) For the purposes of this Chapter, the payment of an amount to an institution by a person other than a student in respect of fees payable by the student to the institution is taken to constitute payment of that amount to the institution by the student.

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Course or program provided on behalf of an institution

- (7) For the purposes of this Chapter:
- (a) a course of instruction provided on behalf of an institution is taken to be provided at the institution, and a person enrolled in such a course is taken to be enrolled at the institution; and
 - (b) a tuition and training program provided on behalf of an institution is taken to be provided at the institution, and a person enrolled in such a program is taken to be enrolled at the institution.

98Q Occupation

Part of an occupation

- (1) The Minister may determine that, for the purposes of this Chapter, a specified part of an occupation is an occupation in its own right.
- Note 1: A determination under this subsection is to be in writing—see subsection 9(1).
- Note 2: A determination under this subsection is a legislative instrument—see paragraph 110(b).
- (2) The following are examples of ways in which a part of an occupation can be specified:
- (a) so much of an occupation as has a Bachelor degree (or equivalent) entry requirement;
 - (b) so much of an occupation as consists of a particular specialisation.
- (3) A determination under subsection (1) has effect accordingly.
- (4) A copy of a determination under subsection (1) is to be:
- (a) published in the *Gazette*; and
 - (b) made available on the internet.

98R Requirements for entry to occupation

- (1) A reference in this Chapter to the ***requirements for entry to a listed professional occupation*** is a reference to the educational

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requirements for entry to that occupation, but does not include a reference to:

- (a) English language training relating to general aspects of written and/or verbal communication; or
 - (b) being successful in:
 - (i) the Occupational English Test administered by Language Australia; or
 - (ii) any other English language test, where that test does not form an integral part of an occupation-related study unit, an occupation-related course of instruction or an occupation-related tuition and training program.
- (2) For the purposes of this Chapter, a requirement for entry to a listed professional occupation may:
- (a) be imposed by or under a law; or
 - (b) be imposed by or under the rules of a body; or
 - (c) consist of eligibility for membership of a body; or
 - (d) arise as a generally accepted employment or industry practice.

98S Listed professional occupations and relevant assessing bodies

- (1) The Minister may determine that, for the purposes of this Chapter:
- (a) a specified occupation is a listed professional occupation; and
 - (b) a specified person or body is a relevant assessing body for a particular listed professional occupation.

Note: A determination under this subsection is a legislative instrument—see paragraph 110(b).

- (2) A determination under subsection (1) has effect accordingly.
- (3) A copy of a determination under subsection (1) is to be:
- (a) published in the *Gazette*; and
 - (b) made available on the internet.
- (4) To avoid doubt, an occupation may be specified even if it is not one of the traditional professions.

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- (5) This section does not prevent 2 or more persons or bodies from being relevant assessing bodies for the same listed professional occupation.
- (6) The specification of a person or body as a relevant assessing body for a particular listed professional occupation may be expressed to be limited to a particular State. In that event, sections 98T and 98U have effect, in relation to the relevant assessing body, as if each reference in those sections to Australia were, by express provision, confined to so much of Australia as consists of that State.

98T Assessment statement given by relevant assessing body

Post-commencement assessment statement

- (1) If:
 - (a) a person holds a qualification awarded in a foreign country;
and
 - (b) the qualification relates to a listed professional occupation;
and
 - (c) the person proposes to seek entry to that occupation in Australia;a relevant assessing body for that occupation may give the person a written statement to the effect that, in the opinion of the body, if the person were to do any or all of the following:
 - (d) successfully undertake additional studies of a kind specified in the statement;
 - (e) be successful in one or more examinations specified in the statement;
 - (f) successfully undertake a tuition and training program of a kind specified in the statement;the person would meet the requirements for entry to that occupation in Australia.

Note: A statement could specify one of the things mentioned in paragraph (d), (e) or (f) or any combination of the things mentioned in those paragraphs.

- (2) A statement under subsection (1) is an **assessment statement** for the purposes of this Chapter.

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- (3) This section does not affect the power of a relevant assessing body to charge fees for an assessment statement under subsection (1).

Pre-commencement assessment statement

- (4) If, at a time before the commencement of this section:
- (a) a person held a qualification awarded in a foreign country; and
 - (b) the qualification related to a listed professional occupation; and
 - (c) the person proposed to seek entry to that occupation in Australia; and
 - (d) a relevant assessing body for that occupation gave the person a written statement to the effect that, in the opinion of the body, if the person were to do any or all of the following:
 - (i) successfully undertake additional studies of a kind specified in the statement;
 - (ii) be successful in one or more examinations specified in the statement;
 - (iii) successfully undertake a tuition and training program of a kind specified in the statement;the person would meet the requirements for entry to that occupation in Australia;
- the statement is an ***assessment statement*** for the purposes of this Chapter.

Note: A statement could specify one of the things mentioned in subparagraph (d)(i), (ii) or (iii) or any combination of the things mentioned in those subparagraphs.

- (5) For the purposes of subsection (4), assume that the first set of determinations under subsections 98Q(1) and 98S(1) had been in force at the time mentioned in subsection (4) of this section.

98U BOTP course

Subject units

- (1) For the purposes of this Chapter, if:
-

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- (a) a person holds an assessment statement issued by a relevant assessing body for a listed professional occupation; and
- (b) the statement is to the effect that, in the opinion of the body, if the person were to successfully undertake additional studies of a kind specified in the statement, the person would meet the requirements for entry to that occupation in Australia; and
- (c) the person undertakes, or proposes to undertake, those additional studies by enrolling, or proposing to enrol, on a non-award basis, in one or more subject units at an institution; and
- (d) the total student load imposed on the person in relation to those subject units does not exceed the institution's maximum BOTP student load determined under subsection (4);

then:

- (e) those subject units are together a BOTP course in relation to the person; and
- (f) that BOTP course relates to the assessment statement.

Courses of instruction

(2) For the purposes of this Chapter, if:

- (a) a person holds an assessment statement issued by a relevant assessing body for a listed professional occupation; and
- (b) the statement is to the effect that, in the opinion of the body, if the person were to be successful in one or more examinations specified in the statement, the person would meet the requirements for entry to that occupation in Australia; and
- (c) the person prepares, or proposes to prepare, for those examinations by enrolling, or proposing to enrol, on a non-award basis, in one or more occupation-related courses of instruction provided by or on behalf of an institution; and
- (d) the total student load imposed on the person in relation to those courses does not exceed the institution's maximum BOTP student load determined under subsection (4);

then:

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- (e) those courses are together a BOTP course in relation to the person; and
- (f) that BOTP course relates to the assessment statement.

Tuition and training program

- (3) For the purposes of this Chapter, if:
 - (a) a person holds an assessment statement issued by a relevant assessing body for a listed professional occupation; and
 - (b) the statement is to the effect that, in the opinion of the body, if the person were to undertake a tuition and training program of a kind specified in the statement, the person would meet the requirements for entry to that occupation in Australia; and
 - (c) the person undertakes, or proposes to undertake, such a program by enrolling, or proposing to enrol, on a non-award basis, in a tuition and training program provided by or on behalf of an institution; and
 - (d) the total student load imposed on the person in relation to that program does not exceed the institution's maximum BOTP student load determined under subsection (4);then:
 - (e) that program is a BOTP course in relation to the person; and
 - (f) that BOTP course relates to the assessment statement.

Maximum BOTP student load

- (4) For the purposes of this section, the **maximum BOTP student load** for an institution is the student load determined by the institution, in accordance with guidelines issued by the Minister, to represent:
 - (a) the load imposed on a full-time student for one year; or
 - (b) the part-time equivalent of that load.

Repeats

- (5) For the purposes of this section, the total student load imposed on a person is to be worked out on the assumption that the person will not be required to repeat anything.

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- (6) Subsection (5) does not, by implication, affect the meaning of the expression *student load* in a provision of this Act other than this section.

98V Citizenship/residency requirements

For the purposes of this Chapter, a person *meets the citizenship/residency requirements* at a particular time if, at that time, the person is ordinarily resident in Australia and is:

- (a) an Australian citizen; or
- (b) a person who has been granted an approval to become an Australian citizen under section 24 of the *Australian Citizenship Act 2007* and who has yet to make the pledge referred to in section 26 of that Act; or
- (c) a person who is a permanent resident.

Section 98W

**Part 4B.2—Additional condition of grant of
financial assistance**

98W Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Part 4B.3—Applications for, and grants of, BOTP loans

Division 1—Application for BOTP loan

98X Making an application for a BOTP loan

- (1) A person may make an application for a BOTP loan if:
 - (a) the person holds an assessment statement issued by a relevant assessing body for a listed professional occupation; and
 - (b) the person has enrolled in, or proposes to enrol in, a BOTP course for a study period at an institution; and
 - (c) the BOTP course relates to the assessment statement; and
 - (d) the study period began on or after 1 July 2002.
- (2) The application must be made on or before the census date for the BOTP course for the study period.
- (3) The application must state that the applicant asks the Commonwealth, in the event that, on the census date for the BOTP course for the study period, the applicant:
 - (a) meets the citizenship/residency requirements; and
 - (b) is enrolled in the BOTP course for the study period at the institution; and
 - (c) has not paid the full amount of the fees charged by the institution for so much of the BOTP course as is being undertaken by the applicant for the study period;to lend to the applicant the amount of those fees outstanding and to use the amount so lent to pay the fees outstanding on behalf of the applicant.
- (4) The application must also acknowledge that, if the Commonwealth complies with the request, the applicant will be liable to make payments under Chapter 5A.
- (5) The application must be:
 - (a) in the approved form; and

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- (b) signed by the applicant; and
 - (c) given to an appropriate officer of the institution.
- (6) Two or more applications may be set out in the same document if the applications are made by the same person and relate to the same BOTP course.

98Y Tax file number of student

Sections 41A, 41B, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 apply in relation to the tax file number of a student as if:

- (a) any references in those sections to student were references to student within the meaning of Chapter 4B; and
- (aa) any references in those sections to institution were references to institution within the meaning of Chapter 4B; and
- (b) any reference in those sections to semester were references to study period within the meaning of Chapter 4B; and
- (c) the references in paragraphs 41A(1)(a) and 41B(1)(a) to a contributing student were references to a student within the meaning of Chapter 4B; and
- (d) the references in paragraphs 41A(1)(a) and 41B(1)(a) to giving a document as mentioned in paragraph 41(1)(b) or (1A)(c) were references to making an application under section 98X; and
- (e) the references in paragraph 41A(1)(b), subsection 41A(2) and paragraph 41B(1)(b) to the document were references to the application; and
- (f) the reference in paragraph 41B(1)(a) to a designated course of study were a reference to a BOTP course; and
- (g) the references in subsection 50(4), paragraph 52(1A)(a) and subsection 53(1A) to this Chapter were references to Chapter 4B.

98Z Notice by institution

- (1) An institution must give a written notice under this subsection to each student who:
 - (a) is enrolled in a BOTP course at the institution on the census date for that course for a study period; and
-

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- (b) has made an application under section 98X for a BOTP loan on or before the census date for that course for that study period.
- (2) The notice must:
 - (a) set out particulars of so much of that course as is being undertaken by the student for that study period; and
 - (b) specify the full amount of the fees charged by the institution for so much of that course as is being undertaken by the student for that study period; and
 - (c) specify the amount of those fees that has been paid by the student on or before the census date for that course for that study period; and
 - (d) specify the amount of those fees outstanding in respect of the student immediately after the census date for that course for that study period.
- (3) A notice to a student under subsection (1) in relation to a study period must be given on or before a date specified by the Minister by notice published in the *Gazette* in relation to that study period for the purposes of this section.
- (4) If, after giving a notice to a student under subsection (1) or this subsection, the institution is satisfied that a material particular in the notice was not, or has ceased to be, correct, the institution must give a further written notice to the student setting out the correct particular.
- (5) A notice under this section is given for the purpose only of providing information to a student, and the liability of a student to pay fees charged by the institution is not affected:
 - (a) if the institution fails to give a notice or to give a notice by the specified date; or
 - (b) if there is an incorrect statement in the notice.
- (6) A notice under this section must set out the effect of subsections 55(1) and (2), as applied in relation to the notice by subsection (7).
- (7) Section 55 applies in relation to a notice under this section as if:

Chapter 4B Bridging for overseas-trained professionals (BOTP) loan scheme

Part 4B.3 Applications for, and grants of, BOTP loans

Division 1 Application for BOTP loan

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- (a) any references in that section to student were references to student within the meaning of Chapter 4B; and
- (aa) any references in that section to institution were references to institution within the meaning of Chapter 4B; and
- (b) the references in subsections 55(1) and (4) to section 54 were references to section 98Z; and
- (c) the reference in subsection 55(3) to the liability of the student to pay the contribution were a reference to the liability of the student to pay fees charged by the institution; and
- (d) the reference in subsection 55(4) to subsection 54(3) were a reference to subsection 98Z(4).

Division 2—Discharge by the Commonwealth of students' liability for fees

98ZAA Application of Division

This Division does not apply in relation to a BOTP course for a study period that ends after 31 December 2004.

98ZA Commonwealth to discharge students' liabilities

- (1) This section operates if a student:
 - (a) has made an application under section 98X for a BOTP loan before the census date for a BOTP course for a study period that began on or after 1 July 2002, being the course specified in the application; and
 - (b) meets the citizenship/residency requirements on the census date for that course for that study period; and
 - (c) is enrolled in the BOTP course on the census date for that course for that study period; and
 - (d) has not, on or before the census date for that course for that study period, paid the full amount of the fees charged by the institution concerned for so much of that course as is being undertaken by the student for that study period.
- (2) The Commonwealth must, as a benefit to the student:
 - (a) lend to the student an amount equal to the amount of the fees outstanding immediately after the census date; and
 - (b) apply the amount so lent in making a payment to the institution in discharge of the student's liability to pay the amount of the fees outstanding.
- (3) The Commonwealth may make advances to the institution on account of an amount that is expected to become payable by the Commonwealth to the institution under this section.

Section 98ZB

98ZB Commonwealth not liable where person does not have a tax file number

- (1) This section operates if:
 - (a) the institution receives notice under subsection 42(3) or (5) as applied by section 98Y to the effect that a person who has made an application under section 98X for a BOTP loan does not have, or no longer has, a tax file number; and
 - (b) at the end of 28 days after the institution receives that notice, the institution has not been notified of a number that the institution is satisfied (in accordance with guidelines issued by the Commissioner) is the person's tax file number.
- (2) The Commonwealth is not liable, and is taken never to have been liable:
 - (a) to lend an amount to the person under paragraph 98ZA(2)(a); or
 - (b) to apply any amount in making a payment to the institution under paragraph 98ZA(2)(b) in discharge of a liability of the person.
- (3) The regulations may set out procedures for the institution to notify persons who may be affected by subsection (2).

98ZC Institution to provide information to Minister

An institution must give to the Minister, if and when required by the Minister to do so, any statistical and other information about students in relation to BOTP courses (not being information as to the name or address of a student) that the Minister reasonably requires for the purposes of this Part.

Part 4B.4—Miscellaneous

98ZD Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if that section were included in this Chapter.

98ZE Annual statement

The chief executive officer of an institution must give to the Minister, on or before 31 December in each year up to and including the year 2004, a statement:

- (a) as to whether the institution has complied with the requirements of this Chapter in respect of the year ending on that 31 December; and
- (b) if the institution has not complied with such a requirement in respect of that year—setting out particulars of the non-compliance.

98ZF Electronic communications between students and institutions

- (1) Sections 56C, 56D and 56E apply for the purposes of this Chapter as if a reference in those sections to a person, thing or provision mentioned in the second column of an item of the table were a reference to the person, thing or provision mentioned in the third column of the item.

How sections 56C, 56D and 56E apply		
Item	Person, thing or provision mentioned in section 56C, 56D or 56E	Equivalent person, thing or provision for this Chapter
1	Student	Student (within the meaning of Chapter 4B), person or applicant
2	Institution	Institution within the meaning of Chapter 4B

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How sections 56C, 56D and 56E apply		
Item	Person, thing or provision mentioned in section 56C, 56D or 56E	Equivalent person, thing or provision for this Chapter
3	Document	Application
4	Paragraph 41(1)(b)	Section 98X
5	Section 54	Section 98Z

- (2) This section does not affect the way in which sections 56C, 56D and 56E apply apart from this section.

Chapter 5—Open Learning Deferred Payment Scheme

Part 5.1—Preliminary

99 Interpretation

- (1) In this Chapter, unless the contrary intention appears:

Agency means Open Learning Agency of Australia Pty. Ltd.
(Australian Corporation No. 053 431 888).

appropriate officer means a person appointed by the Agency to be
an appropriate officer for the purposes of this Chapter.

approved course of study, in relation to a client of the Agency,
means an undergraduate course of study:

- (a) undertaken by the client through an institution; and
- (b) access to which was provided by the Agency.

basic charge has the meaning given by section 104.

census date, in relation to a study period, means the date declared
by the Minister, by notice published in the *Gazette*, to be the
census date for the study period.

Commissioner means the Commissioner of Taxation.

deferred payment scheme means the scheme referred to in
section 100 and for which provision is made under this Chapter.

eligible client, in relation to the Agency, has the meaning given by
section 101.

enrol, in relation to a unit of study, has a meaning affected by
subsection (2).

OL study period debt has the meaning given by section 106K.

standard study load has the meaning given by section 103.

Section 100

study period means a period of 13 weeks commencing in March, June, September or December in any year to which this Chapter applies on a day determined by the Minister by notice published in the *Gazette*.

tax file number has the same meaning as in Chapter 4.

- (2) For the purposes of this Chapter:
- (a) a person is taken not to have enrolled for a unit of study for a study period if his or her enrolment for the unit of study was withdrawn on or before the census date for that study period; and
 - (b) a person who is participating in the deferred payment scheme is taken not to have been enrolled for the units of study, or a number of the units of study, for a study period if:
 - (i) the person incurred an OL study period debt in respect of that study period; and
 - (ii) the OL study period debt, or a part of the OL study period debt equal to the basic charges for that number of units of study, was subsequently remitted under section 106L or 106M.
- (3) For the purposes of this Chapter, the payment of an amount to the Agency by a person other than a client in respect of a charge payable by the client to the Agency is taken to be a payment of that amount to the Agency by the client.

100 Object of Part

- (2) The object of this Part is to make provision for a scheme under which the Commonwealth undertakes, if so required by certain clients of the Agency, to pay to the Agency the basic charges in respect of the units of study for which they have enrolled for the purposes of an approved course of study.
- (3) Those charges are to be repaid to the Commonwealth, as provided under Chapter 5A, when the clients concerned have a HEC repayment income (within the meaning of that Chapter).

101 Eligible clients

- (1) A client of the Agency is an eligible client in respect of a study period if:
- (a) as at the census date for the study period, the client is enrolled to undertake at least 2 units of study for the purposes of an approved course of study in the study period; and
 - (b) the number of units of study for which the client has enrolled for the study period, together with the total number of units of study for which the client had previously enrolled for the purposes of the course, does not exceed 28; and
 - (c) the client has successfully completed half the number of units:
 - (i) for which he or she had enrolled for the purposes of the course since 1 January 1994; and
 - (ii) in respect of which results are known 14 days before the census day for the study period; and
 - (d) on the day (**enrolment day**) on which the client completes his or her enrolment, the client is:
 - (i) an Australian citizen; or
 - (ii) a person who has been granted an approval to become an Australian citizen under section 24 of the *Australian Citizenship Act 2007* and who has yet to make the pledge referred to in section 26 of that Act; or
 - (iii) a New Zealand citizen who is the holder of a permanent visa, is present in Australia and:
 - (A) does not satisfy the prescribed residency requirements; or
 - (B) if, on enrolment day, he or she satisfies the prescribed residency requirements—first satisfied those requirements on a day within the period of 12 months immediately preceding enrolment day; or
 - (iv) a person (other than a New Zealand citizen) who is a permanent resident, is present in Australia and:
 - (A) does not satisfy the prescribed residency requirements; or

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- (B) if, on enrolment day, he or she satisfies the prescribed residency requirements—first satisfied those requirements on a day within the period of 12 months immediately preceding enrolment day.
- (2) For the purposes of subsection (1), the *prescribed residency requirements* for a person on a particular day are that the person:
 - (a) should have been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than one year during the period of 2 years immediately preceding that day; and
 - (b) should have been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than 2 years during the period of 5 years immediately preceding that day.

103 Standard study load

The standard study load of an eligible client of the Agency for a study period for which the client enrolls for the purposes of the course of study he or she is undertaking is the number of units of study that, together with the number of other units of study (if any) for which he or she was enrolled for the purposes of the course in previous study periods having census dates occurring in the same calendar year as the census date for the first-mentioned study period, equals 8.

Part 5.2—Charges

Division 1—Payment of basic charges

104 Basic charge

- (1) The basic charge for a unit of study is the lesser of:
 - (a) the statutory amount, worked out under this section; and
 - (b) the amount that the Agency charges for the unit.
- (2) The statutory amount is \$332 for 1997.
- (3) The statutory amount for a later year is worked out by:
 - (a) multiplying the statutory amount for the year before that later year by the factor that applies to the later year under subsection 40(3); and
 - (b) disregarding any cents.
- (4) For each year from 1998 onwards, the Minister must:
 - (a) work out the statutory amount for the year concerned; and
 - (b) before the start of the year, publish a notice in the *Gazette* specifying the statutory amount and the factor that was used to work it out.

105 Eligible client may join deferred payment scheme

- (1) An eligible client of the Agency may, at any time, choose to participate in the deferred payment scheme by complying with subsections (2) and (3).
- (2) The eligible client must sign, and give to an appropriate officer, a document in the approved form:
 - (a) stating that the client asks the Commonwealth, in the event that on the census date for any study period the client:
 - (i) is an eligible client of the Agency; and
 - (ii) is enrolled to undertake in the study period units of study for the purposes of an approved course of study; and

Section 106A

- (iii) has not paid the basic charges in respect of those units of study or, if the enrolment for the study period is in respect of a number of units of study that exceeds the client's standard study load for the study period, has not paid the basic charges in respect of the number of units of study included in that standard study load;
to lend to the client the amount of the charges and use the amount so lent to pay the charges on behalf of the client; and
 - (b) acknowledging that, if the Commonwealth complies with the request, the client will be liable to make payments under Chapter 5A.
- (3) The client must at the same time give to an appropriate officer:
 - (a) a notice specifying a number that the Agency is satisfied (in accordance with guidelines issued by the Commissioner) is the tax file number issued by the Commissioner to the client; or
 - (b) a certificate in a form approved by the Commissioner stating that the client has applied to the Commissioner asking the Commissioner to issue a tax file number to the client.

106A Tax file number of eligible client

Sections 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 apply in relation to the tax file number of an eligible client of the Agency as if:

- (a) the reference in paragraph 42(1)(a) to paragraph 41B(2)(b) were a reference to paragraph 105(3)(b); and
- (c) a reference to a student or the student were a reference to the eligible client; and
- (d) a reference to the institution, the institution concerned or the institution at which the student is enrolled were a reference to the Agency.

Section 106AA

106AA Agency to notify Minister where tax file number not provided

- (1) If:
- (a) the Agency receives notice under subsection 42(3) or (5) as applied by section 106A to the effect that a client who has chosen to participate in the deferred payment scheme does not have, or no longer has, a tax file number; and
 - (b) at the end of 28 days after the Agency receives that notice, the Agency has not been notified of a number that the Agency is satisfied (in accordance with guidelines issued by the Commissioner) is the client's tax file number;
- the Agency must not permit the client, as an eligible client, to continue to be enrolled in, or to undertake, the unit of study for the study period for which the client is enrolled.
- (2) The regulations may set out procedures for the Agency to notify clients who may be affected by subsection (1).

106AB Commonwealth not liable where client does not have a tax file number

If the circumstances mentioned in paragraphs 106AA(1)(a) and (b) apply, the Commonwealth is not liable, and is taken never to have been liable:

- (a) to lend an amount to the client under paragraph 106D(1)(a); or
- (b) to apply any amount in making a payment to the Agency under paragraph 106D(1)(b) in discharge of any liability of the client.

106B Notice by Agency

- (1) The Agency must give to each client who, on the census date for a study period, is enrolled to undertake units of study for the purposes of an approved course of study and has chosen to participate in the deferred payment scheme a written notice:

Section 106C

- (a) setting out particulars of the units of study (*current units of study*) for which the client is enrolled in respect of that study period for the purposes of the course; and
 - (b) stating whether or not the client is an eligible client in respect of the study period; and
 - (c) specifying:
 - (i) the total amount of the basic charges payable by the client in respect of his or her current units of study; and
 - (ii) the total number of units for which the client has enrolled for the purposes of the course (including the current units of study); and
 - (iii) the number of units of study that, on the census date for the study period, were known to have been successfully completed by the client.
- (2) The notice must be given not later than the date specified for the purposes of this section by the Minister by notice published in the *Gazette*.
- (3) If, after giving a notice to a client under subsection (1) or this subsection, the Agency is satisfied that a material particular in the notice was not, or has ceased to be, correct, the Agency must give a further written notice to the client setting out the correct particular.
- (4) A notice under this section is given for the purpose only of providing information to a client, and the liability of a client to pay a charge is not affected:
 - (a) if the Agency fails to give a notice or to give a notice by the specified date; or
 - (b) if there is an incorrect statement in the notice.
- (5) A notice under this section must set out the effect of subsections 106C(1) and (2).

106C Requests for correction of notices

- (1) If a client who receives a notice under section 106B considers that the notice was not, or has ceased to be, correct in a material particular, the client may, within 14 days after the day on which the

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notice is sent, or within any further period that the appropriate officer allows, ask that officer, in writing, to correct the notice.

- (2) The client must specify the particular that is considered to be incorrect and set out the grounds on which the client considers that particular to be incorrect.
- (3) The making of a request does not affect the liability of the client to pay any basic charge.
- (4) The Agency must:
 - (a) as soon as practicable, consider the request to correct the notice; and
 - (b) notify the client of its decision; and
 - (c) if it is satisfied that a material particular in the notice was not, or has ceased to be, correct, give a further notice under subsection 106B(3).

106CA Electronic communications between clients and Agency

- (1) Sections 56C, 56D and 56E apply for the purposes of this Chapter as if a reference in those sections to a person, thing or provision mentioned in the second column of an item of the table were a reference to the person, thing or provision mentioned in the third column of the item.

How sections 56C, 56D and 56E apply		
Item	Person, thing or provision mentioned in section 56C, 56D or 56E	Equivalent person, thing or provision for this Chapter
1	Student	Client
2	Appropriate officer of an institution	Appropriate officer of the Agency
3	Institution	Agency
4	Paragraph 41(1)(b)	Subsection 105(2)
5	Paragraph 41B(2)(a)	Paragraph 105(3)(a)
6	Paragraph 41B(2)(b)	Paragraph 105(3)(b)
7	Section 54	Section 106B
8	Section 55	Section 106C

Chapter 5 Open Learning Deferred Payment Scheme

Part 5.2 Charges

Division 1 Payment of basic charges

Section 106CA

- (2) This section does not affect the way in which sections 56C, 56D and 56E apply apart from this section.

Division 2—Discharge by Commonwealth of clients' liability for basic charges

106D Commonwealth to discharge clients' liabilities

- (1) If an eligible client of the Agency who has chosen to participate in the deferred payment scheme has not, on or before the census date for a study period, paid the basic charge in respect of a unit of study for which the client is enrolled in the study period, the Commonwealth must, as a benefit to the client:
 - (a) lend to the client an amount equal to the charge; and
 - (b) apply the amount so lent in making a payment to the Agency in discharge of the client's liability to pay the charge.
- (1A) A reference in subsection (1) to a unit of study is a reference to a unit of study for which the client is enrolled for the purposes of an approved course of study.
- (1B) Subsection (1) does not apply to any unit of study that is in excess of the client's standard study load for the study period.
- (2) The Commonwealth may make advances to the Agency on account of an amount that is expected to become payable by the Commonwealth to the Agency under this section.

106E Agency to provide information to Minister

The Agency must give to the Minister, if required by the Minister to do so, any statistical and other information relating to clients undertaking units of study in a study period (not being information as to the name or address of a client) that the Minister reasonably requires for the purposes of this Part.

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Part 5.3—Miscellaneous

106F Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if:

- (a) the section were included in this Chapter; and
- (b) any reference to an institution included a reference to the Agency.

106FA Annual statement

The Chief Executive Officer of the Agency must give to the Minister, on or before 31 December in each year up to and including the year 2004, a statement:

- (a) as to whether the Agency has complied with the requirements of this Chapter in respect of the year ending on that 31 December; and
- (b) if the Agency has not complied with such a requirement in respect of that year, setting out particulars of the non-compliance.

Chapter 5A—Repayment of loans made under Chapters 4, 4A, 4B and 5

Part 5A.1—Preliminary

106H Interpretation

- (1) In this Chapter, unless the contrary intention appears:

accumulated HEC debt has the meaning given by section 106N.

BOTP study period debt has the meaning given by section 106JB.

census date means:

- (a) when used in relation to a loan under section 57 or 98G—
census date within the meaning of Chapter 4; or
- (b) when used in relation to a loan under section 98ZA—census
date within the meaning of Chapter 4B; or
- (c) when used in relation to a loan under section 106D—census
date within the meaning of Chapter 5.

fees means:

- (a) when used in relation to a loan under section 98G—fees as
defined by section 3; or
- (b) when used in relation to a loan under section 98ZA—fees
within the meaning of Chapter 4B.

HEC repayment income of a person means:

- (a) in relation to the year of income ending on 30 June 1996 or
any preceding year of income—an amount equal to the
taxable income of the person in respect of that year; and
- (b) in relation to the year of income ending on 30 June 1997—
the sum of:
 - (i) the taxable income of the person in respect of that year;
and
 - (ii) if, in respect of that year of income, a deduction has
been allowed from the assessable income of the person

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under former section 51 of the *Income Tax Assessment Act 1936* for interest on money borrowed by the person to finance rental property investments and that deduction or, if another deduction has been allowed (otherwise than for interest on money borrowed) from the assessable income of the person under that Act in respect of the rental property investments, the total of those deductions exceeds the rental income of the person—the amount of the excess; and

- (c) in relation to the 1997-98 or 1998-99 year of income—the sum of:
 - (i) the person's taxable income for that year of income; and
 - (ii) if the person has deducted under section 8-1 of the *Income Tax Assessment Act 1997* for that year of income an amount for interest on money the person borrowed to finance rental property investments, and the total of that amount and any other amounts the person has deducted under that Act or the *Income Tax Assessment Act 1936* (otherwise than for interest on money borrowed) in respect of the rental property exceeds the rental income of the person—the amount of the excess; and
- (d) in relation to the 1999-2000 year of income or any later year of income—the sum of:
 - (i) the person's taxable income for that year of income; and
 - (ii) if the person has deducted under section 8-1 of the *Income Tax Assessment Act 1997* for that year of income an amount for interest on money the person borrowed to finance rental property investments, and the total of that amount and any other amounts the person has deducted under that Act or the *Income Tax Assessment Act 1936* (otherwise than for interest on money borrowed) in respect of the rental property exceeds the rental income of the person—the amount of the excess; and
 - (iii) if the person is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) who has a reportable fringe benefits total (as defined in that Act)

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for the year of income—the reportable fringe benefits total for the year of income.

HEC semester debt has the meaning given by section 106J.

OL study period debt has the meaning given by section 106K.

PELS semester debt has the meaning given by section 106JA.

semester debt means:

- (a) an HEC semester debt; or
- (b) an OL study period debt; or
- (c) a PELS semester debt; or
- (d) a BOTP study period debt.

study period means:

- (a) when used in relation to a loan under section 98ZA—study period within the meaning of Chapter 4B; or
 - (b) when used in relation to a loan under section 106D—study period within the meaning of Chapter 5.
- (2) Expressions used in this Chapter that are defined in Chapter 4, 4A, 4B or 5 have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4, 4A, 4B or 5 (as the case may be).
- (3) Expressions used in this Chapter that are defined in the *Income Tax Assessment Act 1936* have in this Chapter, unless the contrary intention appears, the same meanings as in that Act.

106I Object of Part

This Part makes provision for the repayment to the Commonwealth of loans made by the Commonwealth:

- (a) to students under Chapter 4; or
- (aa) to students under Chapter 4A; or
- (ab) to students under Chapter 4B; or
- (b) to eligible clients of the Agency under Chapter 5.

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Part 5A.2—Nature of indebtedness

106J HEC semester debt

- (1) When the Commonwealth under section 57:
 - (a) makes a loan to a person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay a contribution in respect of a course of study in respect of a semester;the person incurs an HEC semester debt to the Commonwealth equal to the amount of the loan.
- (2) The HEC semester debt is taken to have been incurred immediately after the census date in respect of the course of study in respect of the semester, whether or not the Commonwealth has made a payment to the institution in respect of the contribution.

106JA PELS semester debt

- (1) When the Commonwealth under section 98G:
 - (a) makes a loan to a person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay fees in respect of a course of study in respect of a semester;the person incurs a ***PELS semester debt*** to the Commonwealth equal to the amount of the loan.
- (2) The PELS semester debt is taken to have been incurred immediately after the census date for the course of study for the semester, whether or not the Commonwealth has made a payment to the institution in respect of the fees.

106JB BOTP semester debt

- (1) When the Commonwealth under section 98ZA:
 - (a) makes a loan to a person; and

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- (b) uses the amount lent to make a payment in discharge of the person's liability to pay fees in respect of a BOTP course in respect of a study period;
the person incurs a **BOTP study period debt** to the Commonwealth equal to the amount of the loan.
- (2) The BOTP study period debt is taken to have been incurred immediately after the census date for the BOTP course for the study period, whether or not the Commonwealth has made a payment to the institution in respect of the fees.

106K OL study period debt

- (1) When the Commonwealth under section 106D:
 - (a) makes a loan to a person; and
 - (b) uses the amount lent to pay the basic charges that are payable by the person to the Agency in respect of units of study for which the person is enrolled in respect of a study period;
the person incurs an OL study period debt to the Commonwealth equal to the amount of the loan.
- (2) The OL study period debt is taken to have been incurred immediately after the census date for the study period, whether or not the Commonwealth has made a payment to the Agency in respect of the charges.

106KA Semester debts do not arise after 1 January 2005

Despite sections 106J to 106K, a person does not incur a semester debt if the census date, in respect of the course of study or study period in respect of which the debt would (apart from this section) arise, occurs on or after 1 January 2005.

106L Power of Secretary to remit debt in special circumstances

- (1) The Secretary may, in writing, remit the whole or part of a person's HEC semester debt or PELS semester debt if:
 - (a) the person has not completed the course requirements for his or her course of study in respect of a semester during the

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- semester or during the year in which the semester occurred;
and
 - (b) the Secretary is satisfied that special circumstances apply to the person (see subsection (3)); and
 - (c) the person applies in writing to the Secretary for remission of the debt within 12 months after the person's withdrawal day in relation to a unit in the person's course of study for the semester (see subsection (3B)).
- (2) The Secretary may, in writing, remit the whole or part of a person's BOTP study period debt or OL study period debt if:
- (a) the person has not completed the BOTP course, or one or more of the units of study, for which he or she was enrolled for the study period; and
 - (b) the Secretary is satisfied that special circumstances apply to the person (see subsection (3)); and
 - (c) the person applies in writing to the Secretary for remission of the debt within 12 months after the person's withdrawal day in relation to the BOTP course, or a unit of study, in which the person was enrolled for the study period (see subsection (3B)).
- (3) For the purposes of this section, *special circumstances*, in relation to a person, include circumstances that the Secretary is satisfied:
- (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 course of study for the semester or the study period (as the case requires); and
 - (c) make it impracticable for the person to complete the course requirements for the course of study for the semester during the semester or during the year in which the semester occurs, or the units of study for which he or she was enrolled for the study period (as the case requires).
- Note: For meaning of *census date*, see sections 34 (HECS) and 99 (OLDPS).
- (3A) The Secretary may issue guidelines relating to circumstances in which the Secretary will be satisfied of a matter referred to in paragraph (3)(a), (b) or (c). A decision of the Secretary under

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subsection (1) or (2) must be in accordance with any such guidelines.

(3B) For the purposes of this section, a person's *withdrawal day*, in relation to a unit in a course of study for a semester, or a BOTP course, or a unit of study, for a study period, is:

(a) if the person:

- (i) has incurred a semester debt for the course of study for the semester; and
- (ii) withdraws his or her enrolment in respect of the semester for the unit of study; and
- (iii) the institution at which the person was enrolled gives notice to the person that the withdrawal has taken effect; the day specified by the institution in the notice as the day the withdrawal takes effect; or

(b) if:

- (i) the person has incurred a semester debt for the course of study for the semester; and
- (ii) paragraph (a) does not apply to the person; and
- (iii) the person does not complete the course requirements for the course of study for the semester during the semester or during the year in which the semester occurred;

the last day of the semester; or

(ba) if the person:

- (i) has incurred a BOTP semester debt for the BOTP course; and
- (ii) withdraws his or her enrolment for the course for the study period; and
- (iii) the institution at which the person was enrolled gives notice to the person that the withdrawal has taken effect; the day specified by the institution in the notice as the day the withdrawal takes effect; or

(bb) if:

- (i) the person has incurred a BOTP semester debt; and
- (ii) paragraph (ba) does not apply to the person; and

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- (iii) the person does not complete the BOTP course for which he or she was enrolled for the study period; the last day of the study period; or
 - (c) if the person:
 - (i) has incurred an OL study period debt for the unit of study; and
 - (ii) withdraws his or her enrolment for the unit of study for the study period; and
 - (iii) the Agency gives notice to the person that the withdrawal has taken effect; the day specified by the Agency in the notice as the day the withdrawal takes effect; or
 - (d) if:
 - (i) the person has incurred an OL study period debt; and
 - (ii) paragraph (c) does not apply to the person; and
 - (iii) the person does not complete the unit of study for which he or she was enrolled for the study period; the last day of the study period.
- (4) On receiving an application, the Secretary must as soon as practicable consider the matter to which the application relates and notify the applicant of the decision on the application.
- (5) The notice of the decision must include:
 - (a) a statement of the reasons for the decision; and
 - (b) a statement to the effect that:
 - (i) if the applicant is dissatisfied with the decision of the Secretary the applicant may, within 28 days of receiving the notice, apply under section 106M for reconsideration of the decision; and
 - (ii) if the applicant is dissatisfied with the decision on the reconsideration, the applicant may, subject to the *Administrative Appeals Tribunal Act 1975*, make application to the Tribunal for a review of the decision on the reconsideration.
- (6) A failure to comply with subsection (5) does not affect the validity of the notice or of the decision notified.

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- (7) If the Secretary remits the whole or a part of a semester debt, the Secretary must give to the Commissioner written notice setting out:
- (a) the name of the person whose debt is remitted; and
 - (b) the amount remitted; and
 - (c) any other particular that the Commissioner reasonably requires.

106M Reconsideration of decision and appeal to Administrative Appeals Tribunal

- (1) If:
- (a) a person has applied under section 106L for remission of the whole or a part of a semester debt; and
 - (b) the Secretary notifies the person that he or she has decided not to remit the debt or not to remit as much of the debt as the person sought to have remitted;
- the person may apply to the Secretary for a reconsideration of the decision.
- (2) The application must be made in writing and must be given or sent to the Secretary within 28 days after the person has received notice of the decision.
- (3) On receiving the application, the Secretary must, as soon as practicable:
- (a) consider the application and:
 - (i) confirm the original decision; or
 - (ii) vary the original decision; or
 - (iii) revoke the original decision and substitute another decision; and
 - (b) notify the applicant of the decision on the reconsideration.
- (4) The notice of the decision must include:
- (a) a statement of the reasons for the decision; and
 - (b) a statement to the effect that, if the applicant is dissatisfied with the decision, the applicant may, within 28 days after receiving the notification, and subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Tribunal for review of the decision.

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- (5) A failure to comply with subsection (4) does not affect the validity of the notice or of the decision notified.
- (6) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Secretary under subsection (3).

106MA Further review of reconsideration decision concerning remission of semester debt

- (1) If:
 - (a) application is made to the Administrative Appeals Tribunal for review of a decision (the *reconsideration decision*) of the Secretary under subsection 106M(3); and
 - (b) information is provided for the purposes of that review that was not provided to the Secretary;the Secretary may review the reconsideration decision at any time before the determination of the application for review to the Tribunal.
- (2) On reviewing the reconsideration decision, and taking into account the information provided for the purposes of the application to the Administrative Appeals Tribunal, the Secretary must, as soon as practicable:
 - (a) confirm the reconsideration decision; or
 - (b) vary the reconsideration decision; or
 - (c) revoke the reconsideration decision and substitute a decision to remit the semester debt;and notify the applicant and the Registrar of the Tribunal of the decision made on that review.
- (3) The notice of the decision must include a statement of the reasons for the decision.
- (4) A failure to comply with subsection (3) does not affect the validity of the notice or of the decision notified.
- (5) If, on a review of a reconsideration decision, the Secretary varies the reconsideration decision, the application to the Administrative Appeals Tribunal is taken to be an application for review of the reconsideration decision as so varied unless the applicant, by notice

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in writing to the Registrar of the Tribunal, withdraws the application.

- (6) If, on a review of the reconsideration decision, the Secretary decides to revoke the reconsideration decision and to substitute a decision to remit the semester debt:
- (a) the Secretary must notify the Administrative Appeals Tribunal to that effect; and
 - (b) the application to the Tribunal is taken to have been withdrawn by the applicant.

106N Calculation of accumulated HEC debt

- (1) If a person incurred a semester debt or debts before 1 June in a year (the **relevant date**) but after 1 June in the immediately preceding year, the person incurs on the relevant date an **accumulated HEC debt** to the Commonwealth of an amount equal to:
- (a) that debt; or
 - (b) the total of those debts;
- less any amounts paid before the relevant date in reduction of that debt or those debts.
- (2) If on 1 June in a year (**relevant date**) a person owes to the Commonwealth:
- (a) a semester debt or debts incurred before 1 June in the immediately preceding year (the **earlier date**); and
 - (b) a semester debt or debts incurred after the earlier date;
- the person incurs on the relevant date an accumulated HEC debt that is made up of:
- (c) the adjusted accumulated HEC debt of the person at the earlier date (see subsection (3)) multiplied by the factor worked out under subsection (5); and
 - (d) the debt or debts referred to in paragraph (b).
- (2A) A person cannot incur an accumulated HEC debt on 1 June 2006 or on 1 June in any later year.

Note: A person's accumulated HELP debt, worked out under section 140-25 of the *Higher Education Support Act 2003*, for the financial year starting on 1 July 2005 can include an amount for the person's

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accumulated HEC debt incurred on 1 June 2005: see Part 3 of Schedule 1 to the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

- (3) For the purposes of paragraph (2)(c), the **adjusted accumulated HEC debt of the person at the earlier date** is the amount worked out by using the formula:

$$A - (B + C + D - E)$$

where:

A is the accumulated HEC debt of the person as at the earlier date;

B is the sum of:

- (a) any HEC assessment debt or HEC assessment debts of the person assessed on or after the earlier date and before the relevant date, excluding any such HEC assessment debt of the person assessed as a result of a return given before the earlier date; and
- (b) any HEC assessment debt or HEC assessment debts of the person assessed on or after the relevant date as a result of a return given before the relevant date;

C is any amount, or the sum of any amounts, by which the person's accumulated HEC debt at the earlier date is to be reduced because of any payment or payments made (otherwise than in discharge of an HEC assessment debt) on or after the earlier date and before the relevant date.

D is any amount, or the sum of any amounts, by which (whether as a result of an increase in the person's taxable income of a year of income or otherwise) any HEC assessment debt of the person is increased by an amendment of the relevant assessment made on or after the earlier date and before the relevant date; and

E is any amount, or the sum of any amounts, by which (whether as a result of a reduction in the person's taxable income of a year of income or otherwise) any HEC assessment debt of the person is reduced by an amendment of the relevant assessment made on or after the earlier date and before the relevant date.

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- (4) For the purposes of subsection (3), an assessment or an amendment of an assessment is taken to have been made on the day specified in the notice of assessment or notice of amended assessment (as the case may be) as the date of that notice.
- (5) The factor to be used for the purposes of paragraph (2)(c) in calculating the accumulated HEC debt of a person at 1 June in a year is the number (calculated to 3 decimal places) worked out, as at the date on which the index number in respect of the March quarter immediately preceding that 1 June was first published, by dividing the sum of:
 - (a) the index number in respect of that March quarter; and
 - (b) the index numbers in respect of the 3 quarters that immediately preceded that quarter;by the sum of:
 - (c) the index number in respect of the March quarter immediately preceding 1 June in the year that next preceded that year; and
 - (d) the index numbers in respect of the 3 quarters that immediately preceded that last-mentioned quarter.
- (6) Subject to subsection (7), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (7) If, at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.
- (8) If the factor worked out in accordance with subsection (5) in calculating the accumulated HEC debt of a person at 1 June in a year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor worked out in accordance with

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that subsection in making that calculation is taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

- (9) The Commissioner must cause to be published before 1 June in each year the factor worked out in accordance with subsection (5) (as affected by subsection (8)) in relation to the calculation of the accumulated HEC debt of a person at that date.
- (10) If, apart from this subsection, the accumulated HEC debt of a person at 1 June in a year would be an amount consisting of a number of whole dollars and a number of cents, the number of cents must be disregarded.
- (11) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

106O Accumulated HEC debt discharges earlier debts

- (1) The accumulated HEC debt that a person incurs on 1 June in a year (***relevant date***) discharges, or discharges the unpaid part of:
 - (a) any accumulated HEC debt that the person incurred on the preceding 1 June (***earlier date***); and
 - (b) any semester debt that was incurred by the person on or after the earlier date and before the relevant date.
- (2) Nothing in subsection (1) affects the application of section 106L or 106N.

Part 5A.3—Discharge of Indebtedness

Division 1—Voluntary discharge of indebtedness

106P Voluntary payments in respect of debts

- (1) Subject to this Division, if a person owes a debt to the Commonwealth under this Chapter, the person may at any time make a payment in respect of that debt.
- (2) The payment must be made to the Commissioner.

106PA Repayment of debt under this Chapter

- (1) This section applies in relation to the repayment of any debt under this Chapter other than an HEC assessment debt.
- (3) The debtor is taken to pay off the total debt if he or she pays in respect of the debt an amount worked out by using the formula:

Amount of debt outstanding

1.1

- (4) Subject to subsection (5), if a person pays an amount of \$500 or more in part settlement of a debt, the outstanding amount of the debt is to be reduced by the amount worked out by using the formula:

Amount of payment \times 1.1

Example: If a person owes a semester debt of \$1,700, and the person makes a payment of \$600, the debt is to be reduced by an amount of \$660 (i.e. \$600 \times 1.1), leaving a balance of \$1,040 (\$1,700 – \$660) to be paid.

- (5) Subsections (3) and (4) do not apply in respect of a payment in respect of a debt if, in addition to that debt, the debtor owes an HEC assessment debt to the Commonwealth.

Chapter 5A Repayment of loans made under Chapters 4, 4A, 4B and 5

Part 5A.3 Discharge of Indebtedness

Division 1 Voluntary discharge of indebtedness

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- (6) If an amount worked out by using the formula in subsection (3) or (4) is an amount made up of a number of dollars and cents, then:
 - (a) if the amount of cents in the amount is 50—the amount is to be rounded up to the nearest dollar; and
 - (b) in any other case—the amount is to be rounded up or down to the nearest dollar.

Division 1A—Voluntary repayments of accumulated HEC debt

106PB Notice to Commissioner

- (1) If a person owes a debt to the Commonwealth under this Chapter, the person may, on or before 31 December 1996, by writing in an approved form, notify the Commissioner that the person elects to make payments in reduction of his or her accumulated HEC debt when his or her HEC repayment income in respect of a year of income exceeds the prescribed amount for that year of income for the purposes of section 106PC.
- (2) A person who has made an election under subsection (1) may, at any time before the person becomes liable to pay an amount under section 106PC, revoke the election by notice in writing in an approved form to the Commissioner.

106PC Voluntary payments in respect of accumulated HEC debt

- (1A) Subsection (1) does not apply in relation to the 1997-98 year of income or any later year of income.
- (1) If:
 - (a) a person has made an election under subsection 106PB(1) and the election has not been revoked under subsection 106PB(2); and
 - (b) the HEC repayment income of the person in respect of a year of income:
 - (i) exceeds the prescribed amount for the year of income for the purposes of this section (see subsection (3)); but
 - (ii) does not exceed the minimum prescribed amount for the year of income for the purposes of subsection 106Q(1); and
 - (c) on 1 June immediately preceding the making of an assessment in respect of the person's income of that year of income, the person had an accumulated HEC debt;

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the person is liable to pay in accordance with this Chapter to the Commonwealth in reduction of his or her relevant debt (see subsection (3)) an amount equal to so much of that relevant debt as does not exceed 2% of the person's HEC repayment income.

- (2) On the person first becoming liable to pay an amount to the Commonwealth under subsection (1), an additional amount equal to 10% of the person's relevant debt is taken to have been paid in reduction of that debt.

- (3) In subsections (1) and (2):

relevant debt in relation to a person means:

- (a) subject to paragraph (b) of this subsection—the person's accumulated HEC debt referred to in paragraph (1)(c); or
 - (b) if an amount or amounts have been paid in reduction of that debt, or an amount is taken (under subsection (2)) to have been paid in reduction of that debt, or an amount or amounts have been assessed under section 106T to be payable in respect of that debt—the amount (if any) remaining after deducting from that debt the amount so paid or taken to have been paid or the sum of the amounts so paid or assessed to be payable.
- (4) A reference in paragraph (3)(b) to an amount assessed under section 106T to be payable in respect of a person's accumulated HEC debt is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased or the reduced amount (as the case may be).
- (5) For the purposes of this section, the prescribed amount is:
- (a) in the case of the year of income ending 30 June 1996—\$20,000; or
 - (b) in the case of a subsequent year of income—the number of whole dollars of the amount worked out by using the formula:

$$52 \times \frac{\text{AWE}}{5} \times \frac{20,000}{27,674}$$

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where:

AWE is the sum of:

- (i) the average weekly earnings for all employees for the reference period in the December quarter immediately preceding that year of income, as published by the Australian Statistician; and
 - (ii) the average weekly earnings for all employees for the reference period in each of the 4 quarters immediately before that December quarter, as published by the Australian Statistician.
- (6) For the purposes of subsection (5), the reference period in a particular quarter in a year is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.
- (7) The Minister must cause to be published in the *Gazette*:
- (a) as soon as possible after the commencement of this section, the prescribed amount in respect of the year of income ending on 30 June 1996; and
 - (b) before the start of each following year of income, the prescribed amount in respect of that year of income.

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Division 2—Requirement to discharge indebtedness

106Q Compulsory payments in respect of accumulated HEC debt

- (1) Subject to subsections (7) and (8), If:
- (a) the HEC repayment income of a person in respect of a year of income exceeds the minimum prescribed amount for the year of income (see subsection (4)); and
 - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income of that year of income, the person:
 - (i) had an accumulated HEC debt; or
 - (ii) if the 1 June occurs in the year 2006 or a later year—had an accumulated HELP debt;

the person is liable to pay in accordance with this Chapter to the Commonwealth in reduction of his or her relevant debt (see subsection (2)) an amount equal to so much of that relevant debt as does not exceed the percentage of the person's HEC repayment income that is applicable in accordance with the following table:

TABLE		
Item No.	Person's HEC repayment income in respect of year of income	Percentage applicable
1.	Not exceeding the first intermediate prescribed amount for the year of income (see subsection (4))	3%
2.	Exceeding the first intermediate prescribed amount for the year of income but not exceeding the second intermediate prescribed amount for the year of income (see subsection (4))	3.5%
3.	Exceeding the second intermediate prescribed amount for the year of income but not exceeding the third intermediate prescribed amount for the year of income (see subsection (4))	4%

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TABLE

Item No.	Person's HEC repayment income in respect of year of income	Percentage applicable
4.	Exceeding the third intermediate prescribed amount for the year of income but not exceeding the fourth intermediate prescribed amount for the year of income (see subsection (4))	4.5%
5.	Exceeding the fourth intermediate prescribed amount for the year of income but not exceeding the fifth intermediate prescribed amount for the year of income (see subsection (4))	5%
6.	Exceeding the fifth intermediate prescribed amount for the year of income but not exceeding the maximum prescribed amount (see subsection (4))	5.5%
7.	Exceeding the maximum prescribed amount for the year of income	6%

- (2) In subsection (1), **relevant debt**, in relation to a person, means:
- (a) subject to paragraph (b) of this subsection, the person's accumulated HEC debt referred to in paragraph (1)(b); or
 - (b) if an amount or amounts have been paid in reduction of that debt, or an amount or amounts have been assessed under section 106T to be payable in respect of that debt—the amount (if any) remaining after deducting from that debt the amount, or the sum of the amounts, so paid or assessed to be payable.
- (3) A reference in paragraph (2)(b) to an amount assessed under section 106T to be payable in respect of a person's accumulated HEC debt is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased or reduced amount (as the case may be).
- (4) For the purposes of this section:
- (a) the **minimum prescribed amount** or **MPA** for a year of income is:

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- (i) for the 1997-98 year of income—\$20,700; or
 - (ii) for a later year of income (other than the 2004-05 year of income)—the amount worked out using the formula:
$$\$20,700 \times \frac{\text{AWE for the year of income}}{\text{AWE for the 1997 - 98 year of income}}; \text{ or}$$
 - (iii) for the 2004-05 year of income—\$35,000;
 - (b) the **first intermediate prescribed amount** for a year of income is:
 - (i) for the 1997-98 year of income—\$21,830; or
 - (ii) for a later year of income—the amount worked out using the formula:
$$\frac{\text{MPA for the year of income}}{20,700} \times \frac{21,830}{20,700}$$
 - (c) the **second intermediate prescribed amount** for a year of income is:
 - (i) for the 1997-98 year of income—\$23,524; or
 - (ii) for a later year of income—the amount worked out using the formula:
$$\frac{\text{MPA for the year of income}}{20,700} \times \frac{23,524}{20,700}$$
 - (d) the **third intermediate prescribed amount** for a year of income is:
 - (i) for the 1997-98 year of income—\$27,288; or
 - (ii) for a later year of income—the amount worked out using the formula:
$$\frac{\text{MPA for the year of income}}{20,700} \times \frac{27,288}{20,700}$$
 - (e) the **fourth intermediate prescribed amount** for a year of income is:
 - (i) for the 1997-98 year of income—\$32,934; or
 - (ii) for a later year of income—the amount worked out using the formula:
-

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$$\frac{\text{MPA for the year of income}}{\text{year of income}} \times \frac{32,934}{20,700}$$

- (f) the ***fifth intermediate prescribed amount*** for a year of income is:

- (i) for the 1997-98 year of income—\$34,665; or
- (ii) for a later year of income—the amount worked out using the formula:

$$\frac{\text{MPA for the year of income}}{\text{year of income}} \times \frac{34,665}{20,700}$$

- (g) the ***maximum prescribed amount*** for a year of income is:

- (i) for the 1997-98 year of income—\$37,262; or
- (ii) for a later year of income—the amount worked out using the formula:

$$\frac{\text{MPA for the year of income}}{\text{year of income}} \times \frac{37,262}{20,700}$$

- (4A) For the purposes of paragraph (4)(a), ***AWE*** for a year of income is the number of dollars in the sum of:

- (a) the average weekly earnings for all employees for the reference period in the December quarter immediately before the year of income, as published by the Australian Statistician; and
- (b) the average weekly earnings for all employees for the reference period in each of the 4 quarters immediately before that December quarter, as published by the Australian Statistician.

- (4B) If an amount worked out for the purposes of subsection (4) includes any cents, the cents must be disregarded.

- (5) For the purposes of subsection (4A), the reference period in a particular quarter in a year is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

- (6) The Minister must cause to be published in the *Gazette*:

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- (a) as soon as possible after the commencement of this section, the minimum prescribed amount, the intermediate prescribed amounts and the maximum prescribed amount, in respect of the year of income ending on 30 June 1997; and
 - (b) before the start of the 1998-99 year of income or a later year of income, the minimum prescribed amount, the intermediate prescribed amounts and the maximum prescribed amount in respect of that year of income.
- (7) Subsection (1) does not require a person to pay an amount for a year of income if, under section 8 of the *Medicare Levy Act 1986*:
- (a) no Medicare levy is payable by the person on the person's taxable income for the year of income; or
 - (b) the amount of Medicare levy payable by the person on the person's taxable income for the year of income is reduced.
- (8) This section applies in relation to the 2004-05 year of income as if the table in subsection (1) were omitted and the following table were substituted:

HEC repayment thresholds for the 2004-05 year of income		
Item	Person's HEC repayment income in respect of year of income	Percentage applicable
1	More than \$35,000, but less than \$38,988	4%
2	\$38,988 or more, but less than \$42,973	4.5%
3	\$42,973 or more, but less than \$45,233	5%
4	\$45,233 or more, but less than \$48,622	5.5%
5	\$48,622 or more, but less than \$52,658	6%
6	\$52,658 or more, but less than \$55,430	6.5%
7	\$55,430 or more, but less than \$60,972	7%
8	\$60,972 or more, but less than \$65,000	7.5%
9	\$65,000 or more	8%

Division 3—Returns and assessments

106R Agency etc. to provide information to Commissioner

- (1) The Agency must give to the Commissioner, if asked by the Commissioner to do so, any information in its possession relating to its eligible clients that the Commonwealth reasonably requires for the purposes of this Chapter.
- (3) An institution must give to the Commissioner, if asked by the Commissioner to do so, any information in its possession relating to students in relation to designated courses of study at the institution that the Commissioner reasonably requires for the purposes of this Chapter.
- (4) An institution must give to the Commissioner, if asked by the Commissioner to do so, any information in its possession relating to students in relation to eligible post-graduate courses of study at the institution that the Commissioner reasonably requires for the purposes of this Chapter.
- (5) An institution must give to the Commissioner, if asked by the Commissioner to do so, any information in its possession relating to students in relation to BOTP courses at the institution that the Commissioner reasonably requires for the purposes of this Chapter.

106T Assessment

The Commissioner may, from any information in the Commissioner's possession, whether from a return or otherwise, make an assessment of:

- (a) the amount of the accumulated HEC debt of a person at 1 June immediately before the making of the assessment; and
- (b) the amount required to be paid in respect of that accumulated HEC debt under section 106PC or 106Q.

Section 106U

106U Application of tax legislation

- (1) Subject to this Part, Part IV, and Division 1 of Part VI, of the *Income Tax Assessment Act 1936* (**Assessment Act**), and Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*, apply, so far as they are capable of application, in relation to an HEC assessment debt of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the Assessment Act.

Note: Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* deals with collection and recovery of amounts on and after 1 July 2000, replacing some provisions in Division 1 of Part VI of the *Income Tax Assessment Act 1936*.

- (2A) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:
- (a) any HEC assessment debt of a person were income tax payable by the person in respect of the year of income in respect of which the assessment of that debt was made; and
 - (b) Chapters 4, 4A, 4B, 5, 5A and 5B of this Act were income tax laws.
- (2B) Subsection (2A) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.
- (3) Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection by instalments of an HEC assessment debt of a person as if the HEC assessment debt were income tax.
- (5) Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of an HEC assessment debt of a person as if the HEC assessment debt were income tax.

106V Notification on notices of assessment of tax

If:

Section 106W

- (a) the Commissioner is required to serve on a person a notice of assessment in respect of the person's income of a year of income under section 174 of the *Income Tax Assessment Act 1936*; and
 - (b) an assessment (**relevant assessment**) has been made in respect of the person of the amounts referred to in section 106T of this Act but notice of the relevant assessment has not been served on the person;
- notice of the relevant assessment may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

106W Power of Commissioner to defer assessment or reduce assessment to nil

- (1) The Commissioner may, on written application by a person, defer the making of an assessment in relation to the person under section 106T if the Commissioner is of the opinion that:
 - (a) if the assessment were made, payment of the assessed amount would cause serious hardship to the person; or
 - (b) there are other special reasons that make it fair and reasonable to defer the making of the assessment.
- (2) The Commissioner may defer the assessment for any period that he or she thinks appropriate.
- (3) The Commissioner may, on written application by a person, amend an assessment made in relation to the person under section 106T so that no amount is payable under the assessment if the Commissioner is of the opinion that:
 - (a) payment of the assessed amount has caused or would cause serious hardship to the person; or
 - (b) there are other special reasons that make it fair and reasonable to make the amendment.
- (4) If an application is made under subsection (1) or (3), the Commissioner must as soon as practicable:
 - (a) consider the matter to which the application relates; and
 - (b) notify the applicant of the Commissioner's decision on the application.

Section 106X

106X Review of decision of Commissioner

- (1) Application may be made to the Administrative Appeals Tribunal for review of:
 - (a) a decision of the Commissioner under subsection 106W(1);
or
 - (b) a decision of the Commissioner under subsection 106W(3) refusing to amend an assessment.
- (2) A notice under paragraph 106W(4)(b) relating to a decision that may be reviewed by the Tribunal must:
 - (a) include a statement to the effect that, if the person is dissatisfied with the decision of the Commissioner, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision; and
 - (b) except if subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (3) A failure to comply with subsection (2) in relation to a notification does not affect the validity of the notification or of the decision to which the notification relates.

Division 4—Miscellaneous

106Y Application of payments

- (1) Any money paid by a person to meet the person's debts to the Commonwealth under this Chapter is to be applied in payment of those debts as directed by the person.
- (2) If:
 - (a) the person has not given any directions; or
 - (b) the directions given do not adequately deal with the matter;any money available is to be applied as follows:
 - (c) first, in discharge or reduction of any HEC assessment debts of the person;
 - (d) secondly, in discharge or reduction of any accumulated HEC debt of the person;
 - (e) thirdly, in discharge or reduction of:
 - (i) any semester debt of the person; or
 - (ii) if there is more than one such debt, those debts in the order in which they were incurred; or
 - (f) fourthly, in discharge or reduction of:
 - (i) any HELP debt of the person; or
 - (ii) if there is more than one such debt, those debts in the order in which they were incurred.
- (3) In this section:

HELP debt has the same meaning as in the *Higher Education Support Act 2003*.

106YA Effect of bankruptcy

- (1) This section applies in relation to a bankruptcy if:
 - (a) before the bankrupt's bankruptcy date, the bankrupt incurred:
 - (i) an accumulated HEC debt; or
 - (ii) a semester debt or semester debts; or
 - (iii) both; and

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- (b) that debt or those debts had not been discharged before the bankruptcy date.

Debts related to pre-bankruptcy period are provable

- (2) Subject to subsection (5), the following are taken to be provable debts for the purposes of the Bankruptcy Act:
 - (a) the pre-bankruptcy part of the bankrupt's accumulated HEC debt;
 - (b) the unpaid part of the semester debt, or of each of the semester debts.

Note 1: An accumulated HEC debt and a semester debt can be discharged and replaced by a new accumulated HEC debt through the operation of sections 106N and 106O.

Note 2: If an accumulated HEC debt, or a semester debt that the bankrupt incurred before the bankrupt's bankruptcy date, is discharged and replaced in this way:

- (a) it ceases to be a provable debt; and
- (b) subsections (6) and (7) of this section can apply to the new accumulated HEC debt; and
- (c) for that purpose, a pre-bankruptcy part for the bankrupt's new accumulated HEC debt is calculated under subsections (8) and (9).

Debts related to post-bankruptcy period not provable

- (3) To avoid doubt, the following are taken not to be provable debts for the purposes of the Bankruptcy Act:
 - (a) the bankrupt's accumulated HEC debt (apart from the pre-bankruptcy part of that debt);
 - (b) any semester debt incurred by the bankrupt on or after the bankrupt's bankruptcy date.

Dividend taken to be voluntary payment

- (4) A dividend paid under the Bankruptcy Act to the Commonwealth in respect of:
 - (a) the pre-bankruptcy part of the bankrupt's accumulated HEC debt; or
 - (b) a semester debt mentioned in subsection (1);

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is taken for the purposes of this Part to be money that the bankrupt has directed to be applied in payment of that debt.

No release on discharge from bankruptcy

- (5) Section 153 of the Bankruptcy Act does not operate to release the bankrupt from the following:
- (a) all or any part of the accumulated HEC debt;
 - (b) a semester debt mentioned in subsection (1).

Replacement of accumulated HEC debt

- (6) If:
- (a) subsections (2) to (5) apply to an accumulated HEC debt (the **old HEC debt**) of the bankrupt (including because of a previous application of this subsection or subsection (7)); and
 - (b) the old HEC debt is discharged under section 106O because the bankrupt incurred another accumulated HEC debt (the **replacement HEC debt**) under section 106N;
- then:
- (c) after the replacement HEC debt is incurred, those subsections apply (subject to any later application of this subsection) to the replacement HEC debt instead of the old HEC debt; and
 - (d) for that purpose:
 - (i) a proof of debt under the Bankruptcy Act in relation to the pre-bankruptcy part of the old HEC debt (including because of a previous application of this subsection or subsection (7)) is taken to relate, to the extent of that proof, to the pre-bankruptcy part of the replacement HEC debt; and
 - (ii) if at the time the old HEC debt is discharged under section 106O, a semester debt of the bankrupt is also discharged under that section—a proof of debt under the Bankruptcy Act in relation to the semester debt is taken to relate, to the extent of that proof, to the pre-bankruptcy part of the replacement HEC debt.

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Replacement of semester debt only

(7) If:

- (a) immediately before the bankrupt's bankruptcy date, the bankrupt had:
 - (i) one or more undischarged semester debts (an *old semester debt*); and
 - (ii) no undischarged accumulated HEC debt; and
- (b) on or after the bankruptcy date, the unpaid part of an old semester debt is discharged under section 106O because the bankrupt incurred an accumulated HEC debt (the *new HEC debt*) under section 106N;

then:

- (c) after the new HEC debt is incurred, subsections (2) to (5) apply (subject to any later application of subsection (6)) to the new HEC debt instead of the old semester debt; and
 - (d) for that purpose, a proof of debt under the Bankruptcy Act in relation to the old semester debt is taken to relate to the pre-bankruptcy part of the new HEC debt.
- (8) Subject to subsection (9), the *pre-bankruptcy part* of a bankrupt's accumulated HEC debt is the amount that would be the bankrupt's relevant debt calculated in accordance with subsections 106Q(2) and (3), if:
- (a) that amount was calculated as at the time immediately before the bankrupt's bankruptcy date; and
 - (b) the reference in paragraph 106Q(2)(a) to the person's accumulated HEC debt referred to in paragraph (1)(b) were a reference to the person's accumulated HEC debt on the 1 June immediately preceding the bankruptcy date.

(9) If:

- (a) immediately before the bankrupt's bankruptcy date, the bankrupt had one or more undischarged semester debts; and
- (b) at a time (the *discharge time*) on or after the bankruptcy date, the unpaid part of those debts (the *discharged amount*) was discharged because of the operation of section 106O;

then:

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- (c) if the bankrupt did not have an accumulated HEC debt immediately before the discharge time—the *pre-bankruptcy part* of the bankrupt's accumulated HEC debt is equal to the discharged amount; or
 - (d) otherwise—the *pre-bankruptcy part* of the bankrupt's accumulated HEC debt is taken to be increased at the discharge time by an amount equal to the discharged amount.
- (10) In this section:

bankrupt has the same meaning as in the Bankruptcy Act.

bankruptcy has the same meaning as in the Bankruptcy Act.

Bankruptcy Act means the *Bankruptcy Act 1966*.

bankruptcy date, in relation to a bankrupt, means the date of the bankruptcy of the bankrupt (within the meaning of the Bankruptcy Act).

dividend has the same meaning as in the Bankruptcy Act.

pre-bankruptcy part, in relation to a bankrupt's accumulated HEC debt, has the meaning given by subsections (8) and (9).

provable debt has the same meaning as in the Bankruptcy Act.

106Z Indebtedness discharged by death

Upon the death of a person who owes a debt (other than an HEC assessment debt) to the Commonwealth under this Chapter, the debt is taken to have been paid.

106ZA Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if:

- (a) the section were included in this Chapter; and
- (b) any reference to an institution included a reference to the Agency.

Section 106ZB

Chapter 5B—Limit on student debt to Commonwealth

Part 5B.1—Preliminary

106ZB Definitions

- (1) In this Chapter, unless the contrary intention appears:

census date means:

- (a) when used in relation to a loan under section 57 or 98G—census date within the meaning of Chapter 4; or
- (b) when used in relation to a loan under section 98ZA—census date within the meaning of Chapter 4B; or
- (c) when used in relation to a loan under section 106D—census date within the meaning of Chapter 5.

loan limit notice means a notice given under subsection 106ZE(1).

maximum permitted debt means the amount specified in a determination in force under section 106ZD.

study period means:

- (a) when used in relation to a loan under section 98ZA—study period within the meaning of Chapter 4B; or
- (b) when used in relation to a loan under section 106D—study period within the meaning of Chapter 5.

suspension notice means a notice given under subsection 106ZH(1).

total indebtedness under this Act has the meaning given by subsection (3).

- (2) Expressions used in this Chapter that are defined in Chapter 4, 4A, 4B, 5 or 5A have in this Chapter, unless the contrary intention appears, the same meanings as in Chapter 4, 4A, 4B, 5 or 5A (as the case may be).

Section 106ZB

- (3) A person's *total indebtedness under this Act* at a time is the sum of:
- (a) the person's accumulated HEC debt as at the most recent 1 June before that time; and
 - (b) the semester debt or semester debts that:
 - (i) the person owes to the Commonwealth; and
 - (ii) were incurred after that 1 June;
- reduced by any payments made after that 1 June in reduction of the debts mentioned in paragraph (a) or (b).

Section 106ZC

**Part 5B.2—Additional condition of grant of
financial assistance**

106ZC Additional condition

- (1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution referred to in section 4 on the condition that the institution complies with the requirements of this Chapter.
- (2) Without limiting the operation of subsection (1), the following provisions of this Chapter do not of their own force require an institution to do any act or thing.

Part 5B.3—Maximum permitted debt

106ZD Minister may determine maximum permitted debt

The Minister may make a determination specifying an amount that is the *maximum permitted debt* for the purposes of this Chapter.

Part 5B.4—Loan limit notices

106ZE Commissioner to give loan limit notice

- (1) The Commissioner must give a notice (the *loan limit notice*) under this section in relation to a person if the person's total indebtedness under this Act exceeds the maximum permitted debt.
- (2) The notice must:
 - (a) state that, on the day on which the notice is given, the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (b) summarise the effect of sections 106ZF, 106ZG, 106ZH and 106ZJ.
- (3) The notice must be in writing and given to the person to whom it relates.
- (4) The Commissioner must give a copy of the notice to:
 - (a) each institution at which, according to information that the institution has given the Commissioner, the person to whom the notice relates is enrolled in or undertaking a designated course of study, an eligible post-graduate course of study or a BOTP course; and
 - (b) if the Agency has given information to the Commissioner indicating that the person to whom the notice relates is an eligible client of the Agency for a study period—the Agency; unless the notice has been cancelled under section 106ZF.

Note: The Commissioner must give a copy of the notice from time to time as occasion requires. See subsection 33(1) of the *Acts Interpretation Act 1901*.
- (5) At the time the notice is given, the Commissioner must also give a statement in writing to the person to whom the notice relates that specifies:
 - (a) the maximum permitted debt; and
 - (b) the person's total indebtedness under this Act at that time.

Section 106ZF

106ZF Cancelling loan limit notice

- (1) The person to whom the loan limit notice relates may ask the Commissioner to give a notice (the ***cancellation notice***) under this section cancelling the loan limit notice.
- (2) The Commissioner must give the cancellation notice to the person if the person's total indebtedness under this Act no longer exceeds the maximum permitted debt.
- (3) The cancellation notice must be in writing and state that, on the day on which it is given, the person's total indebtedness under this Act does not exceed the maximum permitted debt.

106ZG Consequences of loan limit notice—no amounts payable by Commonwealth

- (1) This section operates if the Commissioner has given a person a loan limit notice in accordance with section 106ZE that relates to the person.

HECS and PELS

- (2) The Commonwealth is not liable, and is taken never to have been liable, in relation to a course of study for a semester covered by subsection (3):
 - (a) to lend an amount to the person under:
 - (i) subsection 57(3), paragraph 57(3A)(e) or subparagraph 57(3B)(b)(i); or
 - (ii) paragraph 98G(2)(a); or
 - (b) to apply any amount in making a payment to an institution, in discharge of a liability of the person, under:
 - (i) subsection 57(2) or (3), paragraph 57(3A)(e) or (f) or subparagraph 57(3B)(b)(ii); or
 - (ii) paragraph 98G(2)(b).
 - (3) Subsection (2) relates to a course of study for a semester if:
 - (a) the course of study is:
 - (i) a designated course of study; or
 - (ii) an eligible post-graduate course of study; and
-

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- (b) the census date for the course of study for the semester is:
 - (i) on or after the day on which the Commissioner gave the person the loan limit notice; and
 - (ii) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.

BOTP loan scheme

- (3A) The Commonwealth is not liable, and is taken never to have been liable, in relation to a BOTP course for a study period covered by subsection (3B):
 - (a) to lend an amount to the person under paragraph 98ZA(2)(a); or
 - (b) to apply any amount in making a payment to an institution, in discharge of a liability of the person, under paragraph 98ZA(2)(b).
- (3B) Subsection (3A) relates to a BOTP course for a study period if the census date for the study period is:
 - (a) on or after the day on which the Commissioner gave the person the loan limit notice; and
 - (b) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.

Open Learning Deferred Payment Scheme

- (4) The Commonwealth is not liable, and is taken never to have been liable, in relation to a unit of study for a study period covered by subsection (5):
 - (a) to lend an amount to the person under paragraph 106D(1)(a); or
 - (b) to apply any amount in making a payment to the Agency, in discharge of a liability of the person, under paragraph 106D(1)(b).
- (5) Subsection (4) relates to a unit of study for a study period if the census date for the study period is:

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- (a) on or after the day on which the Commissioner gave the person the loan limit notice; and
- (b) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.

Notifying affected persons

- (6) The regulations may set out procedures for an institution or the Agency to notify persons who may be affected by subsection (2), (3A) or (4).

Part 5B.5—Suspension notices

106ZH Commissioner must give suspension notice

- (1) The Commissioner must give an institution a notice (the *suspension notice*) in writing under this subsection in relation to a person if:
 - (a) the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (b) the Commissioner has given the person a loan limit notice in accordance with section 106ZE; and
 - (c) the loan limit notice has not been cancelled by a notice under section 106ZF; and
 - (d) according to information that the institution has given the Commissioner, the person:
 - (i) is enrolled in or undertaking a designated course of study at the institution; or
 - (ii) proposes to enrol in or undertake a designated course of study at the institution.
- (2) The suspension notice must:
 - (a) state that:
 - (i) on the day on which it is given, the person's total indebtedness under this Act exceeds the maximum permitted debt; and
 - (ii) the Commissioner gave the person a loan limit notice on or before that day; and
 - (iii) the loan limit notice has not been cancelled by a notice under section 106ZF on or before that day; and
 - (b) specify the day on which the Commissioner gave the person the loan limit notice.
- (3) The Commissioner must give a copy of the suspension notice to the person to whom it relates.

Section 106ZJ

106ZJ Consequences of suspension notice—HECS courses

- (1) This section operates if the Commissioner has given an institution a suspension notice in relation to a person.
- (2) The institution must:
 - (a) not permit the person to undertake a course of study for a semester covered by subsection (3) at the institution; and
 - (b) if the person applies to enrol for a course of study for a semester covered by subsection (3) at the institution—not permit the person to enrol for the course of study for the semester; and
 - (c) if the person has already enrolled for a course of study for a semester covered by subsection (3) at the institution—cancel the person's enrolment for the course of study for the semester.
- (3) Subsection (2) relates to a course of study for a semester if:
 - (a) the course of study is a designated course of study; and
 - (b) the census date for the course of study for the semester is:
 - (i) on or after the day specified in the suspension notice as the day on which the Commissioner gave the person a loan limit notice; and
 - (ii) if the loan limit notice has been cancelled by a notice under section 106ZF—before the day on which the loan limit notice was cancelled.
- (4) The regulations may set out procedures for the institution to notify persons who may be affected by subsection (2).
- (5) Subsection (2) does not apply if:
 - (a) the person pays to the institution the total amount of the contribution that the institution assesses will be payable by the student for the course of study for the semester; or
 - (b) the person is an exempt student for the course of study for the semester.

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Part 5B.6—Secrecy

106ZK Secrecy

Section 78 has effect in relation to information disclosed or obtained under, or for the purposes of, this Chapter as if the section were included in this Chapter.

Chapter 6—Miscellaneous

107 Benefits of, and opportunities created by, grants to be equally available to female and male students

- (1) A payment under this Act to an institution for the purpose of financial assistance is granted on the condition that the institution will ensure that the benefits of, and the opportunities created by, the payment will, as far as practicable, be equally available to female students and male students.
- (2) Where:
 - (a) the benefits of, or the opportunities created by, a particular project or program or particular expenditure would not, but for this subsection, be equally available to female students and male students; and
 - (b) an object of the project, program or expenditure is to secure the adequate advancement of persons of one sex who require special assistance in order to ensure that persons of that sex have equal opportunities with persons of the other sex in connection with education or training;the benefits of, or the opportunities created by, the project, program or expenditure shall be taken, for the purposes of this Act, to be equally available to female students and male students.

108 Additional conditions

In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution or other body under this Act in respect of a year on the conditions that:

- (a) if the Minister informs the institution or body that the Minister is satisfied that the institution or body has failed to fulfil a condition applicable to that financial assistance, the institution or body will pay to the Commonwealth the amount (if any) specified by the Minister, not exceeding the amount of the financial assistance; and

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- (b) if the amount of the financial assistance paid to the institution or body under a provision of this Act exceeds the amount of that financial assistance that is properly payable to the institution or body under that provision, the institution or body will pay an amount equal to the excess to the Commonwealth; and
- (c) despite paragraph (a), if:
 - (i) the institution or body fails to spend any of that financial assistance in accordance with this Act in respect of that year; and
 - (ii) the Minister determines that this paragraph is to apply in relation to the institution or body in respect of that year; so much of the unspent amount as the Minister specifies will be taken to have been granted to the institution or body under this Act in respect of the next following year under similar conditions to the conditions of the original grant or under other conditions determined by the Minister; and
- (d) the institution or body gives to the Minister, not later than 30 June next following that year, a financial statement in respect of that year, in an approved form, together with a report on the statement by a qualified auditor.

109 Amendments affecting entitlements to grants

The Minister shall not make a determination under section 15, 16, 24, 25, 26, 31, 32, 100 or 101:

- (a) that would reduce an amount payable to an institution under a previous determination made by the Minister unless the Minister has consulted the institution in relation to the proposed reduction; or
- (b) that could result in an institution becoming liable to pay an amount to the Commonwealth.

110 Legislative instruments

The following are legislative instruments for the purposes of the *Legislative Instruments Act 2003*:

- (a) a declaration made by the Minister under subsection 4(2) or 98AA(2);

Section 110A

- (b) a determination made by the Minister under section 15, 16, 20A, 24, 25, 27A, 98Q, 98S or 106ZD or under subsection 23(1E);
- (c) guidelines issued under section 19, 20A, 26 or 27, paragraph 35(7)(b), subsection 36(3) or 39(4), section 40A, subsection 56C(6), 56D(6), 56E(4) or 98U(4) (as any of those subsections applies of its own force or otherwise) or subsection 106L(3A).

110A Transitional financial assistance

- (1) There is payable, to an institution to which financial assistance was payable under Chapter 2 in respect of the year 2004, such amount as the Minister determines in respect of a year referred to in subsection (2).
- (2) The total of the amounts that are payable under this section must not exceed:
 - (a) for the year 2005—\$21,989,000; and
 - (b) for the year 2006—\$9,791,000; and
 - (c) for the year 2007—\$7,845,000.

110B Commonwealth not liable where person later gives correct information

Despite any other provision of this Act, the Commonwealth is not, and is taken never to have been, liable to:

- (a) lend an amount to a person under this Act; or
- (b) apply any amount in making a payment to an institution under this Act in discharge of a liability of the person;

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

111 Time and manner of payments

Financial assistance payable to an institution or other body under this Act shall be paid in such amounts, and at such times, as the Minister determines.

Section 112

112 Delegation

- (1) The Minister may, by writing signed by the Minister, delegate to an officer of the Department all or any of the Minister's powers under this Act.
- (2) The Secretary may, by writing signed by the Secretary, delegate to an officer of the Department all or any of the Secretary's powers under this Act.
- (3) The Secretary may delegate to a review officer of an institution the Secretary's powers under sections 106L and 106M so far as those powers relate to persons who are, or have been, enrolled with the institution.
- (4) In exercising powers under a delegation made under subsection (3), the delegate must comply with any directions of the Secretary.
- (5) In this subsection:

review officer, in relation to an institution, means a person, or a person included in a class of persons, appointed by, or by a delegate of, the chief executive officer of the institution to be an appropriate officer of the institution for the purposes of subsection (3).

112A Application of the *Taxation Administration Act 1953*

- (1) Chapters 4, 4A, 4B, 5, 5A and 5B are taken to be, and are taken always to have been, taxation laws for the purposes of the *Taxation Administration Act 1953*.
- (2) Subsection (1), in so far as it applies to Chapters 4A, 4B, 5, 5A and 5B, does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this section.

113 Advances

The Minister may make arrangements for the making of advances by the Minister to an institution or other body, by way of financial assistance to the institution or other body, on account of an amount

Section 115

that is expected to become payable under a provision of this Act to the institution or other body, and the conditions that would be applicable to a payment of the amount under that provision are applicable to any such advance.

115 Authority to borrow

The Treasurer may, from time to time, in accordance with the provisions of the *Commonwealth Inscribed Stock Act 1911*, or in accordance with the provisions of an Act authorising the issue of Treasury Bills, borrow money the total amount of which does not exceed the sum of the amounts payable to institutions under section 27A.

116 Application of money borrowed

Money borrowed under section 115 must be issued and applied only for the expenses of borrowing and for the purpose of making payments to institutions in accordance with section 27A.

118 Appropriation

- (1) The Consolidated Revenue Fund is, by force of this subsection, appropriated as necessary for the purposes of this Act other than Chapters 4, 4A and 4B.
- (2) Subsection (1) shall not be taken to exclude by implication the application in relation to Chapter 4, 4A or 4B of any existing appropriation.

Section 119

119 Report by Minister

The Minister shall, as soon as practicable after the end of each year to which this Chapter applies, cause a report setting out particulars of amounts determined by the Minister under sections 15, 16, 19, 20, 21, 21B, 22, 22A, 23, 23A, 24, 25, 25A, 27A and 27D to be laid before each House of the Parliament.

120 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Institutions or bodies eligible for special research assistance

Note: See section 23.

Institutions or bodies eligible for special research assistance	
Item	Name of institution or body
1	Australian Catholic University
2	Charles Sturt University
3	Southern Cross University
4	Macquarie University
5	The University of New England
6	The University of New South Wales
7	The University of Newcastle
8	The University of Sydney
9	University of Technology, Sydney
10	University of Western Sydney
11	University of Wollongong
12	Deakin University
13	La Trobe University
14	Monash University
15	Royal Melbourne Institute of Technology
16	Swinburne University of Technology
17	The University of Melbourne
18	University of Ballarat
19	Victoria University of Technology
20	Melbourne College of Divinity
21	Central Queensland University
22	Griffith University
23	James Cook University
24	Queensland University of Technology
25	The University of Queensland
26	University of Southern Queensland
27	University of the Sunshine Coast

Schedule 1 Institutions or bodies eligible for special research assistance

Institutions or bodies eligible for special research assistance	
Item	Name of institution or body
28	Bond University
29	Curtin University of Technology
30	Edith Cowan University
31	Murdoch University
32	The University of Western Australia
33	The Flinders University of South Australia
34	The University of Adelaide
35	University of South Australia
36	University of Tasmania
37	Batchelor Institute of Indigenous Tertiary Education
38	Northern Territory University
39	Australian Maritime College
40	The Australian National University
41	University of Canberra
42	The University of Notre Dame Australia

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Higher Education Funding Act 1988*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Higher Education Funding Act 1988	2, 1989	6 Jan 1989	Chapter 5 (ss. 99–106): (a) Remainder: Royal Assent	
Higher Education Funding Amendment Act 1988	138, 1988	26 Dec 1988	26 Dec 1988	—
Higher Education Funding Amendment Act 1989	80, 1989	21 June 1989	21 June 1989	—
Higher Education Funding Amendment Act (No. 2) 1989	168, 1989	19 Dec 1989	19 Dec 1989	s. 10(2)
University of Canberra Act 1989	179, 1989	28 Dec 1989	1 Jan 1990	s. 61(4)
Higher Education Funding Amendment Act (No. 2) 1990	122, 1990	28 Dec 1990	28 Dec 1990	ss. 9(2), (3), 10(2), 14(2), (3) and 17(2)
Higher Education Funding Amendment Act 1991	53, 1991	24 Apr 1991	24 Apr 1991	—
Higher Education Funding Amendment Act (No. 2) 1991	177, 1991	25 Nov 1991	s. 12: 1 Jan 1992 Remainder: Royal Assent	—

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Taxation Laws Amendment Act (No. 3) 1991	216, 1991	24 Dec 1991	s. 113: 1 Mar 1992 (<i>see Gazette</i> 1992, No. GN7) (<i>b</i>)	—
Higher Education Funding Amendment Act 1992	74, 1992	26 June 1992	26 June 1992	—
Higher Education Funding Amendment Act (No. 2) 1992	158, 1992	11 Dec 1992	Parts 2, 3 (ss. 3–46) and Part 5 (ss. 60–70): 1 Jan 1993 Part 4 (ss. 47–59): 1 Jan 1994 Remainder: Royal Assent	ss. 38, 45, 46 and 59
as amended by				
Higher Education Funding Legislation Amendment Act 1994	147, 1994	8 Dec 1994	ss. 12–18: (<i>c</i>)	—
Higher Education Funding Legislation Amendment Act 1993	116, 1993	24 Dec 1993	ss. 3, 4(a), 5–17, 19, Parts 3 and 4 (ss. 21–27): 1 Jan 1994 s. 18: 1 July 1994 s. 20(2): 1 Jan 1994 (<i>d</i>) Remainder: Royal Assent	—
Higher Education Funding Amendment Act 1994	24, 1994	25 Feb 1994	25 Feb 1994	s. 3
as amended by				
Higher Education Funding Legislation Amendment Act 1994	147, 1994	8 Dec 1994	Part 4 (ss. 19–23): (<i>e</i>)	—
Employment, Education and Training Legislation Amendment Act 1994	79, 1994	23 June 1994	23 June 1994	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Higher Education Funding Legislation Amendment Act 1994	147, 1994	8 Dec 1994	ss. 3–11: <i>(f)</i>	ss. 8(2) and 9(2)
Higher Education Funding (Student Organisations) Amendment Act 1994	178, 1994	19 Dec 1994	31 Dec 1994	—
Higher Education Funding Amendment Act (No. 1) 1995	135, 1995	1 Dec 1995	1 Dec 1995	Sch. (items 6, 17)
Higher Education Funding Amendment Act (No. 2) 1995 as amended by	163, 1995	16 Dec 1995	Schedule (Part 5): 1 July 1996 Remainder: 1 Jan 1996	ss. 4 and 38
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 3 (item 30): 16 Dec 1995 <i>(g)</i>	—
Education and Training Legislation Amendment Act 1996	13, 1996	14 June 1996	1 July 1996	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (items 61–64): <i>(h)</i>	—
Higher Education Funding Amendment Act (No. 1) 1996	72, 1996	5 Dec 1996	Schedule 1 (items 20–26, 29–39, 42–50, 52): 1 Jan 1997 Remainder: Royal Assent	Sch. 1 (item 28)
Higher Education Legislation Amendment Act 1996	74, 1996	12 Dec 1996	Schedule 1 (items 1–3, 12): 1 Jan 1998 <i>(i)</i> Schedule 1 (items 4–11, 13–23, 33): 1 Jan 1997 <i>(i)</i> Schedule 1 (items 24–32): Royal Assent <i>(i)</i>	Sch. 1 (items 29, 32)

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	1 July 1997	—
Higher Education Funding Amendment Act (No. 1) 1997	125, 1997	15 Sept 1997	15 Sept 1997	Sch. 1 (items 19, 22)
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 838–850): 1 Jan 1998 (<i>see Gazette</i> 1997, No. GN49) (<i>j</i>)	—
Higher Education Funding Amendment Act 1998	112, 1998	8 Dec 1998	8 Dec 1998	—
A New Tax System (Fringe Benefits Reporting) Act 1999	17, 1999	19 Apr 1999	Schedule 2 (item 14): 17 May 1999 Remainder: Royal Assent	—
Higher Education Funding Amendment Act 1999	158, 1999	8 Dec 1999	Schedule 1 (item 10): (<i>k</i>) Remainder: Royal Assent	—
A New Tax System (Tax Administration) Act 1999	179, 1999	22 Dec 1999	Schedule 11 (item 13): 1 July 2000 Schedule 16 (item 2): (<i>l</i>)	—
A New Tax System (Tax Administration) Act (No. 1) 2000	44, 2000	3 May 2000	Schedule 3 (items 11–13): (<i>m</i>)	—
Higher Education Funding Amendment Act (No. 1) 2000	130, 2000	13 Nov 2000	13 Nov 2000	—
Australian Research Council (Consequential and Transitional Provisions) Act 2001	9, 2001	22 Mar 2001	1 July 2001 (<i>see</i> s. 2 and <i>Gazette</i> 2001, No. GN25)	Sch. 2

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Higher Education Funding Amendment Act 2001	86, 2001	18 July 2001	Schedule 1 (items 4–10), Schedule 2 (items 3, 4) and Schedule 4: Royal Assent (<i>n</i>)	Sch. 2 (item 4)
Innovation and Education Legislation Amendment Act (No. 2) 2001	116, 2001	18 Sept 2001	18 Sept 2001	Sch. 2 (item 22)
Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Act 2001	147, 2001	1 Oct 2001	2 Oct 2001	s. 4
Higher Education Legislation Amendment Act (No. 1) 2002	13, 2002	4 Apr 2002	4 Apr 2002	—
Higher Education Legislation Amendment Act (No. 2) 2002	78, 2002	8 Oct 2002	8 Oct 2002	Sch. 1 (items 24, 29)
Higher Education Funding Amendment Act 2002	87, 2002	21 Oct 2002	Schedule 1 (items 22, 23): (<i>o</i>) Remainder: Royal Assent	Sch. 1 (item 23)
Higher Education Legislation Amendment Act (No. 3) 2002	112, 2002	2 Dec 2002	2 Dec 2002	—
Higher Education Legislation Amendment Act 2003	87, 2003	23 Sept 2003	23 Sept 2003	—

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003	150, 2003	19 Dec 2003	s. 4, Schedule 1 and Schedule 2 (items 1–8, 8A–8D, 9–19, 90–94, 112, 120–124): (<i>p</i>) Schedule 2 (items 104, 109, 111): 18 Sept 2001 Schedule 2 (items 105–108, 110): 4 Apr 2002 Schedule 2 (items 113–119A): 1 Jan 2005	s. 4 and Sch. 2 (item 112) Sch. 1 (am. by 45, 2004, Sch. 3 [items 63–70], Sch. 4 and Sch. 5 [items 3–10]; 114, 2004, Sch. 3 [item 1]; 157, 2004, Sch. 2 [items 1–9]; 83, 2005, Sch. 2 [item 1]; 158, 2005, Sch. 3 [items 21–24]; 72, 2007, Sch. 3 [items 3–5])

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
as amended by				
Higher Education Legislation Amendment Act 2004	45, 2004	21 Apr 2004	21 Apr 2004	—
Higher Education Legislation Amendment Act (No. 2) 2004	114, 2004	13 July 2004	(see 114, 2004 below)	—
Higher Education Legislation Amendment Act (No. 3) 2004	157, 2004	17 Dec 2004	Schedule 2 (items 1–8): Royal Assent Schedule 2 (item 9): (<i>q</i>)	—
Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005	83, 2005	6 July 2005	Schedule 2: (<i>r</i>)	—
Higher Education Legislation Amendment (2005 Measures No. 4) Act 2005	158, 2005	19 Dec 2005	20 Dec 2005	—
Higher Education Legislation Amendment (2007 Measures No. 1) Act 2007	72, 2007	28 May 2007	Schedule 3 (items 3–6): 1 Jan 2008	Sch. 3 (item 6)
Higher Education Legislation Amendment Act 2004	45, 2004	21 Apr 2004	21 Apr 2004	—
Higher Education Legislation Amendment Act (No. 2) 2004	114, 2004	13 July 2004	Schedule 1: Royal Assent	—

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4 and Schedule 1 (items 2, 3, 150–155): Royal Assent	s. 4
Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005	56, 2005	25 May 2005	Schedule 3: Royal Assent Schedule 5: (s)	Sch. 3 (item 2)
Higher Education Legislation Amendment (2005 Budget Measures) Act 2005	156, 2005	19 Dec 2005	19 Dec 2005	—
Higher Education Legislation Amendment (2005 Measures No. 4) Act 2005	158, 2005	19 Dec 2005	20 Dec 2005	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Schedule 2 (items 114, 115) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)
Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006	121, 2006	4 Nov 2006	Schedule 1 (item 1) and Schedule 5: Royal Assent	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 1 (item 15): Royal Assent	—
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (<i>see</i> s. 2(1) and F2007L01653) Remainder: Royal Assent	—
Higher Education Legislation Amendment (2007 Measures No. 1) Act 2007	72, 2007	28 May 2007	Schedule 3 (item 1): Royal Assent	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 2 (item 12): 17 Nov 2009	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (i)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (item 47) and Schedule 7 (item 72): 19 Apr 2011	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 4 (items 7–10): Royal Assent	—

Title	FRLI registration date	Commencement date	Application, saving and transitional provisions
Declaration under subsection 4(2) of the Act	18 Jan 2006 (<i>see</i> F2006L00192)	19 Jan 2006	—
Declaration under subsection 4(2) of the Act	1 Mar 2006 (<i>see</i> F2006L00628)	2 Mar 2006	—
Declaration under subsection 4(2) of the Higher Education Funding Act 1988	19 Oct 2006 (<i>see</i> F2006L03457)	20 Oct 2006	—
Declaration under subsection 4(2) of the Higher Education Funding Act 1988	28 Mar 2007 (<i>see</i> F2007L00840)	29 Mar 2007	—
Declaration under subsection 4(2) of the Higher Education Funding Act 1988	3 Oct 2007 (<i>see</i> F2007L03921)	4 Oct 2007	—

Endnotes

Endnote 1—Legislation history

Title	FRLI registration date	Commencement date	Application, saving and transitional provisions
Declaration under subsection 4(2) of the Higher Education Funding Act 1988	25 Nov 2008 (<i>see</i> F2008L04384)	26 Nov 2008	—
Declaration under subsection 4(2) of the Higher Education Funding Act 1988	18 Mar 2010 (<i>see</i> F2010L00709)	19 Mar 2010	—

- (a) Chapter 5 (sections 99–106) of the *Higher Education Funding Act 1988* was repealed by section 67 of the *Higher Education Funding Amendment Act (No. 2) 1992* before a date was fixed for the commencement.
- (b) The *Higher Education Funding Act 1988* was amended by section 113 only of the *Taxation Laws Amendment Act (No. 3) 1991*, subsection 2(10) of which provides as follows:
- (10) Subject to subsection (11), sections 112 to 117 (inclusive) commence on a day to be fixed by Proclamation.
- (c) The *Higher Education Funding Amendment Act (No. 2) 1992* was amended by sections 12–18 only of the *Higher Education Funding Legislation Amendment Act 1994*, subsections 2(3)–(5) of which provide as follows:
- (3) The repeal effected by section 13 is taken to have commenced on 1 January 1993, immediately after the commencement of Part 2 of the *Higher Education Funding Amendment Act (No. 2) 1992*.
- (4) The amendments made by sections 14, 15, 16 and 17 are taken to have commenced on 1 January 1994, immediately after the commencement of Part 4 of the *Higher Education Funding Amendment Act (No. 2) 1992*.
- (5) The amendment made by section 18 is taken to have commenced on 1 January 1993, immediately after the repeal effected by section 13 is taken to have commenced.
- (d) Subsection 2(3) of the *Higher Education Funding Legislation Amendment Act 1993* provides as follows:
- (3) Subsection 20(2) commences on 1 January 1994 immediately after section 51 of the *Higher Education Funding Amendment Act (No. 2) 1992* commences.
- (e) The *Higher Education Funding Amendment Act 1994* was amended by Part 4 (sections 19–23) only of the *Higher Education Funding Legislation Amendment Act 1994*, subsection 2(6) of which provides as follows:

Endnote 1—Legislation history

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- (6) The amendments made by Part 4 are taken to have commenced on 25 February 1994, immediately after the commencement of the *Higher Education Funding Amendment Act 1994*.
- (f) The *Higher Education Funding Act 1988* was amended by sections 3–11 only of the *Higher Education Funding Legislation Amendment Act 1994*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) The amendments made by paragraphs 5(b) and (c) commence on 1 January 1995.
- (g) The *Higher Education Funding Amendment Act (No. 2) 1995* was amended by Schedule 3 (item 30) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (h) The *Higher Education Funding Act 1988* was amended by Schedule 2 (items 61–64) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Item 61 is taken to have commenced immediately after the commencement of Part 5 of the *Higher Education Funding Amendment Act (No. 2) 1992*.
Part 5 commenced on 1 January 1993.
- Item 62 is taken to have commenced immediately after the commencement of Chapter 2 of the *Higher Education Funding Act 1988*.
Chapter 2 commenced on 6 January 1989.
- Item 63 is taken to have commenced immediately after the commencement of the *Higher Education Funding Amendment Act 1994*.
The *Higher Education Funding Amendment Act 1994* came into operation on 25 February 1994.
- Item 64 is taken to have commenced immediately after the commencement of Part 4 of the Schedule to the *Higher Education Funding Amendment Act (No. 2) 1995*.
Part 4 of the Schedule commenced on 1 January 1996.
- (i) The *Higher Education Funding Act 1988* was amended by Schedule 1 (items 1–33) only of the *Higher Education Legislation Amendment Act 1996*, section 2 of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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Endnote 1—Legislation history

- (2) Items 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 33 of Schedule 1 commence on 1 January 1997, immediately after the commencement of the items in Schedule 1 to the *Higher Education Funding Amendment Act (No. 1) 1996* that also commence on 1 January 1997.
- (3) Items 1, 2, 3, 12, 34 and 35 of Schedule 1 commence on 1 January 1998.
- (j) The *Higher Education Funding Act 1988* was amended by Schedule 2 (items 838–850) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (k) The *Higher Education Funding Act 1988* was amended by Schedule 1 only of the *Higher Education Funding Amendment Act 1999*, subsection 2(2) of which provides as follows:
- (2) Item 10 is taken to have commenced immediately after the commencement of item 31 of Schedule 1 to the *Higher Education Legislation Amendment Act 1996*.
- Schedule 1 (item 10) commenced on 12 December 1996.
- (l) Subsection 2(1) of the *A New Tax System (Tax Administration) Act 1999* provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (m) The *Higher Education Funding Act 1988* was amended by Schedule 3 (items 11–13) only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (n) The *Higher Education Funding Act 1988* was amended by Schedule 1 (items 4–10), Schedule 2 (item 3) and Schedule 4 only of the *Higher Education Funding Amendment Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (o) Subsection 2(1) (item 4) of the *Higher Education Funding Amendment Act 2002* provides as follows:

Endnote 1—Legislation history

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 1, items 22 and 23	Immediately after the commencement of subsection 23(1C) of the <i>Higher Education Funding Act 1988</i>	1 July 2001

(p) Subsection 2(1) (items 2–4, 7, 14 and 16) of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* provide as follows:

- (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.

Provision(s)	Commencement	Date/Details
2. Section 4	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)
3. Schedule 1	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)
4. Schedule 2, Parts 1 to 3	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)
7. Schedule 2, Part 6	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)

Endnotes

Endnote 1—Legislation history

Provision(s)	Commencement	Date/Details
14. Schedule 2, item 112	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)

16. Schedule 2, items 120 to 169	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004 (paragraph (b) applies)
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- (q) Subsection 2(1) (item 6) of the *Higher Education Legislation Amendment Act (No. 3) 2004* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
6. Schedule 2, item 9	Immediately after the commencement of item 24 of Schedule 1 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	1 January 2004

- (r) Subsection 2(1) (item 5) of the *Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
5. Schedule 2	Immediately after the commencement of item 2 of Schedule 1 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	1 January 2004

- (s) Subsection 2(1) (item 7) of the *Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005* provides as follows:
- (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.

Endnote 1—Legislation history

Provision(s)	Commencement	Date/Details
7. Schedule 5	Immediately after the commencement of item 120 of Schedule 2 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	1 January 2004

- (i) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

Endnotes

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Higher Education Funding Act 1988*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Title	am. No. 158, 1992
Chapter 1	
s. 2	am. No. 116, 1993
s. 2A	ad. No. 158, 1992
s. 2B	ad. No. 112, 2002 rep. No. 150, 2003
s. 3	am. Nos. 80 and 168, 1989; No. 122, 1990; No. 177, 1991; No. 158, 1992; No. 116, 1993; Nos. 24 and 147, 1994; Nos. 135 and 163, 1995; No. 72, 1996; No. 130, 2000; No. 116, 2001; No. 150, 2003; No. 21, 2007; No. 5, 2011
s. 4	am. Nos. 80 and 168, 1989; No. 122, 1990; No. 158, 1992; No. 72, 1996; No. 112, 1998; No. 158, 1999; No. 130, 2000; No. 150, 2003; F2006L00192; F2006L00628; F2006L03457; F2007L00840; F2007L03921; F2008L04384; F2010L00709
ss. 5, 6	am. No. 158, 1992
s. 7	am. No. 158, 1992; No. 43, 1996
s. 8	rs. No. 158, 1992
s. 8A	ad. No. 158, 1992
s. 9	am. No. 24, 1994
s. 10	am. No. 80, 1989
s. 11	rep. No. 158, 1992 ad. No. 147, 2001
Chapter 2	
Heading to Chapt. 2	rs. No. 112, 1998
Part 2.1	
Heading to s. 13	am. No. 74, 1996
s. 13	rs. No. 158, 1992

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 74, 1996
s. 14.....	am. No. 43, 1996
Part 2.2	
Heading to Part 2.2.....	rs. No. 158, 1992
ss. 15, 16.....	am. No. 158, 1992
s. 17.....	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993; No. 24, 1994 (as am. by No. 147, 1994); Nos. 79 and 147, 1994; Nos. 135 and 163, 1995; No. 72, 1996; No. 112, 1998; No. 158, 1999; No. 130, 2000; Nos. 9, 86 and 116, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003; Nos. 45 and 114, 2004
s. 18.....	am. No. 158, 1992; No. 72, 1996; No. 125, 1997; No. 112, 1998; No. 86, 2001; No. 78, 2002; No. 150, 2003; No. 111, 2009
s. 18A.....	ad. No. 177, 1991
	am. Nos. 74 and 158, 1992; No. 116, 1993
	rep. No. 163, 1995
s. 19.....	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991
	rep. No. 72, 1996
	ad. No. 125, 1997
s. 20.....	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993; No. 24, 1994 (as am. by No. 147, 1994); Nos. 135 and 163, 1995; Nos. 72 and 74, 1996; No. 125, 1997; No. 112, 1998; No. 158, 1999; No. 130, 2000; Nos. 86 and 116, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003
s. 20A.....	ad. No. 24, 1994
	rs. Nos. 72 and 74, 1996
s. 20B.....	ad. No. 72, 1996
	rep. No. 74, 1996
	ad. No. 150, 2003
Heading to s. 21.....	rs. No. 163, 1995
s. 21.....	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; No. 74, 1992
	rs. No. 158, 1992

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 116, 1993; No. 24, 1994; No. 163, 1995; No. 72, 1996
Heading to s. 21A	rs. No. 163, 1995
s. 21A	ad. No. 158, 1992
	am. No. 78, 2002
s. 21B	ad. No. 163, 1995
s. 22	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993
s. 22A	ad. No. 158, 1992
	am. No. 116, 1993; No. 24, 1994 (as am. by No. 147, 1994); Nos. 135 and 163, 1995; Nos. 13, 72 and 74, 1996; No. 125, 1997; No. 112, 1998; No. 158, 1999; No. 130, 2000; No. 86, 2001; Nos. 78 and 87, 2002; No. 150, 2003
s. 23	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993; No. 72, 1996; No. 9, 2001; Nos. 78 and 87, 2002
Note to s. 23(1E)	am. No. 158, 2005
s. 23A	ad. No. 177, 1991
	am. Nos. 74 and 158, 1992; No. 116, 1993; No. 72, 1996
s. 23B	ad. No. 177, 1991
	am. No. 158, 1992; No. 78, 2002
s. 23BA	ad. No. 135, 1995
s. 23C	ad. No. 116, 1993
	am. No. 135, 1995; No. 163, 1995 (as am. by No. 43, 1996); Nos. 72 and 74, 1996; No. 125, 1997; No. 112, 1998; No. 158, 1999; No. 130, 2000; Nos. 9 and 86, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003; No. 45, 2004
s. 24	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993; Nos. 135 and 163, 1995; Nos. 72 and 74, 1996; No. 125, 1997; No. 112, 1998; No. 158, 1999; No. 130, 2000; No. 86, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003
s. 25	am. No. 80, 1989; No. 122, 1990; No. 158, 1992; No. 78, 2002
s. 25A	ad. No. 158, 1992
	am. No. 178, 1994

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 25B	ad. No. 178, 1994
Part 2.3	rep. No. 158, 1992
s. 26	am. Nos. 80 and 168, 1989; No. 122, 1990; Nos. 53 and 177, 1991; Nos. 74 and 158, 1992; No. 116, 1993
	rs. No. 158, 1992
s. 26A	ad. No. 177, 1991
	rep. No. 158, 1992
s. 27	am. No. 177, 1991; No. 158, 1992
	rs. No. 158, 1992
s. 27A	ad. No. 158, 1992
	am. No. 116, 1993; Nos. 135 and 163, 1995; Nos. 72 and 74, 1996; No. 125, 1997; No. 112, 1998; No. 158, 1999; No. 130, 2000; No. 86, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003
s. 27B	ad. No. 158, 1992
s. 27C	ad. No. 158, 1992
	am. No. 78, 2002
s. 27D	ad. No. 112, 1998
	am. No. 158, 1999; No. 130, 2000; No. 86, 2001; Nos. 78 and 87, 2002; Nos. 87 and 150, 2003
Chapt. 3	rep. No. 158, 1992
s. 29	am. Nos. 80 and 168, 1989
	rep. No. 158, 1992
s. 30	am. Nos. 80 and 168, 1989; No. 122, 1990
	rep. No. 158, 1992
s. 31	am. Nos. 80 and 168, 1989; No. 177, 1991; No. 158, 1992
	rep. No. 158, 1992
s. 32	am. No. 80, 1989; No. 158, 1992
	rep. No. 158, 1992
s. 33	am. No. 177, 1991; No. 158, 1992
	rep. No. 158, 1992

Chapter 4

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part 4.1	
s. 34	am. Nos. 80, 168 and 179, 1989; No. 122, 1990; No. 177, 1991; No. 158, 1992; No. 116, 1993; Nos. 72 and 74, 1996; No. 152, 1997; No. 86, 2001; No. 150, 2003; No. 8, 2005; No. 121, 2006
s. 35	am. No. 158, 1992; No. 116, 1993; No. 24, 1994 (as am. by No. 147, 1994); Nos. 135 and 163, 1995; No. 74, 1996; No. 112, 1998
s. 36	rs. No. 24, 1994 am. No. 86, 2001
s. 37	am. No. 122, 1990
Part 4.2	
Division 1	
s. 38	am. No. 158, 1992
Division 2	
s. 39	am. No. 74, 1996
s. 40	am. No. 177, 1991
s. 40A	ad. No. 74, 1996
s. 41	am. No. 158, 1992; No. 116, 1993; No. 24, 1994; No. 163, 1995; No. 125, 1997; No. 21, 2007
ss. 41A, 41B	ad. No. 24, 1994 am. No. 125, 1997
s. 41C	ad. No. 24, 1994
s. 42	am. No. 24, 1994; No. 43, 1996
s. 42A	ad. No. 24, 1994
s. 43	am. No. 135, 1995
ss. 52, 53	am. No. 147, 2001
s. 54	am. No. 74, 1996; No. 125, 1997; No. 78, 2002
s. 56	am. No. 158, 1992; No. 74, 1996; No. 125, 1997
ss. 56A, 56B	ad. No. 125, 1997
ss. 56C–56E	ad. No. 116, 2001
Division 3	
s. 57	am. No. 24, 1994; No. 125, 1997

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part 4.3	rep. No. 121, 2006
Heading to Part 4.3	rs. No. 152, 1997; No. 8, 2005
	rep. No. 121, 2006
Heading to s. 59	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 121, 2006
s. 59	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 121, 2006
Heading to s. 60	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 121, 2006
s. 60	am. No. 116, 1993; No. 152, 1997; No. 116, 2001; No. 13, 2002
	rs. No. 8, 2005
	rep. No. 121, 2006
Heading to s. 61	am. No. 152, 1997; No. 8, 2005
	rep. No. 121, 2006
s. 61	am. No. 158, 1992; No. 116, 1993; No. 152, 1997; Nos. 86 and 116, 2001; No. 13, 2002; Nos. 8 and 56, 2005
	rep. No. 121, 2006
Part 4.4	
Div. 1 of Part 4.4	rep. No. 116, 1993
s. 62	rep. No. 116, 1993
s. 63	am. No. 122, 1990; No. 158, 1992
	rep. No. 116, 1993
s. 64	rs. No. 158, 1992
	rep. No. 116, 1993
s. 64A	ad. No. 158, 1992
	rep. No. 116, 1993
ss. 65, 66	rep. No. 116, 1993
Div. 2 of Part 4.4	rep. No. 116, 1993

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 67	rep. No. 116, 1993
Div. 3 of Part 4.4	rep. No. 116, 1993
s. 68	am. No. 122, 1990
	rep. No. 116, 1993
Div. 4 of Part 4.4	rep. No. 116, 1993
ss. 69–71	rep. No. 116, 1993
s. 72	am. No. 216, 1991
	rep. No. 116, 1993
ss. 73–75	rep. No. 116, 1993
Division 5	
ss. 76, 77	rep. No. 116, 1993
s. 78	am. No. 147, 2001; No. 5, 2011
Div. 6 of Part 4.4	rep. No. 103, 2013
s. 79	rep. No. 103, 2013
s. 80	rep. No. 103, 2013
s. 81	rep. No. 103, 2013
s. 82	rep. No. 103, 2013
s. 83	rep. No. 103, 2013
s. 84	rep. No. 103, 2013
s. 85	rep. No. 103, 2013
Div. 7 of Part 4.4	rep. No. 103, 2013
s. 86	rep. No. 103, 2013
s. 87	rep. No. 103, 2013
Div. 8 of Part 4.4	rep. No. 103, 2013
s. 88	rep. No. 103, 2013
s. 89	rep. No. 103, 2013
Part 4.5	
Div. 1 of Part 4.5	rep. No. 103, 2013
s. 90	rep. No. 103, 2013
s. 91	rep. No. 103, 2013

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Div. 2 of Part 4.5	rep. No. 103, 2013
s. 92	rep. No. 103, 2013
s. 93	rep. No. 103, 2013
Div. 3 of Part 4.5	rep. No. 103, 2013
s. 94	rep. No. 103, 2013
s. 95	rep. No. 103, 2013
Div. 5 of Part 4.5	rep. No. 103, 2013
s. 97	rep. No. 103, 2013
s. 98	rep. No. 103, 2013
Chapter 4A	
Chapt. 4A	ad. No. 116, 2001
Part 4A.1	
s. 98A	ad. No. 116, 2001
	am. No. 87, 2002; No. 150, 2003
s. 98AA	ad. No. 87, 2002
Note 2 to s. 98AA(2)	am. No. 158, 2005
s. 98B	ad. No. 116, 2001
	am. No. 21, 2007
Part 4A.2	
s. 98C	ad. No. 116, 2001
Part 4A.3	
Division 1	
s. 98D	ad. No. 116, 2001
s. 98E	ad. No. 116, 2001
	am. Nos. 78 and 87, 2002
s. 98F	ad. No. 116, 2001
	am. No. 87, 2002
Division 2	
ss. 98G, 98H	ad. No. 116, 2001
Heading to s. 98J	am. No. 87, 2002

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 98J.....	ad. No. 116, 2001
s. 98JA.....	ad. No. 87, 2002
Part 4A.4	
s. 98K	ad. No. 116, 2001
s. 98L.....	ad. No. 116, 2001
	am. No. 150, 2003
s. 98M.....	ad. No. 116, 2001
Chapter 4B	
Chapt. 4B.....	ad. No. 13, 2002
Part 4B.1	
s. 98N	ad. No. 13, 2002
s. 98NA	ad. No. 150, 2003
s. 98P.....	ad. No. 13, 2002
s. 98Q	ad. No. 13, 2002
	am. No. 8, 2010
Note 2 to s. 98Q(1)	am. No. 158, 2005
s. 98R	ad. No. 13, 2002
s. 98S.....	ad. No. 13, 2002
	am. No. 8, 2010
Notes 1, 2 to s. 98S(1)	rep. No. 158, 2005
Note to s. 98S(1).....	ad. No. 158, 2005
ss. 98T, 98U	ad. No. 13, 2002
s. 98V	ad. No. 13, 2002
	am. No. 21, 2007
Part 4B.2	
s. 98W	ad. No. 13, 2002
Part 4B.3	
Division 1	
s. 98X	ad. No. 13, 2002
ss. 98Y, 98Z	ad. No. 13, 2002

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 87, 2002
Division 2	
s. 98ZAA	ad. No. 150, 2003
ss. 98ZA–98ZC	ad. No. 13, 2002
Part 4B.4	
s. 98ZD	ad. No. 13, 2002
s. 98ZE	ad. No. 13, 2002
	am. No. 150, 2003
s. 98ZF	ad. No. 13, 2002
Chapter 5	
Chapt. 5	ad. No. 116, 1993
Part 5.1	
s. 99	ad. No. 116, 1993
	am. Nos. 72 and 74, 1996
s. 100	ad. No. 116, 1993
	am. No. 163, 1995; No. 74, 1996
s. 101	ad. No. 116, 1993
	am. No. 147, 1994; No. 163, 1995; No. 72, 1996; No. 21, 2007
s. 102	ad. No. 116, 1993
	rep. No. 147, 1994
s. 103	ad. No. 116, 1993
	am. No. 147, 1994
	rs. No. 72, 1996
Part 5.2	
Division 1	
s. 104	ad. No. 116, 1993
	rs. No. 147, 1994
	am. No. 72, 1996
	rs. No. 74, 1996
s. 105	ad. No. 116, 1993

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 24, 1994; No. 72, 1996
s. 106	ad. No. 116, 1993
	am. No. 147, 1994; No. 72, 1996
	rep. No. 74, 1996
s. 106A	ad. No. 116, 1993
	am. No. 24, 1994
ss. 106AA, 106AB.....	ad. No. 24, 1994
	am. No. 72, 1996
s. 106B	ad. No. 116, 1993
	am. No. 72, 1996
s. 106C	ad. No. 116, 1993
s. 106CA.....	ad. No. 116, 2001
Division 2	
s. 106D	ad. No. 116, 1993
	am. No. 147, 1994; Nos. 72 and 74, 1996
s. 106E.....	ad. No. 116, 1993
	am. No. 72, 1996
Part 5.3	
s. 106F	ad. No. 116, 1993
s. 106FA	ad. No. 72, 1996
	am. No. 150, 2003
Part 5.4	ad. No. 116, 1993
	rep. No. 72, 1996
s. 106G	ad. No. 116, 1993
	rep. No. 72, 1996
Chapter 5A	
Heading to Chapt. 5A.....	rs. No. 116, 2001; No. 13, 2002
Chapt. 5A	ad. No. 116, 1993
Part 5A.1	
s. 106H	ad. No. 116, 1993

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 163, 1995; No. 72, 1996; No. 39, 1997; No. 17, 1999; No. 116, 2001; No. 13, 2002; No. 101, 2006
s. 106I.....	ad. No. 116, 1993
	am. No. 116, 2001; No. 13, 2002
Part 5A.2	
s. 106J.....	ad. No. 116, 1993
s. 106JA.....	ad. No. 116, 2001
s. 106JB.....	ad. No. 13, 2002
Heading to s. 106K.....	am. No. 72, 1996
s. 106K.....	ad. No. 116, 1993
	am. No. 72, 1996
s. 106KA.....	ad. No. 150, 2003
Heading to s. 106L.....	am. No. 72, 1996
s. 106L.....	ad. No. 116, 1993
	am. No. 72, 1996; No. 125, 1997; No. 150, 2003
s. 106M.....	ad. No. 116, 1993
	am. No. 72, 1996; No. 150, 2003
s. 106MA.....	ad. No. 135, 1995
s. 106N.....	ad. No. 116, 1993
	am. No. 163, 1995; No. 72, 1996; No. 116, 2001; No. 150, 2003
s. 106O.....	ad. No. 116, 1993
	am. No. 72, 1996; No. 116, 2001
Part 5A.3	
Division 1	
s. 106P.....	ad. No. 116, 1993
	am. No. 163, 1995
s. 106PA.....	ad. No. 163, 1995
	am. No. 150, 2003
Division 1A	
Div. 1A of Part 5A.3.....	ad. No. 163, 1995
s. 106PB.....	ad. No. 163, 1995

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 74, 1996
s. 106PC	ad. No. 163, 1995
	am. Nos. 43 and 74, 1996
Division 2	
s. 106Q	ad. No. 116, 1993
	am. No. 163, 1995; No. 74, 1996; No. 158, 1999; No. 150, 2003
Division 3	
s. 106R	ad. No. 116, 1993
	am. No. 24, 1994; No. 116, 2001; No. 13, 2002
s. 106S	ad. No. 116, 1993
	rep. No. 72, 1996
s. 106T	ad. No. 116, 1993
	am. No. 163, 1995
Heading to s. 106U	am. No. 44, 2000
s. 106U	ad. No. 116, 1993
	am. No. 116, 1993; No. 179, 1999; No. 44, 2000; No. 78, 2002; No. 101, 2006
Note to s. 106U(1)	ad. No. 44, 2000
ss. 106V–106X	ad. No. 116, 1993
Division 4	
s. 106Y	ad. No. 116, 1993
	am. No. 72, 1996; No. 116, 2001; No. 150, 2003; No. 56, 2005; No. 8, 2007
s. 106YA	ad. No. 86, 2001
s. 106Z	ad. No. 116, 1993
s. 106ZA	ad. No. 116, 1993
Chapter 5B	
Chapt. 5B	ad. No. 116, 2001
Part 5B.1	
s. 106ZB	ad. No. 116, 2001
	am. No. 13, 2002

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Part 5B.2

s. 106ZC	ad. No. 116, 2001
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Part 5B.3

s. 106ZD	ad. No. 116, 2001
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Part 5B.4

s. 106ZE	ad. No. 116, 2001
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	am. No. 13, 2002
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s. 106ZF	ad. No. 116, 2001
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s. 106ZG	ad. No. 116, 2001
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	am. No. 13, 2002
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Part 5B.5

s. 106ZH	ad. No. 116, 2001
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s. 106ZJ	ad. No. 116, 2001
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Part 5B.6

s. 106ZK	ad. No. 116, 2001
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Chapt. 5C	ad. No. 112, 2002
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	rep. No. 150, 2003
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s. 106ZL	ad. No. 112, 2002
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	rep. No. 150, 2003
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ss. 106ZM–106ZO	ad. No. 112, 2002
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	rep. No. 150, 2003
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s. 106ZP	ad. No. 112, 2002
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	rep. No. 150, 2003
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ss. 106ZQ, 106ZR	ad. No. 112, 2002
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	rep. No. 150, 2003
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Chapter 6

s. 107	am. No. 158, 1991
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s. 108	am. No. 158, 1991
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	am. No. 78, 2002
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s. 109	am. No. 158, 1991
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Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Heading to s. 110	am. No. 158, 2005
s. 110	rs. No. 177, 1991 am. No. 158, 1992 (as am. by No. 147, 1994); No. 116, 1993; No. 24, 1994; No. 135, 1995; Nos. 72 and 74, 1996; No. 125, 1997; Nos. 9 and 116, 2001; Nos. 13 and 87, 2002; No. 158, 2005
s. 110A	ad. No. 150, 2003 am. No. 114, 2004; No. 156, 2005; No. 121, 2006
s. 110B	ad. No. 72, 2007
s. 111	am. No. 158, 1992
s. 112	am. No. 78, 2002; No. 150, 2003
s. 112A	ad. No. 78, 2002
s. 113	am. No. 158, 1992
s. 114	rs. No. 138, 1988 am. No. 158, 1992 rep. No. 8, 2005
s. 115	am. No. 138, 1988; No. 158, 1992
s. 116	am. No. 138, 1988; No. 158, 1992 rs. No. 8, 2005
s. 117	am. No. 138, 1988; No. 158, 1992 (as am. by No. 147, 1994); No. 152, 1997 rep. No. 8, 2005
s. 118	am. No. 138, 1988; No. 116, 2001; No. 13, 2002; No. 8, 2005
s. 119	am. No. 158, 1992 (as am. by No. 147, 1994); No. 163, 1995; No. 112, 1998
s. 121	rep. No. 103, 2013
s. 122	rep. No. 103, 2013
s. 123	rep. No. 103, 2013
s. 124	rep. No. 103, 2013
Chapt. 7	rep. No. 158, 1992
ss. 125–132	rep. No. 158, 1992

Schedule 1

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
 exp. = expired or ceased to have effect

Provision affected	How affected
Schedule 1	ad. No. 9, 2001
	am. No. 78, 2002

Endnotes

Endnote 3—Uncommenced amendments [none]

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.