

2004-2005

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Higher Education Legislation  
Amendment (2005 Measures No. 1) Bill  
2005**

**No.     , 2005**

*(Education, Science and Training)*

**A Bill for an Act to amend legislation relating to  
higher education, and for related purposes**

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1     **A Bill for an Act to amend legislation relating to**  
2     **higher education, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Higher Education Legislation*  
6                     *Amendment (2005 Measures No. 1) Act 2005.*

7     **2 Commencement**

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

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The day on which this Act receives the Royal Assent.	
3. Schedule 2, item 1	The day on which this Act receives the Royal Assent.	
4. Schedule 2, item 2	Immediately after the commencement of the provision(s) covered by table item 5.	
5. Schedule 2, items 3 to 17	The day on which this Act receives the Royal Assent.	
6. Schedules 3 and 4	The day on which this Act receives the Royal Assent.	
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

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

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

### 7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule  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

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## **Schedule 1—Amendments relating to grants for higher education assistance**

### ***Higher Education Support Act 2003***

#### **1 Paragraphs 30-5(1)(a) to (d)**

7 Repeal the paragraphs, substitute:

- 8 (a) for the year 2005—\$3,066,956,000; or
- 9 (b) for the year 2006—\$3,203,943,000; or
- 10 (c) for the year 2007—\$3,349,013,000; or
- 11 (d) for the year 2008—\$3,414,711,000.

#### **2 Subsection 41-10(1) (cell at table item 5, column headed “Who is eligible”)**

14 Repeal the cell, substitute:

\*Table A providers and \*Table B  
providers

#### **3 Subsection 41-45(1) (table)**

16 Repeal the table, substitute:

<b>Maximum payments for other grants under this Part</b>		
<b>Item</b>	<b>Year</b>	<b>Amount</b>
1	2005	\$1,545,004,000
2	2006	\$1,668,851,000
3	2007	\$1,632,330,000
4	2008	\$1,645,505,000

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2 **Schedule 2—Amendments relating to**  
3 **assistance to students**

4 **Part 1—Amendments**

5 *Higher Education Support Act 2003*

6 **1 Paragraph 16-25(1)(c)**

7 Repeal the paragraph, substitute:

- 8 (c) the body either fulfilled the \*tuition assurance requirements  
9 on the date of making an application under section 16-40 or  
10 is exempted from those requirements under section 16-31;  
11 and

12 **2 Subsection 16-30(1)**

13 Omit “(1)”.

14 **3 Subsection 16-30(1)**

15 Omit “, on the date of an application under section 16-40”.

16 **4 Paragraph 16-30(1)(a)**

17 Omit “making the application”.

18 **5 Subsection 16-30(2)**

19 Repeal the subsection.

20 **6 After section 16-30**

21 Insert:

22 **16-31 Tuition assurance requirements exemption for approvals**

- 23 (1) The Minister may, in writing, exempt a body corporate from the  
24 \*tuition assurance requirements for the purposes of approving the  
25 body under section 16-25.

26 Note: This section only deals with exemptions from the tuition assurance  
27 requirements when approving bodies as higher education providers.  
28 For exemptions from the tuition assurance requirements after approval  
29 has happened, see subsection 19-40(2).

1 (2) An exemption is subject to such conditions as are specified in the  
2 exemption.

3 Note: A body will not be exempt if a condition of the exemption is not  
4 complied with.

5 (3) An exemption given under this section is not a legislative  
6 instrument.

7 **7 At the end of section 19-40**

8 Add:

9 (3) An exemption:

10 (a) is subject to such conditions as are specified in the  
11 exemption; and

12 (b) may be expressed to be in force for a period specified in the  
13 exemption.

14 Note: A body will not be exempt if a condition of the exemption is not  
15 complied with.

16 (4) An exemption given under this section is not a legislative  
17 instrument.

18 **8 Before section 79-1**

19 Insert:

20 **Subdivision 79-A—Main case of re-crediting a person’s SLE**

21 **79-1A Application of this Subdivision**

22 If Subdivision 79-B applies to re-credit a person’s \*SLE with an  
23 amount equal to the \*EFTSL value of a unit of study, then this  
24 Subdivision does not apply in relation to that unit.

25 Note: The heading to section 79-1 is replaced by the heading “**Main case of re-crediting a**  
26 **person’s SLE**”.

27 **9 At the end of Division 79**

28 Add:

1 **Subdivision 79-B—Re-crediting a person’s SLE if provider is**  
2 **unable to provide unit**

3 **79-20 Re-crediting a person’s SLE if provider unable to provide unit**

4 A higher education provider must, on the \*Secretary’s behalf,  
5 re-credit a person’s \*SLE with an amount equal to the \*EFTSL  
6 value of a unit of study if:

- 7 (a) the person has been enrolled in the unit as part of a \*course of  
8 study with the provider; and  
9 (b) the person has not completed the requirements for the unit  
10 during the period during which the person undertook, or was  
11 to undertake, the unit because the provider ceased to be able  
12 to provide the unit; and  
13 (c) the \*tuition assurance requirements applied to the provider at  
14 the time the provider ceased to be able to provide the unit.

15 Note: A HECS-HELP debt relating to a unit of study will be remitted if the  
16 SLE in relation to the unit is re-credited: see subsection 137-5(4). In  
17 addition, it is a condition of the higher education provider’s funding  
18 under Part 2-2 that payments for the unit must be repaid: see  
19 section 36-20.

20 **10 Before subsection 104-25(1)**

21 Insert:

- 22 (1A) If section 104-42 applies to re-credit a person’s \*FEE-HELP  
23 balance with an amount equal to the amounts of \*FEE-HELP  
24 assistance that the person has received for a unit of study, then this  
25 section does not apply in relation to that unit.

26 Note: The heading to section 104-25 is replaced by the heading “**Main case of re-crediting a**  
27 **person’s FEE-HELP balance**”.

28 **11 At the end of Subdivision 104-B**

29 Add:

30 **104-42 Re-crediting a person’s FEE-HELP balance if provider is**  
31 **unable to provide unit**

32 A higher education provider must, on the \*Secretary’s behalf,  
33 re-credit a person’s \*FEE-HELP balance with an amount equal to

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1 the amounts of \*FEE-HELP assistance that the person received for  
2 a unit of study if:

- 3 (a) the person has been enrolled in the unit with the provider;  
4 and  
5 (b) the person has not completed the requirements for the unit  
6 during the period during which the person undertook, or was  
7 to undertake, the unit because the provider ceased to be able  
8 to provide the unit; and  
9 (c) the \*tuition assurance requirements applied to the provider at  
10 the time the provider ceased to be able to provide the unit.

11 Note: A FEE-HELP debt relating to a unit of study will be remitted if the  
12 FEE-HELP balance in relation to the unit is re-credited: see subsection  
13 137-10(4).

14 **12 Subsection 110-5(1)**

15 Omit “, a higher education provider re-credits a person’s \*FEE-HELP  
16 balance”, substitute “or section 104-42, a person’s \*FEE-HELP balance  
17 is re-credited”.

18 **13 Subsection 137-10(4)**

19 After “section 104-25”, insert “or 104-42”.

20 **14 Clause 1 of Schedule 1 (definition of *tuition assurance***  
21 ***requirements*)**

22 Omit “subsection 16-30(1)”, substitute “section 16-30”.

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2 **Part 2—Application of amendments**

3 **15 Application of items 3 and 4**

4 The amendments made by items 3 and 4 of this Schedule apply in  
5 relation to bodies corporate that became higher education providers  
6 before or after the commencement of this item.

7 **16 Application of item 5**

8 Despite the repeal of subsection 16-30(2) of the *Higher Education*  
9 *Support Act 2003* by item 5 of this Schedule, that subsection continues  
10 to apply, in relation to exemptions that are in force immediately before  
11 the repeal, as if the repeal had not happened.

12 **17 Application of items 6 and 7**

13 The amendments made by items 6 and 7 of this Schedule apply in  
14 relation to exemptions given after the commencement of this item.

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## **Schedule 3—Amendments relating to voluntary repayment of debts**

### ***Higher Education Funding Act 1988***

#### **1 Paragraph 61(1)(b)**

7           After “to be refunded”, insert “, other than amounts paid under  
8           section 106P or 106PC or referred to in subsection 106YA(4)”.

#### **2 Application**

10           The amendment made by item 1 of this Schedule applies to all amounts  
11           paid under section 106P or 106PC or referred to in subsection  
12           106YA(4) of the *Higher Education Funding Act 1988*, whether the  
13           amounts were paid before or after the commencement of this item.

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2 **Schedule 4—Amendment of the Maritime**  
3 **College Act 1978**  
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5 **1 Paragraph 15(4)(b)**

6 Omit “Minister”, substitute “Council”.

7 **2 After subsection 15(4)**

8 Insert:

9 (4A) If a member appointed as Chairperson or Deputy Chairperson  
10 resigns his or her office as Chairperson or Deputy Chairperson  
11 under paragraph 15(4)(b), the Council must notify the Minister in  
12 writing of the resignation as soon as practicable after receiving it.

13 **3 Paragraph 17(2)(b)**

14 Repeal the paragraph.

15 **4 At the end of section 17**

16 Add:

17 (4) The Council must remove a member from the Council if the  
18 member has, in the Council’s opinion formed by resolution as  
19 mentioned in subsection (5), breached his or her duties under  
20 section 22A, 22B, 22C, 22D, 22E or 22F as a member of the  
21 Council.

22 (5) For the purposes of subsection (4), the Council forms its opinion  
23 by resolution if the resolution is passed at a meeting of the Council  
24 by at least a two-thirds majority of the members of the Council.

25 (6) If a member is removed from the Council under subsection (4), the  
26 Council must notify the Minister in writing of the removal as soon  
27 as practicable after the member has been removed.

28 **5 Subsections 26(2) and (2A)**

29 Repeal the subsections, substitute:

30 (2) The Council must appoint the Principal.

1 (2A) The Council must not appoint the Principal under subsection (2)  
2 without the Minister's agreement.

3 **6 Subsection 26(4)**

4 After "he or she", insert "resigns from office under subsection (5) or".

5 **7 After subsection 26(4)**

6 Insert:

7 (5) The Principal may resign his or her office as Principal by writing  
8 signed by him or her and delivered to the Council.

9 (5A) If the Principal resigns under subsection (5), the Council must  
10 notify the Minister in writing of the resignation as soon as  
11 practicable after receiving it.

12 **8 Subsection 27(4)**

13 Omit "Minister", substitute "Council".

14 **9 After subsection 27(4)**

15 Insert:

16 (4A) If an acting Principal resigns under subsection (4), the Council  
17 must notify the Minister in writing of the resignation as soon as  
18 practicable after receiving it.

19 **10 Application and savings**

20 (1) A person who, immediately before the commencement of this item, had  
21 been appointed under section 26 of the *Maritime College Act 1978* as  
22 Principal continues to hold office as Principal on and after the  
23 commencement of this item for the balance of the term of his or her  
24 appointment, as if the person had been appointed under that section (as  
25 amended by this Act).

26 (2) The amendment made by item 4 of this Schedule applies to each person  
27 holding office as a member of the Council under the *Maritime College*  
28 *Act 1978* on or after the commencement of that item, whether that  
29 person was appointed to that office before or after that commencement.

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## Schedule 5—Technical correction

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### *Higher Education Funding Act 1988*

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#### **1 Subsection 106Y(3)**

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Repeal the subsection, substitute:

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(3) In this section:

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

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