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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (2006 BUDGET AND OTHER  
MEASURES) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training,  
the Honourable Julie Bishop MP)

# HIGHER EDUCATION LEGISLATION AMENDMENT (2006 BUDGET AND OTHER MEASURES) BILL 2006

## OUTLINE

The Bill will amend the *Higher Education Support Act 2003* (HESA) to revise the maximum funding amounts in:

- section 30-5 to deliver the commitments made by the Prime Minister as part of the Council of Australian Governments' (COAG) Health Workforce and Mental Health packages, including:
  - new medical places;
  - new general nursing places;
  - increasing the contribution to clinical training of nurses;
  - new mental health nursing places; and
  - new clinical psychology places; and
- section 33-10 under the Commonwealth Grant Scheme to provide for an increase in the Commonwealth contribution amount for nursing units of study to \$10,189 in 2007 to assist in meeting the costs associated with nurse clinical training; and
- section 41-45 for Other Grants to provide for an increase in Capital Development Pool (CDP) funding from 2007; to provide funding for the Commercialisation Training Scheme (CTS); and to provide funding for the Federation of Australian Scientific and Technological Societies and the Council for the Humanities, Arts and Social Sciences

to deliver on Government commitments.

The Bill will also amend the HESA to revise the maximum funding amounts in:

- section 30-5 under the Commonwealth Grant Scheme;
- section 41-45 for Other Grants; and
- section 46-40 for Commonwealth Scholarships

to reflect indexation increases for the years 2007 to 2009 and to add a new funding year 2010.

The Bill will also amend the HESA to revise the FEE-HELP limit in:

- section 104-20 to provide for the general FEE-HELP limit to be \$80,000 from 1 January 2007 and be indexed on an annual basis from 2008 under existing arrangements and provide for a FEE-HELP limit of \$100,000, indexed on an annual basis from 2008 under existing arrangements, for students enrolled on or after 1 January 2007 in:
  - a course of study in medicine; or
  - a course of study in dentistry; or
  - a course of study in veterinary science.

These changes to the FEE-HELP limit require subsequent technical amendments to HESA to allow the current arrangements for re-crediting of a person's FEE-HELP balance to continue.

The Bill will extend the summer schools provisions to winter schools and improve higher education providers' flexibility in the delivery of courses.

The Bill will also replace the student cohort provisions to allow higher education providers further flexibility in setting student contributions and tuition fees.

The Bill will also make amendments to HESA to provide for the rounding in the calculation of accumulated HELP debts and former accumulated HELP debts. This has a retrospective date of effect of 1 January 2005. This is required to give effect to the current administrative arrangements which have rounded down HELP debts incurred since 1 January 2005. The measure will reduce a person's repayable HELP debt by any rounded down amount.

The Bill will also make amendments to HESA to provide for the operation of HESA and its guidelines without the need for an exemption under the *Electronic Transactions Act 1999* by revising:

- Part 5-3 to provide for the Administration Guidelines to set out additional requirements for the electronic communication of notices.

The Bill will also amend Division 225 of the HESA to:

- allow the Commonwealth to make guidelines to regulate higher education in the external territories; and
- to allow the Commonwealth to prescribe fees in the guidelines for applications from those intending to provide higher education in the external territories.

The Bill amends the maximum funding amounts under section 110A of the *Higher Education Funding Act 1988* (HEFA) to reflect indexation increases for transition funding for the year 2007.

The Bill will also repeal subsection 34(1) (definition of *Account*) and Part 4.3 of HEFA to remove the HECS account.

The Bill amends section 49 of the *Australian Research Council Act 2001* to reflect updated annual caps on funding.

## **FINANCIAL IMPACT**

In relation to the *Higher Education Support Act 2003*, the Bill:

- Increases the overall appropriation by \$6,230.381 million for the period 1 July 2006 to 31 December 2010 to: vary the maximum grants under the Commonwealth Grants Scheme under Part 2-2 of the Act by \$4,055.801 million; vary the maximum payments for Other Grants under Part 2-3 of the Act by \$1,941.573 million; and vary the maximum payments for Commonwealth Scholarships under Part 2-4 of the Act by \$233.007 million.
- The estimated financial impact of increasing the FEE-HELP limit over the forward estimates period (2006-07 to 2009-2010) is \$18.293 million on the fiscal balance, expenses amount to \$20.759 million and headline cash is -\$78.458 million.
- The estimated financial impact of introducing a winter schools provision under HESA over the forward estimates period (2006-07 to 2009-10) is \$0.294 million on the fiscal balance, expenses amount to \$0.340 million and headline cash is -\$1.290 million.
- The estimated financial impact of introducing a rounding in the calculation of HELP debts over the forward estimates period (2006-07 to 2009-10) is -\$0.001 million on the fiscal balance, expenses amount to \$0.001 million.

In relation to the *Higher Education Funding Act 1988*, the Bill:

- Increases the overall appropriation by \$0.154 million for the period 1 January 2007 to 31 December 2007.

In relation to the *Australian Research Council Act 2001*, the Bill:

- Increases the overall appropriation by \$29.239 million for the period 1 July 2006 to 30 June 2009.

# HIGHER EDUCATION LEGISLATION AMENDMENT (2006 BUDGET AND OTHER MEASURES) BILL 2006

## NOTES ON CLAUSES

### Clause 1 - Short title

Provides for the Act to be cited as the *Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006*.

### Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table, and any other statement in column 2 has effect according to its terms.

The table provides for sections 1 to 3, items 1, 2, 6 and 7 of Schedule 1 and Schedules 3 to 9 to commence on Royal Assent and for items 3 to 5 of Schedule 1 and Schedule 2 to commence on 1 January 2007.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

### Clause 3 - Schedule(s)

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

## **Schedule 1— Amounts relating to grants**

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

#### **Item 1 Paragraph 110A(2)(c)**

Section 110A provides a ministerial discretion to grant transitional financial assistance for the years 2005-2007 to an institution to which financial assistance was payable under Chapter 2 in respect of the year 2004. **Item 1** amends paragraph 110A(2)(c) to vary the maximum aggregate grant amount for 2007 to reflect supplementation consistent with indexation arrangements.

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

#### **Item 2 Paragraphs 30-5(1)(c), (d) and (e)**

Amends paragraphs 30-5(1)(c), (d) and (e) to vary the level of maximum grants under the Commonwealth Grant Scheme (Part 2-2) for the years 2007-2009 to reflect provision for places, increasing the contribution to clinical training of nurses and supplementation consistent with indexation arrangements for the years 2007-2009. **Item 2** also inserts a new paragraph 30-5(1)(f) to provide base funding for 2010 consistent with the forward estimates.

#### **Item 3 Section 33-10 (table item 12)**

Repeals table item 12 and substitutes a new item to increase the Commonwealth contribution amount for nursing units of study to \$10,189 in 2007. The Commonwealth contribution amount is used to calculate a higher education provider's basic grant amount for a year (see section 33-5).

#### **Item 4 Transitional provision-indexation**

A transitional provision which has the effect of providing that the Commonwealth contribution amount for nursing units of study in table item 12 in section 33-10 of the Act (as amended by item 3) is not to be indexed on 1 January 2007. Indexation is to commence from the 2008 funding year.

#### **Item 5 Transitional provision—adjustment of basic grant amount**

A transitional provision which has the effect of providing that, for the purposes of working out if and how a higher education provider's basic grant amount for the grant year 2007 (or an earlier grant year) is to be adjusted under Subdivision 33C of the Act, the amendment made by item 3 is to be disregarded. Subdivision 33C provides for the adjustment of a provider's basic grant amount for a year in certain circumstances.

**Item 6 Subsection 41-45(1) (table items 3 to 5)**

Repeals items 3, 4 and 5 of the table in subsection 41-45(1) and inserts new table items 3, 4 and 5, to vary the maximum payments for Other Grants under Part 2-3 for the years 2006-2009 to reflect an increase in Capital Development Pool (CDP) funding from 2007; the provision of funding for the Commercialisation Training Scheme (CTS); the provision of funding for the Federation of Australian Scientific and Technological Societies and the Council for the Humanities, Arts and Social Sciences; and supplementation consistent with indexation arrangements for the years 2007-2009. Item 6 also inserts a new table item 6 to provide base funding for 2010 consistent with the forward estimates.

**Item 7 Section 46-40 (table items 4 to 6)**

Repeals items 4, 5 and 6 of the table in subsection 46-40(1) and inserts new table items 4, 5, 6 and 7 to vary the maximum payments for Commonwealth Scholarships under Part 2-4 for the years 2007-2009 to reflect supplementation consistent with indexation arrangements and to provide base funding for 2010 consistent with the forward estimates.

## **Schedule 2—FEE-HELP limit**

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

#### **Item 1 Subsection 104-15(1)**

Repeals subsection 104-15(1) and substitutes a new subsection dealing with how a person's FEE-HELP balance is calculated at a particular time. If a person's FEE-HELP limit exceeds the sum of all of the amounts of FEE-HELP assistance they have previously been paid (reduced by any amounts previously re-credited under Subdivision 104-B) that excess represents the person's FEE-HELP balance. In all other cases the person's FEE-HELP balance is zero.

The amendment clarifies how a person's FEE-HELP balance is calculated where re-crediting occurs and the person's FEE-HELP limit has been reduced. If an amount is to be re-credited to a FEE-HELP balance, the balance that is to be re-credited is worked out immediately before that re-crediting. The balance is worked out after the re-crediting by taking account of the amount re-credited. If a person's FEE-HELP limit has been reduced, the balance might not increase, or might not increase by the same amount as the amount re-credited.

#### **Item 2 Section 104-20**

Repeals section 104-20 and substitutes a new section which has the effect of increasing the general FEE-HELP limit to \$80,000 and the FEE-HELP limit for students enrolled in a medicine, dentistry or veterinary science course to \$100,000. The FEE-HELP limit is indexed under Part 5-6 of the Act.

#### **Item 3 Application of amendment of FEE-HELP limit**

An application provision which provides that paragraph 104-20(b) of the Act (as amended by item 2) only applies in relation to a person who is enrolled in a course of study mentioned in that paragraph on or after 1 January 2007. Paragraph 104-20(b) of the Act sets a new FEE-HELP limit of \$100,000 for medicine, dentistry and veterinary science students.

#### **Item 4 Transitional provision**

A transitional provision which has the effect of providing that the new FEE-HELP limits in section 104-20 inserted by item 2 are not to be indexed on 1 January 2007. Indexation is to commence from the 2008 funding year.



**Item 5 At the end of subsection 110-5(1)**

Inserts a note at the end of subsection 110-5(1) (which deals with payments of FEE-HELP assistance to providers on behalf of students) to reflect the amendment made by item 2. The note informs the reader that the provider must repay the amount paid under subsection 110-5(1) even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

**Item 6 At the end of subsection 137-10(4)**

Inserts a note at the end of subsection 137-10(4) (which deals with the remission of a person's FEE-HELP debt) to reflect the amendment made by item 2. The note provides that the FEE-HELP debt is taken to be remitted even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

**Items 7 and 8 Clause 1 of Schedule 1**

Insert new definitions of *course of study in dentistry* and *course of study in veterinary science* in the Dictionary at clause 1 of Schedule 1 to facilitate the amendment made by item 2, which implements the 2006-07 Budget initiative to increase the general FEE-HELP limit to \$80,000 and to \$100,000 for medicine, dentistry and veterinary science students.

# **Schedule 3—Setting student contribution amounts and tuition fees**

## **Part 1—Amendments**

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

Division 19 of Chapter 2 sets out the quality and accountability requirements higher education providers must meet to receive grants of assistance which include the contribution and fee requirements in subdivision 19-F (sections 19-85 to 19-105).

#### **Item 1 Subsection 19-87(2)**

Section 19-87 requires providers to determine a student contribution amounts for all places in units they offer. **Item 1** repeals subsection 19-87(2) and substitutes new subsections 19-87(2) and (2A).

Proposed new subsection 19-87(2) has the effect of providing that the provider must determine (for places in the unit) one or more student contribution amounts that are to apply to students who may enrol in the unit during the period.

Proposed new subsection 19-87(2A) has the effect of providing that, in determining more than one student contribution amount under subsection 19-87(2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must **not** have regard.

#### **Item 2 Section 19-88**

Repeals section 19-88 which dealt with the determination of student contribution amounts for places in units for student cohorts.

#### **Item 3 Subsections 19-90(2) and (3)**

Section 19-90 sets out how providers must determine tuition fees for all students. **Item 3** repeals subsections 19-90(2) and (3) and substitutes new subsections.

Proposed new subsection 19-90(2) provides that the provider must determine (for the unit) one or more fees that are to apply to students who may enrol in the unit during the period.

Proposed new subsection 19-90(3) provides that, in determining more than one fee under subsection 19-90(2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must **not** have regard.

#### **Item 4 Section 19-91**

Repeals section 19-91 which dealt with the determination of tuition fees for students in student cohorts.

#### **Item 5 Paragraph 19-95(2)(a)**

Section 19-95 requires higher education providers to give the Minister a schedule of student contribution amounts for places and tuition fees in an approved form. **Item 5** repeals paragraph 19-95(2)(a) and substitutes new paragraphs 19-95(2)(a) and (aa).

Proposed new paragraph 19-95(2)(a) has the effect of providing that the provider must ensure that the schedule provides sufficient information to enable a person to work out, for each unit of study the provider provides (or is to provide):

- the person's student contribution amount; and
- if the provider determined more than one student contribution amount for places in a unit under section 19-87—which of those student contribution amounts applies to the person.

Proposed new paragraph 19-95(2)(aa) has the effect of providing that the provider must also ensure that the schedule provides sufficient information to enable a person to work out (for each unit of study the provider provides or is to provide) the person's tuition fee and, if the provider determined more than one tuition fee for a unit under section 19-90, which of those tuition fees applies to the person.

#### **Item 6 Sections 19-97 and 19-101**

Repeals sections 19-97 (which dealt with information on student contribution amounts for places and tuition fees for student cohorts) and 19-101 (which defined the meaning of *student cohort*).

#### **Item 7 Section 19-105**

Repeals the definition of *tuition fee* in section 19-105 and substitutes a new definition which defines a person's *tuition fee* for a unit of study as:

- if only one fee has been determined for the unit under subsection 19-90(2)—that fee; or
- if more than one fee has been determined for the unit under that subsection 19-90(2)—the fee determined under that subsection that applies to the person.

#### **Item 8 Subsection 93-5(1)**

Division 93 of Part 3-2 of Chapter 3 (sections 93-1 to 93-15) specifies how amounts of HECS-HELP assistance are worked out while section 93-5 sets out how the student contribution amount component is calculated. **Item 8** repeals subsection 93-5(1) and substitutes a new subsection which has the effect of altering the calculation of the *student contribution amount*

*for a place* component of the calculation so that the person's *student contribution amount for a place* in the unit is:

- if only one student contribution amount has been determined for places in the unit under subsection 19-87(2)—that student contribution amount; or
- if more than one student contribution amount has been determined for places in the unit under subsection 19-87(2)—the student contribution amount determined under that subsection that applies to the person.

#### **Item 9 Subsection 104-4(2)**

Subdivision 104-A of Division 104 of Part 3-3 of Chapter 3 (sections 104-1 to 104-10) sets out the basic rules about who is entitled to FEE-HELP assistance, while section 104-4 sets out the obligations of Open Universities Australia to set a tuition fee and census date for each unit of study they offer. **Item 9** repeals subsection 104-4(2) (dealing with setting a tuition fee) and substitutes new subsections 104-4(2) and (2AA).

Proposed new subsection 104-4(2) provides that Open Universities Australia must determine (for the unit) one or more fees that are to apply to students to whom Open Universities Australia provides access to the unit during the period.

Proposed new subsection 104-4 (2AA) provides that, in determining more than one fee under subsection 104-4(2), Open Universities Australia may have regard to any matters it considers appropriate, other than matters specified in the FEE-HELP Guidelines as matters to which Open Universities Australia must **not** have regard.

#### **Item 10 Clause 1 of Schedule 1 (definition of *student cohort*)**

Repeals the definition of *student cohort* in the Dictionary at clause 1 of Schedule 1.

#### **Item 11 Clause 1 of Schedule 1 (paragraph (b) of the definition of *Tuition fee*)**

Repeals paragraph (b) of the definition of *Tuition fee* in the Dictionary at clause 1 of Schedule 1. Paragraph (b) of the definition relates to units of study offered by Open Universities Australia. For those units *Tuition fee* will now mean:

- if only one fee has been determined for the unit under subsection 104-4(2)—that fee; or
- if more than one fee has been determined for the unit under subsection 104-4(2)—the fee determined under that subsection that applies to the person.

## Part 2—Saving provisions

### Item 12 Saving provision relating to substitution of subsection 19-90(3) (determination of different tuition fees for different courses)

A saving provision which provides that if, immediately before subsection 19-90(3) of the *Higher Education Support Act 2003* was repealed and substituted by item 3 of this Schedule, a determination made in accordance with subsection 19-90(3) had effect, that determination is taken to continue in effect as if it had been made in accordance with subsection 19-90(3) of that Act as in force after the commencement of this Schedule.

### Item 13 Saving provision for determinations of student contribution amounts for student cohorts

Saves determinations of student contribution amounts for student cohorts.

Subitem (1) provides that item 13 applies to a determination (the *saved determination*) made by a higher education provider under section 19-88 of the *Higher Education Support Act 2003* before that section was repealed by item 2 of this Schedule.

Subitem (2) provides that section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by item 6 of this Schedule.

Subitem (3) provides that the definition of a person's *student contribution amount* for a unit in subsection 93-5(1) of the *Higher Education Support Act 2003*, is modified if:

- the person is in the student cohort to which the saved determination relates; and
- the saved determination has not been revoked under subitem (4); and
- the unit forms part of a course of study with the provider who made the saved determination; and
- the person is undertaking the unit with the provider; and
- the person satisfies any conditions that apply to the cohort under the saved determination;

so that the person's *student contribution amount for a place* in the unit is the student contribution amount for the unit specified in the saved determination.

Subitem (4) provides that the provider may revoke the saved determination if the provider:

- does so before the date set out in the Higher Education Provider Guidelines and in the circumstances (if any) specified in those Guidelines; or
- does so with the written approval of the Minister.

Subitem (5) provides that, from the time the provider revokes the saved determination, a determination in effect under section 19-87 starts to apply (according to its terms) to the students who were in the cohort.

Subitem (6) provides that, before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to do so.

Subitem (7) provides that the Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters required or permitted by item 13 to be provided or necessary (or convenient) to be provided in order to carry out or give effect to this item.

Subitem (8) provides that expressions used in item 13 that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.

#### **Item 14 Saving provision for determinations of tuition fees for student cohorts**

Saves determinations of tuition fees for student cohorts.

Subitem (1) provides that item 14 applies to a determination (the *saved determination*) made by a higher education provider under section 19-91 of the *Higher Education Support Act 2003* before that section was repealed by item 4 of this Schedule.

Subitem (2) provides that section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by item 6 of this Schedule.

Subitem (3) provides that the definition of a person's *tuition fee* for a unit in section 19-105 of the *Higher Education Support Act 2003*, is modified if:

- the person is in the student cohort to which the saved determination relates; and
- the saved determination has not been revoked under subitem (4); and
- the unit forms part of a course of study with the provider who made the saved determination; and
- the person is undertaking the unit with the provider; and
- the person satisfies any conditions that apply to the cohort under the saved determination;

so that the person's *tuition fee* for the unit is the fee for the unit specified in the saved determination.

Subitem (4) provides that the provider may revoke the saved determination if the provider:

- does so before the date set out in the Higher Education Provider Guidelines and in the circumstances (if any) specified in those Guidelines; or
- does so with the written approval of the Minister.

Subitem (5) provides that, from the time the provider revokes the saved determination, a determination in effect under section 19-90 starts to apply (according to its terms) to the students who were in the cohort.

Subitem (6) provides that, before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to do so.

Subitem (7) provides that the Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters required or permitted by this item to be provided or necessary (or convenient) to be provided in order to carry out or give effect to item 14.

Subitem (8) provides that expressions used in item 14 that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.

## **Schedule 4—Rounding in calculation of HELP debts**

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

Division 140 prescribes how accumulated HELP debts are worked out while subdivision 140-B deals with former accumulated HELP debts and section 140-5 sets out rules for calculating a person's *former accumulated HELP debt*.

#### **Item 1 Subsection 140-5(1) (method statement, step 2)**

Repeals step 2 of the method statement in subsection 140-5(1) and substitutes new steps 2, 2A and 2B.

Proposed new step 2 has the effect of providing that, as part of calculating a person's former accumulated HELP debt, one takes the HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year and groups them according to whether the debts are in relation to:

- units undertaken with a higher education provider that formed part of one particular course of study with that provider; or
- units undertaken with a higher education provider that formed part of one particular course of study with another provider; or
- units that formed part of one particular bridging course for overseas-trained professionals; or
- units access to which was provided by Open Universities Australia; or
- OS-HELP assistance, the entitlement to which relates to the person's enrolment in an undergraduate course of study with one particular higher education provider.

It should be noted that there will be more than one group of debts under dot point 1 if the person incurred debts in relation to more than one course of study with a provider and that there could be more than one group of debts under dot points 2, 3 or 5.

Proposed new step 2A has the effect of providing that one works out the total for each group of debts and if the total for a particular group is an amount consisting of a number of whole dollars and a number of cents, then the total for that group is taken to be the number of whole dollars. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

Proposed new step 2B has the effect of providing that, if there is more than one group of debts for the person, the totals for all of the groups are added together.

#### **Item 2 Subsection 140-5(1) (method statement, step 3)**

Amends step 3 of the method statement in subsection 140-5(1) to reflect the addition of steps 2A and 2B by item 1.



### **Item 3 Subsection 140-25(1) (definition of *HELP debts incurred*)**

Subdivision 140-C deals with accumulated HELP debts and section 140-25 sets out rules for calculating a person's *accumulated HELP debt* for a financial year. **Item 3** repeals the definition of *HELP debts incurred* in subsection 140-25(1) and inserts a new definition to provide that the term means the amount worked out using the method statement in subsection 140-25(1A) (inserted by item 4).

### **Item 4 After subsection 140-25(1)**

Inserts a new subsection 140-25(1A) which provides a method statement to calculate *HELP debts incurred* for the purposes of subsection 140-25(1).

Proposed new step 1 has the effect of providing that, as part of calculating a person's *HELP debts incurred*, one takes the HELP debts (if any) that the person incurred during the first 6 months of the financial year and groups them according to whether the debts are in relation to:

- units undertaken with a higher education provider that formed part of one particular course of study with that provider; or
- units undertaken with a higher education provider that formed part of one particular course of study with another provider; or
- units that formed part of one particular bridging course for overseas-trained professionals; or
- units access to which was provided by Open Universities Australia; or
- OS-HELP assistance, the entitlement to which relates to the person's enrolment in an undergraduate course of study with one particular higher education provider.

It should be noted that there will be more than one group of debts under dot point 1 if the person incurred debts in relation to more than one course of study with a provider and that there could be more than one group of debts under dot points 2, 3 or 5.

Proposed new step 2 has the effect of providing that, as part of calculating a person's *HELP debts incurred*, one works out the total for each group of debts and they are rounded down to the nearest dollar. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

Proposed new step 3 has the effect of providing that if there is more than one group of debts for the person, the totals for all of the groups are added together.

### **Item 5 Application of amendments**

Provides that the amendments made by Schedule 4 apply to the calculation of HELP debts incurred on or after 1 January 2005.

## Schedule 5—Repeal of the Higher Education (HECS) Account

### *Higher Education Funding Act 1988*

#### **Item 1 Subsection 34(1) (definition of *Account*)**

The Higher Education (HECS) Reserve (the ‘Account’) is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. The purpose of the Account was to make payments under section 61 of the *Higher Education Funding Act 1988* (HEFA), with the amounts with which the Account was to be credited specified in section 60 of HEFA.

Following the implementation of the higher education reforms and the commencement of the *Higher Education Support Act 2003* (HESA) on 1 January 2005, payments under section 61 of HEFA were no longer made out of the Account.

However, until 1 June 2006, amounts were still being credited to the Account. These were amounts payable in respect of accumulated HEC debts. Under Part 3 of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*, accumulated HECS debts became accumulated HELP debts from 1 June 2006 and repayments in respect of these debts have been collected under HESA since then.

As money is no longer being credited to or withdrawn from the Account, the Government proposes to repeal the Account with any amounts in the Account on 31 May 2006 going into consolidated revenue.

**Items 1 and 2** repeal the definition of *Account* in subsection 34(1) and repeal Part 4.3 which establishes the Account.

## Schedule 6—Winter schools

### *Higher Education Support Act 2003*

Section 36-10 sets out rules on when a provider may or may not advise a person that they are a Commonwealth supported student. Subsections 36-10(7) to (10) set out the rules in relation to full fee summer schools.

#### **Item 1 Paragraph 36-10(7)(a)**

Amends paragraph 36-10(7)(a) to also apply the full fee summer schools rules to winter schools. The amendments will have the effect of providing that a higher education provider must not advise a person that he/she is a Commonwealth supported student in relation to a unit of study if the person undertakes the unit wholly during a summer school period (the *current summer school period*) or a winter school period (the *current winter school period*) and the provider has determined that subsection 36-10(7) applies to the unit.

The heading to subsection 36-10(7) is altered to reflect this change.

#### **Items 2 and 3 Subsection 36-10(8)**

Amend subsection 36-10(8) (which sets out rules about when a higher education provider may make a determination that subsection 36-10(7) applies to a unit of study) to reflect the extension of the full fee summer schools rules to winter schools.

#### **Item 4 Subsection 36-10(9)**

Subsection 36-10(9) currently requires a higher education provider to make a determination that subsection 36-10(7) applies to a unit of study before the start of the current summer school period. **Item 4** replaces subsection 36-10(9) with a new subsection which has the effect of providing that the higher education provider must make such a determination:

- before the start of the current summer school period, if the determination relates to a unit undertaken during a summer school period; or
- before the start of the current winter school period, if the determination relates to a unit undertaken during a winter school period.

#### **Item 5 Subsection 36-10(10)**

Amends subsection 36-10(10) by inserting a new definition of *winter school period* which is defined as a period that starts on or after 1 June in a year and ends on or before 31 August in that year.

## Schedule 7—Electronic communications

### *Higher Education Support Act 2003*

#### **Item 1 Sections 174-5, 174-10, 174-15, 174-20 and 174-25**

Repeals sections 174-5, 174-10, 174-15, 174-20 and 174-25 and substitutes a new section 174-5 to provide for Guidelines to deal with electronic communications.

Proposed subsection 174-5(1) provides for the Administration Guidelines to make provision for (or in relation to) requiring (or permitting) information or documents to be given by students to higher education providers, or by higher education providers to students, in accordance with particular information technology requirements on a particular kind of data storage device or by means of a particular kind of electronic communication.

Proposed subsection 174-5(2) provides that the Administration Guidelines may make provision for (or in relation to) requiring, in relation to an electronic communication from a student to a higher education provider, that:

- the communication contain an electronic signature (however described); or
- the communication contain a unique identification in an electronic form; or
- a particular method be used to identify the originator of the communication and to indicate the originator's approval of the information communicated.

Proposed subsection 174-5(3) provides that the reference in subsection 174-5(1) to giving information includes a reference to anything that is **giving information** for the purposes of section 9 of the *Electronic Transactions Act 1999*.

Proposed subsection 174-5(4) provides that in section 174-5 the terms **data storage device**, **electronic communication**, **information** and **information technology requirements** have the same meaning as in the *Electronic Transactions Act 1999*.

It is not intended that the Guidelines will compel students to accept or use electronic communications.

## **Schedule 8—Regulation of higher education in external territories**

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

#### **Item 1 At the end of Division 217**

Chapter 6 of the Act provides for approval as self-accrediting entities and for the accreditation of courses of study in external Territories. **Item 1** inserts a new section 217-5 in Division 217 of Chapter 6 to provide that matters relating to the provision of higher education in the external Territories are also dealt with in the Higher Education in External Territories Guidelines made by the Minister under section 238-10.

#### **Item 2 Section 225-1**

Renames the provisions of section 225-1 as subsection 225-1(1) to reflect the addition of subsections 225-1(2) and (3) by item 3.

#### **Item 3 At the end of section 225-1**

Inserts new subsections 225-1(2) and (3) to clarify the process of applying for approval as a self-accrediting entity or for accreditation of a course in an external Territory.

Proposed subsection 225-1(2) provides that an application under section 225-1 must be in the form approved by the Minister and must be accompanied by the information (if any) specified in the Higher Education in External Territories Guidelines.

Proposed subsection 225-1(3) provides that the Higher Education in External Territories Guidelines may provide for matters relating to applications under section 225-1, including matters relating to either or both of the following:

- requests by the Minister for further information.
- processes and deadlines that applicants must comply with.

#### **Item 4 Paragraphs 225-5(b), 225-10(b), 225-20(1)(b) and 225-20(2)(b)**

Amends paragraphs 225-5(b), 225-10(b), 225-20(1)(b) and 225-20(2)(b) to reflect the amendments made by item 3; i.e. to reflect the role of the new Higher Education in External Territories Guidelines in the approval and accreditation process.

#### **Items 5 to 8 Subsections 225-25(1) and (2)**

Amend subsections 225-25(1) and (2) to reflect that rules relating to fees payable in respect of applications made under section 225-1 are set out in the Higher Education in External Territories Guidelines rather than in the regulations.

Fees are being set out in the Higher Education in External Territories Guidelines rather than in the regulations for consistency with the revised *National Protocols for Higher Education Approval Processes* and to improve flexibility in administering section 225-1. As legislative instruments, the Higher Education in External Territories Guidelines will be disallowable by either House of Parliament.

**Item 9 Subsection 238-10(1) (after table item 6)**

The table in subsection 238-10(1) lists the Guidelines the Minister may make for the purposes of administering the Act. **Item 9** inserts a new table item 6A to give the Minister the discretion to make Higher Education in External Territories Guidelines for the purposes of administering Chapter 6.

## **Schedule 9—Amounts relating to research funding**

### ***Australian Research Council Act 2001***

#### **Items 1 to 3 Paragraphs 49(g), (h) and (i)**

Section 49 sets the total aggregate funding caps for particular years. Items 1, 2 and 3 repeal paragraphs 49(g), (h) and (i) respectively and substitute new paragraphs which increase the funding caps for the financial years 2006-07, 2007-08 and 2008-09 to reflect revised forward estimates.