THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT BILL (NO.1) 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Science and Research)
HIGHER EDUCATION SUPPORT AMENDMENT BILL (No.1) 2012

OUTLINE

The purpose of this Bill is to clarify the application of the indexation arrangements to amounts in the Act. The Bill updates the definitions for ‘course of study in dentistry’ and ‘course of study in veterinary science’ and updates Melbourne College of Divinity’s name in light of its approval to operate under the title MCD University of Divinity. It also allows for technical amendments to the calculation of the voluntary repayment bonus to resolve rounding issues.

Items 1 - 9 amend HESA to clarify the application and operation of the indexation provisions in the Act. The Bill makes it clear that indexation applied to all amounts in the Act on 1 January 2011. It also makes it clear that the amounts that are indexed on 1 January 2012 are the 2011 indexed amounts.

Item 10 amends HESA to update the Melbourne College of Divinity’s name in light of its approval to operate under the name MCD University of Divinity.

Item 11 provides that when calculating the effect of a person making a partial repayment towards his or her HELP debt, the amount would be rounded up to nearest dollar if the calculated amount is made up of dollars and cents.

Items 12 - 15 amend the definitions for ‘Course of Study in Dentistry’ and ‘Course of study in Veterinary Science’ to clarify that only students undertaking courses of study in dentistry or veterinary science that satisfy the minimum academic requirements for registration as a dentist, veterinary surgeon or veterinary practitioner are eligible for the higher FEE-HELP limit.

Application provisions provide that:
• the amendments made by item 11 apply in relation to payments made on or after commencement on 1 January 2013.
• the amendments made by items 12 to 15 apply from the day after Royal Assent to students who are currently enrolled in a course of study in dentistry or veterinary science and students who enrol in these courses in the future.

FINANCIAL IMPACT

There is no financial impact associated with this bill.
Statement of Compatibility with Human Rights

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

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This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Bill will amend the Higher Education Support Act 2003 (HESA) to:
- clarify the application and operation of the indexation arrangements to amounts in the Act on 1 January 2011;
- update the definitions of course of study in dentistry and course of study in veterinary science to clarify that a person is only eligible for the higher FEE-HELP limit while undertaking a course of study that satisfies the minimum educational requirements for professional registration as a dentist, veterinary surgeon or a veterinary practitioner;
- update Melbourne College of Divinity’s name in light of its approval to operate under the title MCD University of Divinity; and
- make technical amendments to the voluntary repayment bonus to fix an issue regarding the rounding of amounts.

Human rights implication

Right to education

The Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

Part 1 of the Bill contains amendments which, among other things, clarify the amount of student contributions and fees. These amendments appear to have an impact on a person’s access to education as the underlying policy allows a university to charge for education and other services. However, these charges generally will not prohibit a person’s access to education as they may be deferred and re-paid under the Higher Education Loan Program (HELP). HELP ensures that eligible students are not prevented from participating in higher education if they are unable to pay their tuition fees or student contribution amounts up-front.

Items 12 to 15 of the Bill amend the definitions of course of study in dentistry and course of study in veterinary science. Students undertaking these courses have access to a higher FEE-HELP limit, which allows these students to defer a higher amount of their tuition fees through the HELP. The amendments in these items will clarify that the higher FEE-HELP limit is only available where a student is undertaking the
minimum level of education required to register as a dentist, a veterinary surgeon or a veterinary practitioner.

Increasing the total amount in student loans available to fee paying students would result in additional Government costs. The amount of fees a person can defer is set at an amount the Government considers reasonable.

**Conclusion**

The Bill is compatible with human rights. The amendments in the Bill are being made in a legislative framework which advances access to education. To the extent that the Bill may have any adverse impact on a person’s access to education, the limitation is reasonable and for legitimate reasons.
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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the Higher Education Support Amendment Act (No. 1) 2012.

Clause 2 - Commencement

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

The table has the effect of providing for:

- Clauses 1 to 4, 6, 9 and 10 of Schedule 1 to commence on 1 January 2012;
- Item 5, 7 and 8 of Schedule 1 to commence on 1 January 2011;
- Item 11 of Schedule 1 to commence on 1 January 2013 and
- Items 12 to 17 to commence on the day after the Act receives Royal Assent.

A Note makes it clear that these commencement times will not be amended by any later amendments of the Bill (once enacted).

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

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.

For ease of description, this Explanatory Memorandum uses the following abbreviations:


‘Student Services and Amenities Act’ means the Higher Education Legislation Amendment (Student Services and Amenities) Act 2011.
‘Indexation Act’ means the *Higher Education Support Amendment (Indexation) Act 2010*
Schedule 1

General Amendments

Part 1 – Amendments relating to indexation

Higher Education Support Act 2003

Items 1 to 4 – Subsection 19-37(5)

Currently, section 19-37 of HESA allows a higher education provider to charge a compulsory student services and amenities fee up to a maximum amount of $250 (plus indexation) per calendar year starting on or after 1 January 2011. The amount of the fee in 2011 after indexation was $254.

Items 1 and 3 omit and substitute references to the date from which a provider may begin charging a student services and amenities fee to 1 January 2012.

Section 19-37, as determined by Proclamation, did not commence until 1 January 2012. The amendments in items 1 and 3 will reflect the actual start date from which providers are allowed to charge the student services and amenities fee.

Items 2 and 4 omit and substitute references to the maximum amount of the student services and amenities fee able to be charged by a higher education provider, changing the amount from $250 to $263.

It was originally intended that the student services and amenities fee would commence on 1 January 2010 and indexation would apply annually from 1 January 2011. However, passage of the legislation was delayed. The amendments in item 2 and 4 reflect the intention of the original amendments and clarify that the maximum amount of the student services fee as at 1 January 2012 is $263.

Item 5 – Section 198-5

This item is consequential to the amendment made by item 7.

Item 6 – Section 198-5 (table item 1AA)

The table contained in section 198-5 of HESA sets out the amounts that are to be indexed.

This amendment will correct an issue which arose because of the timing of passage of the Student Services and Amenities Act and the Indexation Act.

An amendment to the table in section 198-5 was contained in the Student Services and Amenities Act to provide for indexation of the student services and amenities fee in 2011 and in each subsequent year. However, prior to passage of the Student Services and Amenities Act the table
in section 198-5 of HESA was amended by the Indexation Act resulting in some uncertainty as to the effect of the amendment made by the Student Services and Amenities Act.

This item will remove any uncertainty by repealing the amendment made by the Student Services and Amenities Act and including a new item in the table in section 198-5 to include the student services and amenities fee, ensuring it is indexed as was always the intention.

Indexation under the table item will occur from 2013. Indexation is not required on 1 January 2012 as the amount of the student services and amenities fee from 1 January 2012 is being amended by items 2 and 4 to an amount that has had indexation applied from 1 January 2011. This was always intended.

**Item 7 – At the end of section 198-5**

Item 7 inserts new subsection 198-5(2). This subsection clarifies that amounts mentioned in section 198-5 and worked out in accordance with section 198-10, that is amounts indexed under Part 5-6 of HESA, for a calendar year with an indexation factor greater than 1, are replaced by the amount worked out in accordance with section 198-10.

The intention of this subsection is to clarify that indexation under Part 5-6 is cumulative, it is the amount worked out for the previous calendar year that is indexed in the following year.

**Item 8 – Indexation of amounts in 2011**

This item clarifies that the amounts as set out in the table in section 198-5 of HESA, as in force immediately before the commencement of the Indexation Act, are the amounts that are to be indexed on 1 January 2011 in accordance with Part 5-6 of HESA.

This amendment clarifies the way indexation was intended to apply post amendments to HESA made by the Indexation Act. That is, indexation was to apply on 1 January 2011.

**Item 9 – Indexation amount in 2012**

This item provides that the student services and amenities fee is not to be indexed on 1 January 2012. This is unnecessary as the amendments made in items 2 and 4 will replace the original amount with an amount which includes indexation for 1 January 2011 and 1 January 2012. Indexation to the student services and amenities fee will occur from 1 January 2013.

**Part 2 - Other amendments**

**Higher Education Support Act 2003**

**Item 10 – Subsection 16-20(1) (table)**

This amendment changes the reference to ‘Melbourne College of Divinity’ to ‘MCD University of Divinity’ to reflect a name change of the higher education provider.
Item 11 – Subsection 151-5(4)

This item repeals and substitutes subsection 151-5(4).

Section 151-5 explains how much a person needs to pay in order to pay off the total amount of his or her HELP debt. It also explains the effect of a person making a partial repayment towards his or her HELP debt.

Where a voluntary repayment of more than $500 or a payment which pays off the HELP debt is made, this attracts a 5 per cent bonus on the payment amount. Subsection (2) provides the method for calculating how much is required to be paid where the person is paying the total remaining debt amount and subsection (3) explains the effect of making a partial repayment.

Currently subsection 151-5(4) provides that amounts worked out under subsection (2) or (3) are rounded down to the nearest dollar amount. The effect of this rounding provision is that:

- people benefit from the rounding under subsection 151-5(2) because the payment required to pay the entire debt in full is reduced as it is rounded down; and
- people are disadvantaged under subsection 151-5(3) because a payment of more than $500 which does not pay the amount in full is rounded down after the 5 per cent bonus is applied.

In some cases the rounding has lead to HELP debt accounts having a $1 balance and has disadvantaged people who attempted to pay off their HELP debt in full but incurred a further debt prior to making the payment. To resolve these issues, this item will amend subsection 151-5(4) to provide that amounts calculated under subsection (3) in relation to a partial repayment will be rounded up. Amounts calculated under subsection (2) will continue to be rounded down.

Items 12 to 15 – Subclause 1(1) of Schedule 1 (definitions of course of study in dentistry and course of study in veterinary science)

Items 12 to 15 amend the definitions of course of study in dentistry and course of study in veterinary science to add the words ‘minimum’ and ‘regardless of whether further dentistry study is completed before registration is sought.’ The definitions will now provide:

- ‘course of study in dentistry’ means a course of study, completion of which would satisfy the minimum academic requirements for registration as a dentist by an authority of a State, a Territory or the Commonwealth regardless of whether further dentistry study is completed before registration is sought.
- ‘course of study in veterinary science’ means a course of study, completion of which would satisfy the minimum academic requirements for registration as a veterinary surgeon or veterinary practitioner by an authority of a State, a Territory or the Commonwealth regardless of whether further veterinary science study is completed before registration is sought.

The intention of these amendments is to clarify that a person only has access to the higher FEE-HELP limit (as per section 104-20 of HESA) to gain the minimum qualification required for registration as a dentist or a veterinarian. This will prevent a person from having access to the higher FEE-HELP limit where they choose to continue studying beyond the minimum level of study required for professional registration. A person will not have access to the higher FEE-HELP limit regardless of whether they choose to register as a dentist or a veterinarian. For
example, a person who chooses not to register as a dentist after completing the minimum academic requirements and instead decides to go on to further study to specialise in a particular area of dentistry will not have access to the higher FEE-HELP limit beyond completing the minimum academic requirements for professional registration.

Increasing the total amount in student loans available to fee paying students would result in additional Government costs. The amount of fees a person can defer is set at an amount the Government considers reasonable.

**Item 16 – Application–Item 11**

This item provides that the amendments made by item 11 regarding voluntary FEE-HELP repayments will apply in relation to payments made under section 151-1 of HESA on or after commencement. The item commences on 1 January 2013.

**Item 17 – Application items 12 to 15**

This item provides that the amendments made by items 12 to 15 regarding the definitions of *course of study in dentistry* and *course of study in veterinary science* apply for the purposes of working out the FEE-HELP limit in relation to:

- students who are currently enrolled in a course of study in dentistry or course of study in veterinary science on the day the item commences, being the day after the Royal Assent; and
- a person who enrolls in a course of study in dentistry or a course of study in veterinary science on the day after the item commences, being the day after Royal Assent.