2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT
(MAXIMUM PAYMENT AMOUNTS AND OTHER MEASURES) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Science and Research)
OUTLINE

The amendments to the Higher Education Support Act 2003 in Schedule 1 of the Bill update indexed amounts for Other Grants and Commonwealth Scholarships and add the 2016 funding year. The Bill allows the Minister to determine the maximum payment amounts for Other Grants and Commonwealth scholarships by legislative instrument from 2013 onwards.

The purpose of the amendment to the Australian Research Council Act 2001 in Schedule 2 of the Bill is to apply indexation against appropriations for existing schemes and add a figure for the last year of the forward budget estimates. Specifically, Schedule 2 will alter three existing financial year funding figures for indexation and extend the forward estimate period to include the financial year starting on 1 July 2015, resulting in additional spending of $828.590 million over the four financial years.

Bills to amend the ARC Act to receive administered funding must occur each financial year to apply indexation to existing appropriation amounts and add the last year of the forward budget estimates. The proposed amendments only impact on administered special appropriation; they do not alter the substance of the Act or increase departmental funds.

The amendments to the Higher Education Support Act 2003 in Schedule 3 of the Bill allow the disclosure of information (including personal information) obtained or created for the purposes of the Act to:

a) Tertiary Education Quality and Standards Agency (TEQSA), for the purposes of the TEQSA Act;

b) Australian Skills Quality Authority (ASQA) for the purposes of the National Vocational Education and Training Regulator Act;

c) Higher education and vocational education and training providers, peak bodies, Tertiary Admissions Centres and state and territory governments, for use in research relating to the provision of higher education and vocational education and training, including quality assurance and planning; and

d) Conduct Australian Government funded surveys of staff, students and former students.

FINANCIAL IMPACT STATEMENT

The amendments in Schedule 1 result in an expense of $1.2 billion over four years

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The amendments, in Schedule 2 of the Bill, alter three existing financial year funding figures and extend the forward estimates period to 2015–16, resulting in additional spending of $828.590 million.
Statement of Compatibility with Human Rights

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

HIGHER EDUCATION SUPPORT AMENDMENT (MAXIMUM PAYMENT AMOUNTS AND OTHER MEASURES) BILL 2012

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 purpose of Schedule 1 of the Bill is to amend the maximum payment amounts for Other Grants and Commonwealth Scholarships, to account for changes in indexation and to add the next funding year.

Schedule 2 of the Bill amends the Australian Research Council Act 2001 to update appropriation amounts to apply indexation and to insert a new funding cap for the last year of the forward estimates.

Schedule 3 of the Bill permits a wider disclosure of information (including personal information), to the Tertiary Education Quality and Standards Agency (TEQSA), the National VET Regulator and the staff of State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument. This information will be used to assess, amongst other things, the impact of the Government’s higher education and VET reforms and to a third party contracted by the government to conduct surveys of staff, student and former student.

The purpose of Schedule 3 is to enable those entities to which disclosure is made to improve the quality of higher education or vocational education and training, and for research relating to the provision of higher education or vocational education and training, including research relating to quality assurance or planning the provision of higher education or vocational education and training.

Human Rights Implications

The proposed measure engages the following human rights:

Right to education

Schedule 1 of the Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

In continuing to provide Other Grants and Commonwealth Scholarships, the Bill will advance Australians’ right to education and therefore will be compatible with human
rights. The maximum payment amounts are capped having regard to reasonable and necessary constraints on spending.

Prohibition on interference with privacy

The disclosure of personal information engages Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 prohibits unlawful or arbitrary interferences with a person’s privacy. It provides that persons have the right to the protection of the law against such interference.

The proposed measures may impact on an individual’s privacy as the measures provide for wider disclosure by the Department of student and staff data to the staff of higher education providers, VET providers, university groupings, the Tertiary Education Quality and Standards Agency (TEQSA), the National VET Regulator, state and territory governments and bodies or associations determined by the Minister by legislative instrument. Disclosure is limited to these bodies only.

There are legitimate objectives for the proposal as the disclosure of personal information is for the purposes of improving the provision of higher education or vocational education and training and for research relating to the provision of higher education and training, including research relating to quality assurance or planning the provision of higher education or vocational education and training (a “permitted purpose”).

The proposed measures are reasonable, necessary and proportionate to achieve the legitimate objectives identified above. All higher education and vocational education and training providers will need to ensure that their privacy agreements are up to date and meet legislative requirements and that privacy notices provided to students meet the requirements of the Privacy Act 1988 (the Privacy Act). The privacy notices currently printed on students’ enrolment forms given to them by their higher education or vocational education and training provider will be amended to make them aware of potential use and disclosure of their personal information.

The objectives of the surveys of staff, students or former students are to improve the provision of higher education or vocational education and training and for research relating to the provision of higher education or vocational education and training, including research relating to quality assurance or planning the provision of higher education or vocational education and training. Personal information, including use of the Commonwealth Higher Education Student Support Number (CHESSN), is required to construct accurate and robust survey sample frames to assess the quality of teaching and learning.

Where the information is provided by a higher education provider or a VET provider, then the Secretary of the Department may only disclose the information to the staff of the other providers or other bodies or associations determined by the Minister if the provider consents to that disclosure.

The measures will also contain provisions whereby it is an offence for the people to whom HESA information is disclosed to use HESA information for a purpose that is not a permitted purpose or to disclose HESA information to external bodies where it
is personal information (as defined in section 179-5 of HESA) or VET personal information (as defined in clause 72 of Schedule 1A of HESA).

In addition, disclosure will be restricted to the specific purposes set out above. As such, it is not a wider than necessary disclosure of personal information. Groups to whom personal information is disclosed will be required to comply with confidentiality and information-handling requirements specified in the Higher Education Data Protocols. Where personal information is disclosed to a third party engaged by the Department to conduct surveys of staff, students or former students, this will be under a contract of services that requires the third party act to act as though it were an agency bound by the Privacy Act.

**Conclusion**

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.
NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Bill, when it is enacted, is to be cited as the Higher Education Support Amendment Act (Maximum Payment Amounts and Other Measures) Act 2012.

Clause 2 - Commencement

This clause provides that the Act will commence on the day after the Act receives the Royal Assent.

Clause 3 - Schedule(s)

This clause provides that each Act and each set of regulations, that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in the Schedule concern, and that any other item in a Schedule to the Bill has effect according to its terms.

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


Schedule 1
Grants

Summary
Schedule 1 of the Bill makes amendments to sections 41-45, 41-50, 46-40 and 238-5(1) of HESA to reflect the indexation of grant amounts and to give effect to measures contained in the 2012–13 Budget.

The Bill also provides that the Minister may, by legislative instrument, determine the maximum Other Grants payment amounts under Division 41 of HESA and the maximum Commonwealth scholarship payment amounts under Division 46 of HESA. There have been annual amendments to HESA since its enactment in 2003 to provide for annual indexation. The continual cycle of amendments is not the most efficient method of updating the appropriation amounts under HESA. Allowing the maximum payment amounts to be determined by legislative instrument avoids the need for recurrent amendments to HESA.

As any such legislative instrument made to determine maximum payment amounts will be subject to disallowance. There will continue to be Parliamentary scrutiny of any future proposed amounts without the need for Parliament’s valuable and limited time to be used for what is otherwise a routine matter of Government business.

Detailed explanation

Higher Education Support Act 2003

Item 1

Item 1 repeals items 8 to 11 in the table at subsection 41-45(1) of HESA and inserts new items 8 to 13 in the table for the years 2012 to 2017.

New table item 8 provides that the maximum payment for Other Grants under Part 2-3 is $2,114,960,000 for 2012.

New table items 9 to 12 inserts paragraphs (a) and (b) into each item so that payments for other grants under Part 2-3 are either:

- $2,274,359,000 for 2013, if paragraph 9(b) does not apply;
- $2,225,794,000 for 2014, if paragraph 10(b) does not apply;
- $2,231,354,000 for 2015, if paragraph 11(b) does not apply;
- $2,219,169,000 for 2016, if paragraph 12(b) does not apply; or
- if paragraph (b) applies in respect a year, an amount determined by the Minister under subsection 41-45(1A) in respect of that year.
New table item 13 provides that for the year 2017 and each later year the maximum payment for Other Grants is to be determined by the Minister under subsection 41-45(1B) in respect of that year.

**Item 2**

Item 2 inserts new subsections 41-45(1A), 41-45(1B), 41-45(1C) and 41-45(1D).

New subsection 41-45(1A) provides that the Minister may determine, by legislative instrument, the total payments made under Part 2-3 in respect of a year starting on or after 1 January 2013 but before 1 January 2017.

New subsection 41-45(1B) provides that the Minister must, by legislative instrument, determine the total payments made under Part 2-3 in respect of a year starting on or after 1 January 2017.

New subsection 41-45(1C) provides that a determination made under subsection 41-45(1B) for a year must be made before the start of the year.

New subsection 41-45(1D) provides that the Minister may, in writing, vary a determination under subsection 41-45(1A) or 41-45(1B) for a year at any time before the end of that year.

**Item 3 and 4**

Section 41-50 provides that before the start of a year, the Minister must, by legislative instrument, cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10.

Item 3 amends section 41-50 so that the current provision would be contained in new subsection 41-50(1).

Item 4 inserts new subsection 41-50(2) which provides that the Minister may, in writing, vary a list for a year at any time before the end of the year.

**Items 5 and 6**

Section 46-40 provides that the total payments for Commonwealth scholarships in respect of a year must not exceed the amount specified in the table in this section for that year.

Item 5 amends section 46-40 so that the current provision would be contained in new subsection 46-40(1).

Item 6 repeals items 10 to 12 in the table in section 46-40 of HESA and inserts new items 10 to 14 in the table for the years 2013 to 2017. The table sets out the maximum payments for Commonwealth scholarships for a year.
New items 10 to 13 insert paragraphs (a) and (b) into each item so that payments for Commonwealth scholarships under Part 2-4 are either:

- $300,217,000 for 2013, if paragraph 10(b) does not apply;
- $305,166,000 for 2014, if paragraph 11(b) does not apply;
- $307,456,000 for 2015, if paragraph 12(b) does not apply;
- $307,329,000 for 2016, if paragraph 13(b) does not apply; or
- if paragraph (b) in respect of a year applies, an amount determined by the Minister under subsection 46-40(2) in respect of that year.

Item 14 provides that for the year 2017 and each later year the maximum payment for Commonwealth scholarships is to be determined by the Minister under subsection 46-40(3) in respect of that year.

**Item 7**

**Item 7** inserts new subsections 46-40(2), 46-40(3), 46-40(4) and 46-40(5).

New subsection 46-40(2) provides that the Minister may, by legislative instrument, determine the total payments made under Part 2-4 in respect of a year starting on or after 1 January 2013 but before 1 January 2017.

New subsection 46-40(3) provides that the Minister must, by legislative instrument, determine the total payments made under Part 2-4 in respect of a year starting on or after 1 January 2017.

New subsection 46-40(4) provides that a determination under subsection 46-40(3) for a year must be made before the start of that year.

New subsection 46-40(5) provides that the Minister may, in writing, vary a determination under subsections 46-40(2) or 46-40(3) for a year at any time before the end of that year.

**Item 8**

Section 238-5 provides that the Minister may, by writing, delegate to the Secretary, or an APS employee in the Department, all or any of the Minister’s powers under this Act.

**Item 8** amends subsection 238-5(1) so that the Minister may delegate all or any of the Minister’s powers under HESA other than those powers under new section 41-45 or new section 46-40.


Schedule 2

Research funding

Summary

Schedule 2 of the Bill makes amendments to sections 48 and 49 of the ARC Act to apply indexation against existing schemes and to add the last year of the forward budget estimates.

Detailed explanation

Australian Research Council Act 2001

Item 1 – Section 48

Item 1 inserts new paragraph 48(2)(l) to provide that the financial year starting on 1 July 2015 is a year to which Division 1 of Part 7 of the ARC Act applies.

Item 2 – Section 49

Section 49 provides the total of all approved amounts determined in respect of a year to which Division 1 of Part 7 of the ARC Act applies.

Item 2 repeals paragraphs 49(m), 49(n) and 49(o) and inserts new paragraphs 49(m), 49(n), 49(o) and 49(p) so that approved amounts determined in respect of a year to which Division 1 of Part 7 of the ARC Act applies must not exceed:

- $879,107,000 for the financial year starting on 1 July 2012
- $857,364,000 for the financial year starting on 1 July 2013
- $798,653,000 for the financial year starting on 1 July 2014
- $765,634,000 for the financial year starting on 1 July 2015.
Schedule 3

Use and disclosure of information

Summary

Schedule 3 of the Bill repeals current Division 180 and substitutes the new Division 180 of the Higher Education Support Act 2003 (HESA) to allow the disclosure of Higher Education Support Act information (HESA Information) by the Secretary to the Tertiary Education Quality and Standards Agency (TEQSA), the National VET Regulator and to the staff of State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument.

HESA information includes personal information (as defined by section 179-5 of HESA), VET personal information (as defined by clause 72 of Schedule 1A of HESA), any other information obtained or created by a Commonwealth officer for the purposes of HESA and information obtained or created by a Commonwealth officer as a result of a survey of staff, students or former students.

HESA information may be disclosed to TEQSA and the National VET Regulator for the performance of duties or functions, or the exercise of powers under, or for the purposes of the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act), or the National Vocational Education and Training Regulator Act 2011, respectively.

HESA information will only be disclosed to State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument for permitted purposes.

The permitted purposes will be for improving the provision of higher education or vocational education and training; and for research relating to the provision of higher education or vocational education and training including, but not limited to, research relating to quality assurance or planning the provision of higher education or vocational education and training.

Schedule 3 provides that if HESA information was provided by a higher education provider or a VET provider then consent of the provider is required to disclose the information to higher education providers, VET providers or bodies or associations determined by the Minister by legislative instrument.

Schedule 3 amends Division 180 to provide that a person commits an offence if the person uses personal information or VET personal information that the person acquired under new subsection 180-25(1), or from another person who received the information under new subsection 180-25(1), for a purpose that was not a permitted purpose.
Schedule 3 provides that a person commits an offence if the person discloses personal information or VET personal information that the person acquired under new subsection 180-25(1), or from another person who received the information under new subsection 180-25(1), and the disclosure was not a permitted purpose or the disclosure was to a person who is not a member of staff within the same body.

Schedule 3 provides that the offence provisions will not apply if the information was obtained or created by an officer for the purposes of Part 2-3 of HESA.

Schedule 3 amends allow a Commonwealth officer to disclose Higher Education Support Act information to another Commonwealth officer to assist that other officer in the course of the officer’s official employment. The Bill will also allow a Commonwealth officer to use Higher Education Support Act information in the course of the officer’s official employment.

Schedule 3 amends Division 179 to clarify that an officer may use personal information in the course of the officer’s official employment. Schedule 3 amends Division 14 of Schedule 1A of HESA to clarify that a VET officer may use VET personal information in the course of the officer’s official employment.

Schedule 3 amends Division 180 to allow Commonwealth officers to use HESA information to conduct a survey of staff, students and former students of higher education providers or VET education providers for the purposes of improving the provision of higher education or vocational education and training; and for research relating to the provision of higher education or vocational education and training including, but not limited to, research relating to quality assurance or planning the provision of higher education or vocational education and training.

**Background**

The Department has received a high volume of requests from higher education providers, higher education groups, the Tertiary Education Quality and Standards Agency (TEQSA) and state and territory governments for student and staff data at the unit record level (a level at which an individual may be identified). Data at this level allows more accurate assessment and monitoring of the impact of the Australian Government’s higher education demand driven funding reforms for planning and quality assurance purposes.

Currently HESA, in Division 180, provides that the only information that can be disclosed to TEQSA and the National VET Regulator is personal information that is obtained in connection with an application by a registered higher education provider for approval as a higher education provider under HESA, or non-personal information that is obtained by a Commonwealth officer for the purposes of Chapter 2 and Chapter 3 of HESA. The entities which can receive this information are limited to TEQSA and the National VET Regulator.

Additionally, the Advancing Quality in Higher Education (AQHE) Reference Group has recommended the centralisation of Australian Government endorsed student surveys in which it is envisaged the Department would give a third party access to the Commonwealth Higher Education Student Support Number (CHESSN) to construct
accurate and robust survey sample frames to conduct the surveys. Such an approach has been advocated by Universities Australia to reduce the reporting burden on universities. The student surveys are conducted for the purposes of improving the quality of teaching and learning and for research in relation to the provision of higher education. The conducting and enhancement of student surveys within the vocational and education sector is part of the redesign of VET FEE-HELP in line with the 2012 National Partnership Agreement on Skills Reform.

Currently HESA does not allow the use of personal information or VET personal information in order to conduct a survey of students, former students or staff of higher education providers or VET providers for any purpose.

Current Division 179 and Division 14 of Schedule 1A do not have provisions explicitly allowing for Commonwealth officers to use personal information in the course of the officer’s official employment.

**Detailed explanation**

*Higher Education Support Act 2003*

**Part 1 – Amendments**

**Item 1 – Division 179**

The provisions in current Division 179 provide that an officer who discloses, copies or records personal information otherwise in the course of their official employment, or causes authorised access to or modification of personal information, commits an offence. Current Division 179 does not explicitly allow for an officer to use personal information in the course of the officer’s official employment.

At the end of Division 179, Item 1 inserts new sections 179-40 and 179-45.

New section 179-40 provides that an officer may use personal information in the course of the officer’s official employment.

New Section 179-45 provides that Division 179 does not limit the disclosure or use of personal information.

A note to new section 179-45 provides that the disclosure or use of personal information may also be authorised in other circumstances. An example is given of Division 180 and the *Privacy Act 1988*.

The effect of new section 179-45 is to ensure that the provisions within Division 179 will not, by implication, override any other authorisation to use or disclose personal information (such as an authorisation under the *Privacy Act 1988*).
Item 2 – Division 180

Current Division 180 provides further rules about the use and disclosure of information. Current Division 180 allows the Secretary to disclose non-personal information obtained by a Commonwealth officer for the purposes of Chapter 2 and Chapter 3 and personal information if it is obtained in connection with an application for approval as a higher education provider under section 16-40.

Current Division 180 provides that the Secretary can only provide this information to TEQSA and the National VET Regulator for the performance of duties and functions, or exercise of powers, under, or for the purposes of the TEQSA Act and the National Vocational Education and Training Regulator Act 2011 respectively.

To expand the scope of the information that can be disclosed and the entities that can receive the information, Item 2 repeals current Division 180 and substitutes it with new Division 180, which includes new sections 180-1, 180-5, 180-10, 180-15, 180-20, 180-25, 180-30 and 180 - 35.

180-1 What this Division is about

New section 180-1 provides a description of new Division 180 stating that the Division authorises the disclosure and use of HESA information for certain purposes.

180-5 Meaning of Higher Education Support Act information

New section 180-5 provides a definition for HESA information, which is very broad. It includes information specifically defined elsewhere in HESA as personal information and VET personal information, as well as information obtained or created by a Commonwealth officer as a result of a survey of the kind referred to in section 180-30 and any other information obtained or created by a Commonwealth officer for the purposes of HESA.

To avoid doubt, paragraph (d) of the definition of HESA information is intended to capture all other information (including personal information as defined by the Privacy Act 1988) which is obtained or created under HESA and which may not be specifically included in the other categories of HESA information.

In accordance with new sections 180-15, 180-20 and 180-25, the types of information defined as HESA information may be disclosed to TEQSA, the National VET Regulator and the bodies referred to in subsection 180-25(3).

180-10 Disclosure and use by Commonwealth officers

New subsection 180-10(1) provides that a Commonwealth officer may disclose HESA information to another Commonwealth officer to assist that officer in the other officer’s official employment within the meaning of section 179-15.

New subsection 180-10(2) provides that a Commonwealth officer may use HESA information in the course of their official employment within the meaning of 179-15.
The effect of this new section is to allow Commonwealth officers that perform official employment in the Higher Education and VET sectors to exchange information that may be relevant to both sectors to perform their official employment. It also allows Commonwealth officers to use HESA information in the course of their official employment.

180-15 Disclosure of information to TEQSA

New section 180-15 provides that the Secretary may disclose HESA information to TEQSA or a member of staff of TEQSA for the performance of duties or functions, or the exercise of powers, under, or for the purpose of, the TEQSA Act.

“A member of staff of TEQSA” is a defined term under section 5 of the TEQSA Act.

180-20 Disclosure of information to the National VET Regulator

New section 180-20 provides that the Secretary may disclose HESA information to the National VET Regulator or a member of the staff of the Regulator for the performance of duties or function, or the exercise of powers under, or for the purposes of, the National Vocational Education and Training Regulator Act 2011.

“A member of the staff of the Regulator” is a defined term under section 3 of the National Vocational Education and Training Regulator Act 2011.

180-25 Disclosure of information to other bodies

New subsection 180-25(1) prescribes the purposes for which the Secretary may disclose HESA information to a person referred to in new subsection 180-25(3) (a permitted purpose). One of the permitted purposes is for improving the provision of higher education or vocational education and training. This permitted purpose operates broadly and will allow disclosure of HESA information for the purposes of improving the quality of higher education and vocational education and training as well as improving the accountability of the organisations that provide these services.

The other permitted purpose, which is also intended to operate broadly, is for research relating to the provision of higher education or vocational education and training including, but not limited to, research relating to quality assurance or planning the provision of higher education or vocational education and training.

New subsection 180-25(2) provides that if the HESA information was provided by a higher education provider or a VET provider, then the Secretary may only disclose this information to a person referred to in paragraphs (b), (c) and (d) of new subsection 180-25(3) if the provider consents to that disclosure.

New subsection 180-25(3) provides that the persons which are able to receive the information disclosed under new subsection 180-25(1) are a person (an officer) who is employed or engaged by a State or Territory agency, an officer of a higher education provider (as defined under subsection 179-15(3)), an officer of a VET provider (as defined under subclause 74(3) of Schedule 1A) or a person (an officer) who is
employed or engaged by body or association determined by the Minister under subsection 180-25(4).

The terms “engaged by” used in paragraphs 180-25(3)(a) and 180-25(3)(d) is intended to operate broadly so that the Secretary may disclose HESA information (for a permitted purpose) to persons who generally carry out functions or perform services on the behalf of the bodies such as, but not limited to, contractors of the bodies.

New subsection 180-25(4) is the provision that enables the Minister to make, by legislative instrument, a determination in relation to a body or association for the purposes of new paragraph 180-25(3)(d).

It is envisaged that the types of bodies or associations that may be determined by the Minister through a legislative instrument are peak bodies and other advocacy groups for the higher education sector such as Universities Australia, the Council of Private Higher Education, the Australian Council for Private Education and Training and the Tertiary Admissions Centres. These bodies or associations will be determined through a legislative instrument in order to avoid unnecessary amendments to HESA in situations such as a body changing its name.

New subsection 180-25(5) provides that an offence is committed if a person uses personal information or VET personal information for a reason other than a permitted purpose in the event that they received the information from the Secretary (under subsection 180-25(1)) or if they received it from another officer within the same body. If, however, the information used was not obtained or created by an officer for the purposes of Part 2-3, the person will not have committed an offence.

New Subsection 180-25(5) will operate to ensure that both the officer that initially receives the information under subsection 180-25(1) and any officer that receives the information from another officer within the same body will commit an offence if the information is not used for a permitted purpose.

New subsection 180-25(6) provides that an offence is committed if a person discloses personal information or VET personal information if the information was disclosed to another officer within the same body for a reason other than for a permitted purpose or if the information is disclosed to a person outside of the person’s body. The offence applies in the event that the person received the information from the Secretary (under subsection 180-25(1)) or if they received it from another officer within one of the same body. If, however, the information disclosed was not obtained or created by an officer for the purposes of Part 2-3, the person will not have committed an offence.

The purpose of this provision is to create an offence when personal information or VET personal information is disclosed to another body but also to allow disclosure of the information to another officer within the same body for a permitted purpose.

The penalty for committing an offence under new subsection 180-25(5) or 180-25(6) is imprisonment for 2 years. It is intended to act as the strongest possible deterrent to the unlawful use and disclosure of personal information or VET personal information. The penalties under new subsections 180-25(5) and 180-25(6) are consistent with current section 179-10.
180-30 Use of information to conduct surveys

New subsection 180-30 provides that a Commonwealth officer may use HESA information in order to conduct a survey of staff, student or former students of higher education providers or VET providers for particular purposes, which mirror the permitted purposes in subsection 180-25(1).

180-35 This Division does not limit disclosure or use of information

New section 180-35 provides that Division 180 does not limit the disclosure or use HESA information.

A note to new section 180-35 provides that the use of personal information may also be authorised in other circumstances. An example is given of Division 179, Division 14 of Schedule 1A and the Privacy Act 1988.

The effect of new section 180-35 is to ensure that the provisions within Division 180 will not, by implication, override any other authorisation to use or disclose personal information (such as an authorisation under the Privacy Act 1988).

Items 3 and 4 – Subdivision 14-A of Schedule 1A

Current Division 14 of Schedule 1A of the HESA mirrors Divisions 179 and 180 with respect to the vocational education and training sector. Current Division 14 provides that a VET officer who discloses, copies or records VET personal information otherwise than in the course of official employment, or causes unauthorised access to or modification of VET personal information, commits an offence.

Items 3 and 4 amend current subdivision 14-A of Schedule 1A of HESA as a consequence of subdivision 14-B being repealed as a heading under Item 7.

Item 3 repeals the heading of subdivision 14-A as the effect of the repeal of subdivision 14-B as a heading under Item 7 will mean that there are no longer any subdivisions under Division 14 of Schedule 1A of HESA.

Item 4 repeals the heading of clause 71 of Schedule 1A and, to reflect that there are no longer any subdivisions under Division 14 of Schedule 1A of HESA, the following heading is inserted:

71 What this Division is about

Item 5 – Clause 75 of Schedule 1A

Item 5 inserts new paragraph 75(aa) which provides that disclosure by a Commonwealth officer of VET personal information in accordance with Division 180 will be taken to be a disclosure that occurs in the course of a VET officer’s official employment.
As per all paragraphs under clause 75, new paragraph 75(aa) will not limit the matters that are disclosures that occur in the course of a VET officer’s official employment for the purposes of paragraph 73(d) of Schedule 1A.

**Item 6 – Subclause 77(1) of Schedule 1A**

As there are no longer any subdivisions under Division 14 of Schedule 1A of HESA, **Item 6** omits the word “Subdivision” and substitutes the word “Division.”

**Item 7 – Subdivision 14-B of Schedule 1A**

**Item 7** repeals the heading of subdivision 14-B of Schedule 1A of HESA.

As new Division 180 now incorporates and expands on the current Subdivision 14-B, current Subdivision 14-B is repealed as a heading.

**Item 8 – New clauses 78A and 78B**

Current clause 78A mirrors current Division 180 of HESA as it allows the Secretary to disclose non-personal information obtained by a Commonwealth officer for the purposes of Schedule 1A and personal information if it is obtained in connection with an application for approval as a VET provider under clause 9 of Schedule 1A.

Current clause 78A provides that the Secretary can only provide this information to TEQSA and the National VET Regulator for the performance of duties and functions, or exercise power, under, or for the purposes of the TEQSA Act and the *National Vocational Education and Training Regulator Act 2011* respectively.

**Item 8** repeals current clause 78A and inserts new clauses 78A and 78B at the end of the current subdivision 14-A of Schedule 1A.

**78A Officer may use information**

New clause 78A provides that a VET officer may use VET personal information in the course of the officer’s official employment.

**78B This Division does not limit disclosure or use of information**

New clause 78B provides that Division 14 does not limit the disclosure or use of VET personal information.

A note to new clause 78B states that the disclosure or use of VET personal information may also be authorised in other circumstance. Division 180 of HESA and the *Privacy Act 1988* are given as examples.

The effect of new clause 78B is to ensure that the provisions within Division 14 of Schedule 1A will not, by implication, override any other authorisation to use or disclose personal information (such as an authorisation under the *Privacy Act 1988*).
Item 9 – Subclause 1(1) of Schedule 1

Item 9 inserts a definition of HESA information into subclause 1(1) of Schedule 1 which provides that HESA information has the meaning given by section 180-5.

Part 2 – Application

Item 10 – Application of Part 1

Item 10 provides that the amendments made by Part 1 of Schedule 3 of the Bill apply to information obtained or created, before on or after the commencement of item 10.