

***TRADE SUPPORT LOANS ACT 2014***

**TRADE SUPPORT LOAN AMENDMENT  
(OVERSEAS DEBTORS REPAYMENT) RULE  
2017**

**EXPLANATORY STATEMENT**

## OUTLINE

The *Trade Support Loan Amendment (Overseas Debtors Repayment) Rule 2017* (Overseas Debtors Rules) underpin the detailed administrative arrangements for recovery of overseas Trade Support Loans (TSL) debt, including requirements relating to income assessment and notices to be given to the Commissioner of Taxation (The Commissioner). The Overseas Debtors Rules amend the *Trade Support Loan Rules 2014* (TSL Rules).

## BACKGROUND

The *Education Legislation Amendment (Overseas Debt Recovery) Act 2015* (which made amendments to the *Trade Support Loans Act 2014* [TSL Act]) and the *Student Loans (Overseas Debtor Repayment Levy) Act 2015* were passed by Parliament on 9 November 2015 and received the Royal Assent on 26 November 2015. These Acts create an obligation for TSL and Higher Education Loan Programme (HELP) debtors to make repayments on their debts if they are non-residents of Australia for taxation purposes. Under the TSL scheme, eligible apprentices can obtain income-contingent loans to assist them while they complete their apprenticeship. This Explanatory Statement relates to TSL debts only (there are separate Guidelines covering HELP).

From 1 January 2016, people with TSL debts who leave Australia for 183 days or more are required to notify the Australian Taxation Office (ATO) of their absence from Australia and their new contact details within seven days of departing Australia.

People with TSL debts who have been living overseas on or before 1 January 2016 must notify the ATO of their absence from Australia and their new contact details. They have until 1 July 2017 to do this (see 'Part 2 – Application Provisions' of the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*).

In relation to TSL debtors who are foreign residents (overseas debtors), from 1 July 2017 they will be required to make income-contingent repayments on their TSL debt.

The introduction of repayment obligations for overseas debtors is part of the Government's broader agenda to improve the equity and sustainability of income contingent loans for study and training.

## SUMMARY OF RULES

The Overseas Debtors Rules explain how a person works out their foreign-sourced income for an income year under section 47B of the TSL Act. The process is designed to be as comparable to arrangements for domestic debtors as possible, while maximising simplicity for users.

Overseas debtors will have the option of choosing between three methods for working out their foreign-sourced income for each income year. The three methods are:

1. the overseas assessed method, which relies on an income assessment in the person's country of residence;
2. a simple self-assessment method; and
3. a comprehensive tax-based assessment method.

These three methods of working out foreign-sourced income cater for circumstances where there is no foreign tax assessment or where an overseas debtor believes the application of Australian tax rules would better reflect their circumstances.

The Overseas Debtors Rules also:

- explain how to convert foreign-sourced currency to Australian dollars;
- cover the content of notifications to the Commissioner to support the operation of the relevant sections of the TSL Act. This includes the information that an overseas debtor must provide in notifications relating to: leaving Australia, absence from Australia, and in an overseas debtor's notification of income; and
- include exceptions to the requirement to provide notification in some circumstances, for example where an overseas debtor has already notified the ATO of their absence from Australia and returns for a family visit but remains a foreign resident.

## NOTES ON THE INSTRUMENT

Section 1 provides that the title of this instrument is the *Trade Support Loan Amendment (Overseas Debtors Repayment) Rule 2017*.

Section 2 contains the commencement information – the instrument is in force from the day after it is registered.

Section 3 includes information on the authority for the Overseas Debtors Rules, which are made under the *Trade Support Loans Act 2014*.

Section 4 provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule. There is one Schedule to this instrument which amends the TSL Rules.

## SCHEDULE 1 - AMENDMENTS

Item 1 inserts into rule 4 of the TSL Rules a definition of 'foreign currency', which is defined to be a currency other than Australian currency.

Item 2 inserts new rules 16 and 17 relating specifically to the recovery of TSL debt from overseas debtors.

An overseas debtor's repayment obligation is based on their assessed worldwide income. This is pursuant to section 47A of the TSL Act. Assessed worldwide income (defined in section 47B) comprises a person's repayment income plus their foreign-sourced income. A person's repayment income for the purposes of the TSL Act is the same as is defined in section 154-5 of the *Higher Education support Act 2003* (HESA). In summary:

$$\begin{array}{rcccl} \text{Assessed worldwide} & = & \text{Repayment income} & + & \text{Foreign-sourced income} \\ \text{income} & & \text{(154-5 of the HESA)} & & \text{(Rule 16)} \end{array}$$

Overseas debtors must report their income, including their foreign-sourced income, to the ATO to determine their repayment amount. Income earned in a foreign currency is to be converted into Australian currency (see paragraph 47B(1)(b) of the TSL Act).

The new subrule 16 (1) provides the following three approaches for working out a person's foreign-sourced income for an income year:

1. the simple self-assessment method;
2. the overseas assessed method;
3. the comprehensive tax-based assessment method.

Subrule 16(2) enables a person to choose which method he or she is to apply, as is to be stated in the notice given to the Commissioner under subsection 47C(3) of the TSL Act. If the person does not choose a method in that notice, subrule 16(3) provides that the simple self-assessment method may be used to work out the person's foreign-sourced income for the income year.

Subrule 16(4) provides that a person can only choose one method to assess foreign income for the income year. The choice of method in one year does not restrict a person's choice of method in a subsequent year. For example, if a person uses the overseas assessed method one income year, the next income year the person may choose any one of the three available methods.

For the purpose of the Overseas Debtors Rules, the term *income year* refers to the Australian income year (1 July-30 June) (which reflects the meaning given by subsection 998-1(1) of the *Income Tax Assessment Act 1997*).

## **SIMPLE SELF-ASSESSMENT METHOD**

Subrule 16(5) sets out the simple self-assessment method for assessing a person's foreign-sourced income.

Under this method, to assess their foreign-sourced income overseas debtors must report:

- the occupation from which they derived the most foreign income for an income year; and
- their total (pre-tax) foreign income earned.

Their foreign-sourced income is the difference between their total (pre-tax) foreign income and the standard deduction that applies to that person's occupation.

The applicable standard deduction, as determined by the Minister, will be applied by the Commissioner to the pre-tax amount of income earned. This will be based on the occupation provided by the overseas debtor. See Example One.

Subrule 16(6) enables the Minister to determine in a legislative instrument the descriptions of occupations, and the standard deduction for each occupation specified, or how to work out this deduction for an income year. Occupation codes and standard deductions may change from year to year. This is why the Overseas Debtors Rules allow the Minister to determine this for an income year.

## **OVERSEAS ASSESSED METHOD**

Subrule 16(7) sets out the overseas assessed method for assessing a person's foreign-sourced income.

Under this method, a person's foreign-sourced income is the amount equal to the person's taxable income according to the most recent tax assessment completed by a taxation authority of a foreign country. The assessment must cover a 12 month period, even if income was not earned for the whole 12 months.

Subrule 16(8) includes limitations on the use of this method. An overseas debtor cannot use this method of assessment if any of the following apply:

- the period for which the person's most recent assessment relates does not overlap with the relevant income year (Australian financial year) that the notice of income relates to. This is to ensure that overseas debtors are reporting their income for a period of time as closely aligned as possible with the income year;
- multiple assessments of that person's income have been made by different foreign countries during the income year; or
- the assessment has already been used to work out the person's foreign-sourced income for a previous income year.

If no tax was payable because the foreign income is below the foreign country's tax threshold, this option is still available provided there is an income assessment.

Regardless of the 12 month period the foreign tax assessment covers (for example whether it is from April to March or January to December), it is taken to be the overseas debtor's income for the Australian income year (1 July-30 June). This method allows overseas debtors to use their income for a 12 month period as assessed by a foreign tax authority as a proxy for their income for the Australian income year with which it overlaps. See Examples One and Two.



### **EXAMPLE ONE**

Anica has been living in New Zealand for two years, working as an electrician. She has two New Zealand tax assessments. One covers 1 April 2015 to 31 March 2016, and the other covers 1 April 2016 to 31 March 2017.

Anica will need to choose her method of assessing foreign-sourced income. She must also determine if she has any repayment income as outlined in section 154-5 of HESA (which is essentially any income she has earned in or from Australia). This will determine her worldwide income which will be used to work out how much of her TSL debt she will need to repay.

#### **Overseas assessed method**

In working out her foreign-sourced income for the 2016-17 income year, Anica chooses the overseas assessed method. For this, she must use the most recent foreign tax assessment that overlaps with the Australian income year 1 July 2016 to 30 June 2017. This assessment must cover a 12 month period and must not have been used by her before in working out her worldwide income.

As the earlier assessment (1 April 2015 to 31 March 2016) does not overlap with the relevant Australian income year (1 July 2016 to 30 June 2017), Anica must use her most recent assessment covering 1 April 2016 to 31 March 2017.

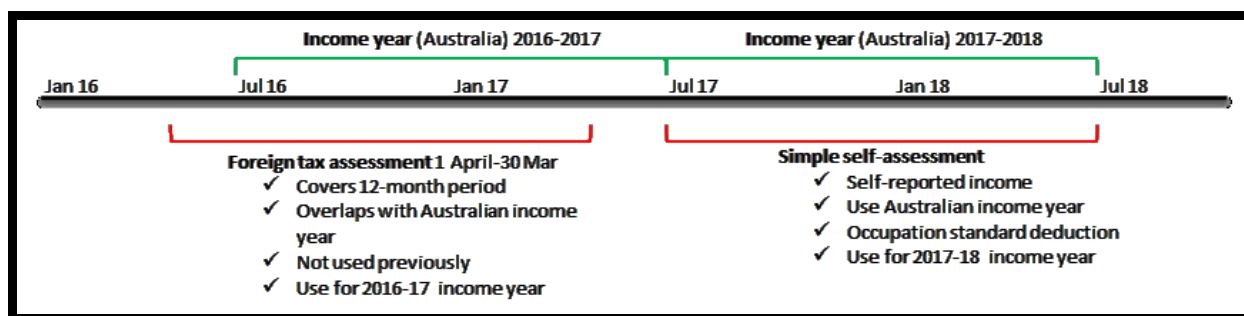
Anica reports the income she earned in New Zealand as recorded on that assessment as a proxy for her income over the relevant Australian income year. This is taken to be her foreign-sourced income for the period 1 July 2016 to 30 June 2017.

She must also report her repayment income, which is added to her foreign-sourced income, to calculate her worldwide income and therefore her repayment amount.

#### **Simple self-assessed method**

The next year, Anica chooses the simple self-assessment method to work out her foreign-sourced income for the 2017-18 income year.

Anica enters her total (pre-tax) foreign income from 1 July 2017 to 30 June 2018, and reports her occupation. The occupation standard deduction is subtracted from her foreign income by the Commissioner to determine Anica's foreign-sourced income. She also reports her repayment income she earned in Australia for the 2017-18 income year. The total forms her worldwide income and from this her repayment amount for the 2017-18 income year will be determined by the Commissioner.



## EXAMPLE TWO

Lee is living in Germany and working as a mechanic. He owns a property in Australia that he rents out.

In working out his foreign-sourced income for the 2016-17 income year, Lee chooses the overseas assessed method. Lee has a German tax assessment for the period 1 October 2016 to 30 September 2017.

When using the overseas assessed method he reports the income he has earned in Germany (as shown in his foreign tax assessment), as a proxy for his income over the income year. This forms the foreign-sourced income component of his worldwide income.

As a foreign resident, Lee must also report all income earned from the rental property by lodging an income tax return in Australia. Rental income falls within the definition of repayment income in section 154-5 of the HESA. The income from his rental property in Australia forms the repayment income component of his worldwide income.

If Lee paid a compulsory repayment amount on his Australian taxable income it will be accounted for when calculating his total repayment amount based on his worldwide income.

## COMPREHENSIVE TAX-BASED ASSESSMENT METHOD

Subrule 16(9) sets out the comprehensive tax-based assessment method for assessing a person's foreign-sourced income.

Under this method, an overseas debtor assesses his or her total foreign income using Australian taxation rules. A person's foreign-sourced income is the difference between the person's total (pre-tax) foreign income and the deductions that would be allowable under the Australian taxation system.

This method is available to ensure that no overseas debtors are unfairly disadvantaged by the income assessment methods when compared to debtors living in Australia. See Example Three.

### EXAMPLE THREE

Nadiah is a small business owner in Canada. She primarily works by herself on contracts with other businesses. Because of differences in tax rules, Nadiah believes it would be better for her to use the comprehensive assessment method when working out her foreign-sourced income for the 2016-17 income year.

Under Australian taxation rules Nadiah is earning Personal Services Income. She can then report the business income as her own income and make deductions derived from business expenses that would be allowable under the Australian tax system. She reports this as her foreign-sourced income for the income year.

Nadiah must also report on any repayment income earned, which is added to her foreign-sourced income, to calculate her worldwide income and therefore her repayment amount.

### CURRENCY CONVERSION

Subrule 16(10) outlines how to convert foreign currency to Australian dollars. The rate of conversion is the average exchange rate for the financial year most closely corresponding to the Australian income year.

For example, if an individual is submitting an assessment for the 2016-17 income year and uses the overseas assessed method, the rate of exchange will be the average rate between 1 July 2016 and 30 June 2017.

The notification of income form approved by the Commissioner will include a currency conversion calculator to assist debtors.

For those overseas debtors who earn currencies not included in the conversion calculator, the Commissioner will allow them to use any reasonable externally sourced exchange rate for that currency, such as a bank. The ATO's current and ongoing policy in relation to externally sourced exchange rates can be found on the ATO website.

Subrule 16(11) notes any term used in this rule 16 that is also used in the *Income Tax Assessment Act 1997* has the same definition as in that Act.

## NOTICES RELATING TO LEAVING AUSTRALIA

Under subsection 47C(1) of the TSL Act, TSL debtors who leave Australia with the intention of remaining outside Australia for at least 183 days must notify the Commissioner in the approved form no later than 7 days after leaving Australia.

New subrule 17(1) requires these debtors to notify the Commissioner of the following information in the approved form:

- their name; and
- their date of birth; and
- if known:
  - their intended or current country of residence; and
  - their contact details, including email address and telephone number.

Under subrule 17(2), debtors are not required to notify the Commissioner that they are leaving Australia if:

- they have already notified the Commissioner in relation to a previous departure and their details have not changed; and
- they have not been an Australian resident for taxation purposes since notifying the Commissioner.

The exceptions are to prevent debtors who previously notified the Commissioner they left Australia from being required to re-notify if they return for a short period of time, for example a family visit. See Example Four.

### EXAMPLE FOUR

Nick moved to South Africa in March 2016 and notified the Commissioner of his overseas address when he moved. In July 2017 Nick flew back to Australia for ten days to attend his sister's wedding. As he remained a foreign resident for tax purposes and had previously told the Commissioner he was living overseas, he did not need to re-notify the Commissioner when he flew back to South Africa after his sister's wedding.

As noted in Subrule 17(6), under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner may request additional content to be included in the approved form of these notices.

## NOTICES RELATING TO ABSENCE FROM AUSTRALIA

Under subsection 47C(2) of the TSL Act, TSL debtors who have been outside Australia for at least 183 days in any 12 month period (and were not required to give a notice under subsection 47C(1)) are required to notify the ATO of their absence no later than 7 days after the end of the 183 days in the approved form.

Subrule 17(3) of the Overseas Debtors Rules requires debtors to notify the Commissioner of the following information in the approved form:

- their name; and
- their date of birth; and
- their country of residence; and
- if known, their contact details including email address and telephone number.

This requirement would cater for individuals whose plans may change after they leave Australia, for example a debtor may be offered a job opportunity while on an intended visit of less than six months and choose to extend their stay overseas.

A debtor is not required to re-notify the Commissioner that they are absent from Australia under subsection 154-18(2) of the HESA if they have already notified the Commissioner under subsection 154-18(2) and they have not been an Australian resident for taxation purposes since notifying the Commissioner.

This is to prevent debtors who previously notified the Commissioner of their absence from Australia from being required to re-notify if they have remained living overseas, or have returned to Australia only for a short period of time (e.g. for a family visit and without becoming an Australian resident again).

As noted in Subrule 17(6), under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner may request additional content to be included in the approved form of these notices.

## NOTICES RELATING TO INCOME

Under subsection 47C(3) of the TSL Act, debtors are required to assess and report their worldwide income (including foreign-sourced income) to the Commissioner in the approved form.

Subrule 17(4) of the Overseas Debtors Rules requires debtors to notify the Commissioner of the following information:

- their name; and
- their date of birth; and
- their country of residence; and
- their occupation; and
- the amount of their income (including foreign-sourced income); and
- 
- the method chosen to work out their foreign-sourced income; and
- if the overseas assessed method was used – the person's identification number that was used by a foreign taxation authority to make an assessment of the person's income.

Subsection 47C(3) of the TSL Act requires the notice to be given within the period specified in the approved form. It is envisaged this will correspond with the Australian financial year and tax assessments onshore, meaning individuals will need to lodge the notice by 31 October following the end of the income year. The Commissioner also has the power to defer the lodgement date for individuals in section 388-55 of Schedule 1 of the *Taxation Administration Act 1953*.

#### *Situations where overseas debtors can lodge a simplified notice of income*

As provided for in Subrule 17(5), the Commissioner may allow low income earners to declare, in the approved form, that their income is less than 25 per cent of the minimum repayment income (reporting threshold).

This is not an exception from the requirement to submit a notice in the approved form, but a simplified notice intended to make it easier for low income earners to comply. These simplified notices will only require a debtor to provide their name, date of birth, country of residence and the declaration that their income does not exceed the published amount. See Example Five.

Under current legislation, in 2016-17 the reporting threshold will be A\$13,717. This amount will be published annually by the ATO on its website.

#### **EXAMPLE FIVE**

Harriet, who has a TSL debt from her apprenticeship, moved to the United Kingdom in June 2016 to undertake further studies.

She notified the Commissioner of her overseas address within seven days of leaving Australia.

On 1 July 2017 she is now required to submit a notice relating to income via *myGov*. Harriet has been studying full time and working casually as an assistant mechanic to support herself while she finishes her further studies.

She has earned the equivalent of A\$10,500 for her work as an assistant mechanic. Because Harriet received income below the 25 per cent threshold, she is able to declare her income is under the reporting threshold of A\$13,717. She is only required to give her name, date of birth and to declare she is living in the United Kingdom in order to submit a simplified notice.

#### *Additional content in the approved form*

Subrule 17(6) provides that new rule 17 does not affect the Commissioner's power under section 388-50 of Schedule 1 of the *Taxation Administration Act 1953* to request additional content to be included in the approved form of these notices.

Subrule 17(7) notes any term used in this rule 17 that is also used in the *Income Tax Assessment Act 1997* has the same definition as in that Act.

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

## **Trade Support Loan Amendment (Overseas Debtors Repayment) Rule 2017**

The *Trade Support Loan Amendment (Overseas Debtors Repayment) Rule 2017* (Overseas Debtors Rules) is compatible with 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 Legislative Instrument**

The Overseas Debtors Rules explain how a person works out their foreign-sourced income for an income year under subsection 47B(2) of the *Trade Support Loans Act 2014* (TSL Act). The process is designed to be as comparable to arrangements for domestic debtors as possible, while maximising simplicity for users.

To simplify processes for overseas debtors they will have the option of choosing between three methods for working out their foreign-sourced income for each income year. The three methods of working out foreign-sourced income allow for simplicity, as well as catering for circumstances where there is no such tax assessment or where an overseas debtor feels that the application of Australian tax rules would be to their advantage.

The Overseas Debtors Rules also:

- explain how to convert foreign-sourced currency to Australian dollars;
- cover the content of notifications to the Commissioner of Taxation to support the operation of the relevant sections of the TSL Act. This includes the information that an overseas debtor must provide in notifications relating to leaving Australia, absence from Australia, and in an overseas debtor's notification of income; and
- include exceptions to the requirement to provide notification in some circumstances, for example where an overseas debtor has already notified the Australian Taxation Office (ATO) of the person's absence from Australia and returns for a family visit but remains a foreign resident.

The Bill engages the following human rights:

- *the right to education* – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- *the right to freedom of movement* – Article 12 of the International Covenant of on Civil and Political Rights (ICCPR)
- *the right to privacy* – Article 17 of the ICCPR
- *the right to an adequate standard of living, including food, water and housing* – Article 11 of ICESCR

### *Right to Education*

The Overseas Debtors Rules engages the right to education contained in Article 13 of the ICESCR.

In particular, Article 13(2)(b) states that secondary education, including technical and vocational education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.

The TSL Act promotes an individual's right to education by providing access to financial assistance, under the loans, during an eligible apprenticeship. The fact that the loans are repayable once a person reaches a particular income threshold will not limit a person's right to education. The Overseas Debtors Rules (which are made pursuant to the TSL Act) use the same repayment thresholds and repayment rates for overseas debtors as for those who remain onshore. This protects low-income earners by preserving the income-contingent nature of the TSL repayment arrangements. In providing for the repayment of student loans by collecting debt from overseas residents, it will contribute to a reduction in debt not expected to be repaid and will ensure the integrity and accessibility of funding for students to pursue technical and vocational education.

The Overseas Debtors Rules are compatible with the right to education.

### *Right to Freedom of Movement*

The Overseas Debtors Rules engage the right to freedom of movement found in Article 12 of the ICCPR. Article 12 provides, among other things, that everyone shall be free to leave any country including his own, and shall not be subject to any restrictions except those provided by law, those necessary to protect national security, public order, public health or morals or the rights and freedoms of others and which are consistent with the other rights recognised in the present Covenant.

The Rules create an obligation on persons with a TSL debt, who leave Australia for 183 days or more, or persons living overseas on or before 1 January 2016, to notify the ATO of their absence from Australia and to advise of their new contact details. The obligation extends to requiring debtors to make repayments towards their TSL debt while they are living overseas.

The universal application of the Australian repayment threshold could be seen as placing a limitation on a person's freedom of movement, namely where a person is moving to a country with high costs of living. However, the restriction is provided for by law in the TSL Act and the *Student Loans (Overseas Debtor Repayment Levy) Act 2015*. Further, it is not considered to place a practical limitation on the right to the freedom of movement as any financial imposition would only affect those earning more than the Australian minimum repayment income, which is currently A\$54,859 for the 2016-17 financial year. This threshold is significantly above the minimum Australian wage, and remains high when compared to thresholds for repayment of income-contingent student loans worldwide. Low income earners or those without



incomes would not be adversely affected. Additionally, the benefit of this measure is that it enhances the sustainability of all people's access to education in Australia.

The Overseas Debtors Rules are compatible with the right to freedom of movement.

### *Right to Privacy*

The Overseas Debtors Rules also engage the right to privacy outlined in Article 17 of the ICCPR. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The Rules create a requirement for persons leaving Australia or persons who are absent from Australia and who have a TSL debt, to provide certain personal information to the ATO including the person's name, date of birth, intended country of residence and contact details. Information about a person's occupation and income is also required. The collection of such information could be seen as limiting a person's right to privacy and reputation.

However, this information is collected for the legitimate purpose of recovering TSL debt. All parties with access to this data are required to use appropriate safeguards to ensure the confidentiality of this information.

Personal information collected by the ATO is considered taxation information, and governed by strict privacy legislation. Taxation information is held on a classified server, and access is limited only to individuals who require the information in the course of their employment. The safeguards for information collected as a result of these Rules will be the same as for other taxation information which ensure that any lawful interference is not arbitrary or at risk of abuse.

The cohort from whom the ATO will collect personal information is limited to TSL debtors who are living, or intend to live overseas. The ATO will only request information that is necessary for administration of overseas TSL debts and ensuring compliance.

The Overseas Debtors Rules are compatible with the right to privacy.

### *Right to an adequate standard of living, including food, water and housing*

The Overseas Debtors Rules also engage the right to an adequate standard of living, including food, water and housing outlined in Article 11 of the ICESCR.

Article 11 recognises everyone be entitled to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The Rules may be seen to impact this right, as the universal application of the Australian repayment threshold may be seen to disproportionately affect individuals in countries with higher costs of living. However, it is not considered a practical limitation, as any financial imposition would only affect those earning more than the Australian minimum repayment income, which is above A\$54,859 in the 2016-17 financial year based on current legislation.

This threshold is significantly above the minimum Australian wage, and remains high when compared to thresholds for repayment of income-contingent student loans worldwide. Low income earners or those without incomes who are below this threshold would not be adversely affected, as they would not need to make repayments.

The Overseas Debtors Rules are compatible with the right to an adequate standard of living, including food, water and housing.

## **Consultation**

As these arrangements are machinery in nature, and simply implement aspects of the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*, passed by Parliament in November 2015, public consultation was not undertaken.

The Department of Education and Training worked extensively with the Australian Taxation Office to develop these Guidelines.

## **Conclusion**

The Overseas Debtors Rules are compatible with human rights because, to the extent that it may limit human rights, the limitations are reasonable, necessary and proportionate.