

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Amendment (2022 Measures No. 1) Act 2023

Higher Education Support Amendment (2022 Measures No. 1) Transitional Rules 2024

AUTHORITY

Item 12 of Schedule 1 to the *Higher Education Support Amendment (2022 Measures No. 1) Act 2023* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature relating to the amendments or repeals made by Schedule 1 to the Act.

PURPOSE AND OPERATION

The *Higher Education Support Amendment (2022 Measures No. 1) Transitional Rules 2024* (the Instrument) sets out transitional rules in relation to the amendments made by the Act to amend the definition of ‘grandfathered student’ in the *Higher Education Support Act 2003* (HESA). On 28 October 2020, the *Higher Education Support Amendment (Job-ready Graduates and Supporting Regional and Remote Students) Act 2020* amended HESA to change student and Commonwealth contribution amounts, to encourage students to enrol in courses in areas of job growth. Those amendments inserted a definition of ‘grandfathered student’ in Schedule 1 of HESA to treat certain existing students (on and after 1 January 2021) beneficially where the changes would otherwise result in those students being charged a higher student contribution amount. On 21 February 2023, the Act amended the definition of a ‘grandfathered student’ to include students undertaking an honours course that is related to a course of study they commenced with a higher education provider before 1 January 2021 but that they did not complete until after 1 January 2021 (affected honours students). The application provisions in Part 2 of Schedule 1 of the Act also ensured that affected honours students are treated as ‘grandfathered students’ from 1 January 2021 and continue to receive the benefit of lower student contribution amounts.

The Instrument makes transitional rules in relation to affected honours students who made a full or partial up-front payment between 1 January 2023 and the day before the commencement of the Act, and should have become grandfathered students as a result of the changes made by the Act. However, these students are no longer captured by the transitional provisions in items 7 and 8 of Schedule 1 to the Act as these items only apply to students who made full and partial up-front payments under sections 96-2 and 96-3 of HESA. Sections 96-2 and 96-3 of HESA were repealed when the *Education Legislation Amendment (2022 Measures No. 1) Act 2022* removed the up-front payment discount (a 10 per cent discount for students eligible for HECS-HELP assistance who paid up-front) on 1 January 2023, prior to the commencement of the Act. The Instrument ensures that affected honours students will be ‘grandfathered students’ for the full period from 1 January 2021

until commencement of the Act and will receive the benefit of lower student contribution amounts.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that an Impact Analysis is not required (reference number OIA23-04977). This is because the instrument will have no more than a minor impact, as the size of the affected cohort in the small window of time will result in no more than a minor burden on providers.

COMMENCEMENT

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The department has not undertaken a formal consultation process in relation to the transitional rules for the cohort of students that are affected by the removal of the up-front payment discount. This is because the operation of the Instrument ensures that all students who would have been included in the transitional provisions in the Act, but are no longer included due to the removal of the up-front payment discount, continue to have the same arrangements apply to them (i.e. continue to be treated beneficially and not be charged a higher student contribution amount).

The measure in the Instrument also reflects the original policy intention of the grandfathering arrangements in HESA introduced by the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (JRG Act) to ensure 'grandfathered students' do not have to pay a higher student contribution amount for a unit of study where the student contribution amount for the unit would otherwise have increased as a result of the amendments to HESA. Consultation was undertaken with higher education providers when the JRG Act was first developed. The department also considered feedback received from students and other stakeholders following the initial introduction of the JRG Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Amendment (2022 Measures No. 1) Transitional Rules 2024

The *Higher Education Support Amendment (2022 Measures No. 1) Transitional Rules 2024* (the Instrument) 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 Legislative Instrument

The Instrument sets out transitional rules in relation to the amendments made by the Act to amend the definition of ‘grandfathered student’ in the *Higher Education Support Act 2003* (HESA). The *Higher Education Support Amendment (Job-ready Graduates and Supporting Regional and Remote Students) Act 2020* amended HESA to change student and Commonwealth contribution amounts, to encourage students to enrol in courses in areas of job growth. Those amendments inserted a definition of ‘grandfathered student’ in Schedule 1 of HESA to treat certain existing students (on and after 1 January 2021) beneficially where the changes would otherwise result in those students being charged a higher student contribution amount. The Act amended the definition of a ‘grandfathered student’ to include students undertaking an honours course that is related to a course of study they commenced with a higher education provider before 1 January 2021 but that they did not complete until after 1 January 2021 (affected honours students). The application provisions in Part 2 of Schedule 1 of the Act also ensured that affected honours students are treated as ‘grandfathered students’ from 1 January 2021 and continue to receive the benefit of lower student contribution amounts.

The Instrument makes transitional rules in relation to affected honours students who made a full or partial up-front payment between 1 January 2023 and the day before the commencement of the Act, and should have become grandfathered students as a result of the changes made by the Act. However, these students are no longer captured by the transitional provisions in items 7 and 8 of Schedule 1 to the Act as these items only apply to students who made full and partial up-front payments under sections 96-2 and 96-3 of HESA. Sections 96-2 and 96-3 of HESA were repealed when the *Education Legislation Amendment (2022 Measures No. 1) Act 2022* removed the up-front payment discount (a 10 per cent discount for students eligible for HECS-HELP assistance who paid up-front) on 1 January 2023, prior to the commencement of the Act. The Instrument ensures that affected honours students will be ‘grandfathered students’ for the full period from 1 January 2021 until commencement of the Act and will receive the benefit of lower student contribution amounts.

Human rights implications

The Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education’.

The Instrument will make transitional rules that ensure students who have made a full or partial up-front payment to a higher education provider in relation to a unit of study between 1 January 2023 and the day before the commencement of the Act, and should have become grandfathered students as a result of the changes made by the Act, will continue to be treated beneficially and not be charged a higher student contribution amount. This will reduce the financial burden on those students as they will be charged a lower student contribution amount and improve their access to education.

Conclusion

The Instrument is compatible with human rights because it supports the right to education.

Minister for Education, The Hon Jason Clare MP

HIGHER EDUCATION SUPPORT AMENDMENT (2022 MEASURES NO. 1) TRANSITIONAL RULES 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument.

Section 2: Commencement

2. This provision provides that the *Higher Education Support Amendment (2022 Measures No. 1) Transitional Rules 2024* (the Instrument) commences the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Instrument is made under item 12 of Schedule 1 to the *Higher Education Support Amendment (2022 Measures No. 1) Act 2023* (the Act).

Section 4: Definitions

4. This section provides definitions for certain expressions used in the Instrument, and also provides that any other expression used in the Instrument that is defined in the *Higher Education Support Act 2003* (HESA) or in Schedule 1 to the Act, have the same meaning in the Instrument as it has in HESA or in Schedule 1 to the Act.

Section 5: Transitional rules for full up-front payments made during second transition period

5. Section 5 sets out the actions that a higher education provider must take where an 'affected student' (as defined in item 4 of Schedule 1 to the Act) has made an upfront payment of the full student contribution amount for a unit of study during the second transition period (the period starting on 1 January 2023 and ending on the day before the commencement of the Act).
6. Subsection 5(1) provides that section 5 is made for the purposes of subitem 12(1) of Schedule 1 to the Act, and applies if, during the second transition period, an affected student made one or more up-front payments to a higher education provider in relation to a unit of study, and the amount of that payment, or the sum of the payment, is equal to 100% of the affected student's 'old student contribution amount' (as defined in item 4 of Schedule 1 to the Act) for the unit (i.e. the student made a full up-front payment).
7. Subsection 5(2) provides that, if the amount paid by the affected student is more than the amount that could have been paid to the higher education provider had the 'relevant amendment' (as defined in item 4 of Schedule 1 to the Act) been in force during the second transition period, the higher education provider must pay to the affected student an amount equal to the difference between the two amounts.

Section 6: Transitional rules for partial up-front payments made during second transition period

8. Section 6 sets out the actions that a higher education provider must take where an affected student has made a partial up-front payment of the student contribution amount for a unit of study during the second transition period.
9. Subsection 6(1) provides that section 6 is made for the purposes of subitem 12(1) of Schedule 1 to the Act, and applies if, during the second transition period, an affected student made one or more up-front payments to a higher education provider in relation to a unit of study, those up-front payments were less than 100% of the affected student's old student contribution amount for the unit, and under section 96-1 of HESA, the Commonwealth lent to the student an amount of HECS-HELP assistance and paid to the provider the amount lent in discharge of the student's liability to pay the remainder of their old student contribution amount for the unit.
10. Subsection 6(2) provides that, if the amount paid to the provider to discharge the student's liability to pay the remainder of their old student contribution is more than the amount that would have been paid to the provider had the relevant amendment been in force during the second transition period, the difference between the two amounts may be deducted from any amount that is payable, or to be paid to the higher education provider under HESA, or recovered by the Commonwealth from the higher education provider as a debt due to the Commonwealth.
11. Subsection 6(3) provides that, if the amount paid by the affected student is more than the amount that could have been paid to the higher education provider had the relevant amendment been in force during the second transition period, the higher education provider must pay to the affected student an amount equal to the difference between the two amounts.
12. Subsection 6(4) provides that the higher education provider must, on the Secretary's behalf, recredit the affected student's HELP balance with an amount (the relevant amount) that is equal to the difference between the amount paid to the provider to discharge the student's liability to pay the remainder of their old student contribution, and the amount that would have been paid under paragraph 96-1(b) of HESA, had the relevant amendment been in force during the second transition period.
13. Subsection 6(5) provides that the affected student's HECS-HELP debt in relation to the unit of study is taken to be remitted by an amount equal to the relevant amount.

Section 7: Secretary may act if provider is unable to

14. Section 7 provides that, for the purposes of the transitional rules specified in section 6, if the higher education provider is unable to act for the purposes of subsection 6(4), the Secretary may act as if the reference in that subsection was a reference to the Secretary.
15. This will allow the Secretary to re-credit an affected student's HELP balance in circumstances where the higher education provider is unable to do so.

16. The Secretary having the power to re-credit a student's HELP balance in the event the higher education provider is unable to do so is consistent with other re-crediting provisions in HESA (see subsections 97-27(2), 97-42(2), 97-45(2) and 97-50(2)).

Section 8: Interaction of transitional rules with the *Higher Education Support Act 2003*

17. Section 8 provides that, for the purposes of subitem 12(2) of Schedule 1 to the Act, item 11 of Schedule 1 to the Act is modified such that the obligations imposed on a higher education provider in the Instrument are taken, for the purposes of HESA, to be conditions of a grant made to the provider under Part 2-2 of HESA. This has the effect of linking payment of grants under Part 2-2 of HESA with the higher education provider's compliance with obligations imposed in the Instrument. The Minister can then take compliance action under HESA if providers do not comply with these obligations.