

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

***Universities Accord (Student Support and Other Measures) Act 2024***

***Universities Accord (Student Support and Other Measures) (Adelaide University)  
Transitional Rules 2025***

### **AUTHORITY**

Subitem 1(1) of Schedule 6 to the *Universities Accord (Student Support and Other Measures) Act 2024* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act.

### **PURPOSE AND OPERATION**

Schedule 5 to the Act amends the *Higher Education Support Act 2003* (HESA), to add Adelaide University to the list of Table A providers in HESA and remove the University of South Australia and the University of Adelaide, and provides for some transitional arrangements. This reflects the planned merger of the University of South Australia and the University of Adelaide to form one new entity, Adelaide University. Subsection 2(1) of the Act provides that Schedule 5 to the Act either commences on a single day to be fixed by Proclamation or 31 March 2026, whichever is earlier. It is intended that a Proclamation will be made specifying the commencement date of Schedule 5 as 1 January 2026.

Subitems 1(1) and (2) of Schedule 6 to the Act makes clear that the Minister may make rules prescribing matters of a transitional nature relating to the amendments or repeals made by the Act, and that those rules may provide that provisions of the Act, or any other Act or instrument, have effect with the modifications prescribed by the rules.

The *Universities Accord (Student Support and Other Measures) (Adelaide University) Transitional Rules 2025* (the Instrument) sets out transitional rules to prescribe some further matters of a transitional nature, in relation to Adelaide University becoming a Table A provider and the University of South Australia and the University of Adelaide being removed as Table A providers.

The purpose of the Instrument is to allow the Minister to enter into a funding agreement with Adelaide University before Adelaide University becomes a Table A provider, and to delay or prevent the transfer of enrolments of some students from the University of South Australia and the University of Adelaide, to Adelaide University.

It is necessary to enter into a funding agreement with Adelaide University before it becomes a Table A provider on 1 January 2026, to provide certainty that Adelaide University will be eligible to receive grants under Part 2-2 of HESA when it becomes a Table A provider on 1

January 2026, and to facilitate various administrative processes, including planning for the enrolment of students into Commonwealth supported places.

Further, the Instrument prevents, or delays, the transfer of the enrolment of some students to Adelaide University, only where those students are due to complete their course of study at the University of South Australia and the University of Adelaide between 1 January and 24 March 2026. This supports the timely completion of graduation, conferral of awards and related administrative processes for students who complete their course of study at the University of South Australia and the University of Adelaide during this period. The Instrument also ensures that any students whose enrolments did not transfer because they were due to complete their course of study, but ultimately did not complete their course of study before 24 March 2026, will have their enrolments transfer to Adelaide University on 24 March 2026.

## **COMMENCEMENT**

The Instrument commences the later of either the day after the Instrument is registered on the Federal Register of Legislation, or immediately after the commencement of the Proclamation fixing the commencement day for Schedule 5 of the Act.

## **CONSULTATION**

The Department of Education has engaged in extensive and comprehensive consultation with Adelaide University over several months to ensure that the Instrument is fit for purpose and supports the transition of the University of South Australia and the University of Adelaide in their merger to form Adelaide University. Adelaide University had no concerns with the final version of the Instrument.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Universities Accord (Student Support and Other Measures) (Adelaide University) Transitional Rules 2025

The *Universities Accord (Student Support and Other Measures) (Adelaide University) Transitional Rules 2025* (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**

Schedule 5 to the Act amends the *Higher Education Support Act 2003* (HESA), to add Adelaide University to the list of Table A providers in HESA and remove the University of South Australia and the University of Adelaide, and provides for some transitional arrangements. This reflects the planned merger of the University of South Australia and the University of Adelaide to form one new entity, Adelaide University. Subsection 2(1) of the Act provides that Schedule 5 to the Act either commences on a single day to be fixed by Proclamation or 31 March 2026. It is intended that a Proclamation will be made specifying the commencement date of Schedule 5 as 1 January 2026.

Subitems 1(1) and (2) of Schedule 6 to the Act makes clear that the Minister may make rules prescribing matters of a transitional nature relating to the amendments or repeals made by the Act, and that those rules may provide that provisions of the Act, or any other Act or instrument, have effect with the modifications prescribed by the rules.

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related administrative processes for students who complete their course of study at the University of South Australia and the University of Adelaide during this period. The Instrument also ensures that any students whose enrolments did not transfer because they were due to complete their course of study, but ultimately did not complete their course of study before 24 March 2026, will have their enrolments transfer to Adelaide University on 24 March 2026.

### **Human rights implications**

The purpose of the Instrument is to make technical transitional rules to allow for the Minister to enter into a funding agreement with Adelaide University before Adelaide University becomes a Table A provider, and to delay or prevent the transfer of enrolments of some students from the University of South Australia and the University of Adelaide, to Adelaide University. These technical rules do not engage any human rights and freedoms.

### **Conclusion**

The Instrument is compatible with human rights because it does not raise any human rights issues.

**Minister for Education, the Hon Jason Clare MP**

# UNIVERSITIES ACCORD (STUDENT SUPPORT AND OTHER MEASURES) (ADELAIDE UNIVERSITY) TRANSITIONAL RULES 2025

## EXPLANATION OF PROVISIONS

### **Section 1: Name**

1. This is a formal provision specifying the name of the *Universities Accord (Student Support and Other Measures) (Adelaide University) Transitional Rules 2025* (the Instrument).

### **Section 2: Commencement**

2. This provision provides that the Instrument commences either on the later of the day after the Instrument is registered on the Federal Register of Legislation, or immediately after the commencement of the Proclamation fixing the commencement day for Schedule 5 of the *Universities Accord (Student Support and Other Measures) Act 2024* (the Act).

### **Section 3: Authority**

3. This provision provides that the Instrument is made under item 1 of Schedule 6 to the Act.

### **Section 4: Definitions**

4. This section defines the terms used in the Instrument and provides that any other expression used in the Instrument that is used in the Act has the same meaning in the Instrument as it has in the Act. A number of terms such as 'enabling course,' 'course of study' and 'funding agreement' are defined to have the same meaning as in Schedule 1 to the *Higher Education Support Act 2003* (HESA).
5. The term 'higher degree by research' is also defined in this section and has the same meaning as the term 'HDR' as defined in the *Commonwealth Scholarships Guidelines (Research) 2017* (CSGs), as in force at the time the Instrument was made. The CSGs define HDR as 'a higher degree by research which is a Research Doctorate or Research Masters course for which at least two-thirds of the student load for the course is required as research work'. The CSGs is an instrument made under section 238-10 of HESA for the purposes of Part 2-4 of HESA. The version of the CSGs in force at the time the Instrument was made can be found here: <https://www.legislation.gov.au/F2016L01602/latest/text>. It is necessary to incorporate this definition into the Instrument as the Instrument deals with preventing, or delaying, the transfer of students enrolled in higher degrees by research (for the purposes of the CSGs and HESA) in certain circumstances.

## **Section 5: Transitional rules in relation to funding agreement for Adelaide University**

6. The purpose of section 5 of the Instrument is to prescribe transitional rules to allow the Minister to enter into a funding agreement with Adelaide University, before Adelaide University becomes a Table A provider.
7. Subsection 5(1) provides that the purpose of section 5 is to prescribe matters of a transitional nature relating to the amendments and repeals made by the Act, and to prescribe modifications to section 30-25 and 30-28 of HESA. Section 30-25 of HESA relates to the Minister's power to enter into a funding agreement with a higher education provider relating to grants under Part 2-2 of HESA. Section 30-28 of HESA relates to the Secretary's obligation to cause a copy of each funding agreement, entered into under section 30-25 of HESA for a year, to be published on the Department's website.
8. Subsection 5(2) provides that the Minister may, on behalf of the Commonwealth, enter into a funding agreement with Adelaide University before the 'merger time' (i.e. before Adelaide University becomes a Table A provider by operation of Schedule 5 of the Act), and may unilaterally vary that agreement for the purposes of paragraph 5(3)(c). It is necessary for the Minister to have the power to unilaterally vary that agreement because the intention is for the funding agreement to initially be entered into in an incomplete and provisional form, but to be finalised before the merger time (see paragraph 5(3)(c) of the Instrument).
9. The note under this subsection explains that subsection 5(2) modifies subsection 30-25(1) of HESA which permits the Minister to only enter into a funding agreement with a 'higher education provider'. Adelaide University will not be a higher education provider until the merger time, but section 5 modifies the operation of section 30-25 to permit the Minister entering into a funding agreement with Adelaide University before that time.
10. Subsection 5(3) provides that the funding agreement may only commence on and from the merger time, must expire at the end of 2026 and may be entered into in an incomplete or provisional form, but must be amended into a complete and final form before the merger time.
11. The note under paragraph 5(3)(c) explains that it is possible for the funding agreement that is entered into before Adelaide University becomes a Table A provider, to be silent on matters such as the provider's maximum basic grant amount for higher education courses, but those amounts must be included in the funding agreement once Adelaide University becomes a Table A provider.
12. Subsection 5(4) provides that, if a funding agreement is entered into in an incomplete or provisional form in accordance with paragraph 5(3)(c), then despite section 30-28 of HESA (which requires the Secretary to publish funding agreements on the Department's website within 28 days after the making of the agreement), the Secretary must instead cause a copy of the funding agreement to be published on the Department's website within 28 days after the Minister has varied that agreement into a complete and final form.

## **Section 6: Transitional rules in relation to transfer of enrolments**

13. The purpose of section 6 of the Instrument is to prescribe transitional rules to prevent or delay the transfer of enrolments of some students from the University of Adelaide and the University of South Australia (known as the ‘merging universities’), to Adelaide University on the merger time.
14. Subsection 6(1) provides that the purpose of this section is to prescribe matters of a transitional nature relating to the amendments and repeals made by the Act and prescribe modifications of items 7 and 8 of Schedule 5 to the Act.
15. Subsections 6(2) and (3) set out the students that will not transfer to Adelaide University at the merger time (intended to be 1 January 2026). Subsections 6(2) and (3) provide that students will not transfer to Adelaide University at the merger time if they are enrolled in a course of study with a merging university immediately before the merger time or they are a grandfathered student under HESA in relation to a course of study with a merging university immediately before the merger time, and, immediately before 1 January 2026, satisfy the following requirements, the student:
  - a. has completed all of the requirements for the conferral of a higher education award in their current course, or if their course is an enabling course, completed all the requirements of that course; or
  - b. is enrolled in and has commenced undertaking a unit of study as part of their current course, but has not met all of the requirements to complete that unit; or
  - c. is enrolled in a higher degree by research course at the merging universities and has submitted a thesis for examination that remains under examination
16. Subsections 6(4) and (5) then provide that certain students who did not transfer to Adelaide University at the merger time, due to subsections 6(2) and (3), will transfer to Adelaide University on 24 March 2026 if the student has not, immediately before 24 March 2026, met all the requirements for the conferral of a higher education award in that course or, in relation to an enabling course, completed all the requirements of that course.