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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION SUPPORT BILL 2003**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training the Hon Dr Brendan Nelson MP)

# HIGHER EDUCATION SUPPORT BILL 2003

## OUTLINE

The Bill establishes a comprehensive framework for the Commonwealth funding of higher education. This funding framework will replace the arrangements of the *Higher Education Funding Act 1988*.

The Bill provides for the Commonwealth to give financial support for higher education:

- (a) through grants and other payments principally made to higher education providers; and
- (b) through financial assistance to students (usually in the form of loans).

The Bill provides for the approval of incorporated bodies as higher education providers by the Minister. Higher education providers must be willing and able to meet certain quality and accountability requirements. These requirements concern financial viability, quality, fairness to students, arrangements for student contributions and tuition fees and general compliance matters.

The Bill establishes the Commonwealth Grants Scheme, the major source of funding for higher education in Australia. The scheme provides funding for student places at certain higher education institutions. Amounts of grants are based largely on the Commonwealth supported places that the Minister allocates to each provider and the Commonwealth contribution amount for each such place. The amount of grant may be adjusted based on the actual number of places delivered by a higher education provider in the previous year and the funding rate for those places. Higher education providers receiving funds under the Commonwealth Grants Scheme must have a Funding Agreement with the Commonwealth. The Bill outlines a range of conditions of grant, in particular conditions concerning the students who may access a Commonwealth supported place funded through the Commonwealth Grant Scheme.

The Bill provides for a range of other grants for particular purposes such as to promote equality of opportunity in higher education, to enhance learning and teaching in higher education, to support research and the research capability of higher education providers and to support the training of research students. It provides for grants to certain higher education providers for the provision of scholarships to students.

The Bill provides for certain persons to have a Student Learning Entitlement. An eligible person initially has a Student Learning Entitlement equivalent to 5 years of full-time study. This is reduced as the person undertakes units of study as a Commonwealth supported student (but it can be re-credited in some circumstances). The Bill also provides for a person to obtain amounts of additional Student Learning Entitlement in certain circumstances.

The Bill provides for 3 kinds of HELP assistance to students in the form of loans from the Commonwealth. HECS-HELP provides assistance to meet a student's liability to pay student contribution amounts for units of study that are Commonwealth supported. This assistance is only available for units of study that are covered by the person's Student Learning Entitlement. FEE-HELP provides assistance to meet a student's liability to pay tuition fees for units of study that are not Commonwealth supported. OS-HELP may provide assistance to a student who undertakes study at an overseas higher education institution as part of his or her course of study.

The Commonwealth pays student assistance to the relevant higher education provider to discharge the student's liability in the case of HECS-HELP assistance or FEE-HELP assistance and for payments to students on the Commonwealth's behalf in the case of OS-HELP assistance.

The Bill sets out how debts are incurred and worked out in relation to the loans made under the various forms of HELP assistance. It provides for the repayment of these debts. Each loan is incorporated into either the person's accumulated HECS-HELP debt or accumulated FEE-HELP/OS-HELP debt, depending on the form of assistance under Chapter 3 to which the loan relates. The accumulated debts can be repaid in 2 ways. A person may make voluntary repayments which may attract a repayment bonus. A person may be required to make compulsory repayments which are based on the person's income and collected using the system for payment of income tax.

The Bill provides for several administrative matters relating to the operation of this Act. These include the manner in which payments may be made by the Commonwealth, the indexation of grants, the reconsideration and review of certain decisions, the administrative requirements that are imposed on higher education providers and provisions concerning electronic communications and tax file numbers. The Bill also creates an offence for failing to protect personal information.

The Bill provides for approval of persons (other than natural persons) as self-accrediting entities in the external Territories and for the accreditation of courses of study that non-self-accrediting entities propose to offer in the external Territories. Persons who are not accredited may be guilty of an offence if they operate as a university or other provider, offer higher education awards or describe themselves as universities in an external Territory.

### **FINANCIAL IMPACT**

Total funding levels for the higher education sector over the 2004-2007 calendar years under the Bill are estimated to be around \$14.4 billion (2004 prices). The total funds appropriated under the bill represent an additional \$1.4 billion (2004 prices) beyond the Government's current commitments to the sector over that period.

# HIGHER EDUCATION SUPPORT BILL 2003

## NOTES ON CLAUSES\*

### Chapter 1-Introduction

The purpose of this Chapter is to set out the introductory material for the Bill. It deals with such matters as the short title, commencement and identification of defined terms in the Act (Division 1), the objects of the Bill (Division 2) and an overview of the Act (Division 3).

#### Division 1 - Preliminary

##### Clause 1-1 - Short title

Provides for the Act to be cited as the *Higher Education Support Act 2003*.

##### Clause 1-5 - Commencement

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

The table provides for sections 1 and 2 of the Act to commence on the day on which it receives the Royal Assent and for other provisions to commence on the days set out in column 2 of the table.

Subclause 1-5(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

##### Clause 1-10 - Identifying defined terms

Describes where various expressions used in the Bill are defined and explains how asterisks are used to signpost certain defined terms. Most of the terms in the Bill are defined in the Dictionary at Schedule 1 while a table in subclause 1-10(6) lists four terms that are defined in the sections in which they appear.

\*Note: The clauses in the Bill will become sections of the Act on Royal assent. In this Explanatory Memorandum only the first reference to a clause or subclause uses that terminology. Subsequent references use the terms “section” or “subsection” as appropriate.

**Clause 1-15 Application of Chapter 6**

Provides that Chapter 6 and any regulation made for the purpose of that Chapter extend to every external Territory

## **Division 2 - Objects**

### **Clause 2-1 Objects of this Act**

Clause 2-1 sets out the object of the Act to provide a general overview of what this Bill is about. The objects of the Act are:

- to support a higher education system that is characterised by quality, diversity and equity of access, that contributes to the development of cultural and intellectual life in Australia and that is appropriate to meet Australia's social and economic needs for a more highly educated and skilled population; and
- to strengthen Australia's knowledge base and enhance the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals; and
- to support students undertaking higher education.

## **Division - 3 - Overview of this Act**

### **Clause 3-1 General**

The Act primarily provides for the Commonwealth to give financial support for higher education through grants and other payments made largely to higher education providers and through financial assistance to students (usually in the form of loans).

### **Clause 3-5 Grants for higher education assistance (Chapter 2)**

Chapter 2 sets out who are higher education providers, and provides for the following grants and payments:

- grants under the Commonwealth Grant Scheme;
- other grants for particular purposes;
- grants for Commonwealth scholarships.

### **Clause 3-10 Assistance to students (Chapter 3)**

Chapter 3 provides for the following assistance to students:

- HECS-HELP assistance for student contribution amounts;
- FEE-HELP assistance for tuition fees;
- OS-HELP assistance for overseas study.

Chapter 3 also provides for the Student Learning Entitlement.

### **Clause 3-15 Repayment of loans (Chapter 4)**

Chapter 4 sets out how debts are incurred and worked out in relation to loans made under Chapter 3 and provides for their repayment.

### **Clause 3-20 Administration (Chapter 5)**

Chapter 5 provides for several administrative matters relating to the operation of this Act.

### **Clause 3-25 Provision of higher education in the external Territories (Chapter 6)**

Chapter 6 primarily provides for approval of persons (other than natural persons) as self accrediting providers and accreditation of courses of study in external Territories.

## **Chapter 2 - Grants for higher education assistance**

### **Division – 8 - Introduction**

#### **Clause 8-1 What this Chapter is about**

Generally, grants and payments under this Act are made to higher education providers. Bodies have to be approved as higher education providers. Higher education providers must comply with the quality and accountability requirements (see Part 2-1). Grants are payable under Part 2-2 (Commonwealth Grant Scheme) to certain higher education providers. Amounts of grants are based largely on the Commonwealth supported places that the Minister allocates to each provider. Grants are made subject to conditions. Other grants and payments are made under Part 2-3 to higher education providers and other bodies for a variety of purposes. Payments for Commonwealth scholarships are made to certain higher education providers under Part 2-4. If a body breaches a condition of a grant made to the body or a quality and accountability requirement, the body may be liable to:

- revocation of its approval as a higher education provider under Part 2-1; or
- a reduction in the amount of a grant paid to the body under Part 2-5; or
- repay to the Commonwealth an amount of a grant under Part 2-5.

### **Part 2-1 - Higher education providers**

#### **Division 13 - Introduction**

##### **Clause 13-1 What this Part is about**

A body generally has to be approved as a higher education provider before it can receive grants, or its students can receive assistance, under this Act. Listed providers have that approval upon commencement of this Act. Bodies that do not have that automatic approval, or whose approval has been revoked, have to apply for approval. Higher education providers are subject to the quality and accountability requirements. A body's approval as a higher education provider may be revoked in certain circumstances.

##### **Clause 13-5 The Higher Education Provider Guidelines**

Notes that higher education providers and their quality and accountability requirements are also dealt with in the Higher Education Provider Guidelines made by the Minister under section 238-10. The provisions of Part 2-1 indicate when a particular matter is or may be dealt with in these Guidelines.



## **Division 16 - What is a higher education provider?**

### ***Subdivision 16-A - General***

#### **Clause 16-1 Meaning of *higher education provider***

Defines a *higher education provider* as a body corporate that is approved under Division 16 of Part 2-1.

#### **Clause 16-5 When a body becomes or ceases to be a higher education provider**

Subclause 16-5(1) provides that a listed provider under section 16-10 is taken to be approved as a higher education provider from the commencement of the Act.

Subclause 16-5(2) provides that a body corporate that is not a listed provider or is a listed provider that has previously ceased to be a higher education provider becomes a provider if approved by the Minister under section 16-25.

Subclause 16-5(3) provides that a higher education provider ceases to be a provider if the provider's approval is revoked or suspended under Division 22.

### ***Subdivision 16-B - Which bodies are listed providers?***

#### **Clause 16-10 Listed providers**

Subclause 16-10 provides that a Table A provider and a Table B provider are *listed providers* for the purposes of the Act. Clauses 16-15 and 16-20 set out the Table A and Table B providers respectively and provide that a body cannot be a Table A or Table B provider if its approval as a higher education provider is revoked or suspended.

### ***Subdivision 16-C—How are bodies approved as higher education providers?***

#### **Clause 16-25 Approval by the Minister**

Subclause 16-25(1) has the effect of providing that the Minister may, in writing, approve a body corporate as a higher education provider if the body established under the law of the Commonwealth, a State or Territory, carries on business in Australia, has its central management and control in Australia and is either a university, or a self-accrediting provider or a non self-accrediting provider that either fulfils the tuition assurance requirements under subsection 16-30(2) or is exempted from these requirements under subsection 16-30(2). The body corporate must also apply for approval in the form and manner provided for in section 16-40 and satisfy the Minister that it is willing and able to meet the quality and accountability requirements set out in Division 19. If the body corporate is a non self-accrediting provider, it must meet the additional requirements in section 16-35.

Subclauses 16-25(2), (3) and (4) define a *university*, a *self-accrediting provider* and a *non self-accrediting provider* respectively.

### **Clause 16-30 The tuition assurance requirements**

Subclause 16-30(1) defines the *tuition assurance requirements* on the date of an application by a body corporate as a higher education provider under section 16-40 while subclause 16-40(2) provides that the Minister may, in writing, exempt a body corporate from the requirements for tuition assurance.

### **Clause 16-35 Additional requirements for non self-accrediting providers**

Has the effect of providing that the additional requirements for a non self-accrediting provider in relation to an application as a higher education provider under section 16-40 are that the body is in a State or Territory that the Minister is satisfied has legislation that complies with the National Protocols and offers at least one course of study that leads to a higher education award and that course is accredited by a State or Territory under National Protocol 3.

### **Clause 16-40 Application**

Provides that a body corporate may apply in writing to the Minister for approval as a higher education provider and that the application must be in a form approved by the Minister and must be accompanied by such information as the Minister requests.

### **Clause 16-45 Minister may seek further information**

Provides that, for the purposes of determining an application by a body corporate for approval as a higher education provider the Minister may, by notice in writing, require the applicant to provide such further information as the Minister directs within the period specified in the notice. If the applicant does not comply with such a requirement the application is taken to have been withdrawn. A notice under this section must include a statement about the consequences of non-compliance.

### **Clause 16-50 Minister to decide application**

Subclause 16-50(1) provides that the Minister must decide an application for approval as a higher education provider and cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider.

Subclause 16-50(2) provides that, for the purposes of paragraph 16-25(f), the Minister may be satisfied that a body corporate is willing and able to meet the quality and accountability requirements if the body gives the Minister such written undertakings as the Minister requires.

Subclause 16-50(3) provides that the Minister's decision must be made within 90 days after receiving the application or, if further information is requested under section 16-45, within 60

days after the end of the period within which the information was required to be provided under that section, whichever is the later.

Subclause 16-50(4) provides that, if the Minister decides that an applicant is approved as a higher education provider, the notice under this section must also contain such information as is specified in the Higher Education Provider Guidelines as information that must be provided to an applicant upon approval as a higher education provider.

## **Division 19 - What are the quality and accountability requirements?**

### ***Subdivision 19-A - General***

#### **Clause 19-1 The quality and accountability requirements**

Lists the five *quality and accountability requirements* as the financial viability requirements (see Subdivision 19-B), the quality requirements (see Subdivision 19-C), the fairness requirements (see Subdivision 19-D), the compliance requirements (see Subdivision 19-E) and the contribution and fee requirements (see Subdivision 19-F). Also clarifies that Division 19 does not of its own force require a higher education provider to do any act or thing.

### ***Subdivision 19-B - The financial viability requirements***

#### **Clause 19-5 Basic requirement**

Provides that a higher education provider must be financially viable and be likely to remain financially viable.

#### **Clause 19-10 Financial information must be provided**

Has the effect of providing that a higher education provider must give to the Minister a financial statement for each annual financial reporting period in which the provider receives assistance under Chapter 2 or a student of the provider receives assistance under Chapter 3. The statement must be in the form approved by the Minister, must be provided together with a report on the statement by a qualified auditor and must be provided within 4 months after the end of the annual financial reporting period for which the statement was given. An *annual financial reporting period* for a higher education provider is the period of 12 months to which the provider's accounts relate that is notified in writing to the Minister as the provider's annual financial reporting period.

### ***Subdivision 19-C - The quality requirements***

#### **Clause 19-15 Provider must maintain quality**

Has the effect of providing that a higher education provider must operate, and continue to operate, at an appropriate level of quality for an Australian higher education provider.

#### **Clause 19-20 Provider to comply with National Protocols**

Provides that a higher education provider must be assessed as meeting the relevant protocols in the National Protocols by an authorised accreditation authority listed on the Australian Qualifications Framework Register (the AQF Register), and comply with a requirement imposed on the provider by an authorised accreditation authority listed on the AQF Register and a

requirement imposed on the provider by the Minister in writing to implement a specified recommendation of a quality auditing body.

### **Clause 19-25 Quality assurance**

Subclause 19-25(1) provides that a higher education provider must agree in writing to be audited by quality auditing body.

Subclause 19-25(2) provides that, after a request from a quality auditing body to audit the provider, the provider must allow the audit to start within the time agreed to by the body and provider, fully co-operate with the auditing body in the course of its audit and pay to the auditing body any charges identified as payable for any such audit.

Subclause 19-25(3) provides that the provider's agreement under paragraph 19-25(2)(a) must be given within one month after the auditing body notifies the provider that the auditing body wants to audit the provider.

### ***Subdivision 19-D - The fairness requirements***

#### **Clause 19-30 Basic requirement**

Provides that a higher education provider must treat all of its students and all of the persons seeking to enrol with the provider fairly.

#### **Clause 19-35 Benefits and opportunities must be available equally to all students**

Subclause 19-35(1) provides that a higher education provider that receives assistance under the Chapter in respect of a student, or a class of students, must ensure that the benefits of, and the opportunities created by, the assistance are made equally available to all such students, or students in such class, in respect of whom that assistance is payable.

Subclause 19-35(2) provides that a higher education provider who receives a grant or allocation under Chapter 2 or OS-HELP assistance, must have open, fair and transparent procedures based on merit for making decisions about the selection of students who are to benefit from the grant allocation or payment.

Subclause 19-35(3) provides that subsection 19-35(2) does not prevent a higher education provider taking into account educational disadvantages that a particular student has experienced in making such decisions about the selection of students for assistance.

#### **Clause 19-40 Compliance with the tuition assurance requirements**

Subclause 19-40(1) provides that a higher education provider, [other than a Table A provider or a body declared under subsection 19-40(2)] must comply with the tuition assurance requirements.

Subclause 19-40(2) provides that the Minister may, by declaration in writing, exempt a specified higher education provider from the requirement in subsection 19-40(1).

### **Clause 19-45 Student grievance and review procedures**

Subclause 19-45(1) provides that a higher education provider must have a grievance procedure dealing with complaints by the provider's students relating to academic matters and a review procedure for dealing with review of decisions made by the provider under Chapter 3.

Subclause 19-45(2) provides that a grievance procedure for dealing with complaints by the provider's students and persons who seek to enrol in courses of study with the provider relating to non-academic matters must comply with the requirements of the Higher Education Provider Guidelines.

Subclause 19-45(3) provides that the review procedure must comply with the requirements of the Higher Education Provider Guidelines.

Subclause 19-45(4) provides that the Higher Education Provider Guidelines may provide for procedures to be followed by review officers.

Subclauses 19-45(5) to (7) have the effect of providing that the provider must comply with its grievance and appeal procedures, publish and make publicly available up to date information setting out the procedures and publish information about any other complaint mechanisms available to complain about provider decisions.

### **Clause 19-50 Higher education providers to appoint review officers**

Provides that a higher education provider must have a review officer to undertake reviews of decisions made by the provider relating to assistance under Chapter 3. A *review officer* of a higher education provider is defined as a person (or a person included in a class of persons) who the chief executive officer of the provider or his/her delegate has appointed to be a review officer for the purposes of reviewing decisions made by the provider relating to assistance under Chapter 3.

### **Clause 19-55 Review officer not to review own decision**

Provides that a higher education provider must ensure that a review officer of the provider does not review a decision that he/she was involved in making and that, in reviewing a decision of the provider, a review officer occupies a position that is senior to that occupied by any person involved in making the original decision.

### **Clause 19-60 Higher education provider to provide access to student information to student**

Provides that a higher education provider must comply with the information privacy principles set out in section 14 of the *Privacy Act 1988* in respect of information obtained for the purposes of the administration of Chapters 3 or 4. A higher education provider must also have a

procedure in place under which a student may apply to the provider for, and receive a copy of all of the information the provider holds in relation to that student. The provider must comply with the requirements of the Higher Education Provider Guidelines and these procedures.

### ***Subdivision 19-E - The compliance requirements***

#### **Clause 19-65 Basic requirements**

Provides that a higher education provider must comply with the requirements of this Act, the regulations and the Guidelines made under section 238-10. In addition, a higher education provider must provide information to the Minister in relation to the affairs of the provider in accordance with the requirements of the Act and a higher education provider's administrative arrangements must support the provision of assistance under the Act.

#### **Clause 19-70 Provider to provide statement of general information**

Provides that a higher education provider must give the Minister such statistical and other information that the Minister by notice in writing requires from the provider in respect of the provision of higher education by the provider and the compliance by the provider with the requirements of the Act. The information must be provided in a form approved by the Minister and in accordance with such other requirements as the Minister makes.

#### **Clause 19-75 Notice of events that affect provider's ability to comply with conditions of Commonwealth assistance**

Provides that a higher education provider must inform the Minister in writing of any event affecting the provider (or related body corporate of the provider) that may affect the provider's capacity to meet the conditions of grants under this Chapter or the quality and accountability requirements.

#### **Clause 19-80 Provider to provide access to Departmental Officers etc.**

Provides that the Secretary may determine in writing access arrangements in respect of a higher education provider for access by APS employees or other persons engaged to perform services for or on behalf of the Commonwealth (such employees or other persons being authorised in writing by the Secretary under subsection 19-80(3) to premises or records of the provider for the purposes of conducting audit and compliance activities related to this Act.

*Subdivision 19-F - What are the contribution and fee requirements?*

**Clause 19-85 Basic Requirements**

Provides that a higher education provider must charge students contribution amounts and tuition fees for each unit of study in which it enrolls students in accordance with the requirements of the Act.

**Clause 19-90 Determining student contribution amounts and tuition fees**

Subclause 19-90(1) provides that a higher education provider must, for each year, determine the student contribution amount per place for each unit of study that it provides or proposes to provide during the year and in relation to which it may, under its funding agreement under section 30-25 in respect of the year, enrol students as Commonwealth supported students.

Subclause 19-90(2) provides that for each year a higher education provider must determine one (and only one) tuition fee for each unit of study that it provides or proposes to provide during the year .

Subclause 19-90(3) provides that if a unit of study can form part of more than one course of study, the provider may determine under subsection 19-95(2) a different tuition fee for the unit for each such course of study.

**Clause 19-95 Schedules of student contribution amounts per place and tuition fees**

Subclause 19-95(1) provides that a higher education provider must give the Minister a schedule of the student contribution amounts per place and tuition fees for all the units of study it provides or proposes to provide during the year. It must give the schedule in a form approved by the Minister and in accordance with the requirements that the Minister determines.

Subclause 19-95(2) provides that the provider must ensure that the schedule provides sufficient information to enable a person to work out the student contribution amount and the tuition fee for each unit of study that the provider provides or is to provide, that the provider publishes the schedule and ensures that the schedule is available to all students enrolled (and persons seeking to enrol) with the provider on request and without charge.

**Clause 19-100 Limits on tuition fees for courses of study**

Provides that a higher education provider must not charge a tuition fee for a course of study that exceeds the sum of all the tuition fees it charges for all of the units of study undertaken as part of the course.



### **Clause 19-105 Meaning of *tuition fee***

Subclause 19-105(1) defines a *tuition fee* as including any tuition, examination or other fee payable to a higher education provider by a person enrolled with, or applying for enrolment with, the provider.

Subclause 19-105(2) provides that a *tuition fee* may also include any fee payable to the provider in respect of the granting of a higher education award.

Subclause 19-105(3) provides that a tuition fee does not include a fee that is:

- payable in respect of an organisation of students, or of students and other persons; or
- payable in respect of the provision to students of amenities or services that are not of an academic nature; or
- payable in respect of residential accommodation; or
- imposed in accordance with guidelines issued by the Minister for the imposition of fees in respect of overseas students and students who are New Zealand citizens because of the operation of section 29 of the *Citizenship Act 1977* of New Zealand; or
- payable in respect of studies (other than an enabling course) that are not permitted to be undertaken for the purpose of obtaining a higher education award; or
- determined, in accordance with guidelines issued by the Minister, to be a fee of a kind that is incidental to studies that may be undertaken with a higher education provider and meets the criteria specified in the Commonwealth Grant Scheme Guidelines; or
- a student contribution amount.

## **Division 22 - When does a body cease to be a higher education provider?**

### *Subdivision 22-A - General*

#### **Clause 22-1 Cessation of approval as a provider**

Provides that a body ceases to be approved as a higher education provider if the approval is revoked under Subdivision 22-B or 22-D or while the approval is suspended under section 22-30.

### *Subdivision 22-B - Revocation for cause.*

#### **Clause 22-5 Revocation of approval if application for approval as a provider is false or misleading**

Provides that the Minister may revoke a body's approval as a higher education provider if the Minister is satisfied that the application for approval contained material that was false or misleading. The Minister must comply with the requirements of section 22-20.

#### **Clause 22-10 Revocation of approval as a provider if body ceases to be a university etc.**

Has the effect of providing that the Minister must revoke a body's approval as a higher education provider if the body was a university, a self-accrediting provider or a non self-accrediting provider the last time the body became a higher education provider and since that time the body has ceased to be a university, a self-accrediting provider or a non self-accrediting provider.

#### **Clause 22-15 Revocation of approval as a provider for a breach of conditions or the quality and accountability requirements**

Subclause 22-15(1) provides that the Minister may revoke a body's approval as a higher education provider if the Minister is satisfied that the body has either breached a condition of a grant made to the body under Part 2-2, 2-3 or 2-4 or breached a quality and accountability requirement and the Minister is satisfied that it is appropriate to take that action (see subsection 22-15(2)). In revoking a body's approval as a higher education provider under this section the Minister must comply with the requirements of section 22-20.

Subclause 22-15(2) provides that, without limiting the matters that the Minister may consider in deciding whether it is appropriate under section 22-15 to revoke a body's approval as a higher education provider, the Minister may consider any or all of the following matters:

- whether the breach in question is of a minor or major nature;
- whether the breach has occurred before and, if so, how often;
- the impact that the breach may have on the body's students;

- the impact of the breach on the higher education provided by the body;
- Australia's reputation as a provider of high quality higher education; and
- any other matter set out in the Higher Education Provider Guidelines.

### ***Subdivision 22-C - Process for decision on revocation under Subdivision 22-B***

#### **Clause 22-20 Process for revoking approval as a provider for loss of status or a breach**

Subclause 22-20(1) provides that before revoking a body's approval as a higher education provider under Subdivision 22-B, the Minister must give the body notice in writing stating that the Minister is considering revoking the body's approval, the reasons why the Minister is considering revoking the body's approval, inviting the body to make written submissions to the Minister within 28 days as to why the approval should not be revoked.

Subclause 22-20(2) provides that, in deciding whether or not to revoke a body's approval under Subdivision 22-B, the Minister must consider any submissions received from the body within the 28 day period.

Subclause 22-20(3) provides that the Minister must notify the body in writing of his or her decision on the revocation of the body's approval as a higher education provider under Subdivision 22-B. The notice must be in writing, must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subsection 22-20(1) and must specify the day that the revocation takes effect.

Subclause 22-20(4) provides that, if no notice is given within the period provided for in subsection 22-20(3), the Minister is taken to have decided not to revoke the approval.

Subclause 22-20(5) provides that a revocation takes effect on the day specified in the notice under subsection 22-20(3) and a copy of the notice must be published in the *Gazette*.

#### **Clause 22-25 Determination retaining approval as a provider in respect of existing students**

Subclause 22-25(1) provides that the Minister may determine that a revocation of a body's approval as a higher education provider under Subdivision 22-B is of no effect for the purposes of grants to the body under Chapter 2 and assistance payable to the body's students under Chapter 3 to the extent that the grants or assistance relate to students who have not completed their course of study on the day specified for the revocation to take effect.

Subclause 22-25(2) provides that the determination may be included in the notice of revocation.

Subclause 22-25(3) provides that the body is taken for the purposes of the Act to continue to be a higher education provider to the extent set out in subsection 22-25(1).

Subclause 22-25(4) provides that subsection 22-25(3) does not prevent the Minister subsequently making a determination to revoke the body's approval as a higher education provider under Division 22.



### **Clause 22-30 Suspension of approval as a provider**

Provides that the Minister may determine in writing that, with effect from a specified day, a body's approval as a higher education provider is suspended pending the making of a decision under Subdivision 22-B as to whether to revoke the body's approval as a provider. A copy of the determination must be given to the body concerned. A determination under this section takes effect on the day specified in the determination and ceases to have effect if the Minister decides not to revoke the body's approval as a higher education provider.

### **Clause 22-35 Disallowance of revocation**

Provides that a notice of revocation under sub-section 22-30(3) is a disallowable instrument and that if a notice of revocation under subsection 22-20(3) is disallowed, the notice is taken never to have been given.

### ***Subdivision 22-D - Revocation of approval on application***

#### **Clause 22-40 Revocation of approval as a provider on application**

Provides that the Minister may revoke the approval of a body as a higher education provider if the body requests the Minister in writing to do so. The request must be given to the Minister at least 30 days before the day on which the revocation is requested to have effect. The Minister must cause the body to be notified of the revocation and the notice must be in writing and be given to the body at least 14 days before the day on which the revocation is to take effect. The revocation has effect on the day requested unless another day is specified in the notice under subsection 22-40(3).

## **Part 2-2 - Commonwealth Grant Scheme**

### **Division 27 - Introduction**

#### **Clause 27-1 What this Part is about**

Grants are payable under this Part to higher education providers that meet certain requirements. Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider. Grants are subject to several conditions relating to the provision of Commonwealth supported places and other matters. The amount of the grant may be reduced or some or all of a grant may be repayable if a condition is breached (see Part 2-5).

#### **Clause 27-5 The Commonwealth Grant Scheme Guidelines**

Notes that the grants payable under this Part are also dealt with in the Commonwealth Grant Scheme Guidelines made by the Minister under section 238-10 and that the provisions of this Part indicate when a particular matter is or may be dealt with in those guidelines.

## **Division 30 - Which higher education providers are eligible for a grant?**

### ***Subdivision 30-A - Basic rules***

#### **Clause 30-1 Eligibility for grants**

Provides that a grant under this Part is payable to a higher education provider (as a benefit to students) in respect of the year 2005 or a later year if the provider is a Table A provider or a higher education provider specified in the Commonwealth Grant Scheme Guidelines as a higher education provider that can be paid grants under this Part and the Minister has allocated a number of Commonwealth supported places to the provider for that year under section Clause 30-10 and the provider has entered into a funding agreement with the Commonwealth under section 30-25. However, a grant is payable to a higher education provider that is not a Table A provider only if the grant relates only to national priorities.

#### **Clause 30-5 Maximum grants**

Subclause 30-5(1) provides that the Minister must ensure that the total amounts of all grants payable under this Part in respect of a year, as a result of all the allocations to higher education providers for that year under section 30-10, does not exceed \$3,086,242,00 for the year 2005, or \$3,215,263,000 for the year 2006 or \$3,342,701,000 for the year 2007. For the purposes of subsection 30-5(1), regard must be had to any adjustments under section 33-20 to amounts for the year.

### ***Subdivision 30-B - Allocation of places***

#### **Clause 30-10 Allocation of places**

Subclauses 30-10(1) and (2) provide that before the commencement of a year, the Minister may allocate a specified number of Commonwealth supported places to a higher education provider for that year and that the allocation must specify the distribution of those places between the funding clusters.

Subclause 30-10(3) provides that the allocation may also specify the number of those places that have a regional loading and the number of those places that have a medical student loading.

Subclause 30-10(4) provides that if the provider is not a Table A provider the allocation must specify that it is only in respect of national priorities and must also specify the number of places for each national priority for which the provider is allocated places.

#### **Clause 30-15 Funding clusters**

Subclause 30-15(1) lists the *funding clusters* for the purposes of the Act. Subclause 30-15(2) provides that the Commonwealth Grant Scheme Guidelines may delete, vary or add to the funding clusters.

## **Clause 30-20 National priorities**

Defines a ***national priority*** as a particular outcome that relates to the provision of higher education and is an outcome specified in the Commonwealth Grant Scheme Guidelines as a national priority.

## ***Subdivision 30-C - Funding agreements***

### **Clause 30-25 Funding agreements**

Subclauses 30-25(1) and (2) provide that the Secretary may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to a grant under this Part in respect of a year (the ***grant year***) and that the agreement may specify conditions to which the grant is subject, that are additional to the conditions that apply under Division 36. Section 36-65 makes it a condition of the grant that the provider comply with the agreement.

Subclause 30-25(3) provides that, without limiting subsection 30-25(2), the agreement may specify the minimum number of Commonwealth supported places that the provider must provide in the grant year, or the maximum number of Commonwealth supported places that the provider may provide in the grant year, or both in relation to one or more of the following:

- places in courses of study at the undergraduate level;
- places in courses of study at the postgraduate non-research level;
- places in courses of study in medical programs;
- places in courses of study in enabling courses;

The agreement may also specify:

- the maximum number of Commonwealth supported places provided by the provider which can have a regional loading in the grant year;
- the maximum number of Commonwealth supported places provided by the provider which can have a medical student loading in the grant year;
- the maximum amount of regional loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant year;
- the undergraduate and postgraduate courses in which the provider may provide Commonwealth supported places;
- restrictions on the type of undergraduate and postgraduate courses in which the provider may provide Commonwealth supported places;
- adjustments that will apply to the amount of a grant payable to the provider under this Part if the provider breaches a condition of the grant;



## **Division 33 - How are grant amounts worked out?**

### ***Subdivision 33-A - Basic rules***

#### **Clause 33-1 How grant amount is worked out**

Provides that the amount of a grant payable to a higher education provider under this Part for a year is worked out by calculating the basic grant amount for the provider for that year under Subdivision 33-B and if applicable, adjusting the basic grant amount under Subdivision 33-C. Advances may also be paid to a higher education provider under Subdivision 33-D.

### ***Subdivision 33-B - Basic grant amounts***

#### **Clause 33-5 Basic grant amounts**

Provides that the *basic grant amount* for a higher education provider for a year is the sum of:

- for each funding cluster to which the Minister has allocated places to the provider under section 30-10 - the amount worked out by multiplying the number of Commonwealth supported places allocated in relation to that funding cluster by the Commonwealth contribution amount for a place in that funding cluster; and
- if the allocation has specified under paragraph 30-10(3)(a) a number of Commonwealth supported places that have a regional loading - the amount of regional loading worked out under the Commonwealth Grant Scheme Guidelines for those places; and
- if the allocation has specified under paragraph 30-10(3)(b) a number of Commonwealth supported places that have a medical student loading - the amount of medical student loading worked out under the Commonwealth Grant Scheme Guidelines for those places.

#### **Clause 33-10 Commonwealth contribution amounts**

Sets out a table listing the *Commonwealth contribution amount* for a place in a funding cluster.

#### **Clause 33-15 Increases in assistance for higher education providers meeting certain requirements**

Subclause 33-15(1) provides that a higher education provider's basic grant amount for a year is increased under section 33-15 if the Commonwealth Grant Scheme Guidelines impose on higher education providers either or both, requirements to be known as the National Governance Protocols or requirements based on the workplace relations policies of the Australian Government and the Minister is satisfied that the provider met those requirements as at a date, specified in the Commonwealth Grant Scheme Guidelines, in the year preceding that year.

Subclause 33-15(2) provides that if subsection 33-15(1) applies to a higher education provider in relation to a year, the provider's basic grant amount for the year is worked out as if the Commonwealth contribution amount for each funding cluster were increased by 2.5% if the

grant year is the year 2005, 5% if the grant year is the year 2006 and 7.5% if the grant year is a later year.

### ***Subdivision 33-C - Adjustments***

#### **Clause 33-20 Adjustments in accordance with guidelines**

Provides that a higher education provider's basic grant amount for a year (the ***grant year***) is to be adjusted, in respect of the preceding year, in the circumstances specified in the Commonwealth Grant Scheme Guidelines and that the Commonwealth Grant Scheme Guidelines must specify, in relation to each of the adjustments:

- whether the adjustment is to be an increase or a reduction in the provider's basic grant amount for the grant year; and
- the amount of the adjustment, or how the adjustment is to be worked out.

#### **Clause 33-25 Adjustments that apply in the absence of guidelines**

Subclause 33-25(1) provides that a higher education provider's basic grant amount for the grant year is reduced by an adjustment if the Commonwealth Grant Scheme Guidelines neither provide for an adjustment when the number of Commonwealth supported places provided by a higher education provider during the preceding year exceeds a number specified in (or worked out under) those guidelines or, provide that there is to be no adjustment in those circumstances and in the preceding year the number of Commonwealth supported places provided by the provider exceed 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10.

Subclause 33-25(2) provides that the adjustment under subsection 33-25(1) is an amount worked out using the formula:

Excess places × Maximum possible student contribution

The term ***excess places*** is defined as the number of Commonwealth supported places that the provider provided during the preceding year in excess of 105% of the total number of Commonwealth supported places allocated to the provider, while the term ***greatest possible student contribution*** is defined as the highest student contribution amount payable to the provider for a unit of study undertaken with the provider during the preceding year.

Subclause 33-25(3) provides that a higher education provider's basic grant amount for the grant year is reduced by an adjustment if the Commonwealth Grant Scheme Guidelines neither provide for an adjustment when the provider's basic grant amount for the preceding year exceeds the provider's corrected basic amount for that year or provide that there is to be no adjustment in these circumstances and the provider's basic grant amount for the preceding year exceeded the provider's corrected basic amount for that year.

Subclause 33-25(4) provides that the adjustment under subsection 33-25(3) is an amount equal to the difference between the basic grant amount and the corrected basic amount.

Subclause 33-25(5) defines a provider's *corrected basic amount* for a year as the amount that would have been the provider's basic grant amount for the year if the number of Commonwealth supported places allocated to the provider for that year under section 33-10 had equalled the number of Commonwealth supported places provided by the provider during that year and the places allocated had been distributed under subsection 30-10(2) between the funding clusters in a way that reflected the units of study in which Commonwealth supported students were enrolled with the provider during that year and the funding clusters in which those units are included.

Subclause 33-25(6) provides that no adjustments are to be made to basic grant amounts under section 33-25 for the year 2005.

### **Clause 33-30 Working out the number of Commonwealth supported places provided**

Subclause 33-30(1) defines how to calculate the *number of Commonwealth supported places* that a higher education provider has provided during a particular year. This is calculated by taking, for each unit of study (other than a unit of study that wholly consists of work experience in industry) that the provider provided that had its census date during the year, the sum of the EFTSL value of the unit and multiplying it by the number of persons enrolled with the provider in that unit as Commonwealth supported students.

Subclause 33-30(2) provides that for the purposes of section 33-30 if a unit of study provided by the provider forms part of more than one course of study and the provider determines [under subsection 73-15(2)] an EFTSL value of the unit for each such course, then the unit is taken to be a different unit of study in respect of each such course.

### **Clause 33-35 Funding clusters in which units of study are included**

Provides that the Commonwealth Grant Scheme Guidelines may specify how to determine, for the purposes of this Act, the funding clusters in which units of study are included or the particular funding cluster in which a particular unit of study is included.

### ***Subdivision 33-D - Special purpose advances***

#### **Clause 33-40 Advances for certain purposes**

Subclause 33-40(1) provides that the Minister may determine an advance is payable to a higher education provider in respect of a year in relation to expenditure of the provider, for such purposes as the Minister determines.

Subclause 33-40(2) provides that the Minister may pay an advance to the provider under subsection 33-40(1) on such conditions (if any) as the Minister determines.

Subclause 33-40(3) provides that the total of the advances in respect of a year must not exceed the amount set out in section 30-5 in respect of the following year.

Subclause 33-40(4) provides that if the Minister determines an advance for the provider in respect of a year, the amounts of grant payable to the provider under section 33-1 in respect of

either the following year, the following 2 years, or the following 3 years are reduced by amounts that equal in total the amount of the advance.

Subclause 33-40(5) provides that determinations under subsections 33-40(1) and (2) and reductions under subsection 33-40(4) must be made in accordance with Commonwealth Grant Scheme Guidelines.

## **Division 36 - What are the conditions of receiving a grant?**

### ***Subdivision 36-A - General***

#### **Clause 36-1 Condition of grant to comply with this Division**

Subclause 36-1(1) provides that a higher education provider receives a grant under Part 2-2 on condition that the provider complies with Division 36.

Subclause 36-1(2) provides that, without limiting subsection 36-1(1), the provisions of Division 36 do not of their own force require the provider to do any act or thing.

### ***Subdivision 36-B - Conditions relating to Commonwealth supported students***

#### **Clause 36-5 Meaning of Commonwealth supported student**

Provides that a person is a ***Commonwealth supported student*** in relation to a unit of study if he/she is advised in writing by the higher education provider with which he/she is enrolled in that unit that he/she is a Commonwealth supported student in relation to the unit. However, the person is not a Commonwealth supported student in relation to the unit if he/she advises the provider in writing on or before the census date for his or her enrolment in the unit that he/she does not wish to be a Commonwealth supported student in relation to the unit.

#### **Clause 36-10 Advice on whether a person is a Commonwealth supported student**

Subclause 36-10(1) provides that a higher education provider must not advise a person that he/she is a Commonwealth supported student in relation to a unit of study unless:

- the provider has been allocated Australian supported in the relevant year; and
- the unit contributes to the requirements of a course of study in which the person is enrolled with the provider; and
- the person is an Australian citizen, a citizen of New Zealand who will be resident within Australia for the duration of the unit or a permanent visa holder who will be resident within Australia for the duration of the unit; and
- the unit is covered by the person's Student Learning Entitlement or wholly consists of work experience in industry or is undertaken as part of an enabling course; and
- the person enrolls in the unit on or before the census date for the unit.

Subclause 36-10(2) provides that, in determining whether a person will be resident within Australia for the duration of the unit of study, any period of residence outside Australia must be disregarded if it cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit or it is required for the purpose of completing a requirement of that unit.

Subclause 36-10(3) provides that a higher education provider must not advise a person that he/she is a Commonwealth supported student in relation to a unit of study if the person has

notified the provider that he/she does not wish to be a Commonwealth supported student in relation to the unit.

Subclause 36-10(4) provides that a notice under subclause 36-1(3) must be in writing and given on before the census date of the unit.

Subclause 36-10(5) provides that a higher education provider that is not a Table A provider must not advise a person that he/she is a Commonwealth supported student in relation to a unit of study unless the unit in which the person is enrolled is within a national priority, the provider has received a grant under Part 2-2 for that national priority for the year in which the person is undertaking the unit and if the national priority is a course of study that has been specified in the Commonwealth Grant Scheme Guidelines to be a national priority, the unit is contributing to the requirements of that course.

Subclause 36-10(6) provides that a higher education provider must not advise a person that he/she is a Commonwealth supported student in relation to a unit of study that wholly consists of work experience in industry unless the unit forms part of a course of study and the person is enrolled (or has previously been enrolled) in another unit of study in that course that does not (or did not) wholly consist of work experience in industry and in relation to which the person is (or was) a Commonwealth supported student.

#### **Clause 36-15 Persons not to be advised they are Commonwealth supported**

Provides that a higher education provider must not advise a person enrolled in a unit of study with the provider that the person is a Commonwealth supported student in relation to the unit if the enrolment is an employer reserved enrolment or the unit forms part of a bridging course for overseas trained professionals.

#### **Clause 36-20 Providers to repay amounts if Student learning Entitlements is re-credited**

Provides that if a person's Student Learning Entitlement, in relation to a unit of study in which the person was enrolled with a higher education provider as a Commonwealth supported student has been re-credited under Division 79, the provider must pay to the person an amount equal to the payments that the person made in relation to the student contribution amount for the unit. The provider must pay to the Commonwealth an amount equal to any HECS HELP assistance to which the person was entitled for the unit.

#### ***Subdivision 36-C - Conditions relating to enrolment***

#### **Clause 36-25 Continued support for Commonwealth supported students**

Provides that a higher education provider must advise a person who is enrolled in a unit of study with the provider, as part of a course of study, that he/she is a Commonwealth supported student in relation to the unit if the person is or has been a Commonwealth supported student in relation to one or more other units of study in the course and the provider is not prohibited under section 36-10 from so advising the person.

### **Clause 36-30 Providers to fill Commonwealth supported places before accepting other enrolments**

Subclause 36-30(1) provides that if a person is to be enrolled with a Table A provider in a unit of study that is covered by the person's Student Learning Entitlement the provider must enrol the person in the unit as a Commonwealth supported student.

Subclause 36-30(2) provides that subsection 36-30(1) does not apply if the provider has, in respect of the year in which the person is enrolled in the unit, already filled all of the number of Commonwealth supported places allocated to the provider for the year under section 30-10 or the person advises the provider, prior to the census date for his or her enrolment in the unit, that he/she does not wish to be a Commonwealth supported student in relation to the unit.

Subclause 36-30(3) provides that if a person is to be enrolled (with a higher education provider that is not a Table A provider) in a unit of study that is covered by a person's Student Learning Entitlement the provider must enrol the person in the unit as a Commonwealth supported student if completion of the unit is in furtherance of a national priority and places have been allocated to the provider under section 30-10 in respect of that national priority for the year in which the person is enrolled in the unit.

Subclause 36-40(4) provides that subsection 36-30(3) does not apply if the provider has, in respect of the year in which the person is enrolled in the unit, already filled all of the number of Commonwealth supported places in respect of that national priority or the person advises the provider prior to the census date for his/ her enrolment in the unit that he/she does not wish to be a Commonwealth supported student in relation to the unit.

### **Clause 36-35 Percentage of Commonwealth supported places to be provided by Table A providers**

Subclause 36-35(1) provides that a Table A provider must ensure that, in any year, the number of Commonwealth supported places provided by the provider accounts for at least 50% (or such higher percentage as is specified in the provider's funding agreement under section 30-25 for that year) of the total number of places that the provider provides in each course of study that is not a course of study that the agreement provides is a course in which the provider must not provide Commonwealth supported places, a course of study in medicine or at least the percentage, declared by the Minister in writing, of the total places provided by the provider in each course of study in medicine.

Subclause 36-35(2) provides that, for the purpose of applying subsection 36-35(1) in relation to a course of study, any enrolment in work experience in industry or an employer reserved place in that course of study must be disregarded.

Subclause 36-35(3) provides that the percentage declared by the Minister under paragraph 36-35(1)(b) must be at least 50%.

Subclause 36-35(4) provides that a course of study in medicine is a course of study completion of which would allow for registration as a medical practitioner by an authority of a State or Territory or the Commonwealth.

### **Clause 36-40 Providers to cancel enrolments in certain circumstances**

Subclause 36-40(1) provides that a higher education provider must cancel a person's enrolment in a unit of study with the provider if the person is enrolled as a Commonwealth supported student in relation to the unit and has not, on or before the census date for the unit, completed signed and provided to the provider a request for Commonwealth assistance in relation to the course of study of which the unit forms a part and given it to the provider.

Subclause 36-40(2) provides that a higher education provider must cancel a person's enrolment in a unit of study with the provider if the person is enrolled as a Commonwealth supported student in relation to the unit and is not entitled to HECS-HELP assistance for the unit and has not, on or before the census date for the unit, paid to the provider the whole of the student contribution amount for the unit. However, subsection 36-40(2) does not apply if the student contribution amount for the unit is a nil amount.

Subclause 36-40(3) defines a *request for Commonwealth assistance* as a document in which a person enrolling in a unit of study with a higher education provider requests the Commonwealth to provide assistance under the Act in relation to the unit, or in relation to the course of study of which the unit forms a part and is in the form approved by the Minister and that the person gives to the provider on or before the person's enrolment in the unit.

### ***Subdivision 36-D - Conditions relating to student contribution amounts***

#### **Clause 36-45 Limits on student contribution amounts**

Provides that if a person is enrolled with a higher education provider in a unit of study as a Commonwealth supported student the provider must not charge the person a student contribution amount for the unit that exceeds the amount worked out by multiplying the maximum amount per place and the EFTSL value of the unit.

#### **Clause 36-50 Provider must not accept up-front payments of more than 80% of student contribution amounts**

Provides that a higher education provider must not accept up-front payments for the unit totalling more than 80% of the student contribution amount for the unit from a person who is enrolled in a unit of study with the provider and is entitled to HECS-HELP assistance for the unit.

### ***Subdivision 36-E - Conditions relating to tuition fees***

#### **Clause 36-55 Tuition fees for non-Commonwealth supported students**

Subclause 36-55(1) provides that if a person is enrolled in a unit of study with a higher education provider and is not a Commonwealth supported student in relation to the unit, the provider must not charge as tuition fees for the unit amounts that in total are less than the student contribution



amount the provider would charge the person if the person were a Commonwealth supported student in relation to the unit or less than such higher amount specified in the CGS Guidelines.

Subclause 36-55(2) provides that subsection 36-55(1) does not apply if the person's enrolment in the unit is in an employer reserved place. However, the provider must not charge as tuition fees for the unit amounts where the sum of the tuition fees and the employer contribution amount for the unit is less than the student contribution amount referred to in subsection 36-55(1).

Subclause 36-55(3) provides that if a person is enrolled in study with a higher education provider on a non-award basis and could have enrolled in that study as a unit of study if the enrolment were not on a non-award basis, the provider must not charge as tuition fees for the study amounts that in total are less than the student contribution amount that the provider would charge the person if the person had enrolled in the study as a unit of study and the person were a Commonwealth supported student in relation to the unit.

### ***Subdivision 36-F - Other conditions***

#### **Clause 36-60 Providers to meet the quality and accountability requirements**

Provides that a higher education provider must meet the quality and accountability requirements.

#### **Clause 36-65 Providers to comply with funding agreement**

Provides that a higher education provider must comply with any funding agreement the provider enters into under section 30-25.

#### **Clause 36-70 Providers to comply with the Commonwealth Grant Scheme Guidelines**

Provides that the Commonwealth Grant Scheme Guidelines may specify conditions that higher education providers must comply with for the purposes of Division 36 and that a higher education provider must comply with all such conditions in respect of any year for which the provider receives a grant under Part 2-2. However, the provider need not comply with such a condition during a particular year if the condition comes into force on or after the day on which the provider entered into a funding agreement under section 30-25 in respect of the year.

## **Part 2-3 - Other grants**

### **Division 41- Other grants**

#### **Clause 41-1 What this Part is about**

Grants that are approved by the Minister under this part are payable to higher education providers and other eligible bodies for a variety of purposes.

#### **Clause 41-5 The Other Grants Guidelines**

Provides that other grants also dealt with in the Other Grants Guidelines made by the Minister under section 238-10. The provisions of Part 2-3 indicate when a particular matter is or may be dealt with in these Guidelines.

#### **Clause 41-10 Eligibility for grants under this Part**

Subclause 41-10(1) creates a table of eligibility for grants under Part 2-3 in respect of the year 2005 or a later year. The table lists 11 grant items (column 1), their purpose (column 2) and who is eligible for them (column 3). Subclause 41-10(1) goes on to provide that, subject to subsection 41-10(2), bodies referred to in an item in the third column of the table are eligible for grants under Part 2-3 for the purposes specified in the second column for that item.

Subclause 41-10(2) provides that if the Other Grants Guidelines specify a program under which grants for a particular purpose specified in the table are to be paid and specify extra conditions of eligibility to receive a grant under the program, then a body specified in the table in respect of those grants is not eligible for such a grant unless it complies with those extra conditions.

#### **Clause 41-15(1) Grants may be paid under programs**

Subclause 41-15(1) provides that the Other Grants Guidelines may specify one or more programs under which grants for particular purposes specified in the table in subsection 41-10(1) are to be paid.

Subclause 41-15(2) provides that, if the Other Grants Guidelines specify a program for a grant for a particular purpose, the guidelines may also specify all or any of the following matters for the program:

- the program's objectives;
- the extra conditions of eligibility to receive a grant under the program;
- the amount, being a part of the amount referred to in section Clause 41-45 for a year, that will be spent on the program in that particular year;
- the indexation of that amount for subsequent years, using the method of indexation set out in Part 5-6;
- the method by which the amount of grants under the program will be determined;
- whether grants under a program are in respect of a year or a project;

- the conditions that apply to grants under the program.

#### **Clause 41-20 Approval of grants**

Provides that the Minister may approve a grant under Part 2-3 in respect of a year or a project to a body corporate that is eligible for such a grant.

#### **Clause 41-25 Conditions on grants**

Provides that if a grant is made under a program and the Other Grants Guidelines specified conditions that apply to that program, the grant is made on those conditions. If a grant is made under a program in respect of which the Other Grants Guidelines do not provide for conditions, the grant is made on such conditions (if any) as the Minister determines in writing. If the body receiving the grant is a higher education provider, the body must also meet the quality and accountability requirements.

#### **Clause 41-30 Amount of a grant**

Provides that if the grant is made under a program and the Other Grants Guidelines specify a method by which the amount of grants under the program are to be determined, the amount of a grant is the amount determined by that method. If a grant is made under a program in respect of which the Other Grants Guidelines do not specify a method by which the amount of grants under the program are to be determined, the amount of grant is determined in writing by the Minister.

#### **Clause 41-35 Amounts payable under this Part**

Provides that an amount referred to in section 41-30 is payable in respect of an year, when a body corporate meets the requirements of the other Grants Guidelines made for the purposes of sections 41-15 in relation to the programs or the Minister approves under section 41-20 a grant to a body corporate in respect of that year or project.

#### **Clause 41-40 Rollover of grant amounts**

If a body corporate that had received a grant in respect of a year under Part 2-3 fails to spend an amount of that grant in that year and the Secretary determines in writing that this section is to apply to this body corporate, then the unspent amount of money as specified by the Secretary is taken to be granted to the body corporate under Part 2-3 for that following year. Also, this amount is taken to be granted for the same purpose as the original grant, and under the same conditions as the original grant but for the following year, or under such other conditions as determined by the Secretary.

#### **Clause 41-45 Maximum payments for other grants under this Part**

Subclause 41-45(1) creates a table setting out the maximum payments for other grants under Part 2-3. The table lists 3 items (column 1), the year (column 2) and the maximum amount payable (column 3). It provides that the total payments made under Part 2-3 in respect of a year referred to in the table, must not exceed the amount specified next to that year in the table.

Subclause 41-45(2) provides that payments made in respect of a project in a year are taken for the purposes of subsection 41-45(1) to have been made in respect of that year.

## **Part 2-4 - Grants for Commonwealth scholarships**

### **Division 46 - Grants for Commonwealth Scholarships**

#### **Clause 46-1 What this Part is about**

Payments for scholarships are made to higher education providers who pay the scholarships to students for the purposes of the students' education.

#### **Clause 46-5 The Commonwealth Scholarships Guidelines**

Notes that Commonwealth scholarships are also dealt with in the Commonwealth Scholarships Guidelines made by the Minister under section 238-10. The provisions of Part 2-4 indicate when a particular matter is or may be dealt with in those Guidelines.

#### **Clause 46-10 Classes of Commonwealth scholarships**

Provides for 2 classes of Commonwealth scholarships that are the standard scholarships and the post-graduate research scholarships. The Commonwealth Scholarship Guidelines set out the types of scholarships in each class.

#### **Clause 46-15 Who is eligible to receive a payment from the Commonwealth for Commonwealth scholarships?**

Provides that Table A providers and higher education providers to which subparagraph 30-1(a)(ii) applies are eligible to receive a payment as a benefit to students from the Commonwealth to pay standard Commonwealth scholarships to their students. Table A providers and Table B providers are eligible to receive a payment from the Commonwealth to pay (as a benefit to students) post-graduate research Commonwealth scholarships to their students.

#### **Clause 46-20 Other matters relating to Commonwealth scholarships**

Subclause 46-20(1) provides that the Commonwealth Scholarships Guidelines may provide for Commonwealth scholarships.

Subclause 46-20(2) provides that, without limiting subsection 46-20(1), the Commonwealth Scholarship Guidelines may provide for the following matters:

- the kinds of scholarships that are to be standard scholarships;
- the kinds of scholarships that are to be post-graduate research scholarships;
- which students are eligible for each kind of scholarship;
- the making of decisions as to which students are to receive scholarships;
- the conditions that apply to each kind of scholarship;
- how the amounts of payments to a Table A provider or a Table B provider are to be determined;

- the amount, being part of the amount referred to in section 46-40 for a year, that will be spent on each kind of scholarship in that year;
- the indexation of the amount for subsequent years;
- how payments to Table A providers or a Table B providers are to be made;
- how providers are to determine the amount of each scholarship;
- the indexation of amounts of scholarships;
- how providers are to pay scholarships.

**Clause 46-25 Condition of grants**

Provides that the higher education provider must meet the quality and accountability requirements for receiving a grant under this Part.

**Clause 46-30 Amounts payable under this Part**

Provides that the amount that is payable under Part 2-4 to a Table A or Table B provider is the amount worked out in accordance with the Commonwealth Scholarships Guidelines.

**Clause 46-35 Rollover of grant amounts**

If a higher education provider who had received a grant under Part 2-4 in respect of a year fails to spend an amount of that grant and the Secretary determines in writing that this section is to apply to the provider, then the unspent amount of money as specified by the Secretary is taken to be granted to the provider under Part 2-4 for the following year. This amount is taken to be granted for the same purpose as the original grant and under the same condition as the original conditions or under such other conditions as determined by the Secretary.

**Clause 46-40 Maximum payments for Commonwealth Scholarships**

Creates a table setting out the maximum payments for Commonwealth scholarships. The table lists 4 items (column 1), the year (column 2) and the maximum amount payable (column 3). Clause 46-40 provides that the total payments made to Table A providers and Table B providers under Part 2-4 to pay Commonwealth scholarships, in respect of a year referred to in the table, must not exceed the amount specified next to that year in the table.

## **Part 2-5 - Reduction and repayment of grants**

### **Division 51 - Introduction**

#### **Clause 51-1 What this Part is about**

Bodies may have their grants reduced, or be required to repay a grant, for breaches of conditions of grants under Part 2-2, 2-3 or 2-4 or the quality and accountability requirements in Division 19.

#### **Clause 51-5 The Reduction and Repayment Guidelines**

Notes that reduction and repayment of grants is also dealt with in the Reduction and Repayment Guidelines made by the Minister under sections 238-10 and that the provisions of Part 2-5 indicate when a particular matter is or may be dealt with in those Guidelines.

## **Division 54 - In what circumstances may a grant be reduced or required to be repaid?**

### **Clause 54-1 Decision as to reduction in or repayment of a grant**

Subclause 54-1(1) provides that the Secretary may determine that an amount of a grant made or to be made to a body under Part 2-2, 2-3 or 2-4 is to be reduced or that an amount of a grant made to a body under Part 2-2, 2-3 or 2-4 is to be repaid to the Commonwealth.

Subclause 54-1(2) provides that the Secretary may make a determination under subsection 54-1(1) if the body breaches a condition of a grant made to the body under Part 2-2, 2-3 or 2-4 (whether or not that grant is the grant to be reduced or repaid), or a quality and accountability requirement. In making such a determination the Secretary must be satisfied that it is appropriate to take that action (see section 54-5) and must comply with the requirements of Division 60.

### **Clause 54-5 Appropriateness of requiring reduction or repayment of grant**

Provides that, without limiting the matters that the Secretary may consider in deciding whether it is appropriate under subsection 54-1 to take particular action, the Secretary may consider any or all of the following matters:

- whether the breach is of a minor or major nature;
- whether the breach has occurred before and, if so, how often;
- if the body is a higher education provider—the impact that the breach may have on the body's students;
- if the body is a higher education provider—the impact of the breach on the higher education provided by the body;
- Australia's reputation as a provider of high quality higher education;
- any other matter set out in the Reduction and Repayment Guidelines.



## **Division 57 - What is the amount of a reduction or repayment?**

### **Clause 57-1 Reduction in amount of grants**

Provides that, if an amount of a grant is to be reduced under Part 2-5, it must be reduced by an amount determined by the Secretary in writing. The Reduction and Repayment Guidelines may set out requirements about how such an amount is to be determined and the Secretary must make his or her determination in accordance with any such requirements.

### **Clause 57-5 Amount of the repayment**

Provides that if an amount of a grant is to be repaid under Part 2-5, the amount to be repaid is the amount that the Secretary determines in writing. The amount to be repaid must not exceed the amount of the grant. The Reduction and Repayment Guidelines may set out requirements about how such an amount is to be determined and the Secretary must make his or her determination in accordance with any such requirements. The amount to be repaid is a debt owed to the Commonwealth by the body to which the grant was paid.

## **Division 60 – How are decisions on reducing a grant or requiring repayment of a grant made?**

### **Clause 60-1 Procedure prior to decision**

Subclause 60-1(1) provides that before making a decision under paragraph 251-1(a) or (b) in respect of a body, the Secretary must give the body notice in writing:

- stating that the Secretary is considering reducing the body's grant, or requiring the repayment of a grant made to the body, as the case may be; and
- stating the amount of proposed reductions or repayment and the reason why the Secretary is considering taking that action; and
- inviting the body to make written submissions to the Secretary within 28 days concerning why that action should not be taken and/or why the amount of proposed reductions or repayment should be reduced; and
- informing the body that, if no submission is received within the time required, the action will take effect on the day after the last day for making submissions.

Subclause 60-1(2) provides that, in deciding whether or not to take the action, the Secretary must consider any submissions received from the body within the 28 day period.

### **Clause 60-5 Notification of decision**

Subclause 60-5(1) provides that the Secretary must notify the body in writing of his/her decision on whether or not to take the action. The notice must be in writing and must be given within the period of 28 days following the period in which submissions may have been given to the Secretary under subsection 60-1(1).

Subclause 60-5(2) provides that if no notice is given within the period provided for in paragraph 60-5(1)(c), the Secretary is taken to have decided not to take the action.

### **Clause 60-10 When a decision takes effect**

Provides that, if no submission was made under subsection 60-1(1), the decision to take the action takes effect on the day after the last day for making submissions or, if such a submission was made, the decision to take effect on the day specified in the notice under subsection 60-5(1) was given.

## **Chapter 3 - Assistance to students**

### **Division 65 - Introduction**

#### **Clause 65-1 What this Chapter is about**

The Commonwealth provides 3 kinds of assistance to students under this Chapter. These are:

- HECS-HELP assistance—assistance to meet a student’s liability to pay student contribution amounts for units of study that are Commonwealth supported (see Part 3-2).  
Note: A sufficient Student Learning Entitlement also enables a student to access places that are funded under Part 2-2 (Commonwealth Grants Scheme). The Commonwealth meets all or part of the higher education costs of student who are enrolled in places funded under Part 2-2.
- FEE-HELP assistance—assistance to meet a student’s liability to pay tuition fees for units of study that are not Commonwealth supported (see Part 3-3);
- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3-4).  
The Commonwealth pays the assistance to the relevant higher education provider either (in the case of HECS-HELP assistance and FEE-HELP assistance) to discharge the student’s liability, or (in the case of OS-HELP assistance) to pay to students on the Commonwealth’s behalf.

The assistance is (in almost all cases) in the form of a loan from the Commonwealth to the student.

## **Part 3-1 - Student Learning Entitlement**

### **Division 70 - Introduction**

#### **Clause 70-1 What this Part is about**

Student Learning Entitlement (or SLE) is needed for many of the forms of assistance under the Act. In these cases, units of study that a person enrolls in must be covered by the person's SLE. Broadly speaking, a person starts with an SLE equivalent to 5 years of full time study. This is reduced as the person undertakes units of study as a Commonwealth supported student (but it can be re credited in some circumstances).

#### **Clause 70-5 The Student Learning Entitlement Guidelines**

Notes that Student Learning Entitlement is also dealt with in the Student Learning Entitlement Guidelines. The provisions of Part 3-1 indicate when a particular matter is or may be dealt with in these Guidelines.

## **Division 73 - What is a person's Student Learning Entitlement?**

### **Clause 73-1 A person's Student Learning Entitlement**

Provides that a person's *Student Learning Entitlement* is the sum of the ordinary SLE that the person has under section 73-5 and any additional SLE that the person has under section 73-20, taking into account any reductions in the person's SLE under Division 76 and any re-crediting of the person's SLE under Division 79.

### **Clause 73-5 Ordinary SLE**

Subclause 73-5(1) provides that a person who is an eligible person on 1 January 2005 has, on that day, an ordinary SLE equal to 5 EFTSL.

Subclause 73-5(2) provides that any other person who (by birth or otherwise) becomes an eligible person on a day after 1 January 2005 has on the earliest such day an ordinary SLE equal to 5 EFTSL.

Subclause 73-5(3) defines an *eligible person* as an Australian citizen, a citizen of New Zealand or a permanent visa holder.

### **Clause 73-10 Meaning of EFTSL**

Defines *EFTSL* as an equivalent full-time student load. It is a measure of the study load of a student undertaking a course of study on a full-time basis. A particular amount of EFTSL is an amount of study (undertaken with a higher education provider as part of a course of study) represented by units of study with EFTSL values, the sum of which equals that amount.

### **Clause 73-15 Meaning of EFTSL value**

Defines the *EFTSL value* of a unit of study as the value that the higher education provider with which the unit may be undertaken determines in writing to be the EFTSL value of the unit, expressed as a fraction of one EFTSL. If the unit can form part of more than one course of study, the provider may determine an EFTSL value of the unit for each such course of study. If a unit of study is subject to separate determinations in relation to different courses of study, a reference to the EFTSL value of the unit is, when the unit forms part of such a course, a reference to the EFTSL value of the unit determined under subsection 73-15(2) for the course. Determinations under section 73-15 must be in accordance with any requirements set out in the Student Learning Entitlement Guidelines.

### **Clause 73-20 Additional SLE**

Subclause 73-20(1) provides that a person has an additional SLE if the person is enrolled in a course of study with a higher education provider, the course is specified (or is a course of a kind specified) in the Student Learning Entitlement Guidelines as a course (or kind of course) to

which additional SLE applies and the person meets any other requirements relating to additional SLE set out in the Student Learning Entitlement Guidelines.

Subclause 73-20(2) provides that the person is taken to have had the additional SLE from the time immediately before he/she enrolled in the course of study.

Subclause 73-20(3) provides that the amount of the additional SLE is an amount (expressed in EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

**Clause 73-25 SLE not transferable**

Provides that a person's SLE cannot be transferred to, or used by, another person.

**Clause 73-30 Ceasing to be an eligible person**

Provides that a person ceases to have an SLE if he/she ceases to be an eligible person. If a person had previously ceased to be an eligible person and becomes an eligible person again, then on becoming an eligible person again, the person has the same SLE (if any) that he/she had immediately before the last time on which he/she ceased to be an eligible person.

## **Division 76 - When is a person's Student Learning Entitlement reduced?**

### **Clause 76-1 Reducing a person's SLE**

Provides that a person's SLE is reduced if, at the end of the census date for a unit of study with a higher education provider, the person is enrolled in the unit, is enrolled in the unit as part of a course of study (other than an enabling course), is a Commonwealth supported student in relation to the unit and the person has completed and signed a request for Commonwealth assistance in relation to the unit (or the course of study of which the unit is a part) on or before the census date.

The amount of the reduction is an amount equal to the EFTSL value of the unit of study and the reduction takes effect immediately after the census date for the unit of study.

Section 76-1 does not apply if the unit of study consists wholly of work experience in industry.

### **Clause 76-5 Reducing a person's additional SLE**

Subclause 76-5(1) provides that if a person has an additional SLE, that additional SLE is not reduced under section 76-1 in relation to a unit of study unless the person's ordinary SLE is less than the EFTSL value of the unit and the person is enrolled in the unit as part of the course of study in relation to which the additional SLE applies.

Subclause 76-5(2) provides that if a person has both an additional SLE and ordinary SLE and the ordinary SLE is insufficient to cover a unit of study in which the person is enrolled then, in reducing the person's SLE under section 76-1 to take account of the unit, the person's ordinary SLE is reduced to zero and the person's additional SLE is reduced only to the extent that the ordinary SLE is insufficient to cover the unit.

## **Division 79 - In What circumstances can a person's Student Learning Entitlement be re-credited?**

### **Clause 79-1 Re-crediting a person's SLE**

Provides that a higher education provider must, on the Secretary's behalf, re-credit a person's SLE with an amount equal to the EFTSL value of a unit of study if the person has been enrolled in the unit as part of a course of study with the provider, the person has not completed the requirements for the unit during the period during which the person undertook (or was to undertake) the unit, the provider is satisfied that special circumstances apply to the person (see section 79-5), the person applies in writing to the provider for re-crediting of the SLE and, either the application is made before the end of the application period under section 79-10 or the provider waives the requirement that the application be made before the end of that period on the ground that it would not be (or was) not possible for the application to be made before the end of that period.

### **Clause 79-5 Special circumstances**

Subclause 79-5(1) provides that, for the purposes of paragraph 79-1(c), special circumstances apply to the person if and only if the higher education provider receiving the application is satisfied that circumstances apply to the person that are beyond the person's control, do not make their full impact on the person until on or after the census date for the unit of study in question and make it impracticable for the person to complete the requirements for the unit during the period during which the person undertook (or was to undertake) the unit.

Subclause 79-5(2) provides that the Student Learning Entitlement Guidelines may specify circumstances in which a higher education provider will be satisfied of a matter referred to in subsection 79-5(1). A decision of a higher education provider under section 79-5 must be in accordance with any such guidelines.

### **Clause 79-10 Application period**

Subclause 79-10(1) provides that if the person applying under paragraph 79-1(d) for the re-crediting of the person's SLE in relation to a unit of study has withdrawn his/her enrolment in the unit and the higher education provider gives notice to the person that the withdrawal has taken effect, then the application period for the application is 12 months after the day specified in the notice as the day the withdrawal takes effect.

Subclause 79-10(2) provides that if subsection 79-10(1) does not apply the application period for the application is 12 months after the end of the period during which the person undertook (or was to undertake) the unit.

### **Clause 79-15 Dealing with applications**

Provides that, if the application is made before the end of the application period under section 79-10 or the higher education provider waives the requirement that the application be made



before the end of that period on the ground that it would not be (or was) not possible for the application to be made before the end of that period, then the provider must as soon as practicable consider the matter to which the application relates and notify the applicant of the decision on the application. The notice must include a statement of the reasons for the decision.

## **Division 82 - When is a unit of study covered by a person's Student Learning Entitlement?**

### **Clause 82-1 General rule**

Provides that the general rule is that a unit of study is *covered* by a person's SLE if the person enrolls in the unit as part of a course of study with a higher education provider and the EFTSL value of the unit does not exceed the amount of SLE available to the person at the time of enrolment in the unit.

### **Clause 82-5 Availability of a person's SLE**

Provides that the amount of a person's SLE that is *available* to the person at a particular time is the difference between the amount of the person's SLE at that time and the sum of the EFTSL values of all of the units of study (if any) in which the person is enrolled. Each unit of study (if any) in which the person is enrolled must be a unit of study for which the census date will occur later than that time, that was covered by the person's SLE at the time of enrolment and in relation to which the person is a Commonwealth supported student.

### **Clause 82-10 Additional SLE**

Provides that despite section 82-1, a unit of study is not *covered* by a person's SLE if the person has an additional SLE and the EFTSL value of the unit exceeds the amount of the person's ordinary SLE available to the person at the time of enrolment in the unit, unless the person is enrolled in (or proposes to enrol in) the unit as part of the course of study in relation to which the additional SLE applies.

### **Clause 82-15 Simultaneous enrolments that exceed a person's SLE**

Subclause 82-15(1) provides that if a person enrolls at the same time in more than one unit of study as part of one or more courses of study with one or more higher education providers and the sum of the EFTSL values of the units exceed the amount of the person's SLE available at the time of enrolment in the units, then despite section 82-1 a unit that is one of those units is *covered* by the person's SLE only if:

- the person chooses not to be a Commonwealth supported student in relation to one or more of the other units (*excluded units*); and
- the sum of the EFTSL values of all of those units that are not excluded units does not exceed the amount of the person's SLE that is available to the person at the time of enrolment in the units; and
- in a case where the person has an additional SLE, section 82-10 does not prevent the unit from being covered by the person's SLE.

Subclause 82-15(2) provides that a person's choice under paragraph 82-15(1)(c) [under which a person has the choice not to be a Commonwealth supported student in relation to one or more of the excluded units] in relation to a unit of study is made by notifying the higher education provider with which the person is enrolled in the unit on or before the census date for the unit.

## **Part 3-2 – HECS-HELP assistance**

### **Division 87 - Introduction**

#### **Clause 87-1 What this Part is about**

Students may be entitled to HECS-HELP assistance for units of study for which they are Commonwealth supported, if they meet certain requirements. The amount of assistance is based on the student contribution amounts charged for the units, less any up front payments. The assistance is paid to higher education providers to discharge the students' liability to pay student contribution amounts. Amounts of assistance under this Part may form part of a person's HECS-HELP debt that the Commonwealth recovers under Part 4-2.

#### **Clause 87-5 The HECS-HELP Guidelines**

Notes that HECS-HELP assistance is also dealt with in the HECS-HELP Guidelines and that the provisions of Part 3-2 indicate when a particular matter is or may be dealt with in these Guidelines.

## **Division 90 - Who is entitled to HECS-HELP assistance?**

### **Clause 90-1 Entitlement to HECS-HELP assistance**

Provides that a student is entitled to HECS-HELP assistance for a unit of study in which the student is enrolled with a higher education provider if:

- the student meets the citizenship or residency requirements under section 90-5; and
- the census date for the unit is on or after 1 January 2005; and
- the student is a Commonwealth supported student in relation to the unit; and
- either, at the time of enrolment the unit was covered by the student's Student Learning Entitlement, or the unit wholly consists of work experience in industry; and
- the student enrolled in the unit on or before the census date for the unit and immediately before the end of the census date remained so enrolled; and
- the student either meets the tax file number requirements or pays (as one or more up-front payments in relation to the unit) 80% of the student contribution amount for the unit; and
- on or before the census date the student has completed and signed a request for Commonwealth assistance in relation to the unit or in relation to the course of study of which the unit forms a part.

### **Clause 90-5 Citizenship or residency requirements**

Provides that the citizenship or residency requirements for HECS-HELP assistance for a unit of study are that the student in question is an Australian citizen or the holder of a permanent humanitarian visa (within the meaning of the regulations made under the *Migration Act 1958*) who will be resident in Australia for the duration of the unit. In determining whether the student will be resident in Australia for the duration of the unit, any period of residence outside Australia that cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit or is required for the purpose of completing a requirement of that unit is to be disregarded.

## **Division 93 - How are amounts of HECS-HELP assistance worked out?**

### **Clause 93-1 The amount of HECS-HELP assistance for a unit of study**

Provides that the amount of HECS-HELP assistance to which a student is entitled for a unit of study is the difference between the student contribution amount for the unit and the sum of any up-front payments made in relation to the unit.

### **Clause 93-5 Student contribution amounts**

Subclause 93-5(1) provides that the *student contribution amount* for a unit of study is the amount worked out as follows:

$$\text{Student contribution amount per place} \times \text{The *EFTSL value of the unit}$$

where:

*student contribution amount per place* is the amount that the higher education provider with which the unit is to be undertaken determines to be the student contribution amount per place for the unit.

Subclause 93-5(2) provides that the student contribution amount per place determined for the unit must not exceed the maximum student contribution amount per place for the unit.

Subclause 93-5(3) provides that the *student contribution amount* for a unit of study is nil if it is undertaken as part of an enabling course. Subsection 93-5(3) has effect despite subsection 93-5(1).

Subclause 93-5(4) provides that if an amount worked out by using the formula in subsection 93-5(1) is an amount made up of dollars and cents, the amount must be rounded down to the nearest dollar.

### **Clause 93-10 Maximum student contribution amounts per place**

Creates a table setting out the maximum student contribution amount per place. The table lists 12 items (column 1), the funding clusters (column 2) and the maximum student contribution amount per place (column 3). Provides that the *maximum student contribution amount per place* for a unit of study is the amount specified in the third column of the table in relation to that funding cluster or such other amount as is specified in the Commonwealth Grant Scheme Guidelines in relation to that funding cluster if the unit is included in a funding cluster that is referred to in column 2 of the table. If the unit is included in a funding cluster that has been varied or added by the Commonwealth Grant Scheme Guidelines, the *maximum student contribution amount per place* for a unit of study is the amount specified in the OSE Guidelines in relation to that funding cluster.

### **Clause 93-15 Up-front payments**

Provides that an *up-front payment* in relation to a unit of study for which a student contribution amount is payable, is a payment of a part of the student contribution amount for the unit, other than a payment of HECS-HELP assistance under Part 3-2 and the payment must be made on or before the census date for the unit. However, the payment is not an *up-front payment* to the extent that the payment or, if other up-front payments have already been made in relation to the unit, the sum of the payment and all of those other up-front payments exceeds 80% of the student contribution amount for the unit.

## **Division 96 - How are amounts of HECS-HELP assistance paid?**

### **Clause 96-1 Payments to higher education providers—no up-front payment of student contribution amount**

Provides that if a student is entitled to an amount of HECS-HELP assistance for a unit of study with a higher education provider and no up-front payments are made for the unit, the Commonwealth must (as a benefit to the student) lend to the student the amount of HECS-HELP assistance and pay to the provider the amount lent in discharge of the student's liability to pay the student contribution amount for the unit.

### **Clause 96-5 Payments to higher education providers—partial up-front payment of student contribution amount**

Subclause 96-5(1) provides that if a student is entitled to an amount of HECS-HELP assistance for a unit of study with a higher education provider, one or more up-front payments have been made for the unit, the sum of all the up-front payments made for all the units of study (that have the same census date as that unit and in relation to which the student is enrolled as a Commonwealth supported student) is less than 80% of the sum of the student contribution amounts for all of the units and the sum of all the up-front payments made for all of the units is \$500 or more, then the Commonwealth must pay the amount of HECS-HELP assistance in accordance with subsections 96-5(2) and (3).

Subclause 96-5(2) provides that the Commonwealth must (as a benefit to the student) lend to the student an amount equal to the difference between the amount of HECS-HELP assistance for the unit and the HECS-HELP discount for the unit and pay the provider the amount lent in discharge of that amount of the student's liability to pay the student contribution amount for the unit.

Subclause 96-5(3) provides that the Commonwealth must (as a benefit to the student) pay to the provider an amount equal to the HECS-HELP discount for the unit in discharge of that amount of the student's liability to pay the student contribution amount for the unit.

Subclause 96-5(4) provides that the *HECS-HELP discount* for a unit of study is an amount equal to one quarter of the sum of all the up-front payments made for the unit if the sum of those payments is \$500 or more.

### **Clause 96-10 Payments to higher education providers—full up-front payment of student contribution amount**

Provides that if a student is entitled to an amount of HECS-HELP assistance for a unit of study with a higher education provider, one or more up-front payments have been made for the unit and the sum all the up-front payments made for all the units of study (that have the same census date as that unit and in relation to which the student is enrolled as a Commonwealth supported student) is 80% of the sum of the student contribution amounts for all of the units, then the Commonwealth must (as a benefit to the student) pay to the provider the amount of HECS-HELP assistance for the unit in discharge of that amount of the student's liability to pay the student contribution amount for the unit.

## **Part 3-3 – FEE-HELP Assistance**

### **Division 101 - Introduction**

#### **Clause 101-1 What this Part is about**

Students may be entitled to FEE-HELP assistance for units of study for which they are not Commonwealth supported if they meet certain requirements. The amount of assistance is based on the tuition fees charged for the units, but there is a limit on the total amount of assistance that a student can receive. The assistance is paid to higher education providers to discharge the students' liability to pay tuition fees.

#### **Clause 101-5 The FEE-HELP Guidelines**

Notes that FEE-HELP assistance is also dealt with in the FEE-HELP Guidelines and that the provisions of Part 3-3 indicate when a particular matter is or may be dealt with in these Guidelines.



## **Division 104 - Who is entitled to FEE-HELP assistance?**

### ***Subdivision 104-A - Basic rules***

#### **Clause 104-1 Entitlement to FEE-HELP assistance**

Provides that a student is entitled to FEE-HELP assistance for a unit of study if:

- the student meets the citizenship or residency requirements under section 104-5; and
- the student's FEE-HELP balance is greater than zero; and
- the census date for the enrolment is on or after 1 January 2005; and
- the student is not a Commonwealth supported student in relation to the unit; and
- the unit meets the course requirements under section 104-10; and
- the unit is, or is to be, undertaken as part of a course of study or is a unit access to which was provided by Open Learning Australia or is part of a bridging course for overseas-trained professionals; and
- the student enrolled in the unit on or before the census date for the unit and immediately before the end of the census date, remained so enrolled; and
- the student meets the tax file number requirements; and
- the student has, on or before the census date, completed and signed a request for Commonwealth assistance in relation to the unit, or in relation to the course of study of which the unit forms a part; and
- the student has not been precluded from receipt of the FEE-HELP assistance because of section 107-15

However, the student is not entitled to FEE-HELP assistance for the unit if the student has already undertaken 8 or more other units of study to which access was provided by Open Learning Australia and the student did not successfully complete at least 50% of those other units.

#### **Clause 104-5 Citizenship or residency requirements**

Subclause 104-5(1) provides that the citizenship or residency requirements for FEE-HELP assistance for a unit of study are that the student in question is an Australian citizen, or the holder of a permanent humanitarian visa (within the meaning of the regulations made under the *Migration Act 1958*) who will be resident in Australia for the duration of the unit or, if the student is undertaking or is to undertake the unit as part of a bridging course for overseas-trained professionals, a permanent visa holder who will be resident in Australia for the duration of the unit.

Subclause 104-5(2) provides that, in determining (for the purposes of subsection 104-5(1)) whether the student will be resident in Australia for the duration of the unit, any period of residence outside Australia that cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit or is required for the purpose of completing a requirement of that unit is to be disregarded.

## **Clause 104-10 Course requirements**

Subclause 104-10(1) provides that the course requirements for FEE-HELP assistance for a unit of study are that if the unit is being undertaken as part of a course of study, the course is not a course that is subject to a determination under subsection 104-10(2) or is with a higher education provider that is subject to a determination under subsection 104-10(2). If the higher education provider who is providing the course is a non self-accrediting provider the course must be an accredited course.

Subclause 104-10(2) provides that the Minister may determine in writing that a specified course provided by a specified higher education provider does not meet the course requirements for FEE-HELP assistance or that all courses provided by a specified higher education provider do not meet the course requirements for FEE-HELP assistance.

## ***Subdivision 104-B – FEE-HELP balances***

### **Clause 104-15 A person's FEE-HELP balance**

Subclause 104-15(1) provides that if the FEE-HELP limit is greater than the sum of all of the amounts of FEE-HELP assistance that have previously been payable to them, then a person's ***FEE-HELP balance*** at a particular time is the difference between the person's FEE-HELP limit and that sum. Otherwise a person's FEE-HELP limit is zero.

Subclause 104-15(2) provides that, to avoid doubt, the sum referred to in subsection 104-15(1) includes amounts of FEE-HELP assistance that have been repaid.

### **Clause 104-20 The FEE-HELP limit**

Provides that the ***FEE-HELP limit*** is \$50,000 and is indexed under Part 5-6.

### **Clause 104-25 Re-crediting a person's FEE-HELP balance**

Provides that a higher education provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of FEE-HELP assistance that the person received for a unit of study if:

- the person has been enrolled in the unit with the provider; and
- the person has not completed the requirements for the unit during the period during which the person undertook or was to undertake the unit; and
- the provider is satisfied that special circumstances apply to the person (see section 104-30); and
- the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
- either the application is made before the end of the application period under section 104-35 or the provider waives the requirement that the application be made before the end of

that period on the ground that it would not be (or was) not possible for the application to be made before the end of that period.

### **Clause 104-30 Special circumstances**

Subclause 104-30(1) provides that, for the purposes of paragraph 104-25(c), special circumstances apply to the person if and only if the higher education provider receiving the application is satisfied that circumstances apply to the person that are beyond the person's control, do not make their full impact on the person until on or after the census date for the unit of study in question and make it impracticable for the person to complete the requirements for the unit during the period during which the person undertook or was to undertake the unit.

Subclause 104-30(2) provides that if the Student Learning Entitlement Guidelines specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph 79-5(1)(a), (b) or (c) any decision of a higher education provider under this section must be in accordance with any such guidelines.

### **Clause 104-35 Application period**

Subclause 104-35(1) provides that if the person applying under paragraph 104-25(d) for the re-crediting of their FEE-HELP balance in relation to a unit of study has withdrawn his/her enrolment in the unit and the higher education provider gives notice to the person that the withdrawal has taken effect, then the application period is 12 months after the day specified in the notice as the day the withdrawal takes effect.

Subclause 104-35(2) provides that if subsection 104-35(1) does not apply, the application period is 12 months after the period during which the person undertook (or was to undertake) the unit.

### **Clause 104-40 Dealing with applications**

Subclause 104-40(1) provides that if the application is made before the end of the application period under subsection 104-35 or the higher education provider waives the requirement that the application be made before the end of that period on the ground that it would not be (or was) not possible for the application to be made before the end of that period, then the provider must as soon as practicable consider the matter to which the application relates and notify the applicant of the decision on the application.

Subclause 104-40(2) provides that the notice must include a statement of the reasons for the decision.

## ***Subdivision 104-C - Bridging courses for overseas-trained professionals***

### **Clause 104-45 Meaning of *bridging course for overseas-trained professionals***

Subclause 104-45(1) provides that one or more subjects or units in which a person is enrolled with a higher education provider are together a ***bridging course for overseas-trained professionals*** if:

- the person holds an assessment statement issued by an assessing body for a listed professional occupation; and
- the statement is to the effect that, in the body's opinion, if the person were successfully to undertake additional studies of a kind specified in the statement, the person would meet the requirements for entry to that occupation; and
- the person undertakes, or proposes to undertake, those additional studies by enrolling, or proposing to enrol, on a non-award basis, in those subjects or units with the provider; and
- the total student load imposed on the person in relation to those subjects or units does not exceed the provider's maximum BOTP student load; and
- those subjects or units relate to the assessment statement.

Subclause 104-45(2) provides that one or more occupation-related courses of instruction in which a person is enrolled with a higher education provider are together a ***bridging course for overseas-trained professionals*** if:

- the person holds an assessment statement issued by an assessing body for a listed professional occupation; and
- the statement is to the effect that, in the body's opinion, if the person were to be successful in one or more examinations specified in the statement, the person would meet the requirements for entry to that occupation; and
- the person prepares, or proposes to prepare, for those examinations by enrolling, or proposing to enrol, on a non-award basis, in those occupation-related courses of instruction with the provider; and
- the total student load imposed on the person in relation to those courses does not exceed the provider's maximum BOTP student load; and
- those courses relate to the assessment statement.

Subclause 104-45(3) provides that a tuition and training program in which a person is enrolled with a higher education provider is a ***bridging course for overseas-trained professionals*** if:

- a person holds an assessment statement issued by an assessing body for a listed professional occupation; and
- the statement is to the effect that, in the body's opinion, if the person were to undertake a tuition and training program of a kind specified in the statement, the person would meet the requirements for entry to that occupation; and
- the person undertakes, or proposes to undertake, such a program by enrolling, or proposing to enrol, on a non-award basis, in a tuition and training program with the provider; and
- the total student load imposed on the person in relation to that program does not exceed the institution's maximum BOTP student load; and
- that program relates to the assessment statement.

### **Clause 104-50 Assessment statements**

Subclause 104-50(1) provides that an assessing body for a listed professional occupation may give to a person who holds a qualification that was awarded in a foreign country and relates to that occupation and the person proposes to seek entry to that occupation in Australia (or if the assessing body is an assessing body of a State or Territory, in that State or Territory), a written statement to the effect that, in the body's opinion, if the person were to do any or all of the things referred to in subsection 104-50(2), the person would meet the requirements for entry to that occupation. The statement is an *assessment statement*.

Subclause 104-50(2) provides that the statement may refer to any or all of the following:

- successfully undertaking additional studies of a kind specified in the statement;
- being successful in one or more examinations specified in the statement;
- successfully undertaking a tuition and training program of a kind specified in the statement.

Subclause 104-50(3) provides that section 104-50 does not affect the power of an assessing body to charge fees for an assessment statement under subsection 104-50(1).

### **Clause 104-55 Meaning of *assessing body***

Provides that an *assessing body* for a particular listed professional occupation is a person or body specified in the FEE-HELP Guidelines as an assessing body for that occupation. Section 104-55 does not prevent 2 or more persons or bodies from being assessing bodies for the same listed professional occupation. The FEE-HELP Guidelines may limit the specification of a person or body as an assessing body for a particular listed professional occupation to a particular State, the Australian Capital Territory or the Northern Territory. Such an assessing body is an *assessing body of a State or Territory*.

### **Clause 104-60 Meaning of *listed professional occupations***

Provides that a *listed professional occupation* is an occupation specified in the FEE-HELP Guidelines as a listed professional occupation. An occupation may be specified even if it is not one of the traditional professions.

### **Clause 104-65 Occupation includes part of an occupation**

Provides that an *occupation* includes a part of an occupation specified in the FEE-HELP Guidelines as an occupation in its own right. Clause 104-65 gives two examples of ways in which a part of an occupation can be specified.

### **Clause 104-70 Requirements for entry to an occupation**

Subclause 104-70(1) provides that the *requirements for entry* to a listed professional occupation are the educational requirements for entry to that occupation in Australia or, if the requirements

are referred to in an assessment statement given by an assessing body of a State or Territory for that occupation, the educational requirements for entry to that occupation in that State or Territory.

Subclause 104-70(2) provides that a requirement for entry to a listed professional occupation may be imposed by or under a law, be imposed by or under the rules of a body, consist of eligibility for membership of a body or arise as a generally accepted employment or industry practice.

Subclause 104-70(3) provides that neither of the following is a requirement for entry to a listed professional occupation:

- English language training relating to general aspects of written communication or verbal communication (or both); or
- being successful in the Occupational English Test administered by Language Australia or any other English language test where that test does not form an integral part of an occupation-related study unit, course of instruction or tuition and training program.

#### **Clause 104-75 Meanings of *student load* and *maximum BOTP student load***

Defines the *student load* for one or more units of study, for one or more occupation-related courses of instruction or for a tuition and training program as the study load determined (in accordance with FEE-HELP Guidelines) by the higher education provider providing the units, courses or program. It does not include any work experience in industry and is to be worked out on the assumption that the person undertaking (or proposing to undertake) the units, courses or program will not be required to repeat anything.

Defines the *maximum BOTP student load* for a higher education provider as the student load determined by the provider (in accordance with FEE-HELP Guidelines) to represent the load imposed on a full-time student for one year or the part-time equivalent of that load.

## **Division 107 - How are amounts of FEE-HELP assistance worked out?**

### **Clause 107-1 The amount of FEE-HELP assistance for a unit of study**

Provides that the amount of FEE-HELP assistance to which a student is entitled for a unit of study is the difference between the tuition fee for the unit and the sum of any up-front payments made in relation to the unit.

### **Clause 107-5 Up-front payments**

Provides that an *up-front payment* in relation to a unit of study for which a tuition fee is payable is a payment of all or part of the tuition fee for the unit, other than a payment of FEE-HELP assistance under Part 3-3. The payment must be made on or before the census date for the unit.

### **Clause 107-10 Amounts of FEE-HELP assistance must not exceed the FEE-HELP balance**

Subclause 107-10(1) provides that the amount of FEE-HELP assistance to which a student is entitled for a unit of study is an amount equal to the student's FEE-HELP balance on the census date for the unit if there is no other unit of study (with the same census date) for which the student is entitled to FEE-HELP assistance and the amount of FEE-HELP assistance to which the student would be entitled under section 107-1 for the unit would exceed that FEE-HELP balance.

Subclause 107-10(2) provides that, if the sum of the amount of FEE-HELP assistance to which a student would be entitled under section 107-1 for a unit of study and any other amounts of FEE-HELP assistance to which the student would be entitled under that section for other units that have the same census date as that unit, would exceed the student's FEE-HELP balance on the census date for the unit then, despite subsection 107-1, the total amount of FEE-HELP assistance to which the student is entitled for all of those units is an amount equal to that FEE-HELP balance.

Subclause 107-10(3) provides that if the student has enrolled in the units with more than one higher education provider, the student must notify each provider of the proportion of the total amount of FEE-HELP assistance that is to be payable in relation to the units in which the student has enrolled with that provider.

### **Clause 107-15 Limits on amounts of FEE-HELP assistance relating to particular higher education providers**

Subclause 107-15(1) provides that the FEE-HELP Guidelines may specify that the sum of all amounts of FEE-HELP assistance that would (apart from this section) be payable for units of study undertaken with a particular higher education provider during a particular period is not to exceed a specified amount.

Subclause 107-15(2) provides that the provider must select which of the students who (apart from section 107-15) are entitled to FEE-HELP assistance, are to receive FEE-HELP assistance

during the period. The selection must be carried out in accordance with the FEE-HELP Guidelines.

Subclause 107-15(3) provides that the FEE-HELP Guidelines may set out procedures that higher education providers must follow in deciding whether to select students for receipt of FEE-HELP assistance.

Subclause 107-15(4) provides that without limiting subsection 107-15(3), those procedures may include one or more of the following:

- applications by students for selection for receipt of FEE-HELP assistance;
- matters higher education providers must consider in deciding which students to select;
- the basis on which higher education providers must decide which students to select;
- deadlines on higher education providers for making those decisions;
- notifying applicants of the decisions on their applications.



## **Division 110 - How are amounts of FEE-HELP assistance paid?**

### **Clause 110-1 Payments to higher education providers**

Provides that if a student is entitled to an amount of FEE-HELP assistance for a unit of study with a higher education provider, the Commonwealth must (as a benefit to the student) lend the student the amount of FEE-HELP assistance and pay the amount lent to the provider in discharge of the student's liability to pay the tuition fee for the unit.

### **Clause 110-5 Effect of FEE-help balance being re-credited**

Provides that if under section 104-25 a higher education provider re-credits a person's FEE-HELP balance with an amount relating to FEE-HELP assistance for a unit of study, the provider must pay to the Commonwealth an amount equal to the amount of FEE-HELP assistance to which the person was entitled for the unit.

## **Part 3-4 – OS-HELP Assistance**

### **Division 115 - Introduction**

#### **Clause 115-1 What this Part is about**

Students may be entitled to OS-HELP assistance for periods of study with overseas higher education institutions if they meet certain requirements. In particular, their higher education provider must have selected them for OS-HELP assistance. The amount of OS-HELP assistance is limited to a maximum amount for each period of study, and only 2 such periods can attract OS-HELP assistance.

#### **Clause 115-5 The OS-HELP Guidelines**

Notes that OS-HELP assistance is also dealt with in the OS-HELP Guidelines. The provisions of Part 3-4 indicate when a particular matter is or may be dealt with in those Guidelines.

## **Division 118 - Who is entitled to OS-HELP assistance?**

### **Clause 118-1 Entitlement to OS-HELP assistance**

Subclause 118-1(1) provides that a student is entitled to OS-HELP assistance in relation to a period of 6 months if:

- the student meets the citizenship or residency requirements under section 118-5; and
- the student has not received OS-HELP assistance on more than one other occasion; and
- the student is enrolled in a course of study with a Table A higher education provider; and
- the student has already completed units of study that count towards the course requirements for that course that have a total EFTSL value of at least one EFTSL and in relation to which the student was a Commonwealth supported student; and
- the student meets the overseas study requirements under section 118-10; and
- on the completion of that study outside Australia, the student will have to complete units of study that have a total EFTSL value of at least one EFTSL in order to complete the course requirements for that course of study; and
- the student meets the tax file number requirements; and
- the student has completed and signed a request for Commonwealth assistance in relation to that course of study; and
- the provider has selected the student for receipt of OS-HELP assistance in relation to the period (see section 118-15).

Subclause 118-1(2) provides that the student is not entitled to OS-HELP assistance in relation to that period if another higher education provider has granted OS-HELP assistance to the student in relation to that period or a period that overlaps with that period.

### **Clause 118-5 Citizenship or residency requirements**

Provides that the citizenship or residency requirements for OS-HELP assistance are that the student in question is an Australian citizen or the holder of a permanent humanitarian visa (within the meaning of the regulations made under the *Migration Act 1958*).

### **Clause 118-10 Overseas study requirements**

Provides that the overseas study requirements for OS-HELP assistance are that:

- the student in question is enrolled in full-time study with an overseas higher education institution and will be outside Australia while undertaking that study and the study commences on or after 1 January 2005; and
- there is an arrangement, between the overseas institution and the higher education provider with which the student is enrolled, for the provider's students to undertake study at the institution; and
- under that arrangement the student's study outside Australia will count towards the course requirements of the course of study in which the student is enrolled with the provider.

## **Clause 118-15 Selection of students for receipt of OS-HELP assistance**

Subclause 118-15(1) provides that the OS-HELP Guidelines may set out procedures that higher education providers must follow in deciding whether to select students for receipt of OS-HELP assistance.

Subclause 118-15(2) provides that, without limiting subsection 118-15(1), those procedures may include one or more of the following:

- applications by students for selection for receipt of OS-HELP assistance;
- the basis on which higher education providers will select students for receipt of OS-HELP assistance;
- matters higher education providers must consider in deciding which students to select;
- deadlines on higher education providers for making those decisions;
- notifying applicants of the decisions on their applications.

Subclause 118-15(3) provides that any decision by a higher education provider about whether to select a student for receipt of OS-HELP assistance must be made in accordance with the OS-HELP Guidelines. Those procedures may include one or more of the following;

- applications by students for selection for receipt of OS-HELP assistance;
- the basis on which higher education providers will select students for receipt of OS-HELP assistance;
- matter higher education providers must consider in deciding which students to select;
- deadlines on higher education providers for making those decisions;
- notifying applicants of the decisions on their applications.

Subclause 118-15(4) provides that, without limiting the matters that may be included in the OS-HELP Guidelines made for the purposes of subsection 118-15(3), those guidelines may deal with the number of its students whom higher education providers may select for receipt of OS-HELP assistance or how that number is to be determined.

## **Division 121 - How are amounts of OS-HELP assistance worked out?**

### **Clause 121-1 The amount of OS-HELP assistance for a period**

Provides that the amount of OS-HELP assistance to which a student is entitled for a period of 6 months is the amount determined by the higher education provider to which the student applied for selection for receipt of the assistance. The amount must not exceed the amount specified in the application or the maximum OS-HELP amount for a period of 6 months. If the provider has a minimum OS-HELP amount, the amount must not be less than the higher education provider's minimum OS-HELP amount. The OS-HELP Guidelines may specify requirements for how amounts of OS-HELP assistance are to be determined and amounts of OS-HELP assistance are to be determined in accordance with any such requirements.

### **Clause 121-5 Maximum OS-HELP amount**

Provides that the *maximum OS-HELP amount*, for a period of 6 months, is \$5,000.

### **Clause 121-10 Minimum OS-HELP amounts**

Provides that a higher education provider may determine, in writing, its *minimum OS-HELP amount*. Such a determination has effect until it is replaced by a later determination or it is revoked. The OS-HELP Guidelines may specify requirements for how minimum OS-HELP amounts are to be determined and minimum OS-HELP amounts are to be determined in accordance with any such requirements.

## **Division 124 - How are amounts of OS-HELP assistance paid?**

### **Clause 124-1 Amounts of OS-HELP assistance are lent to students**

Provides that if a student is entitled to an amount of OS-HELP assistance for a period of 6 months, the Commonwealth must (as a benefit to the student) lend the student the amount of OS-HELP assistance. The higher education provider that selected the student for receipt of OS-HELP assistance in relation to the period must (on the Commonwealth's behalf) pay the student the amount lent. The Commonwealth must make payments to the higher education provider on account of amounts the provider pays under this section on the Commonwealth's behalf.

## **Chapter 4 - Repayment of loans**

### **Division 129 - Introduction**

#### **Clause 129-1 What this Chapter is about**

Loans that the Commonwealth makes to students under Chapter 3 are repayable under this Chapter. Each loan is incorporated into either the person's accumulated HECS-HELP debt or accumulated FEE-HELP/OS-HELP debt, depending on the form of assistance under Chapter 3 to which the loan relates (see Part 4-1). Under Part 4-2, the accumulated debts can be repaid in 2 ways:

- a person may make voluntary repayments (which may attract a repayment bonus); or
- compulsory repayments (based on a person's income) are made using the system for payment of income tax.

## **Part 4-1 - Indebtedness**

### **Division 134 - Introduction**

#### **Clause 134-1 What this Part is about**

A person incurs a HELP debt if he/she receives, as HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, a loan from the Commonwealth under Chapter 3. HECS-HELP debts are incorporated into the person's accumulated HECS-HELP debt. FEE HELP debts and OS HELP debts are incorporated into the person's accumulated FEE-HELP/OS-HELP debt. These accumulated debts represent the amount that the person is obliged to repay.



## **Division 137 - How do HELP debts arise?**

### **Clause 137-1 HELP debts**

Provides that HECS-HELP debts, FEE-HELP debts and OS-HELP debts are *HELP debts*.

### **Clause 137-5 HECS-HELP debts**

Subclause 137-5(1) provides that a person incurs a *HECS-HELP debt* to the Commonwealth if, under section 96-1 or 96-5, the Commonwealth makes a loan to the person and uses the amount lent to make a payment in discharge of the person's liability to pay the student contribution amount for a unit of study.

Subclause 137-5(2) provides that the amount of the HECS-HELP debt is the amount of the loan.

Subclause 137-5(3) provides that the HECS-HELP debt is taken to have been incurred immediately after the census date for the person's enrolment in the unit, whether or not the Commonwealth has made a payment in respect of the student contribution amount.

Subclause 137-5(4) provides that a person's HECS-HELP debt in relation to a unit of study is taken to be remitted if the person's SLE is re-credited under Division 79 in relation to the unit.

### **Clause 137-10 FEE-HELP debts**

Subclause 137-10(1) provides that a person incurs a *FEE-HELP debt* to the Commonwealth if under section 110-1 the Commonwealth makes a loan to the person and uses the amount lent to make a payment in discharge of the person's liability to pay the tuition fee for a unit of study.

Subclause 137-10(2) provides that the amount of the FEE-HELP debt is the amount of the loan.

Subclause 137-10(3) provides that the FEE-HELP debt is taken to have been incurred immediately after the census date for the person's enrolment in the unit, whether or not the Commonwealth has made a payment in respect of the tuition fee.

Subclause 137-10(4) provides that a person's FEE-HELP debt in relation to a unit of study is taken to be remitted if the person's FEE-HELP balance is re-credited under section 104-25 in relation to the unit.

### **Clause 137-15 OS-HELP debts**

Subclause 137-15(1) provides that a person incurs an *OS-HELP debt* to the Commonwealth if under section 124-1 the Commonwealth makes a loan to the person.

Subclause 137-15(2) provides that the amount of the OS-HELP debt is the amount of the loan.

Subclause 137-15(3) provides that the OS-HELP debt is taken to have been incurred on the day on which a higher education provider (on the Commonwealth's behalf) paid the amount lent to the person.

**Clause 137-20 HELP debt discharged by death**

Provides that upon the death of a person who owes a HELP debt to the Commonwealth, the debt is taken to have been paid.

## **Division 140 - How are accumulated HECS-HELP debts worked out?**

### ***Subdivision 140-A - Outline of this Division***

#### **Clause 140-1 Outline of this Division**

There are 2 stages to working out a person's accumulated HECS-HELP debt for a financial year.

The former accumulated HECS-HELP debt is worked out by adjusting the preceding financial year's accumulated HECS-HELP debt to take account of changes in the Consumer Price Index, the HECS-HELP debts that the person incurs during the last 6 months of the preceding financial year, voluntary repayments of the debt and compulsory repayment amounts in respect of the debt (See Subdivision 140-C.)

The person's accumulated HECS-HELP debt is worked out from his/her former accumulated HECS-HELP debt, the HECS-HELP debts that he/she incurs during the first 6 months of the financial year and voluntary repayments of HECS-HELP debts during the 12 months preceding 1 June in the financial year (See Subdivision 140-C).

Incurring that financial year's accumulated HECS-HELP debt discharges the previous accumulated HECS-HELP debt and HECS-HELP debts under Part 4-1 (see section 372-3).

### ***Subdivision 140-B - Former accumulated HECS HELP debts***

#### **Clause 140-5 Working out a former accumulated HECS-HELP debt**

Subclause 140-5(1) provides that a person's *former accumulated HECS-HELP debt*, in relation to the person's accumulated HECS-HELP debt for a financial year is worked out by multiplying the amount worked out using a six step method statement (set out in the subsection) by the HELP debt indexation factor for 1 June in that financial year.

Subclause 140-5(2) provides that for the purposes of section 140-5, an assessment (or an amendment of an assessment) is taken to have been made on the day specified in the notice of assessment (or notice of amended assessment) as the date of issue of that notice.

#### **Clause 140-10 HELP debt indexation factor**

Subclause 140-10(1) provides that the *HELP debt indexation factor* for 1 June in a financial year is the number (rounded to 3 decimal places) worked out in accordance with a three step method statement set out in the subsection.

Subclause 140-10(2) provides that for the purposes of rounding a HELP debt indexation factor, the third decimal place is rounded up if, apart from the rounding, the factor would have 4 or more decimal places and the fourth decimal place would be a number greater than 4.

## **Clause 140-15 Index numbers**

Subclause 140-15(1) provides that the *index number* for a quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

Subclause 140-15(2) provides that subject to subsection 140-15(3), if at any time before or after the commencement of the Act the Australian Statistician has published or publishes an index number in respect of a quarter and that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter, then the publication of the later index is disregarded for the purposes of this section.

Subclause 140-15(3) provides that if, at any time before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then in applying this section after the change took place or takes place, regard should be had only to index numbers published in terms of the new reference base.

## **Clause 140-20 Publishing HELP debt indexation factors**

Provides that the Commissioner must cause to be published before 1 June in each financial year the HELP debt indexation factor for that 1 June.

### ***Subdivision 140-C - Accumulated HECS-HELP debts***

## **Clause 140-25 Working out an accumulated HECS-HELP debt**

Subclause 140-25(1) provides that a person's *accumulated HECS-HELP debt*, for a financial year is worked out as follows:

$$\text{Former accumulated HECS-HELP debt} + \text{HECS-HELP debts incurred} - \text{HECS-HELP debt repayments}$$

where:

***former accumulated HECS-HELP debt*** is the person's former accumulated HECS-HELP debt in relation to that accumulated HECS-HELP debt.

***HECS-HELP debt repayments*** is the sum of all of the voluntary repayments (if any) paid, on or after 1 July in the preceding financial year and before the next 1 June, in reduction of the HECS-HELP debts incurred on or after 1 July in the preceding financial year.

***HECS-HELP debts incurred*** is the sum of the amounts of all of the HECS-HELP debts (if any) that the person incurred during the first 6 months of the financial year.

Subclause 140-25(2) provides that the person incurs the accumulated HECS-HELP debt on 1 June in the financial year.

Subclause 140-25(3) provides that the first financial year for which a person can have an accumulated HECS-HELP debt is the financial year starting on 1 July 2005.

**Clause 140-30 Rounding of amounts**

Provides that if (apart from section 140-30) a person's accumulated HECS-HELP debt would be an amount consisting of a number of whole dollars and a number of cents, the number of cents is disregarded. In addition, if (apart from section 140-30) a person's accumulated HECS-HELP debt would be an amount of less than one dollar, then the person's accumulated HECS-HELP debt is taken to be zero.

**Clause 140-35 Accumulated HECS-HELP debt discharges earlier debts**

Subclause 140-35(1) provides that the accumulated HECS-HELP debt that a person incurs on 1 June in a financial year discharges (or discharges the unpaid part of) any HECS-HELP debt that the person incurred during the calendar year preceding that day and any accumulated HECS-HELP debt that the person incurred on the preceding 1 June.

Subclause 140-35(2) provides that nothing in subsection 140-35(1) affects the application of Division 137 or section 140-25.

**Clause 140-40 Accumulated HECS-HELP debt discharged by death**

Provides that upon the death of a person who has an accumulated HECS-HELP debt, the accumulated HECS-HELP debt is taken to be discharged. To avoid doubt, this section does not affect any compulsory repayment amounts required to be paid in respect of the accumulated HECS-HELP debt, whether or not those amounts were assessed before the person's death.

## **Division 143 - How are accumulated FEE-HELP/OS-HELP debts worked out?**

### ***Subdivision 143-A - Outline of this Division***

#### **Clause 143-1 Outline of this Division**

Subclause 143-1(1) provides that there are 3 stages to working out a person's accumulated FEE-HELP/OS-HELP debt for a financial year. These 3 stages are set out in subsections 143-1(2), (3) and (4).

##### *Stage 1*

Subclause 143-1(2) provides that the person's former unindexed FEE-HELP/OS-HELP debt is worked out by adjusting the preceding financial year's accumulated FEE-HELP/OS-HELP debt to take account of the FEE-HELP/OS-HELP debts that he/she incurs during the last 6 months of the preceding financial year, voluntary repayments of the debt and compulsory repayment amounts in respect of the debt so far as they are not taken into account in working out an accumulated HECS-HELP debt (see Subdivision 143-B.)

##### *Stage 2*

Subclause 143-1(3) provides that the former indexed FEE-HELP/OS-HELP debt is worked out by adjusting the person's former unindexed FEE-HELP/OS-HELP debt to take account of changes in the Consumer Price Index and (for some financial years) an interest rate of 3.5% (see Subdivision 143-C.)

##### *Stage 3*

Subclause 143-1(4) provides that the person's accumulated FEE-HELP/OS-HELP debt is worked out from his/her former indexed FEE-HELP/OS-HELP debt, the FEE-HELP debts and OS-HELP debts that he/she incurs during the first 6 months of the financial year and voluntary repayments of FEE-HELP debts and OS-HELP debts during the 12 months preceding 1 June in the financial year (see Subdivision 143-D.)

### ***Subdivision 143-B - Former unindexed FEE-HELP/OS-HELP debts***

#### **Clause 143-5 Working out a former unindexed FEE-HELP/OS-HELP debt**

Subclause 143-5(1) provides that a person's *former unindexed FEE-HELP/OS-HELP debt*, in relation to the financial year is worked out using a six step method statement set out in the subsection.

Subclause 143-5(2) provides that, in applying Step 4, 5 or 6 of the method statement, any compulsory repayment amount of the person (or any increase or reduction in that amount) must be disregarded to the extent (if any) that the amount, increase or reduction is taken into account in the corresponding step in the method statement in section 140-5. A detailed example is provided below the subsection.

Subclause 143-5(3) provides that for the purposes of section 143-5 an assessment or an amendment of an assessment is taken to have been made on the day specified in the notice of assessment (or notice of amended assessment) as the date of that notice.

***Subdivision 143-C - Former indexed FEE-HELP/OS-HELP debts***

**Clause 143-10 Working out a former indexed FEE-HELP/OS-HELP debt**

Subclause 143-10(1) provides that a person's ***former indexed FEE-HELP/OS-HELP debt***, in relation to the person's accumulated FEE-HELP/OS-HELP debt for a financial year to which subsection 143-10(1) applies, is worked out by multiplying the person's former unindexed FEE-HELP/OS-HELP debt in relation to the financial year by the sum of the HELP debt indexation factor for 1 June in that financial year and the factor of 0.035.

Subclause 143-10(2) provides that subsection 143-10(1) applies to a financial year if it is the financial year during which the person first incurred any FEE-HELP debt or OS-HELP debt (whether or not that debt that has been repaid) or it is any of the 9 financial years following that financial year.

Subclause 143-10(3) provides that a person's ***former indexed FEE-HELP/OS-HELP debt***, in relation to the person's accumulated FEE-HELP/OS-HELP debt for a financial year to which subsection 143-10(1) does not apply is worked out by multiplying the person's former unindexed FEE-HELP/OS-HELP debt in relation to the financial year by the HELP debt indexation factor for 1 June in that financial year.

***Subdivision 143-D - Accumulated FEE-HELP/OS-HELP debts***

**Clause 143-15 Working out an accumulated FEE-HELP/OS-HELP debt**

Subclause 143-15(1) provides that a person's ***accumulated FEE-HELP/OS-HELP debt***, for a financial year is worked out as follows:

$$\text{Former accumulated FEE-HELP/OS-HELP debt} + \text{FEE-HELP and OS-HELP debts incurred} - \text{FEE-HELP and OS-HELP debt repayments}$$

where:

***FEE-HELP and OS-HELP debt repayments*** is the sum of all of the voluntary repayments (if any) paid, on or after 1 July in the preceding financial year and before the next 1 June, in reduction of the HELP debts incurred on or after 1 July in the preceding financial year that are not HECS-HELP debts.

***FEE-HELP and OS-HELP debts incurred*** is the sum of the amounts of all of the FEE-HELP debts (if any) and OS-HELP debts (if any) that the person incurred during the first 6 months of the financial year.

***former accumulated FEE-HELP/OS-HELP debt*** is the person's former indexed FEE-HELP/OS-HELP debt in relation to that accumulated FEE-HELP/OS-HELP debt.

Subclause 143-15(2) provides that the person incurs the accumulated FEE-HELP/OS-HELP debt on 1 June in the financial year.

Subclause 143-15(3) provides that the first financial year for which a person can have an accumulated FEE-HELP/OS-HELP debt is the financial year starting on 1 July 2005.

**Clause 143-20 Rounding of amounts**

Provides that if, apart from section 143-20, a person's accumulated FEE-HELP/OS-HELP debt would be an amount consisting of a number of whole dollars and a number of cents, the number of cents is disregarded. In addition if, apart from section 143-20, a person's accumulated FEE-HELP/OS-HELP debt would be an amount of less than one dollar, the person's accumulated FEE-HELP/OS-HELP debt is taken to be zero.

**Clause 143-25 Accumulated FEE-HELP/OS-HELP debt discharges earlier debts**

Subclause 143-25(1) provides that the accumulated FEE-HELP/OS-HELP debt that a person incurs on 1 June in a financial year discharges (or discharges the unpaid part of) any FEE-HELP debt or OS-HELP debt that the person incurred during the calendar year preceding that day and any accumulated FEE-HELP/OS-HELP debt that the person incurred on the preceding 1 June.

Subclause 143-25(2) provides that nothing in subsection 143-25(1) affects the application of Division 137, Subdivision 143-B or 143-C or section 143-15.

**Clause 143-30 Accumulated FEE-HELP/OS-HELP debt discharged by death**

Provides that, upon the death of a person who has an accumulated FEE-HELP/OS-HELP debt, the accumulated FEE-HELP/OS-HELP debt is taken to be discharged. Section 143-30 does not affect any compulsory repayment amounts required to be paid in respect of the accumulated FEE-HELP/OS-HELP debt, whether or not those amounts were assessed before the person's death.



## **Part 4-2 - Discharge of indebtedness**

### **Division 148 - Introduction**

#### **Clause 148-1 What this Part is about**

A person who owes a debt to the Commonwealth under this Chapter may make voluntary repayments. In some cases these may attract a 10% repayment bonus. The person is required to make repayments, of amounts based on his/ her income if that income is above a particular amount. The Commissioner of Taxation makes assessments of what amounts are to be repaid and the amounts are collected in the same way as amounts of income tax.

## **Division 151 - How is indebtedness voluntarily discharged?**

### **Clause 151-1 Voluntary repayments in respect of debts**

Provides that a person may at any time make a payment in respect of a debt that the person owes to the Commonwealth under Chapter 4. The payment must be made to the Commissioner for Taxation.

### **Clause 151-5 Voluntary repayment bonus relating to HECS-HELP debts**

Subclause 151-5(1) provides that the effect that a payment under section 151-1 has on a HECS-HELP debt or an accumulated HECS-HELP debt that a person (the *debtor*) owes to the Commonwealth under Chapter 4 is the effect specified in subsection 151-5(2) or (3) if the amount of the payment is \$500 or more or sufficient to be taken under subsection 155-5(2) to pay off the total debt and the payment is in respect of one or more HECS-HELP debts or an accumulated HECS-HELP debt.

Subclause 151-5(2) provides that the debtor is taken to pay off the total debt if the payment in respect of the debt is equal to, or exceeds, an amount worked out as follows:

$$\frac{\text{Amount of the debt outstanding}}{1.1}$$

Subclause 151-5(3) provides that if the debtor is not taken to pay off the total debt, the outstanding amount of the debt is to be reduced by an amount worked out as follows:

$$\text{Amount of the payment} \times 1.1$$

Subclause 151-5(4) provides that if an amount worked out using the formula in subsection 151-5(2) or (3) is an amount made up of dollars and cents, the amount must be rounded down to the nearest dollar.

### **Clause 151-10 Application of voluntary repayments**

Provides that any money a person pays under Division 151 to meet the person's debts to the Commonwealth under Chapter 4 is to be applied in payment of those debts as the person directs at the time of the payment. If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:

- first, in discharge or reduction of any accumulated HECS-HELP debt of the person;
- secondly, in discharge or reduction of any accumulated FEE-HELP/OS-HELP debt of the person;
- thirdly, in discharge or reduction of any HECS-HELP debt of the person or, if there is more than one such debt, those debts in the order in which they were incurred;
- fourthly, in discharge or reduction of any FEE-HELP debt or OS-HELP debt of the person or, if there is more than one such debt, those debts in the order in which they were incurred.

### **Clause 151-15 Refunding of payments**

Provides that if a person pays an amount to the Commonwealth under Division 151 and the amount exceeds the sum of the total amount that the person owed to the Commonwealth under Chapter 4 and the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*), then the Commonwealth must refund to the person an amount equal to that excess.

Under taxation legislation, interest is payable if the Commonwealth is late in paying refunds [Pt IIIA, *Taxation (interest on Overpayments and Early Payments) Act 1983*].

## **Division 154 - How is indebtedness compulsorily discharged?**

### ***Subdivision 154-A - Liability to repay amounts***

#### **Clause 154-1 Liability to repay amounts**

Sub-clause 154-1(1) provides that if a person's repayment income for an income year exceeds the minimum repayment income for the income year and on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year the person had an accumulated HECS-HELP debt, an accumulated FEE-HELP/OS-HELP debt, or both, then the person is liable to pay to the Commonwealth in accordance with Division 154 the amount worked out under section 154-20 in reduction of the person's repayable debt.

Sub-clause 154-1(2) provides that a person is not liable under section 154-1 to pay an amount for an income year if, under section 8 of the *Medicare Levy Act 1986* no Medicare levy is payable by the person on the person's taxable income for the income year or the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

#### **Clause 154-5 Repayment income**

Subclause 154-5(1) provides that a person's ***repayment income*** for an income year is an amount equal to the sum of:

- the person's taxable income for the income year; and
- if a person has a net rental property loss for the income year, the amount of that net rental property loss; and
- if the person is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) and has a reportable fringe benefits total (within the meaning of that Act) for the income year - the reportable fringe benefits total for the income year; and
- if the person has exempt foreign income for the income year—the amount of that exempt foreign income.

Subclause 154-5(2) provides that the person's ***rental property loss*** is the amount (if any) by which the amount of the person's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property in Australia exceeds the person's gross rental property income.

Subclause 154-5(3) provides that for the purposes of subsection 154-5(2), any rental property income that the person derives as a member of a partnership is to be disregarded.

Subclause 154-5(4) provides that the person's ***exempt foreign income*** is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.

Subclause 154-5(5) provides that, for the purposes of subsection 154-5(5), any capital losses and outgoings are to be disregarded.

### **Clause 154-10 Minimum repayment income**

Provides that the *minimum repayment income* for the 2005-06 income year is \$30,000 and the *minimum repayment income* for a later income year – is that amount as indexed under section 154-25..

### **Clause 154-15 Repayable debt for an income year**

Subclause 154-15(1) provides that a person's *repayable debt* for an income year is the sum of the person's accumulated HECS-HELP debt (if any) and the person's accumulated FEE-HELP/OS-HELP debt (if any) referred to in paragraph 154-15(1)(b) in relation to that income year or, if one or more amounts have been paid in reduction of those debts (or have been assessed under section 154-35 to be payable in respect of those debts), the amount (if any) remaining after deducting from the sum of those debts the amount (or sum of the amounts) so paid or assessed to be payable.

Subclause 154-15(2) provides that a reference in paragraph 154-15(1)(b) to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

### ***Subdivision 154-B - Amounts payable to the Commonwealth***

### **Clause 154-20 Amounts payable to the Commonwealth**

Creates a table setting out “applicable percentages” for the purposes of calculating the amount that a person is liable to pay to the Commonwealth under section 154-1 in respect of an income year. The table lists 9 items (column 1), a description of various repayment incomes for a person (column 2) and the percentage applicable to each repayment income (column 3). Clause 154-20 provides that the amount that a person is liable to pay under section 154-1 in respect of an income year, is an amount equal to so much of the person's repayable debt for the income year as does not exceed the percentage of the person's repayment income that is applicable under the table.

### **Clause 154-25 Indexation**

Subclause 154-25(1) provides that, for the 2006-07 income year or a later income year, the minimum repayment income and the amounts referred to in paragraph (a) of the second column of items 1 to 8 of the table in section 154-20 are indexed by multiplying the corresponding amounts for the 2005-06 income year by the amount worked out using the formula:

$$\frac{\text{*AWE for that income year}}{\text{AWE for the 2005-06 income year}}$$

Subclause 154-25(2) provides that *AWE* for an income year is the number of dollars in the sum of the average weekly earnings for all employees (total earnings, seasonally adjusted) for the reference period in the quarter ending on 31 December immediately before the income year, (as

published by the Australian Statistician) and the average weekly earnings for all employees for the reference period in each of the 3 quarters immediately before that quarter (as published by the Australian Statistician).

Subclause 154-25(3) provides that the *reference period* in a particular quarter in a year is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

Subclause 154-25(4) provides that if an amount worked out under section 154-25 is an amount made up of dollars and cents the amount must be rounded down to the nearest dollar.

### **Clause 154-30 Publishing indexed amounts**

Provides that before the start of the 2006-07 income year (or a later income year) the Minister must publish the minimum repayment income and the amounts referred to in paragraph (a) of the second column of items 1 to 8 of the table in section 154-20, for that income year in the *Gazette*.

### ***Subdivision 154-C - Assessments***

#### **Clause 154-35 Commissioner may make assessments**

Provides that, relying on any information in the Commissioner's possession (whether from a return or otherwise), the Commissioner may make an assessment of the sum of the person's accumulated HECS-HELP debt and the person's accumulated FEE-HELP/OS-HELP debt on 1 June immediately before the making of the assessment and the amount required to be paid in respect of that sum under section 154-1.

#### **Clause 154-40 Notification of notices of assessment of tax**

Provides that if:

- (a) the Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an income year under section 174 of the *Income Tax Assessment Act 1936*; and
  - (b) the Commissioner has made (in respect of the person) an assessment under section 154-35 of this Act of the amounts referred to in that section; and
  - (c) notice of the assessment under that section has not been served on the person;
- then notice of the assessment under that section may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

#### **Clause 154-45 Commissioner may defer making assessments**

Subclause 154-45(1) provides that a person may apply in writing to the Commissioner for deferral of the making of an assessment in respect of the person under section 154-35.

Subclause 154-45(2) provides that the application must specify the income year for which the deferral is being sought and the reasons for seeking the deferral.

Subclause 154-45(3) provides that the income year specified in the application must be the income year in which the person makes the application, the immediately preceding income year or the immediately succeeding income year.

Subclause 154-54(4) provides that, on application by a person under section 154-45, the Commissioner may defer making an assessment in respect of the person under section 154-35 if the Commissioner is of the opinion that if the assessment were made, payment of the assessed amount would either cause serious hardship to the person, or there are other special reasons that make it fair and reasonable to defer making the assessment.

Subclause 154-45(5) provides that the Commissioner may defer making the assessment for any period that he/she thinks appropriate.

Subclause 154-45(6) provides that as soon as practicable after an application is made under section 154-45 the Commissioner must consider the matter to which the application relates and notify the applicant of the Commissioner's decision on the application.

#### **Clause 154-50 Commissioner may amend assessments**

Subclause 154-50(1) provides that a person may apply in writing to the Commissioner for an amendment of an assessment made in respect of the person under section 154-35 so that the amount payable under the assessment is reduced or no amount is payable under the assessment.

Subclause 154-50(2) provides that the application must be made no later than 2 years after the end of the income year to which the assessment relates or must specify the reasons justifying a later application.

Subclause 154-50(3) provides that, on application by a person under section 154-50, the Commissioner may amend an assessment made in respect of the person under section 154-35 so that the amount payable under the assessment is reduced or no amount is payable under the assessment if the Commissioner is of the opinion that payment of the assessed amount has caused (or would cause) serious hardship to the person or there are other special reasons that make it fair and reasonable to make the amendment.

Subclause 154-50(4) provides that, as soon as practicable after an application is made under section 154-50, the Commissioner must consider the matter to which the application relates and notify the applicant of the Commissioner's decision on the application.

#### **Clause 154-55 Higher education providers etc. to provide information to Commissioner**

Provides that a higher education provider must give to the Commissioner (if asked by the Commissioner to do so) any information that is in its possession relating to students who have applied for HECS-HELP assistance or FEE-HELP assistance for a unit of study or OS-HELP assistance in relation to a period of 6 months and that the Commissioner reasonably requires for the purposes of Chapter 4. If asked by the Commissioner to do so, Open Learning Australia must also give the Commissioner any information that is in its possession relating to students

who have applied for FEE-HELP assistance for a unit of study and that the Commissioner reasonably requires for the purposes of Chapter 4.

### ***Subdivision 154-D - Application of tax legislation***

#### **Clause 154-60 Returns, assessments, collection and recovery**

Provides that, subject to Part 4-2 of the Act, Part IV and Division 1 of Part VI of the *Income Tax Assessment Act 1936* and Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* apply (so far as they are capable of application) in relation to a compulsory repayment amount of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

#### **Clause 154-65 Charges and civil penalties for failing to meet obligations**

Subclause 154-65(1) provides that Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if any compulsory repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made, and Chapter 3 of this Act and Chapter 4 were income tax laws.

Subclause 154-65(2) provides that subsection 154-65(1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of subsection 154-65(2).

#### **Clause 154-70 Pay as you go (PAYG) withholding**

Provides that Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies (so far as it is capable of application) in relation to the collection of amounts of a person's compulsory repayment amount as if the compulsory repayment amount were income tax.

#### **Clause 154-75 Provisional tax**

Provides that Division 3 of Part VI of the *Income Tax Assessment Act 1936* applies (so far as it is capable of application) in relation to the collection of a person's compulsory repayment amount as if the compulsory repayment amount were income tax.

#### **Clause 154-80 Pay as you go (PAYG) instalments**

Provides that Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies (so far as it is capable of application) in relation to the collection of a person's compulsory repayment amount as if the compulsory repayment amount were income tax.



## **Chapter 5 - Administration**

### **Division 159 - Introduction**

#### **Clause 159-1 What this Chapter is about**

Part 5-1 deals with matters to do with payments made by the Commonwealth under this Act.  
Part 5-2 contains the administrative requirements that are imposed on higher education providers.

Part 5-3 provides for some documents to be given between higher education providers and students to be given electronically.

Part 5-4 deals with the protection of personal information gained in the administration of Chapters 3 and 4.

Part 5-5 deals with the tax file numbers of students.

Part 5-6 provides for the indexation of certain amounts.

Part 5-7 deals with reconsideration and administrative review of certain decisions made under this Act.

#### **Clause 159-5 The Administrative Guidelines**

The administrative requirements are also dealt with in the Administrative Guidelines. The provisions of Part 5-2 may indicate when a particular matter is or may be dealt with in these Guidelines.

## **Part 5-1 - Payments by the Commonwealth**

### **Division 164 - Payments by the Commonwealth**

#### **Clause 164-1 What this Part is about**

Part 5-1 contains general provisions relating to how the Commonwealth makes payments under the Act to higher education providers and other bodies.

#### **Clause 164-5 Time and manner of payments**

Provides that amounts payable by the Commonwealth to a higher education provider or other body under this Act are to be paid in such a way (including payment in instalments) as the Minister determines and that these amounts are to be paid by the Commonwealth to a higher education provider or other body under this Act at such times as the Secretary determines.

#### **Clause 164-10 Advances**

Provides that the Minister may make arrangements for advances to a higher education provider or other body on account of an amount that is expected to become payable under a provision of the Act to the provider or other body. The conditions that would be applicable to a payment of the amount under that provision are applicable to any such advance. Section 164-10 does not affect the Minister's power to determine under section 33-40 that an advance is payable to a higher education provider.

#### **Clause 164-15 Overpayments**

Provides that an overpayment to a higher education provider may offset a future payment under the Act, or be recovered as a debt due to the Commonwealth.

#### **Clause 164-20 Rounding of amounts**

Provides that if an amount payable under the Act is an amount made up of dollars and cents, the amount must be rounded down to the nearest dollar.

#### **Clause 164-25 Appropriation**

Provides that amounts payable by the Commonwealth under the Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

## **Part 5-2 - Administrative requirements on higher education providers**

### **Division 169 - Introduction**

#### **Clause 169 What this Part is about**

This Part imposes a number of administrative requirements on higher education providers. It is a quality and accountability requirement that a higher education provider comply with these administrative requirements.

## **Division 169 - What are the requirements relating to notices?**

### **Clause 169-5 Notices**

Provides that a higher education provider must give such notices as are required by the Administrative Guidelines to a person who is enrolled with the provider for a unit of study and who is seeking Commonwealth assistance under this Act for the unit or is a Commonwealth supported student for the unit. A notice must contain the information set out in the Administrative Guidelines and must be given within the period set out in those guidelines.

Provides that a notice under section 169-5 is given only for the purpose of providing information to a person. Any liability or entitlement of a person under the Act (including Student Learning Entitlement) is not affected by the failure of a higher education provider to give a notice under section 169-5, the failure of a higher education provider to give such a notice by the date required under the Administrative Guidelines or by the notice containing an incorrect statement.

### **Clause 169-10 Correction of notices**

Provides that if, after giving a person a notice under section 169-5, a higher education provider is satisfied that a material particular in the notice was not (or has ceased to be) correct, the provider must give a further written notice to the person setting out the correct particular.

Subclause 169-10(2) provides that if a person receives a notice from a higher education provider under section 169-5 and the person considers that the notice was not (or has ceased to be) correct in a material particular, then the person may give the provider a written request for the notice to be corrected in respect of that particular.

Subclause 169-10(3) provides that the request must be given to an appropriate officer of the provider either:

- (a) within 14 days after the day the notice was given; or
- (b) within such further period as the provider allows for the giving of the request.

Subclause 169-10(4) provides that the request must specify the particular in the notice that the person considers is incorrect and the reasons the person has for considering the particular is incorrect.

Subclause 169-10(5) provides that the making of the request does not affect any liability or entitlement of the person under the Act (including student learning entitlement).

Subclause 169-10(6) provides that if a higher education provider receives a request under section 169-10 the provider must, as soon as practicable, determine the matter to which the request relates, notify the person of the provider's determination and if the provider determines that a material particular in the notice was or has ceased to be incorrect, give a further notice under section 169-10.

### **Clause 169-15 Charging student contribution amounts and tuition fees**

Subclause 169-15(1) provides that a higher education provider must require any student who is a Commonwealth supported student in relation to a unit of study, is enrolling in the unit with the provider and is not an exempt student for the unit to pay the provider the student contribution amount for the unit and must not require the student to pay any tuition fee for the unit.

Subclause 169-15(2) provides that a higher education provider must require any student who is not a Commonwealth supported student in relation to a unit of study, is enrolling in the unit with the provider and is not an exempt student for the unit to pay the provider the tuition fee for the unit. If the student is a domestic student, the higher education provider must not require the student to pay any other tuition fee or any student contribution amount for the unit.

Subclause 169-15(3) provides that a higher education provider must repay to a person the amount of any payment of a student contribution amount or a tuition fee for a unit of study that the person made on or before the census date for the unit if the person is no longer enrolled in the unit at the end of the census date.

### **Clause 169-20 Exempt students**

Subclause 169-20(1) provides that the Minister may determine that all students or students of a specified kind are exempt from payment of student contribution amounts, tuition fees or both for any units of study undertaken as part of a specified course of study or a course of study of a specified kind. Such a student or a student of such a kind is an *exempt student*.

Subclause 169-20(2) provides that the Administration Guidelines may provide that in all circumstances (or in the circumstances specified in those guidelines) all students are exempt from payment of student contribution amounts and tuition fees for any units of study that wholly consist of work experience in industry. A student is (or is in those specified circumstances) an *exempt student* for such units.

Subclause 169-20(3) provides that a student is an *exempt student* for all the units of study undertaken as part of a course of study if the higher education provider with which the student is enrolled in the course has awarded the student an exemption scholarship for the course and the provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines.

Subclause 169-20(4) provides that without limiting the matters that may be specified in the Administration Guidelines for the purposes of paragraph 169-20(3)(b)[ which provides that one of the limbs for determining that a student is an *exempt student* for all the units of study undertaken as part of a course of study is that the provider awarded a scholarship in accordance with any requirements specified in the Administration Guidelines] those matters may include one or both of the following:

- the maximum number of exemption scholarships that a particular higher education provider may award in respect of a year;
- which students are eligible to receive exemption scholarships.

### **Clause 169-25 Determining census dates and EFTSL values**

Provides that a higher education provider must, for each unit of study it provides or proposes to provide during a year, determine for that year a particular date to be the census date for the unit and the EFTSL value for the unit. If a higher education provider provides the same unit over different periods, the unit is taken to be a different unit of study in respect of each period. Therefore the provider will have to determine a separate census date and a separate EFTSL value in respect of each period.

A date determined under section 169-25 must not occur less than 20% of the way through the period during which the unit is undertaken. The provider must publish the census date and the EFTSL value for the unit in the manner specified in the Administration Guidelines.

**Clause 169-30 Communications with the Commonwealth concerning students etc.**

Provides that, in communications under (or for the purposes of) the Act between the Commonwealth and a higher education provider concerning a person who is enrolled (or seeking to enrol) in a unit of study with the provider and has indicated that he/she is seeking Commonwealth assistance under the Act for the unit or is a Commonwealth supported student for the unit, then the provider must use any identifier for that person that the Secretary has indicated must be used in such communications.

## **Part 5-3 - Electronic communications**

### **Division 174 – Electronic communications**

#### **Clause 174 What this Part is about**

Provides that certain documents that the Act requires or permits to be given between students and higher education providers may be transmitted electronically.

#### **Clause 174-5 Electronic communications from students to higher education providers**

Subclause 174-5(1) provides that if a provision of the Act requires or permits a document (the *document*) that is to be given by a student to a higher education provider and the student gives the document to the provider by electronic communication using an information system in respect of which there is a declaration by the provider under subsection 174-5(2); and a declaration by the Minister under subsection 174-5(3), then the student complies with the provision so far as it requires or permits the student to give the document to the provider.

Subclause 174-5(2) provides that a higher education provider may declare (in writing given to the Minister) that a specified information system may be used by any student to give the provider a document permitted or required by the Act to be given by the student to the provider.

Subclause 174-5(3) provides that the Minister may declare (in writing given to a higher education provider) that an information system declared by the provider under subsection 174-5(2) meets the Administration Guidelines referred to in subsection 174-5(4).

Subclause 174-5(4) provides that the Administration Guidelines may set out the requirements relating to information systems that may be used by students to give higher education providers documents that they are required or permitted to give to higher education providers under the Act.

#### **Clause 174-10 Electronic communication by students of students' signatures**

Subclause 174-10(1) provides that if a provision of the Act requires a student to sign a document (the *document*) that is to be given to a higher education provider and the student's identity and approval of the document are made apparent by a method in respect of which there is a declaration by the provider under subsection 174-10(2) and there is also a declaration by the Minister under subsection 174-10(3), then the student complies with the requirement.

Subclause 174-10(2) provides that a higher education provider may declare (in writing given to the Minister) that, in connection with a document required to be signed by a student, a specified method may be used to indicate the student's identity and approval of the document.

Subclause 174-10(3) provides that the Minister may declare (in writing given to a higher education provider) that a method declared by the provider under subsection 174-10(2) meets the Administration Guidelines referred to in subsection 174-10(4).



Subclause 174-10(4) provides that the Administration Guidelines may set out requirements relating to methods that may be used by students to identify themselves and indicate their approval of documents, in connection with documents that are required to be signed by students and given to a higher education provider.

#### **Clause 174-15 The Effects of Sections 174-5 and 174-10**

Provides that sections 174-5 and 174-10 only operate at a time when sections 9, 10 and 11 of the *Electronic Transactions Act 1999* do not apply to the requirements under this Act for a student to give a document to a higher education provider or sign a document that is to be given to a higher education provider or a permission under this Act for a student to give a document to a higher education provider. An exemption from the operation of a section of the *Electronic Transactions Act 1999* may be given under regulations made under that Act.

Subclause 174-15(2) provides that neither section 174-5 nor section 174-10 limit how a student may comply with a provision of the Act.

#### **Clause 174-20 Notices electronically communicated from higher education providers to students**

Provides that if a higher education provider gives a student a notice that the provider is required to give in writing under section 169-5, the notice is given using an information system to which the student has access provided by the provider in accordance with the Administration Guidelines referred to in section 174-25 and the student consents to receiving notices under section 169-5 by way of electronic communication, then the requirements of section 9 of the *Electronic Transactions Act 1999* are taken to have been met. This means that the requirement to give notice in writing is met by the electronic communication of the notice.

#### **Clause 174-25 Guidelines may deal with electronic communications from higher education providers to students**

Provides that the Administration Guidelines may set out requirements relating to higher education providers providing students with access to information systems that higher education providers use to give students notices under section 169-5.

## **Part 5-4 - Protection of personal information**

### **Division 179 - Protection of personal information**

#### **Clause 179-1 What this Part is about**

An officer who discloses, copies or records personal information otherwise than in the course of official employment, or causes unauthorised access to or modification of personal information, commits an offence.

#### **Clause 179-5 Meaning of *personal information***

Defines *Personal information* as information about an individual whose identity is apparent, or can reasonably be ascertained from the information and is obtained or created by an officer for the purposes of Chapters 3 and 4.

#### **Clause 179-10 Use of personal information**

Subclause 179-10(1) provides that an officer commits an offence punishable by imprisonment for 2 years if:

- he/she either discloses information or makes a copy or other record of information; and
- the information is personal information; and
- the information was acquired by the officer in the course of the officer's official employment; and
- the disclosure did not occur, or the copy or record was not made, in the course of that official employment.

#### **Clause 179-15 Meanings of *officer etc.* and *official employment***

Defines *officer*, *Commonwealth officer*, *officer of a higher education provider* and *official employment* (of an officer) for the purposes of the Act.

#### **Clause 179-20 When information is disclosed in the course of official employment**

Provides that for the purposes of paragraph 540-3(1)(d) the following disclosures are taken to be disclosures in the course of an officer's official employment:

- if a Commonwealth officer discloses personal information to another Commonwealth officer to assist that officer in the performance of the officer's duties arising under this Act;
- if an officer discloses personal information to the Administrative Appeals Tribunal in connection with a reviewable decision;

- if a Commonwealth officer discloses personal information to an officer of a higher education provider to assist the provider officer in the performance of the provider officer's duties arising under this Act
- if an officer of a higher education provider discloses personal information to a Commonwealth officer to assist the Commonwealth officer in his or her official employment.

#### **Clause 179-25 Commissioner may disclose information**

Provides that, despite anything in an Act of which the Commissioner has the general administration, the Commissioner (or a person authorised by the Commissioner) may communicate protected information to an officer for use by that officer in the course of the officer's official employment.

#### **Clause 179-30 Oath or declaration to protect information**

Provides that an officer must, if and when required by the Secretary or the Commissioner to do so, make an oath or declaration to protect information in accordance with Part 5-4. The Secretary or the Commissioner may determine, in writing the form of the oath or declaration and the manner in which the oath or declaration must be made.

#### **Clause 179-35 Unauthorised access to, or modification of, personal information**

Provides that a person commits an offence punishable by imprisonment for 2 years if:

- he/she causes unauthorised access to or modification to personal information that is held in a computer to which access is restricted by an access control system; and
- he/she intends to cause the access or modification; and
- he/she knows that the access or modification is unauthorised; and
- the personal information is held in a computer of a higher education provider or held on behalf of a provider.

## **Part 5-5 - Tax file numbers**

### **Division 184 - Introduction**

#### **Clause 184-1 What this Part is about**

Requirements relating to students' tax file numbers apply to assistance under Chapter 3 that gives rise to HELP debts. The Commissioner may notify higher education providers of matters relating to tax file numbers. Higher education providers have obligations relating to notifying students about tax file number requirements and to cancelling the enrolment of students who do not have tax file numbers.

## **Division 187 - What are the tax file number requirements for assistance under Chapter 3?**

### **Clause 187-1 Meeting the tax file number requirements**

Subclause 187-1(1) provides that a student who is enrolled with (or proposes to enrol with) a higher education provider *meets the tax file number requirements* for assistance under Chapter 3 if the student notifies his/her tax file number to an appropriate officer of the provider and the provider is satisfied (in accordance with subsection 187-1(4)) that this number is a valid tax file number or the student gives the officer a certificate from the Commissioner stating that the student has applied to the Commissioner asking him/her to issue a tax file number to the student.

Subclause 187-1(2) provides that if the student is seeking HECS-HELP assistance or FEE-HELP assistance for a unit of study, he/she does not meet the tax file number requirements for the assistance unless he/she complies with subsection 187-1(1) on or before the census date for the unit.

Subclause 187-1(3) provides that a notification under paragraph 187-1(1)(a) [if the student notifies their tax file number to the appropriate officer of the provider and the provider is satisfied (in accordance with subsection 187-1(4)) that this number is a valid tax file number] may be included in a request for Commonwealth assistance that the student has given to the provider in relation to the unit of study for which the assistance is sought (or any other unit of study) or the course of study of which the unit (or the other unit) forms a part, or any other course of study.

Subclause 187-1(4) provides that the Commissioner may issue guidelines about the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number for the purposes of paragraph 187-1(1)(a).

Subclause 187-1(5) provides that a certificate under paragraph 187(1)(b) [the student gives the officer a certificate from the Commissioner stating that the student has applied to the Commissioner asking him/her to issue a tax file number to the student] must be in a form approved by the Commissioner.

**Division 190 - In what circumstances can higher education providers be notified of tax file number matters?**

**Clause 190-1 When tax file numbers are issued etc.**

Provides that the Commissioner may give a higher education provider written notice of the tax file number of a student who is enrolled in a course of study with the provider if the Commissioner issues the tax file number to the student or refuses to issue a tax file number to the student on the ground that the student already has a tax file number.

**Clause 190-5 When tax file numbers are altered**

Provides that the Commissioner may give a higher education provider written notice of the tax file number of a student who is enrolled in a course of study with the provider if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn. The new number is taken to be the number that the student notified to the provider.

**Clause 190-10 When tax file numbers are incorrectly notified—students with tax file numbers**

Provides that if the Commissioner is satisfied that the tax file number a student has notified to a higher education provider has been cancelled or withdrawn since the notification was given (or is otherwise wrong) and that the student has a tax file number, then the Commissioner may give to the provider written notice of the incorrect notification and of the student's tax file number. That number is taken to be the number that the student notified to the provider.

**Clause 190-15 When tax file numbers are incorrectly notified—students without tax file numbers**

Subclause 190-15(1) provides that if the Commissioner is satisfied that the tax file number a student notified to a higher education provider has been cancelled since the notification was given (or is for any other reason not the student's tax file number) and the Commissioner is not satisfied that the student has a tax file number, then the Commissioner may give to the provider a written notice informing the provider accordingly.

Subclause 190-15(2) provides that the Commissioner must give a copy of any notice under subsection 190-15(1) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

**Clause 190-20 When applications are refused or tax file numbers are cancelled**

Provides that if the Commissioner refuses a student's application for the issue of a tax file number or cancels a tax file number issued to a student, then the Commissioner may give to a higher education provider with which the student is enrolled in a course of study a written notice

informing the provider accordingly. The written notice must include a statement of the reason for the decision to give the notice (see subsection 190-20(2)).

## **Division 193 - What are the requirements on higher education providers relating to tax file numbers?**

### **Clause 193-1 Giving information about tax file number requirements**

Subclause 193-1(1) provides that a higher education provider must notify a person in writing how to meet the tax file number requirements if:

- the person is enrolled in a unit of study with the provider; and
- the person has (on or before the census date for the unit) completed and signed a request for Commonwealth assistance in relation to the unit or in relation to the course of study of which the unit forms a part; and
- in that request, the person requests HECS-HELP assistance or FEE-HELP assistance for the unit or the course; and
- the request does not include a number that purports to be the person's tax file number.

Subclause 193-1(2) provides that the provider must notify the person under subsection 193-1(1) on or before the census date for the unit or within 7 days after the person gives the provider the request for Commonwealth assistance, whichever is earlier.

Subclause 193-1(3) provides that a higher education provider must notify a person in writing how to meet the tax file number requirements if:

- the person is enrolled in a course of study with the provider; and
- the person has, before receiving OS-HELP assistance, completed and signed a request for Commonwealth assistance; and
- in that request, the person requests OS-HELP assistance in relation to a period of 6 months; and
- the request does not include a number that purports to be the person's tax file number.

Subclause 193-1(4) provides that the provider must notify the person under subsection 193-1(3) within 7 days after the person gives the provider the request for Commonwealth assistance.

Subclause 193-1(5) provides that section 193-1 does not apply to the person if the person (in the request for Commonwealth assistance) requests HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, but the person is not entitled to the assistance or the person (in the request for Commonwealth assistance) requests HECS-HELP assistance in relation to a unit of study but one or more up-front payments for the unit have been made totalling 80% of the student contribution amount for the unit.

### **Clause 193-5 Cancelling enrolments of people without tax file numbers**

Subclause 193-5(1) provides that a higher education provider must cancel a person's enrolment in a unit of study with the provider if the provider receives notice under section 190-15 or section 190-20 to the effect that the person does not have (or no longer has) a tax file number and at the end of 28 days after the provider receives that notice the provider has not been notified of a number that the provider is satisfied (in accordance with subsection 193-5(3)) is a valid tax file number.



Subclause 193-5(2) provides that the provider must not accept a further enrolment of the person in that unit.

Subclause 193-5(3) provides that, in deciding whether it is satisfied that a number is a valid tax file number for the purposes of paragraph 193-5(1)(b) [where at the end of 28 days after the provider receives a notice under section 190-5 or 190-20 to the effect that the person does not have (or no longer has) a tax file number the provider has not been notified of a number that the provider is satisfied is a valid tax file number], a higher education provider must comply with the guidelines issued by the Commissioner under subsection 187-1(4).

Subclause 193-5(4) provides that a higher education provider must comply with any requirements (set out in guidelines issued by the Commissioner) relating to procedures for informing persons who may be affected by subsection 193-5(1) or (3) of the need to obtain a valid tax file number.

## **Part 5-6 - Indexation**

### **Division 198 - Indexation**

#### **Clause 198-1 What this Part is about**

Several amounts referred to in provisions of the Act are indexed. This Part sets out how those amounts are indexed.

#### **Clause 198-5 The amounts that are to be indexed**

Creates a table setting out the amounts that are to be indexed. The table lists 4 items (column 1), a description of the amounts (column 2), refers to the relevant section of the Act (column 3) and lists the first year of indexation for each (column 4).

#### **Clause 198-10 Indexing amounts**

Provides that an amount is indexed on 1 January in the year referred to in the table in section 198-5 as the first year of indexation in relation to the amount and on 1 January of each subsequent year, by multiplying it by the indexation factor for the relevant year. However an amount is not indexed if its indexation factor is 1 or less.

#### **Clause 198-15 *Indexation factor***

Provides that the *indexation factor* for the relevant year is:

$$\frac{\text{The *index number for the relevant year}}{\text{The *index number for the year preceding the relevant year}}$$

The indexation factor is worked out to 3 decimal places (rounding up if the fourth decimal place is 5 or more). For example, if the factor is 1.102795, it would be rounded up to 1.103.

#### **Clause 198-20 *Index number***

Provides that the *index number*, for a year is the Higher Education Grants Index number for that year published by the Minister in the *Gazette*. Publication may occur at any time, including any time before the start of the year.

## **Part 5-7 - Review of decisions**

### **Division 203 - Introduction**

#### **Clause 203-1 What this Part is about**

Some decisions made under the Act are subject to reconsideration and then review by the Administrative Appeals Tribunal.

## **Division 206 - Which decisions are subject to review?**

### **Clause 206-1 Reviewable decisions etc.**

Creates a table setting out the *reviewable decisions* under the Act and the *decision maker* (for the purposes of Division 206) in respect of each of those decisions. The table lists 10 items (column 1), a description of the decision (column 2), the provision of the Act under which the decision was made (column 3) and the decision maker for each (column 4).

### **Clause 206-5 Deadlines for making reviewable decisions**

Provides that if the Act provides for a person to apply to a decision maker to make a reviewable decision, a period is specified under the Act for giving notice of the decision to the applicant and the decision maker has not notified the applicant of the decision within that period, then the decision maker is taken (for the purposes of the Act) to have made a decision to reject the application.

### **Clause 206-10 Decision maker must give reasons for reviewable decisions**

Subclause 206-10(1) provides that if the Act requires the decision maker to notify a person of the making of a reviewable decision, the notice must include reasons for the decision.

Subclause 206-10(2) provides that subsection 206-10(1) does not affect an obligation to give reasons for a decision imposed on the decision maker by any other law.

## **Division 209 - How are decisions reconsidered?**

### **Clause 209-1 Reviewer of decisions**

Subsection 209-1(1) provides that the *reviewer* of a reviewable decision is the Secretary if the decision maker was a higher education provider acting on behalf of the Secretary. In any other case the *reviewer* of a reviewable decision is the decision maker (subject to subsection 209-1(2)).

Subsection 209-1(2) provides that if a reviewable decision was made by a delegate of a decision maker and the decision is to be reconsidered by a delegate of the decision maker, then the delegate who reconsiders the decision must be a person who was not involved in making the decision and occupies a position that is senior to that occupied by any person involved in making the decision.

### **Clause 209-5 Reviewer may reconsider reviewable decisions**

Subsection 209-5(1) provides that the reviewer of a reviewable decision may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.

Subsection 209-5(2) provides that the reviewer may reconsider the decision even if an application for reconsideration of the decision has been made under section 209-10 or the decision has been confirmed, varied or set aside under section 209-10 and an application has been made under section 212-1 for review of the decision.

Subsection 209-5(3) provides that, after reconsidering the decision, the decision maker must confirm the decision, vary the decision or set the decision aside and substitute a new decision.

Subsection 209-5(4) provides that the reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect on the day specified in the decision on review or, if a day is not specified, on the day on which the decision on review was made.

Subsection 209-5(5) provides that the reviewer must give written notice of the decision on review to the person to whom that decision relates.

Subsection 209-5(6) provides that the notice must be given within a reasonable period after the decision is made and must contain a statement of the reasons for the reviewer's decision on review.

### **Clause 209-10 Reconsideration of reviewable decisions on request**

Subsection 209-10(1) provides that a person whose interests are affected by a reviewable decision may request the reviewer to reconsider the decision.

Subsection 209-10(2) provides that the person's request must be made by written notice given to the reviewer within 28 days (or such longer period as the reviewer allows) after the day on which the person first received notice of the decision.

Subsection 209-10(3) provides that the notice must set out the reasons for making the request.

Subsection 209-10(4) provides that after receiving the request the reviewer must reconsider the decision and either confirm the decision, vary the decision or set the decision aside and substitute a new decision.

Subsection 209-10(5) provides that the reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect on the day specified in the decision on review or, if a day is not specified, on the day on which the decision on review was made.

Subsection 209-10(6) provides that, for the purposes of Part 5-7, the reviewer is taken to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

**Division 212 - Which decisions are subject to AAT review?**

**Clause 212-1 AAT review of reviewable decisions**

Provides that an application may be made to the Administrative Appeals Tribunal for the review of a reviewable decision that has been confirmed, varied or set aside under section 209-5 or 209-10.

## **Chapter 6 - The provision of higher education in the external Territories**

### **Division 217 – Introduction**

#### **Clause 217-1 What this Chapter is about**

This Chapter primarily provides for approval as self-accrediting entities and for accreditation of courses of study in external Territories.

### **Part 6-1 - Approval and accreditation**

#### **Division 222 - Introduction**

#### **Clause 222-1 What this Part is about**

Certain persons (other than natural persons) in the external Territories may apply for approval as self accrediting entities, or for the accreditation of courses of study that they propose to offer. Persons who are not accredited under this Part may be guilty of an offence if they operate as a university or other provider, offer higher education awards or describe themselves as universities.



## **Division 225 - How does a person obtain approval and accreditation?**

### **Clause 225-1 Application for approval as self-accrediting entity or for accreditation of course**

Has the effect of providing that, if a person (other than a natural person) is not a listed self-accrediting entity and wishes to operate in an external territory as a university or other provider of courses leading to higher education awards, then the person must apply in writing to the Minister either for approval of the person as a self-accrediting entity in relation to that territory or for accreditation in relation to that territory of each course it proposes to offer.

### **Clause 225-5 Approving a person as a self-accrediting entity**

Has the effect of providing that, if a person applies for approval as a self-accrediting entity in relation to an external territory under section 225-1, the Minister may determine the person to be such a self-accrediting entity in relation to that territory if the Minister is satisfied, following an assessment made having regard to the National Protocols, that it is appropriate that the person be empowered to issue its own qualifications. A refusal to approve a person as a self-accrediting entity is a reviewable decision under Part 5-7.

### **Clause 225-10 Accrediting a course of study**

Provides that the Minister may accredit a particular course of study (in relation to an external Territory) as a course of study leading to a higher education award if:

- (a) the person applies, under section 225-1 for accreditation of that course in relation to that Territory; and
- (b) the Minister is satisfied, following an assessment made having regard to the National Protocols, that the course and the way of delivering it are appropriate to the award.

### **Clause 225-15 Duration of approval and accreditation**

Subclause 225-15(1) provides that an approval of a person as a self-accrediting entity by the Minister under section 225-5 remains in force for the period that the Minister determines and is subject to any conditions that the Minister imposes.

Subclause 225-15(2) provides that an accreditation of a particular course of study by the Minister under section 225-10 remains in force for the period that the Minister determines and is subject to any conditions that the Minister imposes.

### **225-20 Amending or revoking an approval or accreditation**

Subclause 225-20(1) provides that the Minister may amend or revoke an approval of a person as a self-accrediting entity in relation to an external territory under section 225-5 at any time if the Minister is satisfied that the person has breached a condition to which the person's approval is subject or, following a reassessment of the person's approval made having regard to the National

Protocols, that the circumstances of the person have so changed that if the person were to apply for approval as a self-accrediting entity in relation to that territory at that time the Minister would refuse the application.

Subclause 225-20(2) provides that the Minister may amend or revoke an accreditation of a course of study under section 225-10 in relation to an external territory as a course leading to a higher education award at any time if the Minister is satisfied that the person offering the course has breached a condition to which the course accreditation is subject or, following a reassessment of the course accreditation made having regard to the National Protocols, that the content or manner of providing the course have so changed that if the person providing the course were to apply for accreditation of the course in relation to that territory at that time the Minister would refuse the application.

### **Clause 225-25 Fees**

Provides that the regulations may prescribe fees to be paid in respect of applications made under section 225-1 and for that purpose may take into account costs directly or indirectly incurred in making a decision on such an application. A person making an application under section 225-1 must pay such fees as are provided for in the regulations at such times as the regulations provide.

## **Division 228 - Limitations upon operations of certain persons in the external Territories**

### **Clause 228-1 Persons without accreditation not to operate as universities or other provider in external Territories**

Subclause 228-1(1) has the effect of making it an offence for a person to operate or purport to operate in an external territory as a university (or part of a university) or as another provider of courses of study leading to higher education awards unless the person is a listed self-accrediting entity, or approved by the Minister as a self-accrediting entity in relation to that territory under section 225-5 or any course offered by the person is accredited by the Minister under section 225-10 in relation to that territory.

Subclause 228-1(2) specifies that the offence in subsection 228-1(1) attracts strict liability in respect of the physical elements of circumstance in subparagraph 228-1(1)(c)(ii) and paragraph 228-1(1)(d), that the power of approval and accreditation is under sections 225-5 and 225-10 respectively. Where strict liability applies to an offence the prosecution does not have to prove fault on the part of the defendant in relation to that physical element. A defence of mistake of fact is open to the defendant under section 9.2 of the *Criminal Code*. This defence is available if a person is under a mistaken but reasonable belief about a fact and, had that fact existed, the conduct would not constitute an offence. Under the *Criminal Code*, any legislative provision that attracts strict liability must expressly state that it is an offence of strict liability (see section 6.1 of the Code).

### **Clause 228-5 Persons without accreditation not to offer higher education awards or courses in external Territories**

Subclause 228-5(1) has the effect of making it an offence for a person to offer or purport to offer in an external territory a course of study leading to a higher education award unless the person is a listed self-accrediting entity, or approved by the Minister as a self-accrediting entity in relation to that territory under section 225-5 or the course is accredited by the Minister under section 225-10 in relation to that territory.

Subclause 228-5(2) has the effect of making it an offence for a person to offer or purport to offer in an external territory a higher education award unless the person is a listed self-accrediting entity, or approved by the Minister as a self-accrediting entity in relation to that territory under section 225-5 or the offer or purported offer of the award is dependant on the successful completion of a course of study accredited by the Minister under section 225-10 in relation to that territory as a course leading to that award. The offence created by subsection 228-5(2) is intended to include the situation where a person who is not a listed self-accrediting entity or approved by the Minister as a self-accrediting entity in relation to that territory under section 225-5, offers or purports to offer in an external territory a higher education award without offering or requiring the completion of any course.

Subclause 228-5(3) specifies that the offences in subsections 228-5(1) and (2) attract strict liability in respect of the physical elements of circumstance in proposed subparagraphs 228-5(1)(c)(ii) or 228-5(2)(c)(ii) and paragraphs 228-5(1)(d) or 228-5(2)(d), that the power of approval and accreditation respectively is under sections 225-5 and 225-10 respectively. Where strict liability applies to an offence the prosecution does not have to prove fault on the part of the

defendant in relation to that physical element. A defence of mistake of fact is open to the defendant under section 9.2 of the *Criminal Code*. This defence is available if a person is under a mistaken but reasonable belief about a fact and, had that fact existed, the conduct would not constitute an offence. Under the *Criminal Code*, any legislative provision that attracts strict liability must expressly state that it is an offence of strict liability (see section 6.1 of the Code)

#### **Clause 228-10 Persons without accreditation not to describe themselves as universities in external Territories**

Subclause 228-10(1) has the effect of making it an offence for a person to use the word “university”, “university college” or any like words to identify the person or their operation or purported operation in an external territory unless the person is a listed self-accrediting entity, or approved by the Minister as a self-accrediting entity in relation to that territory under section 225-5 or the Minister has approved the use of that word or those words for those purposes.

Subclause 228-10(2) specifies that the offence in subsection 228-10(1) attracts strict liability in respect of the physical elements of circumstance in proposed subparagraph 228-10(1)(b)(ii) that the power of approval and accreditation respectively is under section 225-5. Where strict liability applies to an offence the prosecution does not have to prove fault on the part of the defendant in relation to that physical element. A defence of mistake of fact is open to the defendant under section 9.2 of the *Criminal Code*. This defence is available if a person is under a mistaken but reasonable belief about a fact and, had that fact existed, the conduct would not constitute an offence. Under the *Criminal Code*, any legislative provision that attracts strict liability must expressly state that it is an offence of strict liability (see section 6.1 of the Code).

#### **Clause 228-15 Meanings of *operating* and *offering***

Subclause 228-15(1) provides that a reference to a person ***operating*** or purporting to operate in an external Territory as a university, part of a university or as another provider, of courses of study leading to higher education awards includes a reference to a person operating (or purporting to operate) as such a university, part of a university or other provider in or from that Territory by means of any of the following telecommunication devices:

- a computer adapted for communicating by way of the Internet or another communications network;
- a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;
- a telephone;
- any other electronic device.

Subclause 228-15(2) provides that a reference to a person ***offering*** or purporting to offer (in an external Territory) courses of study leading to higher education awards includes a reference to such a person offering (or purporting to offer) such courses in or from that Territory by means of any of the telecommunication devices referred to in subsection 228-15(1).

## **Part 6-2 - Use of company names and business names**

### **Division 233 - Use of company names and business names**

#### **Clause 233-1 Law in force in external Territory not to allow company or business names using the word “university” etc.**

Provides that, despite any provision of a law in force in an external Territory that regulates the use of company names or business names in that Territory, registration (or purported registration) of or authorisation (or purported authorisation) of any company name or business name that uses the word “university”, “university college” or any like words is of no effect unless the Minister has given written approval for the use of that name.

## **Chapter 7 - Miscellaneous**

### **Clause 238-1 Delegations by Secretary**

Provides that the Secretary may, in writing, delegate to an APS employee in the Department all or any of the Secretary's powers under the Act, the regulations or any Guidelines made under section 238-10. The Secretary may, in writing, delegate to a review officer of a higher education provider the Secretary's powers under Division 209 to reconsider reviewable decisions made by the provider relating to Chapter 3. In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

### **Clause 238-5 Delegations by Minister**

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 the Act. In exercising powers under the delegation, the delegate must comply with any directions of the Minister.

### **Clause 238-10 Guidelines**

Creates a table setting out the Guidelines the Minister may make for various purposes. The table lists 10 items (column 1), a description of the Guidelines (column 2) and the relevant Chapter or Part of the Act under which the Guidelines were made (column 3). Clause 238-10 provides that the Minister may make Guidelines specified in column 2 of the table providing for matters required or permitted by the corresponding Chapter or Part specified in column 3 of the table to be provided (or necessary or convenient to be provided) in order to carry out or give effect to that Chapter or Part.

### **Clause 238-15 Regulations**

Provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

## **Schedule 1 - Dictionary**

Provides a dictionary of defined terms used in the Act. Section 1-3 describes how asterisks are used to identify those terms in the Act.