



Higher Education Support Act 2003

Act No. 149 of 2003 as amended

This compilation was prepared on 20 December 2004
taking into account amendments up to Act No. 157 of 2004

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
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An Act relating to the funding of higher education, and for other purposes

Chapter 1—Introduction

Division 1—Preliminary

1-1 Short title [see Note 1]

This Act may be cited as the *Higher Education Support Act 2003*.

1-5 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1-1 and 1-5 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 December 2003
2. Sections 1-10 to 238-15	The later of: (a) 1 January 2004; and (b) the day after the day on which this Act receives the Royal Assent.	1 January 2004
3. Schedule 1	The later of: (a) 1 January 2004; and (b) the day after the day on which this Act receives the Royal Assent.	1 January 2004

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 1 Introduction

Division 1 Preliminary

Section 1-10

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

1-10 Identifying defined terms

- (1) Many of the terms in this Act are defined in the Dictionary in Schedule 1.
- (2) Most of the terms that are defined in the Dictionary in Schedule 1 are identified by an asterisk appearing at the start of the term: as in “*accredited course”. The footnote with the asterisk contains a signpost to the Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.
- (6) The following basic terms used throughout the Act are not identified with an asterisk:

Terms that are not identified		
Item	This term:	is defined in:
1	enrol	Schedule 1
2	higher education provider	section 16-1
3	student	Schedule 1
4	unit of study	Schedule 1

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

1-15 Application of Chapter 6 etc.

Chapter 6 and any regulation made for the purposes of that Chapter extend to every external Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Objects

2-1 Objects of this Act

The objects of this Act are:

- (a) to support a higher education system that:
 - (i) is characterised by quality, diversity and equity of access; and
 - (ii) contributes to the development of cultural and intellectual life in Australia; and
 - (iii) is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and
- (b) to support the distinctive purposes of universities, which are:
 - (i) the education of persons, enabling them to take a leadership role in the intellectual, cultural, economic and social development of their communities; and
 - (ii) the creation and advancement of knowledge; and
 - (iii) the application of knowledge and discoveries to the betterment of communities in Australia and internationally;

recognising that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university's overall performance and its ongoing independence; and

- (c) 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
- (d) to support students undertaking higher education.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Overview of this Act

3-1 General

This Act primarily provides for the Commonwealth to give financial support for higher education:

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

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

- (1) Chapter 2 sets out who are higher education providers, and provides for the following grants and payments:
 - (a) grants under the Commonwealth Grant Scheme;
 - (b) other grants for particular purposes;
 - (c) grants for Commonwealth scholarships.
- (2) Higher education providers will be universities, self-accrediting providers or non self-accrediting providers.

3-10 Assistance to students (Chapter 3)

Chapter 3 provides for the following assistance to students:

- (a) HECS-HELP assistance for student contribution amounts;
- (b) FEE-HELP assistance for tuition fees;
- (c) OS-HELP assistance for overseas study.

Chapter 3 also provides for the Student Learning Entitlement.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 1 Introduction

Division 3 Overview of this Act

Section 3-20

3-20 Administration (Chapter 5)

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

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

Chapter 6 primarily provides for approval as self-accrediting entities, and for accreditation of courses of study, in external Territories.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2—Grants for higher education assistance

Division 8—Introduction

8-1 What this Chapter is about

This Chapter provides for who are higher education providers, and for 3 kinds of grants to be made.

Part 2-1 sets out who are higher education providers (universities, self-accrediting providers and non self-accrediting providers), the quality and accountability requirements for higher education providers and how bodies cease to be higher education providers.

Note: Except in very limited cases, only higher education providers can get grants under this Chapter.

The 3 kinds of grants available under this Chapter are:

- grants under Part 2-2 (Commonwealth Grant Scheme) to certain higher education providers. Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider. Grants are made subject to conditions; and
- other grants under Part 2-3 to higher education providers and other bodies corporate for a variety of purposes; and
- grants for Commonwealth scholarships to certain higher education providers under Part 2-4.

The amount of a grant may be reduced, or an amount paid may be required to be repaid, if the recipient breaches a quality and accountability requirement or a condition of the grant (see Part 2-5).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance

Division 8 Introduction

Section 8-1

Note:	A body's approval as a higher education provider may be suspended or revoked for such a breach.
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*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-1—Higher education providers

Division 13—Introduction

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 (universities and certain self-accrediting 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 circumstances such as breach of a quality and accountability requirement.

13-5 The Higher Education Provider Guidelines

Higher education providers and the *quality and accountability requirements are also dealt with in the Higher Education Provider Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Higher Education Provider Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 16—What is a higher education provider?

Subdivision 16-A—General

16-1 Meaning of *higher education provider*

A *higher education provider* is a body corporate that is approved under this Division.

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

- (1) A *listed provider is taken to be approved as a higher education provider from the commencement of this Act.
- (2) A body corporate:
 - (a) that is not a *listed provider; or
 - (b) that 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.
- (3) 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?

16-10 Listed providers

The following are *listed providers*:

- (a) a *Table A provider;
- (b) a *Table B provider.

16-15 Table A providers

- (1) The following are *Table A providers*:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Table A providers

Providers

Central Queensland University
Charles Darwin University
Charles Sturt University
Curtin University of Technology
Deakin University
Edith Cowan University
Griffith University
James Cook University
La Trobe University
Macquarie University
Monash University
Murdoch University
Queensland University of Technology
Royal Melbourne Institute of Technology
Southern Cross University
Swinburne University of Technology
The Australian National University
The Flinders University of South Australia
The University of Adelaide
The University of Melbourne
The University of Queensland
The University of Sydney
The University of Western Australia
University of Ballarat
University of Canberra
University of Newcastle
University of New England
University of New South Wales
University of South Australia
University of Southern Queensland
University of Tasmania

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-20

Table A providers

Providers

University of Technology, Sydney

University of the Sunshine Coast

University of Western Sydney

University of Wollongong

Victoria University of Technology

Australian Catholic University

Australian Maritime College

Batchelor Institute of Indigenous Tertiary Education

- (2) However, a body is not a Table A provider if its approval as a higher education provider is revoked or suspended.

16-20 Table B providers

- (1) The following are *Table B providers*:

Table B providers

Providers

Bond University

The University of Notre Dame Australia

Melbourne College of Divinity

- (2) However, a body is not a 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?

16-25 Approval by the Minister

- (1) The Minister, in writing, may approve a body corporate as a higher education provider if:
- (a) the body:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (i) is established under the law of the Commonwealth, a State or a Territory; and
 - (ii) carries on business in Australia; and
 - (iii) has its central management and control in Australia; and
- (aa) the body's principal purpose is either or both of the following:
- (i) to provide education;
 - (ii) to conduct research; and
- (b) the body is either:
- (i) a *university; or
 - (ii) a *self-accrediting provider; or
 - (iii) a *non self-accrediting provider; and
- (c) the body either fulfils the *tuition assurance requirements or is exempted from those requirements under subsection 16-30(2); and
- (d) in the case of a non self-accrediting provider, the body meets the additional requirements under section 16-35; and
- (e) the body applies for approval as provided for in section 16-40; and
- (f) the Minister is satisfied that the body is willing and able to meet the *quality and accountability requirements.
- (2) A **university** means a body corporate:
- (a) that meets *National Protocol 1; and
 - (b) that is established as a university, or recognised as a university, by or under a law of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.
- (3) A **self-accrediting provider** is a body corporate, other than a *university, whose name is included in the *Australian Qualifications Framework Register as the name of a higher education institution empowered to issue its own qualifications.
- (4) A **non self-accrediting provider** is a body corporate:
- (a) whose name is included; or
 - (b) who owns or controls a business name that is included;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-30

in the list of Non Self-Accrediting Higher Education Institutions contained in the *Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one or more *higher education awards.

16-30 The tuition assurance requirements

- (1) The *tuition assurance requirements* are that, on the date of an application under section 16-40:
 - (a) the body corporate making the application complies with the requirements for tuition assurance set out in the Higher Education Provider Guidelines; or
 - (b) if the guidelines do not set out such requirements, the body has in place arrangements that the Minister is satisfied will ensure, for any person enrolled in a *course of study with the body, that, should the body cease to be able to provide that course:
 - (i) the person will be able to enrol in a similar course with another higher education provider and receive full recognition by that other provider for any successfully completed units of study undertaken as part of the course of study with the body; and
 - (ii) the person will be able to receive a payment equivalent to any of the person's *student contribution amount or *tuition fee that has been paid for a unit of study in that course with the body that the person has not completed because the body ceased to be able to provide the course.
- (2) The Minister may, in writing, exempt a body corporate from the *tuition assurance requirements.

16-35 Additional requirements for non self-accrediting providers

The additional requirements for *non self-accrediting providers are that the body:

- (a) is in a State or Territory that the Minister is satisfied has legislation that complies with the *National Protocols; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) 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.

16-40 Application

- (1) A body corporate may apply in writing to the Minister for approval as a higher education provider.
- (2) The application:
 - (a) must be in the form approved by the Minister; and
 - (b) must be accompanied by such information as the Minister requests.

16-45 Minister may seek further information

- (1) For the purposes of determining an application, the Minister may, by notice in writing, require an applicant to provide such further information as the Minister directs within the period specified in the notice.
- (2) If an applicant does not comply with a requirement under subsection (1), the application is taken to have been withdrawn.
- (3) A notice under this section must include a statement about the effect of subsection (2).

16-50 Minister to decide application

- (1) The Minister must:
 - (a) decide an application for approval as a higher education provider; and
 - (b) cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider.
- (2) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 16-55

- (3) The Minister's decision must be made:
 - (a) within 90 days after receiving the application; or
 - (b) 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.
- (4) If the Minister decides that an applicant is approved as a higher education provider, the notice 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.

16-55 Disallowance of approval

- (1) A notice of approval under paragraph 16-50(1)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (2) A decision of the Minister to approve a body corporate as a higher education provider takes effect at the later of the following times:
 - (a) on the day immediately after the last day on which a resolution referred to in subsection 48(4) of the *Acts Interpretation Act 1901* disallowing the notice could be passed;
 - (b) the day (if any) specified in the notice under paragraph 16-50(1)(b) as the day on which the approval takes effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 19—What are the quality and accountability requirements?

Subdivision 19-A—General

19-1 The quality and accountability requirements

- (1) The *quality and accountability requirements* are:
 - (a) the *financial viability requirements (see Subdivision 19-B); and
 - (b) the *quality requirements (see Subdivision 19-C); and
 - (c) the *fairness requirements (see Subdivision 19-D); and
 - (d) the *compliance requirements (see Subdivision 19-E); and
 - (e) the *contribution and fee requirements (see Subdivision 19-F).
- (2) This Division does not of its own force require a higher education provider to do any act or thing.

Subdivision 19-B—The financial viability requirements

19-5 Basic requirement

A higher education provider:

- (a) must be financially viable; and
- (b) must be likely to remain financially viable.

19-10 Financial information must be provided

- (1) A higher education provider must give to the Minister a financial statement for each *annual financial reporting period for the provider in which:
 - (a) the provider receives assistance under this Chapter; or
 - (b) a student of the provider receives assistance under Chapter 3.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-12

- (2) The statement:
 - (a) must be in the form approved by the Minister; and
 - (b) must be provided together with a report on the statement by an independent *qualified auditor; and
 - (c) must be provided within 6 months after the end of the *annual financial reporting period for which the statement was given.
- (3) An *annual financial reporting period*, for a higher education provider, is the period of 12 months:
 - (a) to which the provider's accounts relate; and
 - (b) that is notified in writing to the Minister as the provider's annual financial reporting period.

19-12 Minister to have regard to financial information

In determining whether a higher education provider is financially viable, and likely to remain so, the Minister must have regard to any financial statement provided by the provider under section 19-10.

Subdivision 19-C—The quality requirements

19-15 Provider must maintain quality

- (1) A higher education provider must operate, and continue to operate, at an appropriate level of quality for an Australian higher education provider.
- (2) The Minister must not determine that a higher education provider meets an appropriate level of quality for an Australian higher education provider, unless the Minister is satisfied that:
 - (a) if the provider is not a *Table A provider—the provider meets the requirements of sections 19-20 and 19-25; or
 - (b) if the provider is a Table A provider—the provider meets the requirements of section 19-27.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-20 Provider (other than Table A provider) to comply with National Protocols etc.

A higher education provider (other than a *Table A provider) must:

- (a) be assessed, by an authorised accreditation authority listed in the *Australian Qualifications Framework Register, as meeting the relevant protocols in the *National Protocols; and
- (b) comply with any requirement imposed on the provider by an authorised accreditation authority listed on the Australian Qualifications Framework Register; and
- (c) comply with any requirement imposed on the provider by the Minister in writing in order to implement a specified recommendation of a *quality auditing body.

19-25 Quality assurance—provider (other than Table A provider)

- (1) A higher education provider (other than a *Table A provider) must be audited:
 - (a) by a *quality auditing body; and
 - (b) as the auditing body requires.
- (2) The provider must also:
 - (a) after a request from a *quality auditing body to audit the provider, allow the audit to start within the time agreed to by the body and provider; and
 - (b) fully co-operate with the auditing body in the course of its audit; and
 - (c) pay to the auditing body any charges payable for such an audit.
- (3) The provider's agreement under paragraph (2)(a) must be given to the *quality auditing body within one month after the body makes the request to the provider.

19-27 Quality assurance—Table A provider

- (1) A *Table A provider must be audited by a *quality auditing body at least once every 5 years.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance

Part 2-1 Higher education providers

Division 19 What are the quality and accountability requirements?

Section 19-30

- (2) The provider must, in relation to each audit of the provider:
 - (a) either:
 - (i) before the start of the audit, reach agreement with the body on the time of, and the arrangements for, the audit; or
 - (ii) comply with the Minister's determination under subsection (3); and
 - (b) in relation to each audit, comply with any requests, made in the course of the audit by the body conducting the audit, that are reasonable having regard to the provider's circumstances.
- (3) If the provider and the *quality auditing body are unable to agree on matters referred to in subparagraph (2)(a)(i) in relation to an audit of the provider, the Minister may, after consulting with the provider, determine in writing the audit arrangements for the provider.

Subdivision 19-D—The fairness requirements

19-30 Basic requirement

A higher education provider must treat fairly:

- (a) all of its students; and
- (b) all of the persons seeking to enrol with the provider.

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

- (1) A higher education provider that receives assistance under this 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.
- (2) A higher education provider that receives:
 - (a) any grant or allocation under this Chapter; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) any payment under section 124-1 on account of amounts of *OS-HELP assistance;
must have open, fair and transparent procedures that, in the provider's view, are based on merit for making decisions about the selection of students who are to benefit from the grant, allocation or payment.
- (3) Subsection (2) does not prevent a higher education provider taking into account, in making such decisions about the selection of students, educational disadvantages that a particular student has experienced.
- (4) A higher education provider that receives any payment under section 110-1 on account of amounts of *FEE-HELP assistance for a unit of study must have open, fair and transparent procedures that, in the provider's view, are based on merit for making decisions about:
- (a) the selection, from among the persons who seek to enrol with the provider in that unit of study, of persons to enrol; and
 - (b) the treatment of students undertaking that unit of study.
- (5) Subsection (4) does not prevent a higher education provider taking into account, in making decisions mentioned in that subsection, educational disadvantages that a particular student has experienced.

19-40 Compliance with the tuition assurance requirements

- (1) A higher education provider, other than a *Table A provider or a body declared under subsection (2), must comply with the *tuition assurance requirements.
- (2) The Minister may, by declaration in writing, exempt a specified higher education provider from the requirement in subsection (1).

19-45 Student grievance and review procedures

Must have grievance and review procedures

- (1) A higher education provider must have:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance

Part 2-1 Higher education providers

Division 19 What are the quality and accountability requirements?

Section 19-45

- (a) 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; and
- (b) a grievance procedure for dealing with complaints by the provider's students relating to academic matters; and
- (c) a review procedure for dealing with review of decisions made by the provider relating to assistance under Chapter 3.

Note: Part 5-7 also deals with reconsideration and review of decisions.

- (2) Except where the provider is a *Table A provider, the grievance procedures referred to in paragraphs (1)(a) and (b) must comply with the requirements of the Higher Education Provider Guidelines.
- (3) The review procedure referred to in paragraph (1)(c) must comply with the requirements of the Higher Education Provider Guidelines.

Guidelines may provide for certain matters

- (4) The Higher Education Provider Guidelines may provide for procedures that are to be followed by *review officers when reviewing the decisions of higher education providers made relating to assistance under Chapter 3.

Provider to comply with procedures

- (5) The provider must comply with its grievance and review procedures.

Provider to provide information about procedures

- (6) The provider must publish, and make publicly available, up to date information setting out the procedures.

Provider to provide information about other complaint mechanisms

- (7) The provider must publish information about any other complaint mechanisms available to complain about the provider's decisions.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-50 Higher education providers to appoint review officers

- (1) A higher education provider must appoint a *review officer to undertake reviews of decisions made by the provider relating to assistance under Chapter 3.

Note: The Secretary may delegate to a review officer of a higher education provider the power to reconsider decisions of the provider under Division 209: see subsection 238-1(2).

- (2) A *review officer* of a higher education provider is a person, or a person included in a class of persons, whom:
- (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider;
- has appointed to be a review officer of the provider for the purposes of reviewing decisions made by the provider relating to assistance under Chapter 3.

19-55 Review officers not to review own decisions

A higher education provider must ensure that a *review officer of the provider:

- (a) does not review a decision that the review officer was involved in making; and
- (b) in reviewing a decision of the provider, occupies a position that is senior to that occupied by any person involved in making the original decision.

19-60 Procedures relating to personal information

- (1) A higher education provider must comply with the information privacy principles set out in section 14 of the *Privacy Act 1988* in respect of *personal information obtained for the purposes of Chapter 3 or 4.
- (2) A higher education provider must have a procedure under which a student enrolled with the provider may apply to the provider for, and receive, a copy of *personal information that the provider holds in relation to that student.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-65

- (3) The provider must comply with:
 - (a) the requirements of the Higher Education Provider Guidelines relating to *personal information in relation to students; and
 - (b) the procedure referred to in subsection (2).

Subdivision 19-E—The compliance requirements

19-65 Basic requirements

- (1) A higher education provider must comply with the requirements of this Act, the regulations and the Guidelines made under section 238-10.
- (2) A higher education provider must provide information to the Minister in relation to the affairs of the provider in accordance with the requirements of this Act.
- (3) A higher education provider's administrative arrangements must support the provision of assistance under this Act.

19-70 Provider to provide statement of general information

- (1) A higher education provider must give to the Minister such statistical and other information that the Minister by notice in writing requires from the provider in respect of:
 - (a) the provision of higher education by the provider; and
 - (b) compliance by the provider with the requirements of this Act.
- (2) The information must be provided:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with such other requirements as the Minister makes.
- (3) A notice under this section must not require the giving of information that a higher education provider is required to give to the Minister under section 19-95.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

A higher education provider must by writing inform the Minister of any event affecting:

- (a) the provider; or
- (b) a *related body corporate of the provider;

that may significantly affect the provider's capacity to meet the conditions of grants under this Chapter or the *quality and accountability requirements.

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

19-85 Basic requirement

A higher education provider must charge, in accordance with the requirements of this Act, *student contribution amounts and *tuition fees for each unit of study in which it enrolls students.

19-87 Determining student contribution amounts for all places in units

- (1) This section applies to a unit of study:
 - (a) that a higher education provider provides or proposes to provide during a year; and
 - (b) that may form part of a *course of study in which the provider or, where the provider is a *Table A provider, another Table A provider may enrol students as *Commonwealth supported students.
- (2) The provider must determine a *student contribution amount for a place in the unit that is to apply to all students who may enrol in the unit during the year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-88

19-88 Determining student contribution amounts for places in units for student cohorts

- (1) This section applies to a unit of study:
 - (a) that a higher education provider provides or proposes to provide as part of a *student cohort's *course of study; and
 - (b) in which the provider may enrol students as *Commonwealth supported students.
- (2) In addition to the amount determined under section 19-87, the provider may determine a *student contribution amount for a place in the unit that is only to apply to students in that *student cohort who may enrol in the unit as part of the cohort's *course of study. However, the provider must determine the amount in the year before the cohort commences its course of study.
- (3) The provider may only determine one amount for the unit to apply to students in that *student cohort.
- (4) The provider may also determine conditions for that *student cohort that are to apply in relation to the *student contribution amount for a place in the unit.
- (5) However, the provider may only determine conditions under subsection (4) of the kind or kinds specified for the purposes of that subsection in the Higher Education Provider Guidelines.

19-90 Determining tuition fees for all students

- (1) This section applies to a unit of study that a higher education provider provides or proposes to provide during a year.
- (2) The provider must determine a *fee for the unit that is to apply to all students who may enrol in the unit during the year.
- (3) However, if the unit can form part of more than one *course of study, the provider may determine under subsection (2) a different *fee for the unit for each such course to apply to students who may enrol in the unit as part of that course.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-91 Determining tuition fees for students in student cohorts

- (1) This section applies to a unit of study that a higher education provider provides or proposes to provide as part of a *student cohort's *course of study.
- (2) In addition to the amount determined under section 19-90, the provider may determine a *fee for the unit that is only to apply to students in that *student cohort who may enrol in the unit as part of the cohort's *course of study. However, the provider must determine the fee in the year before the cohort commences its course of study.
- (3) The provider may only determine one *fee for the unit to apply to students in that *student cohort.
- (4) The provider may also determine conditions for that *student cohort that are to apply in relation to the *fee for the unit.
- (5) However, the provider may only determine conditions under subsection (4) of the kind or kinds specified for the purposes of that subsection in the Higher Education Provider Guidelines.

19-95 Schedules of student contribution amounts for places and tuition fees

- (1) A higher education provider must give the Minister a schedule of the *student contribution amounts for places, and *tuition fees, determined under sections 19-87 and 19-90 for all the units of study it provides or proposes to provide during the year. It must give the schedule:
 - (a) in a form approved by the Minister; and
 - (b) in accordance with the requirements that the Minister determines in writing.
- (2) The provider must:
 - (a) ensure that the schedule provides sufficient information to enable a person to work out his or her *student contribution amount and tuition fee determined under sections 19-87 and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 19-97

19-90 for each unit of study that the provider provides or is to provide; and

- (b) publish the schedule for a particular year by the date specified in the Higher Education Provider Guidelines in the year preceding that year; and
- (c) ensure that the schedule is available to all students enrolled, and persons seeking to enrol, with the provider on request and without charge.

19-97 Information on student contribution amounts for places and tuition fees for student cohorts

- (1) If the provider has determined, under section 19-88 or 19-91, *student contribution amounts for places in units, or *tuition fees, to apply to students in *student cohorts, the provider must publish, and make publicly available:
 - (a) sufficient information to enable a person in a student cohort to work out his or her *student contribution amount and tuition fee for each unit of study that the provider provides or is to provide as part of the cohort's *course of study; and
 - (b) any conditions that are to apply in relation to the amount or fee for each unit of study for each student cohort.
- (2) The information mentioned in subsection (1) for a particular unit must be published and made publicly available by the date specified in the Higher Education Provider Guidelines in the year preceding the year in which the *student cohort commences its course of study.

19-100 Limits on fees for courses of study

A higher education provider must not charge a person a *fee for a *course of study that exceeds the sum of the person's *tuition fees for all of the units of study undertaken with the provider by the person as part of the course.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

19-101 Meaning of *student cohort*

A *student cohort*, in relation to a particular *course of study of which a unit of study forms a part, is the group of all of the students who commence the course in a particular year with a particular higher education provider.

19-102 Meaning of *fee*

- (1) A *fee* includes any tuition, examination or other fee payable to a higher education provider by a person enrolled with, or applying for enrolment with, the provider.
- (2) A *fee* may also include any fee payable to the provider in respect of the granting of a *higher education award.
- (3) A *fee* does not include a fee that is:
 - (a) payable in respect of an organisation of students, or of students and other persons; or
 - (b) payable in respect of the provision to students of amenities or services that are not of an academic nature; or
 - (c) payable in respect of residential accommodation; or
 - (d) imposed in accordance with the Commonwealth Grant Scheme Guidelines for the imposition of fees in respect of *overseas students; or
 - (e) 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
 - (f) determined, in accordance with guidelines issued by the Minister, to be a fee of a kind that:
 - (i) is incidental to studies that may be undertaken with a higher education provider; and
 - (ii) meets the criteria specified in the Commonwealth Grant Scheme Guidelines; or
 - (g) a *student contribution amount payable in respect of a student.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance

Part 2-1 Higher education providers

Division 19 What are the quality and accountability requirements?

Section 19-105

- (4) The definition of *fee* in this section does not apply for the purposes of sections 104-50 and 225-25.

19-105 Meaning of *tuition fee*

A person's *tuition fee* for a unit of study is:

- (a) if all of the following apply:
- (i) the unit forms part of a *course of study with a higher education provider;
 - (ia) the person is undertaking the unit with the provider;
 - (ii) the person commenced that *course of study in a particular *student cohort;
 - (iii) the provider has determined, in accordance with section 19-91, a *fee for the unit that applies to students in that cohort;
 - (iv) the person satisfies any conditions that apply to the cohort under that section in relation to the fee for the unit;
- the fee determined under that section for the cohort; or
- (b) if paragraph (a) does not apply and a different fee for the unit has been determined for each course of study in accordance with subsection 19-90(3)—the fee determined for the unit for the person's course of study; or
- (c) in all other cases—the fee determined under subsection 19-90(2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 22—When does a body cease to be a higher education provider?

Subdivision 22-A—General

22-1 Cessation of approval as a provider

A body ceases to be approved as a higher education provider:

- (a) if the approval is revoked under Subdivision 22-B or 22-D;
or
- (b) while the approval is suspended under section 22-30.

Subdivision 22-B—Revocation for cause

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

The Minister may revoke a body's approval as a higher education provider if the Minister:

- (a) is satisfied that the body's application under section 16-40 for approval as a higher education provider contained material that was false or misleading; and
- (b) complies with the requirements of section 22-20.

22-7 Revocation of approval if providing education and/or conducting research ceases to be the body's principal purpose

The Minister may revoke a body's approval as a higher education provider if:

- (a) at the last time the body became a higher education provider, the body's principal purpose was either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 22-10

- (b) since that time, the body's circumstances have changed so that it no longer satisfies paragraph 16-25(1)(aa); and
- (c) the Minister complies with the requirements of section 22-20.

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

Bodies that were universities

- (1) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was a *university at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be a university; and
 - (c) the Minister complies with the requirements of section 22-20.

Bodies that were self-accrediting providers

- (2) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was a *self-accrediting provider at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be a self-accrediting provider; and
 - (c) the Minister complies with the requirements of section 22-20.

Bodies that were non self-accrediting providers

- (3) The Minister may revoke a body's approval as a higher education provider if:
 - (a) the body was a *non self-accrediting provider at the last time the body became a higher education provider; and
 - (b) since that time, the body has ceased to be a non self-accrediting provider; and
 - (c) the Minister complies with the requirements of section 22-20.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

- (1) The Minister may revoke a body's approval as a higher education provider if the Minister:
 - (a) is satisfied that the body has either:
 - (i) breached a condition of a grant made to the body under Part 2-2, 2-3 or 2-4; or
 - (ii) breached a *quality and accountability requirement; and
 - (b) is satisfied that it is appropriate to take that action (see subsection (2)); and
 - (c) complies with the requirements of section 22-20.
- (2) Without limiting the matters that the Minister may consider in deciding whether it is appropriate under this section to revoke a body's approval as a higher education provider, the Minister may consider any or all of the following matters:
 - (a) whether the breach in question is of a minor or major nature;
 - (b) whether the breach has occurred before and, if so, how often;
 - (c) the impact that the breach may have on the body's students;
 - (d) the impact of the breach on the higher education provided by the body;
 - (e) the impact of the breach on Australia's reputation as a provider of high quality higher education;
 - (f) any other matter set out in the Higher Education Provider Guidelines.

Subdivision 22-C—Process for decisions on revocation under Subdivision 22-B

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

- (1) Before revoking a body's approval as a higher education provider under Subdivision 22-B, the Minister must give the body notice in writing:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (a) stating that the Minister is considering revoking the body's approval; and
 - (b) stating the reasons why the Minister is considering revoking the body's approval; and
 - (c) inviting the body to make written submissions to the Minister within 28 days concerning why the approval should not be revoked.
- (2) 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.
- (3) The Minister must notify the body in writing of his or her decision whether to revoke the body's approval under Subdivision 22-B. The notice:
- (a) must be in writing; and
 - (b) must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subsection (1); and
 - (c) if the Minister decides to revoke the body's approval—must specify the day that the revocation takes effect.
- (4) If no notice is given within the period provided for in subsection (3), the Minister is taken to have decided not to revoke the approval.
- (5) If the Minister decides to revoke the body's approval:
- (a) the revocation takes effect on the day specified in the notice under subsection (3); and
 - (b) a copy of the notice must be published in the *Gazette*.

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

- (1) The Minister may determine, in writing, 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:
- (a) grants to the body under this Chapter; and
 - (b) assistance payable to the body's students under Chapter 3;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

to the extent that the grants or assistance relate to students of the body who have not completed the *courses of study in which they were enrolled with the body on the day specified for the purposes of paragraph 22-20(5)(a).

- (2) The determination may be included in the notice of revocation under subsection 22-20(3).
- (3) The body is taken, for the purposes of this Act, to continue to be a higher education provider, but only to the extent referred to in subsection (1).
- (4) Subsection (3) does not prevent the Minister subsequently revoking the body's approval as a higher education provider under this Division.

22-30 Suspension of approval as a provider

- (1) 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.
- (2) A copy of the determination must be given to the body concerned.
- (3) If the Minister makes a determination under subsection (1) in respect of a body, the Minister must give to the body a notice under section 22-20 within 48 hours after giving a copy of the determination to the body.
- (4) A determination under this section:
 - (a) takes effect accordingly on the day specified in the determination; and
 - (b) ceases to have effect if the Minister decides not to revoke the body's approval as a higher education provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 22-35

22-35 Disallowance of revocation

- (1) A notice of revocation under subsection 22-20(3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (2) A decision of the Minister to revoke the approval of a higher education provider takes effect at the later of the following times:
 - (a) on the day immediately after the last day on which a resolution referred to in subsection 48(4) of the *Acts Interpretation Act 1901* disallowing the notice could be passed;
 - (b) the day specified in the notice of revocation under subsection 22-20(3) as the day on which the revocation takes effect.

Subdivision 22-D—Revocation of approval on application

22-40 Revocation of approval as a provider on application

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-2—Commonwealth Grant Scheme

Division 27—Introduction

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.

Amounts of grants may be reduced, or some or all of a grant may be repayable if a condition is breached (see Part 2-5).

27-5 Guidelines

- (1) The grants payable under this Part are also dealt with in the Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines.
- (2) The provisions of this Part indicate:
 - (a) when a particular matter is, or may be, dealt with in the guidelines; and
 - (b) whether the matter is dealt with in the Commonwealth Grant Scheme Guidelines or the Tuition Fee Guidelines.

Note 1: The Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines are made by the Minister under section 238-10.

Note 2: The Commonwealth Grant Scheme Guidelines may also deal with matters arising under section 93-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 30-1

Division 30—Which higher education providers are eligible for a grant?

Subdivision 30-A—Basic rules

30-1 Eligibility for grants

- (1) A grant under this Part is payable, as a benefit to students, to a higher education provider, in respect of the year 2005 or a later year, if:
 - (a) the provider is:
 - (i) a *Table A provider; or
 - (ii) 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
 - (b) the Minister has allocated a *number of Commonwealth supported places to the provider for that year under section 30-10; and
 - (c) the provider has entered into a funding agreement with the Commonwealth under section 30-25 in respect of that year.
- (2) 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.

30-5 Maximum grants

- (1) 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:
 - (a) for the year 2005—\$3,066,122,000; or
 - (b) for the year 2006—\$3,200,648,000; or
 - (c) for the year 2007—\$3,342,929,000; or
 - (d) for the year 2008—\$3,406,337,000.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) For the purposes of subsection (1), regard must be had to any adjustments under section 33-20 to amounts for the year.

Note: The adjustments would be in respect of the preceding year.

Subdivision 30-B—Allocation of places

30-10 Allocation of places

- (1) 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.
- (2) The allocation must specify the distribution of those places between the *funding clusters.
- (2A) If the provider has indicated to the Minister its preferred distribution of those places, the Minister must have regard to that preferred distribution in deciding the distribution of those places.
- (3) The allocation may also specify:
- (a) the number of those places that have a regional loading; and
 - (b) the number of those places that have a medical student loading; and
 - (c) the number of those places that have an enabling loading.
- (4) If the provider is not a *Table A provider, the allocation must specify:
- (a) that it is only in respect of *national priorities; and
 - (b) the number of places for each national priority for which the provider is allocated places.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 30-15

30-15 Funding clusters

The *funding clusters* are:

Funding clusters

Funding clusters

Law

Accounting, Administration, Economics, Commerce

Humanities

Mathematics, Statistics

Behavioural Science, Social Studies

Computing, Built Environment, Health

Foreign Languages, Visual and Performing Arts

Engineering, Science, Surveying

Dentistry, Medicine, Veterinary Science

Agriculture

Education

Nursing

30-20 National priorities

A *national priority* is a particular outcome:

- (a) that relates to the provision of higher education; and
- (b) that is an outcome specified in the Commonwealth Grant Scheme Guidelines as a national priority.

Note: The following are examples of national priorities:

- (a) increasing the number of persons undertaking particular courses of study;
- (b) increasing the number of particular kinds of persons undertaking courses of study;
- (c) increasing the number of persons in particular regions undertaking courses of study.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 30-C—Funding agreements

30-25 Funding agreements

- (1) The Minister 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*).
- (1A) In negotiating the agreement the Minister must have regard to all of the types of matters that the provider has indicated to the Minister it wishes to be specified in the agreement.
- (2) The agreement may specify conditions to which the grant is subject, that are additional to the conditions that apply under Division 36.

Note: It is a condition of the grant that the provider comply with the agreement: see section 36-65.
- (2A) However, the agreement must not specify as a condition to which the grant is subject a matter in respect of which the Minister could have made a determination under subsection 36-15(2) (or could have made such a determination but for subsection 36-15(3)).

Note: The Minister has the power under subsection 36-15(2) to determine that students are not to be enrolled as Commonwealth supported students in particular courses. The determination is disallowable (see subsection 36-15(3)).
- (2B) Where the agreement specifies conditions to which the grant is subject, that are additional to the conditions that apply under Division 36, those conditions must not relate to industrial relations matters.
- (3) Without limiting subsection (2), the agreement may specify:
 - (a) in relation to one or more of the following:
 - (i) places in *undergraduate courses of study;
 - (ii) places in non-research *postgraduate courses of study;
 - (iii) places in courses of study in medical programs;
 - (iv) places in courses of study in *enabling courses;the minimum *number of Commonwealth supported places that the provider must provide in the grant year, or the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 30-25

- maximum number of Commonwealth supported places that the provider may provide in the grant year, or both; and
- (b) the maximum number of Commonwealth supported places provided by the provider which can have a regional loading in the grant year; and
 - (c) the maximum number of Commonwealth supported places provided by the provider which can have a medical student loading in the grant year; and
 - (ca) the maximum number of Commonwealth supported places provided by the provider which can have an enabling loading in the grant year; and
 - (d) the maximum amount of regional loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant year; and
 - (da) the maximum amount of enabling loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant year; and
 - (g) 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.
- (4) The Minister must cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the making of the agreement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 33—How are grant amounts worked out?

Subdivision 33-A—Basic rule

33-1 How grant amount is worked out

- (1) The amount of a grant payable to a higher education provider under this Part for a year is worked out by:
 - (a) working out the *basic grant amount for the provider for that year under Subdivision 33-B; and
 - (b) if applicable, adjusting the basic grant amount under Subdivision 33-C.
- (2) Advances may be paid to a higher education provider under Subdivision 33-D.

Note: Part 5-1 deals with how payments can be made.

Subdivision 33-B—Basic grant amounts

33-5 Basic grant amounts

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

- (a) for each *funding cluster to which the Minister has allocated places to the provider under section 30-10—the amount worked out by multiplying:
 - (i) the *number of Commonwealth supported places allocated in relation to that funding cluster; by
 - (ii) the *Commonwealth contribution amount for a place in that funding cluster; and
- (b) 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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (c) 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; and
- (d) if the allocation has specified under paragraph 30-10(3)(c) a number of Commonwealth supported places that have an enabling loading—the amount of enabling loading worked out under the Commonwealth Grant Scheme Guidelines for those places.

33-10 Commonwealth contribution amounts

The *Commonwealth contribution amount*, for a place in a *funding cluster, is:

Commonwealth contribution amount		
Item	Funding cluster	Commonwealth contribution amount
1	Law	\$1,442
2	Accounting, Administration, Economics, Commerce	\$2,371
3	Humanities	\$3,995
4	Mathematics, Statistics	\$4,718
5	Behavioural Science, Social Studies	\$6,342
6	Computing, Built Environment, Health	\$7,064
7	Foreign Languages, Visual and Performing Arts	\$8,687
8	Engineering, Science, Surveying	\$11,757
9	Dentistry, Medicine, Veterinary Science	\$14,738
10	Agriculture	\$15,667
11	Education	\$6,970
12	Nursing	\$9,316

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note: Commonwealth contribution amounts are indexed under Part 5-6.

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

- (1) A higher education provider's *basic grant amount for a year is increased under this section if:
 - (a) the Commonwealth Grant Scheme Guidelines impose on higher education providers requirements to be known as the National Governance Protocols; and
 - (b) the higher education provider's certified agreement, made and certified after 22 September 2003, includes the following clause: "The provider may offer AWAs in accordance with the *Workplace Relations Act 1996*"; and
 - (c) the Minister is satisfied that the provider met the requirements in paragraphs (a) and (b) as at a date, specified in the Commonwealth Grant Scheme Guidelines, in the year preceding that year.
- (2) If subsection (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:
 - (a) if the grant year is the year 2005—2.5%; and
 - (b) if the grant year is the year 2006—5%; and
 - (c) if the grant year is a later year—7.5%.

Subdivision 33-C—Adjustments

33-20 Adjustments in accordance with guidelines

- (1) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 33-25

- (2) The Commonwealth Grant Scheme Guidelines must specify, in relation to each of the adjustments:
- (a) whether the adjustment is to be an increase or a reduction in the provider's *basic grant amount for the grant year; and
 - (b) the amount of the adjustment, or how the adjustment is to be worked out.

33-25 Adjustments that apply in the absence of guidelines

Number of places provided exceeds allocated places by 5% or higher agreed percentage

- (1) A higher education provider's *basic grant amount for the grant year is reduced by an adjustment if:
- (a) the Commonwealth Grant Scheme Guidelines neither:
 - (i) 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; nor
 - (ii) provide that there is to be no adjustment in those circumstances; and
 - (b) in the preceding year, the number of Commonwealth supported places provided by the provider exceeds:
 - (i) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or
 - (ii) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year;whichever is higher.
- (2) The adjustment under subsection (1) is an amount worked out using the formula:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

$$\text{Excess places} \times \frac{\text{Student contributions}}{\text{Places provided}}$$

where:

excess places is the *number of Commonwealth supported places that the provider provided during the preceding year in excess of:

- (a) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or
- (b) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year;

whichever is higher.

places provided is the *number of Commonwealth supported places that the provider provided during the preceding year.

student contributions is the sum of all of the students' *student contribution amounts that the provider has received, or is entitled to receive, for all of the units of study undertaken with the provider during the preceding year.

Corrected basic amount is less than the basic grant amount

- (3) A higher education provider's *basic grant amount for the grant year is reduced by an adjustment if:
 - (a) the Commonwealth Grant Scheme Guidelines neither:
 - (i) provide for an adjustment when the provider's *corrected basic amount for the preceding year is less than the provider's basic grant amount for that year; nor
 - (ii) provide that there is to be no adjustment in these circumstances; and
 - (b) the provider's corrected basic amount for the preceding year was less than 99% of the provider's basic grant amount for that year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 33-25

- (4) The adjustment under subsection (3) is an amount equal to the difference between:
 - (a) 99% of the *basic grant amount; and
 - (b) the *corrected basic amount.

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

Corrected basic amount exceeds the basic grant amount

- (5A) A higher education provider's *basic grant amount for the grant year is increased by an adjustment if:
 - (a) the Commonwealth Grant Scheme Guidelines neither:
 - (i) provide for an adjustment when the provider's *corrected basic amount for the preceding year exceeds the provider's basic grant amount for that year; nor
 - (ii) provide that there is to be no adjustment in these circumstances; and
 - (b) the provider's corrected basic amount for the preceding year exceeded the provider's basic grant amount for that year; and
 - (c) the Minister determines that the provider's basic grant amount for that year should be increased by an adjustment under this subsection.

- (5B) The adjustment under subsection (5A) is an amount equal to the lesser of the following:
 - (a) 1% of the *basic grant amount;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the difference between the *corrected basic amount and the basic grant amount.

No adjustment for 2005

- (6) No adjustments are to be made under this section to *basic grant amounts for the year 2005.

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

- (1) The *number of Commonwealth supported places* that a higher education provider has provided during a particular year is a number equal to the number worked out as follows:

Method statement

Step 1. 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, multiply:

- (a) the *EFTSL value of the unit; by
- (b) the number of persons enrolled with the provider in that unit as *Commonwealth supported students.

Step 2. Add together all of the amounts worked out under step 1.

- (2) For the purposes of this section, if:
- (a) a unit of study provided by the provider forms part of more than one *course of study; and
 - (b) the provider determines under subsection 73-15(2) an *EFTSL value of the unit for each such course;
- the unit is taken to be a different unit of study in respect of each such course.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 33-35

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

The Commonwealth Grant Scheme Guidelines may specify:

- (a) how to determine, for the purposes of this Act, the *funding clusters in which units of study are included; or
- (b) the particular funding cluster in which a particular unit of study is included for the purposes of this Act.

Subdivision 33-D—Special purpose advances

33-40 Advances for certain purposes

- (1) The Minister may determine that 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.
- (2) The Minister may pay an advance to the provider under subsection (1) on such conditions (if any) as the Minister determines.
- (3) 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.
- (4) 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:
 - (a) the year next following that year; or
 - (b) the 2 years next following that year; or
 - (c) the 3 years next following that year;are reduced by amounts that equal in total the amount of the advance.
- (5) Determinations under subsections (1) and (2), and reductions under subsection (4), must be made in accordance with Commonwealth Grant Scheme Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 36—What are the conditions of receiving a grant?

Subdivision 36-A—General

36-1 Condition of grant to comply with this Division

- (1) A higher education provider receives a grant under this Part on condition that the provider complies with this Division.
- (2) Without limiting subsection (1), the following provisions of this Division do not of their own force require the provider to do any act or thing.

Subdivision 36-B—Conditions relating to Commonwealth supported students

36-5 Meaning of *Commonwealth supported student*

- (1) A person is a *Commonwealth supported student*, in relation to a unit of study, if the higher education provider with which he or she is enrolled in that unit has advised the person in writing that he or she is a Commonwealth supported student:
 - (a) in relation to the unit; or
 - (b) if the person is undertaking a *course of study with the provider of which the unit forms a part—in relation to that course of study.
- (2) An advice under paragraph (1)(b) may be subject to the requirements of section 36-10 being met by the provider, the unit and the person.
- (3) However, the person is not a Commonwealth supported student in relation to the unit if he or she notifies an *appropriate officer of the provider that he or she does not wish to be a Commonwealth supported student in relation to the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 36-10

- (4) A notice under subsection (3):
 - (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

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

When a provider must not advise that a person is Commonwealth supported

- (1) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study unless:
 - (a) a *number of Commonwealth supported places has been allocated to the provider under section 30-10 for the year in which the person is undertaking the unit; and
 - (b) the unit contributes to the requirements of a *course of study in which the person is enrolled with the provider or, where the provider is a *Table A provider, with another Table A provider; and
 - (c) the person is:
 - (i) an Australian citizen; or
 - (ii) a citizen of New Zealand who will be resident within Australia for the duration of the unit; or
 - (iii) a *permanent visa holder who will be resident within Australia for the duration of the unit; and
 - (d) the unit:
 - (i) is *covered by the person's *Student Learning Entitlement; or
 - (ii) wholly consists of *work experience in industry; or
 - (iii) is undertaken as part of an *enabling course; and
 - (e) the person enrolls in the unit on or before the *census date for the unit.
- (2) In determining, for the purposes of subparagraph (1)(c)(ii) or (iii), whether a person will be resident within Australia for the duration

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

of the unit of study, disregard any period of residence outside Australia if:

- (a) it cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
- (b) it is required for the purpose of completing a requirement of that unit.

Persons who do not wish to be Commonwealth supported

- (3) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study if the person has notified an *appropriate officer of the provider that he or she does not wish to be a Commonwealth supported student in relation to the unit.
- (4) A notice under subsection (3):
 - (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

Additional requirement for non-Table A providers

- (5) A higher education provider that is not a *Table A provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study unless:
 - (a) the unit in which the person is enrolled is within a *national priority; and
 - (b) the provider has received a grant under this Part for that national priority for the year in which the person is undertaking the unit; and
 - (c) 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.

Additional requirement relating to work experience in industry

- (6) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study that wholly consists of *work experience in industry unless:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (a) the unit forms part of a *course of study; and
- (b) the person is enrolled, or has previously been enrolled, in another unit of study in that course:
 - (i) that does not, or did not, wholly consist of work experience in industry; and
 - (ii) in relation to which the person is, or was, a Commonwealth supported student.

Units of study at full fee summer schools

- (7) A higher education provider must not advise a person that he or she is a *Commonwealth supported student in relation to a unit of study if:
 - (a) the person undertakes the unit wholly during a summer school period (the **current summer school period**); and
 - (b) the provider has determined that this subsection applies to the unit.
- (8) A higher education provider may determine that subsection (7) applies to a unit of study only if each person who could undertake the unit during the current summer school period could undertake, or could have undertaken, the unit during a period other than a summer school period as part of a *course of study undertaken by the person with the higher education provider.
- (9) The higher education provider must make the determination before the start of the current summer school period.
- (10) In this section:

summer school period means a period that starts on or after 1 November in a year and ends after 1 January, but before 1 March, in the following year.

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

- (1) 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:
 - (a) the enrolment is in an *employer reserved place; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) the unit forms part of a *bridging course for overseas trained professionals; or
 - (c) the unit forms part of a course to which a determination under subsection (2) applies.
- (2) The Minister may determine in writing that:
- (a) a specified *course of study is not one in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students; or
 - (b) a *course of study of a specified type is not one in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students.
- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course, or a course of that type.
- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or a course of that type, with the provider.
- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

36-20 Providers to repay amounts if Student Learning Entitlement is re-credited

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:

- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and
- (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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36-22 Providers to repay amounts etc. for units wholly consisting of work experience in industry in special circumstances

- (1) This section applies to a person if:
- (a) the person has been enrolled as a *Commonwealth supported student with a higher education provider in a unit of study; and
 - (aa) the unit would, if completed, form part of a *course of study undertaken with the provider or, where the provider is a *Table A provider, with another Table A provider; and
 - (b) the unit wholly consists of *work experience in industry; and
 - (c) 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
 - (d) the provider with which the person is enrolled in the unit is satisfied that special circumstances apply to the person (see subsection (3)); and
 - (e) the person applies in writing to that provider for either or both:
 - (i) the repayment of any amounts that the person paid in relation to his or her *student contribution amount for the unit; or
 - (ii) the remission of the person's *HECS-HELP debt in relation to the unit; and
 - (f) either:
 - (i) the application is made before the end of the application period under subsection (5) or (6); or
 - (ii) 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.

Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(5).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) The provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.

Special circumstances

- (3) For the purposes of paragraph (1)(d), 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:
- (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit; and
 - (c) 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.

Student Learning Entitlement Guidelines may specify circumstances

- (4) 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 subsection (3) of this section must be in accordance with any such guidelines.

Note: The matters referred to in paragraphs 79-5(1)(a), (b) and (c) (which relate to the re-crediting of Student Learning Entitlement) are identical to the matters referred to in paragraphs (3)(a), (b) and (c) of this section.

Application period where enrolment withdrawn

- (5) If:
- (a) the person applying under paragraph (1)(e) has withdrawn his or her enrolment in the unit; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (b) the higher education provider gives notice to the person that the withdrawal has taken effect;

the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.

Application period in other cases

- (6) If subsection (5) does not apply, the application period for the application is the period of 12 months after the end of the period during which the person undertook, or was to undertake, the unit.

Dealing with applications

- (7) If:
- (a) the application is made before the end of the application period under subsection (5) or (6); or
 - (b) 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;
- 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.

Statement of reasons

- (8) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Part 5-7.

Subdivision 36-C—Conditions relating to enrolment

36-25 Continued support for Commonwealth supported students

- (1) 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 being undertaken with the provider, that he or she is a *Commonwealth supported student in relation to the unit if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the person is or has been a Commonwealth supported student in relation to one or more other units of study, undertaken with the provider, as part of the course; and
 - (b) the provider is not prohibited, under section 36-10, from so advising the person.
- (2) A **Table A provider (the **host provider**)* must advise a person who is enrolled in a unit of study with the provider, as part of a **course of study being undertaken with another Table A provider (the **home provider**)*, that he or she is a **Commonwealth supported student in relation to the unit if:*
- (a) the person is or has been a Commonwealth supported student in relation to one or more other units of study in the course undertaken with the home provider; and
 - (b) the person must undertake the unit, because it is required to complete the course; and
 - (c) the host provider is not prohibited, under section 36-10, from so advising the person.

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

Table A providers

- (1) If:
- (a) 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*; and
 - (b) the provider is not prohibited, under section 36-10, from advising the person that he or she is a **Commonwealth supported student in relation to the unit*;
- the provider must enrol the person in the unit as a Commonwealth supported student.
- (2) Subsection (1) does not apply, and is taken never to have applied, in relation to that enrolment if:
- (a) in respect of the year in which the person is enrolled in the unit, the provider has already filled, or fills, all of the

**To find definitions of asterisked terms, see the Dictionary in Schedule 1.*

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*number of Commonwealth supported places allocated to the provider for the year under section 30-10; or

- (b) the person notifies an *appropriate officer of the provider that he or she does not wish to be a *Commonwealth supported student in relation to the unit.

Other higher education providers

- (3) 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:
- (a) completion of the unit is in furtherance of a *national priority; and
 - (b) 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.
- (4) Subsection (3) does not apply, and is taken never to have applied, in relation to that enrolment if:
- (a) in respect of the year in which the person is enrolled in the unit, the provider has already filled, or fills, all of the *number of Commonwealth supported places in respect of that *national priority; or
 - (b) the person notifies an *appropriate officer of the provider that he or she does not wish to be a *Commonwealth supported student in relation to the unit.

Notices under paragraph (2)(b) or (4)(b)

- (5) A notice under paragraph (2)(b) or (4)(b):
- (a) must be in writing; and
 - (b) must be given on or before the *census date for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

- (1) A *Table A provider must ensure that, in any year, the *number of Commonwealth supported places provided by the provider accounts for:
 - (a) at least 65% of the total number of places that the provider provides for *domestic students in each *undergraduate course of study that is not:
 - (i) a course of study to which a determination under subsection 36-15(2) applies; or
 - (ii) a *course of study in medicine; or
 - (b) at least the percentage, declared by the Minister in writing, of the total places provided by the provider for domestic students in each course of study in medicine.
- (2) For the purpose of applying subsection (1) in relation to a *course of study, disregard any enrolment in:
 - (a) *work experience in industry; or
 - (b) an *employer reserved place in that course; or
 - (c) a unit of study that is the subject of a determination by the provider under subsection 36-10(7).
- (3) The percentage declared by the Minister under paragraph (1)(b) must be at least 65%.
- (4) A *course of study in medicine* is a *course of study completion of which would allow provisional registration as a medical practitioner by an authority of a State, a Territory or the Commonwealth.

36-40 Providers to cancel enrolments in certain circumstances

- (1) A higher education provider must cancel a person's enrolment in a unit of study with the provider if the person:
 - (a) is enrolled as a *Commonwealth supported student in relation to the unit; and
 - (b) has not, on or before the *census date for the unit:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (i) completed, and signed, a *request for Commonwealth assistance in relation to the unit or, where the unit forms part of a *course of study undertaken with the provider, in relation to the course of study; and
 - (ii) given it to an *appropriate officer of the provider.
- (2) A higher education provider must cancel a person's enrolment in a unit of study with the provider if the person:
- (a) is enrolled as a *Commonwealth supported student in relation to the unit; and
 - (b) is not entitled to *HECS-HELP assistance for the unit; and
 - (c) has not, on or before the *census date for the unit, paid to the provider the whole of the person's *student contribution amount for the unit.

However, this subsection does not apply if the person's student contribution amount for the unit is a nil amount.

- (3) A *request for Commonwealth assistance*, in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit was not provided by *Open Learning Australia), means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit or, where the unit forms part of a *course of study undertaken with the provider, in relation to the course of study; and
 - (b) that is in the form approved by the Minister.

Subdivision 36-D—Conditions relating to student contribution amounts

36-45 Limits on student contribution amounts

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, as the person's *student contribution amount for the unit, an amount that exceeds the amount worked out as follows:

$$\frac{\text{*Maximum student contribution amount for a place}}{\text{*Maximum student contribution amount for a place}} \times \text{The *EFTSL value of the unit}$$

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

A higher education provider must not accept, from a person who:

- (a) is enrolled in a unit of study with the provider; and
 - (b) is entitled to *HECS-HELP assistance for the unit;
- *up-front payments for the unit totalling more than 80% of the person's *student contribution amount for the unit.

Note: For entitlement to HECS-HELP assistance: see Division 90.

Subdivision 36-E—Conditions relating to tuition fees

36-55 Tuition fees for non-Commonwealth supported students

Tuition fees for units of study

- (1) A higher education provider must not determine, as a person's *tuition fee for a unit of study, an amount that is less than:
 - (a) if paragraph (b) does not apply—the highest *student contribution amount that the provider would charge any person who is a *Commonwealth supported student in relation to the unit; or
 - (b) such other higher amount as is specified in the Tuition Fee Guidelines.
- (2) Subsection (1) does not apply if the person is enrolled in an *employer reserved place. However, the provider must not charge, as the person's *tuition fees for the unit, amounts that are such that the sum of:
 - (a) the tuition fees; and
 - (b) the *employer contribution amount for the unit;is less than:
 - (c) if paragraph (d) does not apply—the *student contribution amount referred to in paragraph (1)(a); or
 - (d) such amount as is specified in the Tuition Fee Guidelines for the purposes of paragraph (1)(b).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (3) If a person:
- (a) is enrolled in study with a higher education provider on a *non-award basis; and
 - (b) 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 the person's *fees for the study, amounts that in total are less than the highest amount that the provider would charge any person:
 - (c) who may enrol in the study as a unit of study; and
 - (d) who is a *Commonwealth supported student in relation to the unit.

Subdivision 36-F—Other conditions

36-60 Providers to meet the quality and accountability requirements

A higher education provider must meet the *quality and accountability requirements.

36-65 Providers to comply with funding agreement

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

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

- (1) The Commonwealth Grant Scheme Guidelines may specify conditions that higher education providers must comply with for the purposes of this Division.
- (2) A higher education provider must comply with all such conditions in respect of any year for which the provider receives a grant under this Part.
- (3) However, the provider need not comply with such a condition during a particular year if the condition comes into force on or after

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the day on which the provider entered into a funding agreement under section 30-25 in respect of the year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-3—Other grants

Division 41—Other grants

41-1 What this Part is about

Grants under this Part are payable to higher education providers and other eligible bodies for a variety of purposes.

41-5 The Other Grants Guidelines

Other grants are also dealt with in the Other Grants Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Other Grants Guidelines are made by the Minister under section 238-10.

41-10 Eligibility for grants under this Part

- (1) Subject to subsection (2), a body corporate referred to in an item in the third column of the table is eligible for grants under this Part, in respect of the year 2005 or a later year, for the purposes specified in the second column of that item.

Eligibility for grants under this Part		
Item	Purpose of grant	Who is eligible
1	Grants to promote equality of opportunity in higher education	*Table A providers
2	Grants to promote the productivity of higher education providers	*Table A providers
3	Grants to enhance learning and teaching in higher education	*Table A providers

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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Eligibility for grants under this Part		
Item	Purpose of grant	Who is eligible
4	Grants to support national institutes specified in the Other Grants Guidelines for the purposes of this item	*Table A providers
5	Grants to support the capital development projects of higher education providers	*Table A providers
6	Grants to assist with the cost of higher education providers' superannuation liabilities	*Table A providers
7	Grants to support research by, and the research capability of, higher education providers	*Table A providers and *Table B providers
8	Grants to support the training of research students	*Table A providers and *Table B providers
9	Grants to foster collaboration and reform in higher education	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item
10	Grants to support the development of systemic infrastructure used by higher education providers	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item
11	Grants for activities that: (a) assure and enhance the quality of Australia's higher education sector; or (b) foster an understanding of the importance of, or promote research and scholarship in, science, social science or the humanities in Australia; or (c) support open access to higher education across Australia.	*Table A providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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(2) If the Other Grants Guidelines:

- (a) specify a program under which grants for a particular purpose specified in the table are to be paid; and
- (b) specify extra conditions of eligibility to receive a grant under the program;

then a body corporate specified in the table in respect of those grants is not eligible for such a grant unless it complies with those extra conditions.

41-15 Grants may be paid under programs

- (1) 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.
- (2) 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:
 - (a) the program's objectives;
 - (b) the extra conditions of eligibility to receive a grant under the program;
 - (c) the amount, being a part of the amount referred to in section 41-45 for a year, that will be spent on the program in that particular year;
 - (d) the indexation of that amount for subsequent years, using the method of indexation set out in Part 5-6;
 - (e) the method by which the amount of grants under the program will be determined;
 - (f) whether grants under a program are in respect of a year or a project;
 - (g) the conditions that apply to grants under the program.

41-20 Approval of grants

The Minister may approve a grant under this Part in respect of a year or a project to a body corporate that is eligible for such a grant.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

41-25 Conditions on grants

A grant is made on the following conditions:

- (a) if the grant is made under a program and the Other Grants Guidelines specified conditions that apply to a grant under that program:
 - (i) on the conditions provided for in the guidelines; and
 - (ii) if the body receiving the grant is a higher education provider—also on the condition that the body must meet the *quality and accountability requirements; or
- (b) if paragraph (a) does not apply:
 - (i) on such conditions (if any) as the Minister determines in writing; and
 - (ii) if the body receiving the grant is a higher education provider—also on the condition that the body must meet the quality and accountability requirements.

41-30 Amount of a grant

The amount of a grant is:

- (a) 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 determined by that method; or
- (b) if paragraph (a) does not apply—the amount determined in writing by the Minister.

41-35 Amounts payable under this Part

If:

- (a) a body corporate meets, in respect of a year, the requirements of the Other Grants Guidelines made for the purposes of section 41-15 in relation to a program; or
- (b) the Minister approves, under section 41-20, a grant to a body corporate in respect of a year or project;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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there is payable to the body corporate concerned, in respect of that year or project, an amount equal to the amount referred to in section 41-30 in respect of that grant.

41-40 Rollover of grant amounts

- (1) If:
 - (a) a body to which a grant under this Part has been made in respect of a year fails to spend an amount of that grant; and
 - (b) the *Secretary determines in writing that this section is to apply to the body in respect of that grant;then so much of the unspent amount as the Secretary specifies is taken to be granted to the body under this Part in respect of the next following year.
- (2) The amount is taken to be granted for the same purpose as the original grant.
- (3) The grant is taken to be made:
 - (a) under the same conditions as the conditions of the original grant—except the grant is taken to be made in respect of the next following year; or
 - (b) under such other conditions as are determined by the *Secretary.

41-45 Maximum payments for other grants under this Part

- (1) The total payments made under this Part in respect of a year referred to in the table must not exceed the amount specified next to that year in the table.

Maximum payments for other grants under this Part		
Item	Year	Amount
1	2005	\$1,535,064,000
2	2006	\$1,657,147,000
3	2007	\$1,623,834,000
4	2008	\$1,645,505,000

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) Payments made in respect of a project in a year are taken, for the purposes of subsection (1) to have been made in respect of that year.

41-50 Grant amounts is disallowable instrument

- (1) Before the start of a year, the Minister must cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10.
- (2) The list is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-4—Grants for Commonwealth scholarships

Division 46—Grants for Commonwealth scholarships

46-1 What this Part is about

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

46-5 The Commonwealth Scholarships Guidelines

*Commonwealth scholarships are also dealt with in the Commonwealth Scholarships Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Commonwealth Scholarships Guidelines are made by the Minister under section 238-10.

46-10 Classes of Commonwealth scholarships

There are 2 classes of *Commonwealth scholarships:

- (a) standard scholarships; and
- (b) postgraduate research scholarships.

Note: The Commonwealth Scholarships Guidelines set out the kinds of scholarships in each class.

46-15 Who is eligible to receive a grant from the Commonwealth for Commonwealth scholarships?

- (1) *Table A providers, and higher education providers to which subparagraph 30-1(1)(a)(ii) applies, are eligible to receive a grant from the Commonwealth to pay, as a benefit to students, standard *Commonwealth scholarships to their students.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) *Table A providers and *Table B providers are eligible to receive a grant from the Commonwealth to pay, as a benefit to students, postgraduate research *Commonwealth scholarships to their students.
- (3) A provider that is eligible to receive a grant under subsection (1) or (2) is an *eligible scholarship provider*.

46-20 Other matters relating to Commonwealth scholarships

- (1) The Commonwealth Scholarships Guidelines may provide for *Commonwealth scholarships.
- (2) Without limiting subsection (1), those guidelines may provide for the following matters:
 - (a) the kinds of scholarships that are to be standard scholarships;
 - (b) the kinds of scholarships that are to be postgraduate research scholarships;
 - (c) which students are eligible for each kind of scholarship;
 - (e) the conditions that apply to each kind of scholarship;
 - (f) how the amounts of grants to an *eligible scholarship provider are to be determined;
 - (g) 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;
 - (h) the indexation of such an amount for subsequent years, using the method of indexation set out in Part 5-6;
 - (i) how grants to providers are to be made;
 - (j) how providers are to determine the amount of each scholarship;
 - (k) the indexation of amounts of scholarships, using the method of indexation set out in Part 5-6;
 - (l) how providers are to pay scholarships.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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46-25 Condition of grants

It is a condition of a grant under this Part that the higher education provider to whom the grant is payable must meet the *quality and accountability requirements.

46-30 Amounts payable under this Part

The amount that is payable under this Part to an *eligible scholarship provider is the amount worked out in accordance with the Commonwealth Scholarships Guidelines.

46-35 Rollover of grant amounts

(1) If:

- (a) a higher education provider to which a grant under this Part has been made fails to spend an amount of that grant; and
- (b) the *Secretary determines in writing that this section is to apply to the provider in respect of that grant;

then so much of the unspent amount as the Secretary specifies is taken to be granted to the provider under this Part in respect of the next following year.

(2) The amount is taken to be granted:

- (a) under the same conditions as the conditions of the original grant—except the grant is taken to be made in respect of the next following year; or
- (b) under such other conditions as are determined by the *Secretary.

46-40 Maximum payments for Commonwealth scholarships

The total payments made under this Part in respect of a year referred to in the table must not exceed the amount specified next to that year in the table.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Maximum payments for Commonwealth Scholarships		
Item	Year	Amount
1	2004	\$124,212,000
2	2005	\$151,452,000
3	2006	\$176,382,000
4	2007	\$201,628,000
5	2008	\$209,787,000

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2-5—Reduction and repayment of grants

Division 51—Introduction

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.

51-5 The Reduction and Repayment Guidelines

Reduction and repayment of grants is also dealt with in the Reduction and Repayment Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Reduction and Repayment Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 54—In what circumstances may a grant be reduced or required to be repaid?

54-1 Decision as to reduction or repayment of a grant

- (1) The Minister may determine:
 - (a) 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
 - (b) 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.
- (2) The Minister may make a determination under subsection (1) if:
 - (a) 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; and
 - (b) the Minister is satisfied that it is appropriate to take that action (see section 54-5); and
 - (c) the Minister complies with the requirements of Division 60.

54-5 Appropriateness of requiring reduction or repayment of grant

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

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 57—What is the amount of a reduction or repayment?

57-1 Reduction in amount of grants

- (1) If an amount of a grant is to be reduced under this Part, it must be reduced by an amount determined by the Minister in writing.
- (2) The Reduction and Repayment Guidelines may set out requirements about how such an amount is to be determined. The Minister must make his or her determination in accordance with any such requirements.

57-5 Amount of the repayment

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 60—How are decisions reducing a grant or requiring repayment of a grant made?

60-1 Procedure prior to decision

- (1) Before making a decision under paragraph 54-1(a) or (b) in respect of a body, the Minister must give to the body notice in writing:
 - (a) stating that the Minister is considering reducing the body's grant, or requiring the repayment of a grant made to the body, as the case may be; and
 - (b) stating the amount of the proposed reduction or repayment and the reasons why the Minister is considering taking that action; and
 - (c) inviting the body to make written submissions to the Minister within 28 days on either or both of the following matters:
 - (i) why that action should not be taken;
 - (ii) why the amount of the proposed reduction or repayment should be reduced; and
 - (d) informing the body that, if no submission is received under paragraph (c) within the time required, the action will take effect on the day after the last day for making submissions.
- (2) In deciding whether to take the action, the Minister must consider any submissions received from the body within the 28 day period.

60-5 Notification of decision

- (1) The Minister must notify the body in writing of his or her decision on whether or not to take the action. The notice:
 - (a) must be in writing; and
 - (b) if a submission was received from the body within the 28 day period—must specify the day that the decision is to take effect; and
 - (c) must be given within the period of 28 days following the period in which submissions may have been given to the Minister under subsection 60-1(1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2 Grants for higher education assistance

Part 2-5 Reduction and repayment of grants

Division 60 How are decisions reducing a grant or requiring repayment of a grant made?

Section 60-10

- (2) If no notice is given within the period provided for in paragraph (1)(c), the Minister is taken to have decided not to take the action.

60-10 When a decision takes effect

If the Minister's decision is to take the action, the decision takes effect:

- (a) if no submission was made under subsection 60-1(1)—on the day after the last day for making submissions; or
- (b) if such a submission was made—on the day specified in the notice under subsection 60-5(1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3—Assistance to students

Division 65—Introduction

65-1 What this Chapter is about

This Chapter provides for the Student Learning Entitlement and for 3 kinds of assistance that the Commonwealth provides to students.

A sufficient Student Learning Entitlement is required for a student to access HECS-HELP assistance under this Chapter. It also enables a student to access places that are funded under Part 2-2 (Commonwealth Grant Scheme).

Note: The Commonwealth meets all or part of the higher education costs of students who are enrolled in places funded under Part 2-2.

The 3 kinds of assistance available under this Chapter 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);
- 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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Division 65 Introduction

Section 65-1

(in the case of OS-HELP assistance) to pay to students on the Commonwealth's behalf.

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

Note: Chapter 4 deals with the repayment of loans made under this Chapter.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-1—Student Learning Entitlement

Division 70—Introduction

70-1 What this Part is about

Student Learning Entitlement (or SLE) is needed for many of the forms of assistance under this 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 7 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).

70-5 The Student Learning Entitlement Guidelines

*Student Learning Entitlement is also dealt with in the Student Learning Entitlement Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Student Learning Entitlement Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 73-1

Division 73—What is a person's Student Learning Entitlement?

73-1 A person's Student Learning Entitlement

A person's *Student Learning Entitlement* is the sum of:

- (a) the *ordinary SLE that the person has under section 73-5; and
- (b) any *additional SLE that the person has under section 73-20; and
- (c) any *life long SLE that the person has under section 73-22; 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.

73-5 Ordinary SLE

Ordinary SLE accruing on 1 January 2005

- (1) A person who is an *eligible person on 1 January 2005 has, on that day, an *ordinary SLE equal to 7 *EFTSL.

Ordinary SLE accruing after 1 January 2005

- (2) 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 7 *EFTSL.

Meaning of eligible person

- (3) An *eligible person* is:
 - (a) an Australian citizen; or
 - (b) a citizen of New Zealand; or
 - (c) a *permanent visa holder.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

73-10 Meaning of *EFTSL*

- (1) An *EFTSL* is an equivalent full-time *student load for a year. It is a measure, in respect of a *course of study, of the study load for a year of a student undertaking that course of study on a full-time basis.
- (2) 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.

73-15 Meaning of *EFTSL value*

- (1) The *EFTSL value* of a unit of study is 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.
- (2) 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.
- (3) If a unit of study is subject to separate determinations in relation to different *courses of study, a reference in this Act 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 (2) for the course.
- (4) Determinations under this section must be in accordance with any requirements set out in the Student Learning Entitlement Guidelines.

73-20 Additional SLE

- (1) A person has an *additional SLE if:
 - (a) the person is enrolled in a *course of study with a higher education provider; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 73-22

- (b) 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
 - (c) the person meets any other requirements, relating to additional SLE, set out in the Student Learning Entitlement Guidelines.
- (2) The person is taken to have had the *additional SLE from the time immediately before he or she enrolled in the *course of study.
 - (3) The amount of the *additional SLE is an amount (expressed in *EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

73-22 Life long SLE

- (1) A person has a *life long SLE in the circumstances specified in the Student Learning Entitlement Guidelines.
- (2) The amount of the *life long SLE is an amount (expressed in *EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

73-25 SLE not transferable

A person's *SLE cannot be transferred to, or used by, another person.

73-30 Ceasing to be an eligible person

- (1) A person ceases to have an *SLE if he or she ceases to be an *eligible person.
- (2) If a person:
 - (a) had previously ceased to be an *eligible person; and
 - (b) becomes an eligible person again;on becoming an eligible person again, the person has the same *SLE (if any) that he or she had immediately before the last time on which he or she ceased to be an eligible person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 76—When is a person's Student Learning Entitlement reduced?

76-1 Reducing a person's SLE

- (1) A person's *SLE is reduced if:
 - (a) at the end of the *census date for a unit of study with a higher education provider, the person is enrolled in the unit; and
 - (b) the person is enrolled in the unit as part of a *course of study (other than an *enabling course); and
 - (c) the person is a *Commonwealth supported student in relation to the unit; and
 - (d) the person has, on or before the census date, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance in relation to:
 - (i) the unit; or
 - (ii) where the course of study of which the unit forms a part is undertaken with the provider—the course of study.
- (2) The amount of the reduction is an amount equal to the *EFTSL value of the unit of study.
- (3) The reduction takes effect immediately after the *census date for the unit of study.
- (4) This section does not apply if the unit of study consists wholly of *work experience in industry.

Note 1: There are special rules for reduction of a person's additional SLE or life long SLE: see sections 76-5 and 76-10.

Note 2: A person's SLE can be re-credited in some circumstances: see Division 79.

76-5 Reducing a person's additional SLE

- (1) 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:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 76-10

- (a) the person's *ordinary SLE is less than the *EFTSL value of the unit; and
 - (b) the person is enrolled in the unit as part of the *course of study in relation to which the additional SLE applies.
- (2) If:
- (a) a person has both an *additional SLE and *ordinary SLE; and
 - (b) 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:
- (c) the person's ordinary SLE is reduced to zero; and
 - (d) the person's additional SLE is reduced only to the extent that the ordinary SLE is insufficient to cover the unit.

76-10 Reducing a person's life long SLE

- (1) If a person has a *life long SLE, that life long SLE is not reduced under section 76-1 in relation to a unit of study unless:
- (a) if the person does not have an *additional SLE—the person's *ordinary SLE is less than the *EFTSL value of the unit; and
 - (b) if the person has an additional SLE—the sum of the person's ordinary SLE and the person's additional SLE is less than the EFTSL value of the unit.
- (2) If:
- (a) a person has both:
 - (i) a *life long SLE; and
 - (ii) an *ordinary SLE or an *additional SLE, or both; and
 - (b) the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are 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:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (c) the person's ordinary SLE or additional SLE is reduced (or both the person's ordinary SLE and the person's additional SLE are reduced) to zero; and
- (d) the person's life long SLE is reduced only to the extent that the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to cover the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 79-1

Division 79—In what circumstances can a person's Student Learning Entitlement be re-credited?

79-1 Re-crediting a person's SLE

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:

- (a) the person has been enrolled in the unit with the provider; and
- (aa) the unit would, if completed, form part of a *course of study undertaken with the provider or, where the provider is a *Table A provider, with another Table A provider; and
- (b) 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
- (c) the provider is satisfied that special circumstances apply to the person (see section 79-5); and
- (d) the person applies in writing to the provider for re-crediting of the SLE; and
- (e) either:
 - (i) the application is made before the end of the application period under section 79-10; or
 - (ii) 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.

Note: A HECS-HELP debt relating to a unit of study will be remitted if the SLE in relation to the unit is re-credited: see subsection 137-5(4). In addition, it is a condition of the higher education provider's funding under Part 2-2 that payments for the unit must be repaid: see section 36-20.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

79-5 Special circumstances

- (1) 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:
 - (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) 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.
- (2) The Student Learning Entitlement Guidelines may specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph (1)(a), (b) or (c). A decision of a higher education provider under this section must be in accordance with any such guidelines.

Note: Guidelines made for the purposes of this subsection also have effect for the purposes of subsection 36-22(4) (repayments etc. for work experience units) and subsection 104-30(2) (re-crediting a person's FEE-HELP balance).

79-10 Application period

- (1) If:
 - (a) 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 or her enrolment in the unit; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (2) If subsection (1) does not apply, the application period for the application is the period of 12 months after the end of the period during which the person undertook, or was to undertake, the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-1 Student Learning Entitlement

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

Section 79-15

79-15 Dealing with applications

- (1) If:
- (a) the application is made before the end of the application period under section 79-10; or
 - (b) 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;
- 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.

- (2) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Part 5-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

82-1 General rule

A unit of study is *covered* by a person's *SLE if:

- (a) the person enrolls in the unit as part of a *course of study with a higher education provider; and
- (b) the *EFTSL value of the unit does not exceed the amount of the person's SLE that is *available to the person at the time of enrolment in the unit.

82-5 Availability of a person's SLE

The amount of a person's *SLE that is *available* to the person at a particular time is the difference between:

- (a) the amount of the person's SLE at that time; and
- (b) the sum of the *EFTSL values of all of the units of study (if any) in which the person is enrolled, each of which is a unit of study:
 - (i) the *census date for which will occur later than that time; and
 - (ii) that was *covered by the person's SLE at the time of enrolment; and
 - (iii) in relation to which the person is a *Commonwealth supported student.

Example: Assume that Alan has an SLE of 0.75 EFTSL on a day on which he enrolls as a Commonwealth supported student in 2 units of study with one higher education provider (total EFTSL value of 0.25 EFTSL), and in 3 units of study with another higher education provider (total EFTSL value of 0.38 EFTSL). Assume further that the census dates for all of the units are later days.

The amount of SLE that is available to Alan following the enrolments is:

$$0.75 \text{ EFTSL} - (0.25 \text{ EFTSL} + 0.38 \text{ EFTSL}) = 0.12 \text{ EFTSL}$$

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3 Assistance to students

Part 3-1 Student Learning Entitlement

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

Section 82-10

Note that Alan still has an SLE of 0.75 EFTSL, which is unaffected until the first of the census dates for the units. However, only 0.12 EFTSL can be applied to further enrolments.

If Alan wanted to enrol in another unit of study with an EFTSL value of 0.125, the unit would not be covered by the person's SLE.

Alan could not be a Commonwealth supported student in relation to the other unit unless, before the census date for one of the units (with an EFTSL value of at least 0.05) in which he is enrolled, he:

- (a) provides written advice to the higher education provider in question that he did not wish to be a Commonwealth supported student in relation to the unit; or
- (b) discontinues his enrolment in the unit.

82-10 Additional SLE

A unit of study is not covered by a person's *SLE, despite section 82-1, if:

- (a) the person has an *additional SLE; and
- (b) the *EFTSL value of the unit exceeds the amount of the person's *ordinary SLE or *life long SLE that is *available (or the person's ordinary SLE and the person's life long SLE that are 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.

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

(1) If:

- (a) 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
- (b) the sum of the *EFTSL values of the units exceed the amount of the person's *SLE that is *available to the person 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:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 82-15

- (c) the person chooses not to be a *Commonwealth supported student in relation to one or more of the other units (*excluded units*); and
 - (d) 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
 - (e) 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.
- (2) A person's choice under paragraph (1)(c) in relation to a unit of study is to be made by giving written notice of the choice:
- (a) to an *appropriate officer of the higher education provider with which the person is enrolled in the unit; and
 - (b) on or before the *census date for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-2—HECS-HELP assistance

Division 87—Introduction

87-1 What this Part is about

A student may be entitled to HECS-HELP assistance for units of study for which he or she is Commonwealth supported, if certain requirements are met.

The amount of assistance to which the student may be entitled is based on his or her student contribution amounts for the units, less any up-front payments. The assistance is paid to a higher education provider to discharge the student's liability to pay his or her student contribution amounts.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

87-5 The HECS-HELP Guidelines

*HECS-HELP assistance is also dealt with in the HECS-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note 1: The HECS-HELP Guidelines are made by the Minister under section 238-10.

Note 2: Matters arising under section 93-10 may be dealt with in the Commonwealth Grant Scheme Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 90—Who is entitled to HECS-HELP assistance?

90-1 Entitlement to HECS-HELP assistance

A student is entitled to *HECS-HELP assistance for a unit of study in which the student is enrolled with a higher education provider as part of a *course of study if:

- (a) the student meets the citizenship or residency requirements under section 90-5; and
- (b) the *census date for the unit is on or after 1 January 2005; and
- (c) the student is a *Commonwealth supported student in relation to the unit; and
- (d) either:
 - (i) at the time of enrolment, the unit was *covered by the student's *Student Learning Entitlement; or
 - (ii) the unit wholly consists of *work experience in industry; and
- (e) the student:
 - (i) enrolled in the unit on or before the census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled; and
- (f) the student either:
 - (i) *meets the tax file number requirements (see section 187-1); or
 - (ii) pays, as one or more *up-front payments in relation to the unit, 80% of his or her *student contribution amount for the unit; and
- (g) the student has, on or before the census date, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance in relation to the unit or, where the course of study of which the unit forms a part is undertaken with the provider, in relation to the course of study.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 90-5

90-5 Citizenship or residency requirements

- (1) The citizenship or residency requirements for *HECS-HELP assistance for a unit of study are that the student in question is:
 - (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit.

- (2) In determining, for the purpose of paragraph (1)(b), whether the student will be resident in Australia for the duration of the unit, disregard any period of residence outside Australia that:
 - (a) cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of that unit; or
 - (b) is required for the purpose of completing a requirement of that unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

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

The amount of *HECS-HELP assistance to which a student is entitled for a unit of study is the difference between:

- (a) his or her *student contribution amount for the unit; and
- (b) the sum of any *up-front payments made in relation to the unit.

93-5 Student contribution amounts

- (1) A person's *student contribution amount* for a unit of study is the amount worked out as follows:

$$\frac{\text{The person's student contribution amount for a place in the unit}}{\text{The *EFTSL value of the unit}}$$

where the person's *student contribution amount for a place* in the unit is:

- (a) if all of the following apply:
 - (i) the unit forms part of a *course of study with a higher education provider;
 - (ia) the person is undertaking the unit with the provider;
 - (ii) the person commenced that *course of study in a particular *student cohort;
 - (iii) the provider has determined, in accordance with section 19-88, a student contribution amount for a place in the unit that applies to students in that cohort;
 - (iv) the person satisfies any conditions that apply to the cohort under that section in relation to the student contribution amount for a place in the unit;the amount determined under that section for the cohort; and
- (b) in all other cases—the student contribution amount for a place in the unit determined under subsection 19-87(2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 93-10

- (2) A person's *student contribution amount for a place in a unit must not exceed the *maximum student contribution amount for a place in the unit.
- (3) A person's *student contribution amount* for a unit of study is nil if the person undertakes the unit as part of an *enabling course. This subsection has effect despite subsection (1).
- (4) If an amount worked out by using the formula in subsection (1) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

93-10 Maximum student contribution amounts for places

The *maximum student contribution amount for a place* in a unit of study is the amount specified in the following table in relation to the funding cluster in which the unit is included.

Maximum student contribution amounts for places		
Item	Funding clusters	Maximum student contribution amount for a place
1	Law	\$7,854
2	Accounting, Administration, Economics, Commerce	\$6,709
3	Humanities	\$4,710
4	Mathematics, Statistics	\$6,709
5	Behavioural Science, Social Studies	\$4,710
6	Computing, Built Environment, Health	\$6,709
7	Foreign Languages, Visual and Performing Arts	\$4,710
8	Engineering, Science, Surveying	\$6,709
9	Dentistry, Medicine, Veterinary Science	\$7,854
10	Agriculture	\$6,709

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Maximum student contribution amounts for places

Item	Funding clusters	Maximum student contribution amount for a place
11	Education	\$3,768
12	Nursing	\$3,768

Note 1: For the funding clusters in which particular units of study are included, see the Commonwealth Grant Scheme Guidelines made for the purposes of section 33-35.

Note 2: Maximum student contribution amounts for places are indexed under Part 5-6.

93-15 Up-front payments

- (1) An *up-front payment*, in relation to a unit of study for which a person is liable to pay his or her *student contribution amount, is a payment of part of the student's student contribution amount for the unit, other than a payment of *HECS-HELP assistance under this Part.
- (2) The payment must be made on or before the *census date for the unit.
- (3) A payment made in respect of a person is not an *up-front payment* to the extent that:
 - (a) the payment; or
 - (b) if other up-front payments have already been made in respect of the person in relation to the unit—the sum of the payment and all of those other up-front payments;
 exceeds 80% of the person's *student contribution amount for the unit.

Note 1: The Commonwealth pays $\frac{1}{4}$ of any up-front payments in respect of a student if the total amount of the up-front payments, for the unit and the student's other units with the same census date, is 80% of the sum of his or her student contribution amounts for all of his or her units or is \$500 or more: see sections 96-5 and 96-10.

Note 2: It is a condition of grants under Part 2-2 that a higher education provider not accept an up-front payment of more than 80% of a student's student contribution amount from a student who is entitled to HECS-HELP assistance: see section 36-50.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 96-1

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

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

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

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:

- (a) as a benefit to the student, lend to the student the amount of HECS-HELP assistance; and
- (b) pay to the provider the amount lent in discharge of the student's liability to pay his or her *student contribution amount for the unit.

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

General

- (1) If:
 - (a) a student is entitled to an amount of *HECS-HELP assistance for a unit of study with a higher education provider; and
 - (b) one or more *up-front payments have been made for the unit; and
 - (c) the sum of all of the up-front payments made for all of the student's units of study:
 - (i) that have the same *census date as that unit; and
 - (ii) in relation to which the student is enrolled with the provider as a *Commonwealth supported student; is less than 80% of the sum of the student's *student contribution amounts for all of his or her units; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(d) the sum of all of the up-front payments made for all of the units is \$500 or more;

the Commonwealth must pay the amount of HECS-HELP assistance in accordance with subsections (2) and (3).

Payment of loan amount

- (2) The Commonwealth must:
- (a) 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
 - (b) pay to the provider the amount lent in discharge of that amount of the student's liability to pay his or her *student contribution amount for the unit.

Payment of discount amount

- (3) 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 his or her *student contribution amount for the unit.

Meaning of HECS-HELP discount

- (4) The **HECS-HELP discount** for a unit of study is an amount equal to one quarter of the sum of all of the *up-front payments made for the unit.

Example: Robert is required to pay a student contribution amount of \$2,745 by 31 March 2005, and makes an up-front payment of \$1,000 on 20 March 2005.

Robert is entitled to HECS-HELP assistance of \$1,745 (\$2,745 minus \$1,000), which the Commonwealth must pay to the higher education provider.

The up-front payment exceeded \$500 so there is a HECS-HELP discount of \$250 (one quarter of \$1,000). The Commonwealth lends to Robert the remainder of the HECS-HELP assistance, an amount of \$1,495 (\$1745 minus \$250).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 96-10

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

If:

- (a) a student is entitled to an amount of *HECS-HELP assistance for a unit of study with a higher education provider; and
- (b) one or more *up-front payments have been made for the unit; and
- (c) the sum of all of the up-front payments made for all of the student's units of study:
 - (i) that have the same *census date as that unit; and
 - (ii) in relation to which the student is enrolled as a *Commonwealth supported student;is 80% of the sum of the student's *student contribution amounts for all of his or her units;

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 his or her student contribution amount for the unit.

Note: HECS-HELP assistance does not give rise to a HECS-HELP debt if there has been an up-front payment of 80% of a student's student contribution amount for the unit and for the student's other units with the same census date.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-3—FEE-HELP assistance

Division 101—Introduction

101-1 What this Part is about

A student may be entitled to FEE-HELP assistance for units of study for which he or she is not Commonwealth supported, if certain requirements are met.

The amount of assistance to which the student may be entitled is based on his or her tuition fees for the units, but there is a limit on the total amount of assistance that the student can receive. The assistance is paid to a higher education provider or, if the student accesses units through Open Learning Australia, that body, to discharge the student's liability to pay his or her tuition fees.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

101-5 The FEE-HELP Guidelines

*FEE-HELP assistance is also dealt with in the FEE-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The FEE-HELP Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 104—Who is entitled to FEE-HELP assistance?

Subdivision 104-A—Basic rules

104-1 Entitlement to FEE-HELP assistance

- (1) Subject to sections 104-2, 104-3 and 104-4, a student is entitled to *FEE-HELP assistance for a unit of study if:
- (a) the student meets the citizenship or residency requirements under section 104-5; and
 - (b) the student's *FEE-HELP balance is greater than zero; and
 - (c) the *census date for the unit is on or after 1 January 2005; and
 - (d) the student is not a *Commonwealth supported student in relation to the unit; and
 - (e) the unit meets the course requirements under section 104-10; and
 - (f) the unit:
 - (i) is, or is to be, undertaken as part of a *course of study; or
 - (ii) is a unit access to which was provided by *Open Learning Australia; or
 - (iii) is part of a *bridging course for overseas-trained professionals; and
 - (g) the student:
 - (i) enrolled in the unit on or before the census date for the unit; and
 - (ii) at the end of the census date, remained so enrolled; and
 - (h) the student *meets the tax file number requirements (see section 187-1); and
 - (i) the student has, on or before the census date:
 - (i) if access to the unit was provided by Open Learning Australia—completed, signed and given to an *appropriate officer of Open Learning Australia a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

*request for Commonwealth assistance in relation to the unit; or

- (ii) in any other case—completed, signed and given to an appropriate officer of the higher education provider a request for Commonwealth assistance in relation to the unit or, where the course of study of which the unit forms a part is, or is to be, undertaken with the provider, in relation to the course of study.

104-2 Failure by a student to complete previous units accessed through Open Learning Australia

A student is not entitled to *FEE-HELP assistance for a unit of study access to which is provided by *Open Learning Australia if:

- (a) the student has already undertaken 8 or more other units of study, access to which was provided by Open Learning Australia; and
- (b) the student did not successfully complete at least 50% of those other units.

104-3 Failure by Open Learning Australia to comply with FEE-HELP Guidelines

- (1) The Minister may determine, in writing, that there is to be no entitlement to *FEE-HELP assistance for a specified year for units of study to which access is provided by *Open Learning Australia, if the Minister is satisfied that Open Learning Australia has, during the 2 years immediately preceding the specified year, failed to comply with the FEE-HELP Guidelines.
- (2) Without limiting the generality of what may be included in the FEE-HELP Guidelines, they may include any or all of the following:
 - (a) requirements relating to the financial viability of *Open Learning Australia;
 - (b) requirements relating to the quality of tuition accessed through Open Learning Australia;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (c) requirements relating to fairness in the treatment of persons accessing, or seeking to access, tuition through Open Learning Australia;
 - (d) requirements relating to compliance with this Act, the regulations and other Guidelines made under this Act;
 - (e) requirements relating to *tuition fees for units of study accessed through Open Learning Australia;
 - (f) requirements relating to the provision of information to the Commonwealth by Open Learning Australia that is relevant in any way to the provision of *FEE-HELP assistance to students accessing units of study through Open Learning Australia, or the repayment of the *HELP debts of those students;
 - (g) administrative requirements of the kinds imposed on higher education providers under Parts 5.2 and 5.3 of this Act.
- (3) A student is not entitled to *FEE-HELP assistance for a unit of study if:
- (a) access to the unit is provided by *Open Learning Australia; and
 - (b) the Minister has made a determination under subsection (1) in relation to the year during which the unit is accessed; and
 - (c) the determination was made before 1 July in the year immediately preceding that year.
- (4) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

104-4 Failure by Open Learning Australia to set tuition fees and census date

- (1) This section applies to a unit of study access to which is provided by *Open Learning Australia during a year.

Tuition fees

- (2) *Open Learning Australia must determine a *fee for the unit that is to apply to all students to whom Open Learning Australia provides access to the unit during the year.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) A *fee* includes any tuition, examination or other fee payable to *Open Learning Australia by those students in relation to the unit.
- (4) A *fee* does not include a fee:
- (a) payable in respect of an organisation of students, or of students and other persons; or
 - (b) payable in respect of the provision to students of amenities or services that are not of an academic nature; or
 - (c) payable in respect of residential accommodation.

Census date

- (5) *Open Learning Australia must set a particular date to be the *census date for the unit for the year.

Consequence of failure to set tuition fees and census date

- (6) If *Open Learning Australia does not:
- (a) determine a *fee in accordance with subsection (2) for the unit for the year; or
 - (b) determine a *census date in accordance with subsection (5) for the unit for the year;
- no student to whom Open Learning Australia provides access to the unit for that year is entitled to *FEE-HELP assistance for the unit.

104-5 Citizenship or residency requirements

- (1) The citizenship or residency requirements for *FEE-HELP assistance for a unit of study are that the student in question is:
- (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder who will be resident in Australia for the duration of the unit; or
 - (c) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (2) In determining, for the purpose of paragraph (1)(b) or (c), whether the student will be resident in Australia for the duration of the unit, disregard any period of residence outside Australia that:
 - (a) cannot reasonably be regarded as indicating an intention to reside outside Australia for the duration of the unit; or
 - (b) is required for the purpose of completing a requirement of that unit.

104-10 Course requirements

- (1) The course requirements for *FEE-HELP assistance for a unit of study are that:
 - (a) if the unit is being undertaken as part of a *course of study, the course is not a course that:
 - (i) is subject to a determination under subsection (2); or
 - (ii) is with a higher education provider that is subject to a determination under subsection (2); and
 - (b) if the unit is being undertaken as part of a course of study with a higher education provider that is a *non self-accrediting provider—the course is an *accredited course.
- (2) The Minister may determine in writing that:
 - (a) a specified course provided by a specified higher education provider is a course in relation to which *FEE-HELP assistance is unavailable; or
 - (b) all courses provided by a specified higher education provider are courses in relation to which FEE-HELP assistance is unavailable.
- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course or courses.
- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or courses, with the provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Subdivision 104-B—FEE-HELP balances

104-15 A person's FEE-HELP balance

- (1) A person's *FEE-HELP balance* at a particular time is:
- (a) 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 the person—the difference between the *FEE-HELP limit and that sum; and
 - (b) otherwise—zero.
- (2) To avoid doubt, the sum referred to in paragraph (1)(a) includes amounts of *FEE-HELP assistance that have been repaid.

104-20 The FEE-HELP limit

The *FEE-HELP limit* is \$50,000.

Note: The FEE-HELP limit is indexed under Part 5-6.

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

- (1) 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:
- (a) the person has been enrolled in the unit with the provider; and
 - (aa) access to the unit was not provided by *Open Learning Australia; and
 - (b) 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
 - (c) the provider is satisfied that special circumstances apply to the person (see section 104-30); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 104-35; or
 - (ii) 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.
- (2) *Open Learning Australia 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 has received for a unit of study if:
- (a) access to the unit was provided by Open Learning Australia; and
 - (b) 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
 - (c) Open Learning Australia is satisfied that special circumstances apply to the person (see section 104-30); and
 - (d) the person applies in writing to Open Learning Australia for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under section 104-35; or
 - (ii) Open Learning Australia 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.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-10.

104-30 Special circumstances

- (1) For the purposes of paragraph 104-25(1)(c), special circumstances apply to the person if and only if the higher education provider

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

receiving the application is satisfied that circumstances apply to the person that:

- (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake the unit.
- (2) 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.

Note: The matters referred to in paragraphs 79-5(1)(a), (b) and (c) (which relate to re-crediting of Student Learning Entitlement) are identical to the matters referred to in paragraphs (1)(a), (b) and (c) of this section.

- (3) For the purposes of paragraph 104-25(2)(c), special circumstances apply to the person if and only if *Open Learning Australia is satisfied that circumstances apply to the person that:
- (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.

104-35 Application period

- (1) If:
- (a) the person applying under 104-25(1)(d) for the re-crediting of the person's *FEE-HELP balance in relation to a unit of study has withdrawn his or her enrolment in the unit; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;
- the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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(1A) If:

- (a) the person applying under paragraph 104-25(2)(d) for the re-crediting of the person's *FEE-HELP balance in relation to a unit of study has withdrawn from the unit; and
- (b) *Open Learning Australia gives notice to the person that the withdrawal has taken effect;

the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.

- (2) If subsections (1) and (1A) do not apply, the application period for the application is the period of 12 months after the period during which the person undertook, or was to undertake, the unit.

104-40 Dealing with applications

(1) If:

- (a) the application is made under paragraph 104-25(1)(d) before the end of the relevant application period; or
- (b) 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;

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.

(1A) If:

- (a) the application is made under paragraph 104-25(2)(d) before the end of the relevant application period; or
- (b) *Open Learning Australia 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;

Open Learning Australia must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision of the application.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) The notice must include a statement of the reasons for the decision.

Note: Refusals of applications are reviewable under Part 5-7.

Subdivision 104-C—Bridging courses for overseas-trained professionals

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

Courses consisting of subjects or units

- (1) 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:
- (a) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and
 - (b) 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
 - (c) 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
 - (d) 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
 - (e) those subjects or units relate to the assessment statement.

Courses consisting of occupation-related courses of instruction

- (2) 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:
- (a) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and
 - (b) the statement is to the effect that, in the body's opinion, if the person were to be successful in one or more examinations

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- specified in the statement, the person would meet the *requirements for entry to that occupation; and
- (c) 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
 - (d) the total *student load imposed on the person in relation to those courses does not exceed the provider's *maximum BOTP student load; and
 - (e) those courses relate to the assessment statement.

Courses consisting of tuition and training programs

- (3) 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) the person holds an *assessment statement issued by an *assessing body for a *listed professional occupation; and
 - (b) 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
 - (c) 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
 - (d) the total *student load imposed on the person in relation to that program does not exceed the institution's *maximum BOTP student load; and
 - (e) that program relates to the assessment statement.

104-50 Assessment statements

- (1) An *assessing body for a *listed professional occupation may give to a person who:
 - (a) holds a qualification that:
 - (i) was awarded in a foreign country; and
 - (ii) relates to that occupation; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) proposes to seek entry to that occupation:
- (i) in Australia; or
 - (ii) 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 (2), the person would meet the *requirements for entry to that occupation. The statement is an *assessment statement*.
- (2) The statement may refer to any or all of the following:
- (a) successfully undertaking additional studies of a kind specified in the statement;
 - (b) being successful in one or more examinations specified in the statement;
 - (c) successfully undertaking a tuition and training program of a kind specified in the statement.
- Note: A statement could specify one of the things mentioned in paragraph (a), (b) or (c) or any combination of the things mentioned in those paragraphs.
- (3) This section does not affect the power of an *assessing body to charge fees for an *assessment statement under subsection (1).

104-55 Meaning of *assessing body*

- (1) 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.
- (2) This section does not prevent 2 or more persons or bodies from being assessing bodies for the same *listed professional occupation.
- (3) 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) a particular State; or
 - (b) the Australian Capital Territory; or
 - (c) the Northern Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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Such an assessing body is an *assessing body of a State or Territory*.

104-60 Meaning of *listed professional occupations*

- (1) A *listed professional occupation* is an *occupation specified in the FEE-HELP Guidelines as a listed professional occupation.
- (2) To avoid doubt, an *occupation may be specified even if it is not one of the traditional professions.

104-65 Occupation includes part of an occupation

- (1) An *occupation* includes a part of an occupation specified in the FEE-HELP Guidelines as an occupation in its own right.
- (2) The following are examples of ways in which a part of an occupation can be specified:
 - (a) so much of an occupation as has a bachelor degree (or equivalent) entry requirement;
 - (b) so much of an occupation as consists of a particular specialisation.

104-70 Requirements for entry to an occupation

- (1) The *requirements for entry*, to a *listed professional occupation, are the educational requirements:
 - (a) for entry to that occupation in Australia; or
 - (b) if the requirements are referred to in an *assessment statement given by an *assessing body of a State or Territory for that occupation—for entry to that occupation in that State or Territory.
- (2) A requirement for entry to a *listed professional occupation may:
 - (a) be imposed by or under a law; or
 - (b) be imposed by or under the rules of a body; or
 - (c) consist of eligibility for membership of a body; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (d) arise as a generally accepted employment or industry practice.
- (3) However, neither of the following is a requirement for entry to a *listed professional occupation:
 - (a) English language training relating to general aspects of written communication or verbal communication, or both; or
 - (b) being successful in:
 - (i) the Occupational English Test administered by Language Australia; or
 - (ii) any other English language test, where that test does not form an integral part of an occupation-related study unit, an occupation-related course of instruction or an occupation-related tuition and training program.

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

- (1) 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 is the study load determined, in accordance with the FEE-HELP Guidelines, by the higher education provider providing the units, courses or program. It:
 - (a) does not include any *work experience in industry; and
 - (b) 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.
- (2) The *maximum BOTP student load* for a higher education provider is the *student load determined by the provider, in accordance with the FEE-HELP Guidelines, to represent:
 - (a) the load imposed on a full-time student for one year; or
 - (b) the part-time equivalent of that load.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

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

The amount of *FEE-HELP assistance to which a student is entitled for a unit of study is the difference between:

- (a) the student's *tuition fee for the unit; and
- (b) the sum of any *up-front payments made in relation to the unit.

Note: A lesser amount may be payable because of section 107-10.

107-5 Up-front payments

- (1) An *up-front payment*, in relation to a unit of study for which a student is liable to pay a *tuition fee, is a payment of all or part of the student's tuition fee for the unit, other than a payment of *FEE-HELP assistance under this Part.
- (2) The payment must be made on or before the *census date for the unit.

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

Amount of FEE-HELP assistance for one unit

- (1) 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:
 - (a) there is no other unit of study, with the same census date, for which the student is entitled to FEE-HELP assistance; and
 - (b) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Amount of FEE-HELP assistance for more than one unit

- (2) If the sum of:
- (a) the amount of *FEE-HELP assistance to which a student would be entitled under section 107-1 for a unit of study; and
 - (b) 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 (1) of this section, 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.
- Example: Kath has a FEE-HELP balance of \$2,000, and is enrolled in 4 units with the same census date. Kath's tuition fee for each unit is \$600. The total amount of FEE-HELP assistance to which Kath is entitled for the units is \$2,000, even though the total amount of her tuition fees for the units is \$2,400.
- (3) If the student has enrolled in the units with more than one higher education provider, and access to none of the units was provided by *Open Learning Australia, 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.
- (4) If access to some, but not all, of the units of study was provided by *Open Learning Australia, the student must:
- (a) notify Open Learning Australia of the proportion of the total amount of *FEE-HELP assistance that is to be payable in relation to units access to which was provided by Open Learning Australia; and
 - (b) notify each higher education provider at which the student is enrolled in a unit access to which was not provided by Open Learning Australia, of the proportion of the total amount of FEE-HELP assistance that is to be payable in relation to that unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

110-1 Payments

- (1) If a student is entitled to an amount of *FEE-HELP assistance for a unit of study with a higher education provider, and access to the unit was not provided by *Open Learning Australia, the Commonwealth must:
 - (a) as a benefit to the student, lend to the student the amount of FEE-HELP assistance; and
 - (b) pay the amount lent to the provider in discharge of the student's liability to pay his or her *tuition fee for the unit.
- (2) If a student is entitled to an amount of *FEE-HELP assistance for a unit of study and access to the unit was provided by *Open Learning Australia, the Commonwealth must:
 - (a) as a benefit to the student, lend to the student the amount of FEE-HELP assistance; and
 - (b) pay the amount lent to Open Learning Australia in discharge of the student's liability to pay his or her *tuition fee for the unit.

110-5 Effect of FEE-HELP balance being re-credited

- (1) If, under subsection 104-25(1), 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.
- (2) If, under subsection 104-25(2), *Open Learning Australia re-credits a person's *FEE-HELP balance with an amount relating to *FEE-HELP assistance for a unit of study, Open Learning Australia must pay to the Commonwealth an amount equal to the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

amount of FEE-HELP assistance to which the person was entitled for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3-4—OS-HELP assistance

Division 115—Introduction

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.

The purpose of OS-HELP assistance is to help students based in Australia to do part of their course of study overseas.

Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Part 4-2.

115-5 The OS-HELP Guidelines

*OS-HELP assistance is also dealt with in the OS-HELP Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The OS-HELP Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 118—Who is entitled to OS-HELP assistance?

118-1 Entitlement to OS-HELP assistance

- (1) A student is entitled to *OS-HELP assistance in relation to a period of 6 months if:
 - (a) the student meets the citizenship or residency requirements under section 118-5; and
 - (b) the student has not received OS-HELP assistance on more than one other occasion; and
 - (c) the student is enrolled in an *undergraduate course of study with a higher education provider (the *home provider*); and
 - (d) the student meets the prior study requirements under section 118-7; and
 - (e) the student meets the overseas study requirements under section 118-10; and
 - (f) 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
 - (g) the student *meets the tax file number requirements (see section 187-1); and
 - (h) the student has completed, signed and given to an *appropriate officer of the home provider a *request for Commonwealth assistance in relation to that course of study; and
 - (i) the home provider has selected the student for receipt of OS-HELP assistance in relation to the period (see section 118-15).

- (2) However, 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:
 - (a) that period; or
 - (b) a period that overlaps with that period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 118-5

118-5 Citizenship or residency requirements

The citizenship or residency requirements for *OS-HELP assistance are that the student in question is:

- (a) an Australian citizen; or
- (b) a *permanent humanitarian visa holder.

118-7 Prior study requirements

The prior study requirements for *OS-HELP assistance are that:

- (a) the student in question has completed units of study in Australia that count towards the course requirements for the *course of study; and
- (b) the units of study have a total *EFTSL value of at least one *EFTSL; and
- (c) the student was a *Commonwealth supported student in relation to the units.

118-10 Overseas study requirements

The overseas study requirements for *OS-HELP assistance are that:

- (a) the student in question:
 - (i) is enrolled in full-time study with an overseas higher education institution or is enrolled with the home provider in full-time study at an overseas campus or enrolled with another higher education provider in full-time study at an overseas campus; and
 - (ii) will be outside Australia while undertaking that study; and
 - (iii) the study commences on or after 1 January 2005; and
- (c) 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 home provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

118-15 Selection of students for receipt of OS-HELP assistance

- (1) The OS-HELP Guidelines may set out principles and procedures that higher education providers must follow in deciding whether to select students for receipt of *OS-HELP assistance.
- (3) Any decision by a higher education provider whether to select a student for receipt of *OS-HELP assistance must be made in accordance with the OS-HELP Guidelines.
- (4) Without limiting the matters that may be included in the OS-HELP Guidelines made for the purposes of subsection (3), those guidelines may deal with:
 - (a) the number of its students whom higher education providers may select for receipt of *OS-HELP assistance; or
 - (b) how that number is to be determined.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 121-1

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

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

- (1) 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.
- (2) The amount must not exceed:
 - (a) the amount specified in the application; or
 - (b) the *maximum OS-HELP amount for a period of 6 months.
- (3) The amount must not be less than the higher education provider's *minimum OS-HELP amount, if the provider has a minimum OS-HELP amount.

121-5 Maximum OS-HELP amount

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

Note: The maximum OS-HELP amount is indexed under Part 5-6.

121-10 Minimum OS-HELP amounts

- (1) A higher education provider may determine, in writing, its *minimum OS-HELP amount.
- (2) The determination has effect until:
 - (a) it is replaced by a later determination; or
 - (b) it is revoked.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

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

- (1) 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 to the student the amount of OS-HELP assistance.
- (2) 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 to the student the amount lent.
- (3) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4—Repayment of loans

Division 129—Introduction

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 the person's accumulated HELP debt (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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4-1—Indebtedness

Division 134—Introduction

134-1 What this Part is about

A person incurs a HELP debt if he or she receives, as HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, a loan from the Commonwealth under Chapter 3.

HELP debts are incorporated into the person's accumulated HELP debt. This accumulated debt forms the basis of working out the amounts that the person is obliged to repay (see Part 4-2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 137—How do HELP debts arise?

137-1 HELP debts

The following are *HELP debts*:

- (a) *HECS-HELP debts;
- (b) *FEE-HELP debts;
- (c) *OS-HELP debts.

137-5 HECS-HELP debts

Incurring HECS-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 96-1 or 96-5, the Commonwealth:
 - (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay his or her *student contribution amount for a unit of study.

The debt is a *HECS-HELP debt*.

- (2) The amount of the *HECS-HELP debt is the amount of the loan.

When HECS-HELP debts are incurred

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

Remission of HECS-HELP debts

- (4) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (5) A person's *HECS-HELP debt, in relation to a unit of study that wholly consists of *work experience in industry, is taken to be remitted if section 36-22 applies to the person.

137-10 FEE-HELP debts

Incurring FEE-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 110-1, the Commonwealth:
- (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment in discharge of the person's liability to pay his or her *tuition fee for a unit of study.

The debt is a **FEE-HELP debt**.

- (2) The amount of the *FEE-HELP debt is:
- (a) if the loan relates to *FEE-HELP assistance for a unit of study that forms part of an *undergraduate course of study—an amount equal to 120% of the loan; or
 - (b) if paragraph (a) does not apply—the amount of the loan.

When FEE-HELP debts are incurred

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

Remission of FEE-HELP debts

- (4) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 137-15

137-15 OS-HELP debts

Incurring OS-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 124-1, the Commonwealth makes a loan to the person. The debt is an **OS-HELP debt**.
- (2) The amount of the *OS-HELP debt is an amount equal to 120% of the amount of the loan.

When OS-HELP debts are incurred

- (3) 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.

137-20 HELP debt discharged by death

Upon the death of a person who owes a *HELP debt to the Commonwealth, the debt is taken to have been paid.

Note: HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 140—How are accumulated HELP debts worked out?

Subdivision 140-A—Outline of this Division

140-1 Outline of this Division

- (1) There are 2 stages to working out a person's *accumulated HELP debt for a financial year.

Stage 1—Former accumulated HELP debt

- (2) The *former accumulated HELP debt is worked out by adjusting the preceding financial year's *accumulated HELP debt to take account of:
- (a) changes in the Consumer Price Index; and
 - (b) the *HELP debts that he or she incurs during the last 6 months of the preceding financial year; and
 - (c) *voluntary repayments of the debt; and
 - (d) *compulsory repayment amounts in respect of the debt.
- (See Subdivision 140-B.)

Stage 2—Accumulated HELP debt

- (3) The person's *accumulated HELP debt is worked out from:
- (a) his or her *former accumulated HELP debt; and
 - (b) the *HELP debts that he or she incurs during the first 6 months of the financial year; and
 - (c) *voluntary repayments of those debts.
- (See Subdivision 140-C.)

Note: Incurring that financial year's accumulated HELP debt discharges the previous accumulated HELP debt and HELP debts under this Part: see section 140-35.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 140-B—Former accumulated HELP debts

140-5 Working out a former accumulated HELP debt

- (1) A person's *former accumulated HELP debt*, in relation to the person's *accumulated HELP debt for a financial year, is worked out by multiplying:
 - (a) the amount worked out using the following method statement; by
 - (b) the *HELP debt indexation factor for 1 June in that financial year.

Method statement

- Step 1.* Take the person's *accumulated HELP debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated HELP debt for that financial year.)
- Step 2.* Add the sum of all of the *HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.
- Step 3.* Subtract the sum of the amounts by which the person's debts referred to in steps 1 and 2 are reduced because of any *voluntary repayments that have been made during the period:
 - (a) starting on 1 June in the immediately preceding financial year; and
 - (b) ending immediately before the next 1 June.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- Step 4.* Subtract the sum of all of the person's *compulsory repayment amounts that:
- (a) were assessed during that period (excluding any assessed as a result of a *return given before that period); or
 - (b) were assessed after the end of that period as a result of a return given before the end of that period.
- Step 5.* Subtract the sum of the amounts by which any *compulsory repayment amount of the person is increased (whether as a result of an increase in the person's *taxable income of an *income year or otherwise) by an amendment of an assessment made during that period.
- Step 6.* Add the sum of the amounts by which any *compulsory repayment amount of the person is reduced (whether as a result of a reduction in the person's *taxable income of an *income year or otherwise) by an amendment of an assessment made during that period.

Example: Lorraine is studying part-time for a Degree of Bachelor of Communications. On 1 June 2007 Lorraine had an accumulated HELP debt of \$15,000. She incurred a HELP debt of \$1,500 on 31 March 2007. She made a voluntary repayment of \$550 (which includes a voluntary repayment bonus of \$50) on 1 May 2008. Lorraine lodged her 2006-07 income tax return and a compulsory repayment amount of \$3,000 was assessed and notified on her income tax notice of assessment on 3 September 2007.

To work out Lorraine's former accumulated HELP debt before indexation on 1 June 2008:

- Step 1:* Take the previous accumulated HELP debt of \$15,000 on 1 June 2007.
- Step 2:* Add the HELP debt of \$1,500 incurred on 31 March 2007.
- Step 3:* Subtract the \$550 voluntary repayment made on 1 May 2008.
- Step 4:* Subtract the \$3,000 compulsory repayment assessed on 3 September 2007.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-1 Indebtedness

Division 140 How are accumulated HELP debts worked out?

Section 140-10

Steps 5 and 6: Do not apply because since 1 June 2007 Lorraine had no amendments to any assessment.

Lorraine's former accumulated HELP debt before indexation on 1 June 2008 is:

$$(\$15,000 + \$1,500) - (\$550 + \$3,000) = \$12,950$$

If, for example, the indexation factor for 1 June 2008 were 1.050, then the former accumulated HELP debt would be:

$$\$12,950 \times 1.050 = \$13,597.50$$

- (2) For the purposes of this section, 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.

140-10 HELP debt indexation factor

- (1) The **HELP debt indexation factor** for 1 June in a financial year is the number (rounded to 3 decimal places) worked out as follows:

Method statement

Step 1. Add:

- (a) the *index number for the *quarter ending on 31 March in that financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 2. Add:

- (a) the *index number for the *quarter ending on 31 March in the immediately preceding financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 3. The **HELP debt indexation factor** for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.

- (2) For the purposes of rounding a *HELP debt indexation factor, the third decimal place is rounded up if, apart from the rounding:
- (a) the factor would have 4 or more decimal places; and
 - (b) the fourth decimal place would be a number greater than 4.

140-15 Index numbers

- (1) 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.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this Act:
- (a) the *Australian Statistician has published or publishes an *index number in respect of a *quarter; and
 - (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;
- disregard the publication of the later index for the purposes of this section.
- (3) 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, have regard only to *index numbers published in terms of the new reference base.

140-20 Publishing HELP debt indexation factors

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Subdivision 140-C—Accumulated HELP debts

140-25 Working out an accumulated HELP debt

- (1) A person's *accumulated HELP debt*, for a financial year, is worked out as follows:

$$\begin{array}{r} \text{Former accumulated} \\ \text{HELP debt} \end{array} + \begin{array}{r} \text{HELP debts} \\ \text{incurred} \end{array} - \begin{array}{r} \text{HELP debt} \\ \text{repayments} \end{array}$$

where:

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

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

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

Example: Paula is studying part-time for a Degree of Bachelor of Science. On 1 June 2009, her former accumulated HELP debt was worked out using Subdivision 143-B to be \$20,000. She incurred a HELP debt of \$1,500 on 31 August 2008. No repayments have been made in the 12 months from 1 June 2008.

Paula's accumulated HELP debt on 1 June 2009 is worked out by taking her former accumulated HELP debt of \$20,000 and adding the \$1,500 HELP debt incurred on 31 August 2008. That is:

$$\$20,000 + \$1,500 = \$21,500$$

- (2) The person incurs the *accumulated HELP debt on 1 June in the financial year.
- (3) The first financial year for which a person can have an *accumulated HELP debt is the financial year starting on 1 July 2005.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

140-30 Rounding of amounts

- (1) If, apart from this section, a person's *accumulated HELP debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.
- (2) If, apart from this section, a person's *accumulated HELP debt would be an amount of less than one dollar, the person's accumulated HELP debt is taken to be zero.

140-35 Accumulated HELP debt discharges earlier debts

- (1) The *accumulated HELP debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:
 - (a) any *HELP debt that the person incurred during the calendar year immediately preceding that day; and
 - (b) any accumulated HELP debt that the person incurred on the immediately preceding 1 June.
- (2) Nothing in subsection (1) affects the application of Division 137, Subdivision 140-B or section 140-25.

140-40 Accumulated HELP debt discharged by death

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

Note: Accumulated HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4-2—Discharge of indebtedness

Division 148—Introduction

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 or 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 151—How is indebtedness voluntarily discharged?

151-1 Voluntary repayments in respect of debts

- (1) A person may at any time make a payment in respect of a debt that the person owes to the Commonwealth under this Chapter.
- (2) The payment must be made to the *Commissioner.

151-5 Voluntary repayment bonus relating to HELP debts

- (1) The effect that a payment under section 151-1 has on a *HELP debt or an *accumulated HELP debt that a person (the *debtor*) owes to the Commonwealth under this Chapter is the effect specified in subsection (2) or (3) of this section if the amount of the payment is:
 - (a) \$500 or more; or
 - (b) sufficient to be taken under subsection (2) to pay off the total debt.

Total debt paid off

- (2) 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:

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

Example: The total of Andrew's HELP debts and accumulated HELP debt is \$2,500. To pay off his debt to the Commonwealth he only needs to repay \$2,272 (\$2,500 divided by 1.1 is \$2,272, rounding down to the nearest dollar).

Part of debt paid off

- (3) 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:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-2 Discharge of indebtedness

Division 151 How is indebtedness voluntarily discharged?

Section 151-10

Amount of the payment \times 1.1

Example: The total of Helen's HELP debts and accumulated HELP debt is \$4,500. She makes a voluntary repayment of \$1,500. With a 10% bonus, the value of her repayment is \$1,650. The total amount that she owes to the Commonwealth is reduced to \$2,850.

- (4) If an amount worked out using the formula in subsection (2) or (3) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

151-10 Application of voluntary repayments

- (1) Any money a person pays under this Division to meet the person's debts to the Commonwealth under this Chapter is to be applied in payment of those debts as the person directs at the time of the payment.
- (2) 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:
- (a) first, in discharge or reduction of any *accumulated HELP debt of the person;
 - (b) secondly, in discharge or reduction of:
 - (i) any *HELP debt of the person; or
 - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

151-15 Refunding of payments

If:

- (a) a person pays an amount to the Commonwealth under this Division; and
- (b) the amount exceeds the sum of:
 - (i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Chapter; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) the total amount of the person's primary tax debts
(within the meaning of Part IIB of the *Taxation
Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to
that excess.

Note: Interest is payable if the Commonwealth is late in paying refunds: see
Part IIIA of the *Taxation (Interest on Overpayments and Early
Payments) Act 1983*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 154—How is indebtedness compulsorily discharged?

Subdivision 154-A—Liability to repay amounts

154-1 Liability to repay amounts

- (1) If:
 - (a) a person's *repayment income for an *income year exceeds the *minimum repayment income for the income year; and
 - (b) 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 HELP debt;the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 154-20 in reduction of the person's *repayable debt.
- (2) A person is not liable under this section to pay an amount for an *income year if, under section 8 of the *Medicare Levy Act 1986*:
 - (a) no *Medicare levy is payable by the person on the person's *taxable income for the income year; or
 - (b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

154-5 Repayment income

- (1) A person's *repayment income* for an *income year is an amount equal to the sum of:
 - (a) the person's *taxable income for the income year; and
 - (b) if a person has a *rental property loss for the income year—the amount of that rental property loss; and
 - (c) if the person:
 - (i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) 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
 - (d) if the person has *exempt foreign income for the income year—the amount of that exempt foreign income.
- (2) 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.
 - (3) For the purposes of subsection (2), disregard any rental property income that the person derives as a member of a partnership.
 - (4) 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.
 - (5) For the purposes of subsection (4), disregard any capital losses and outgoings.

154-10 Minimum repayment income

The **minimum repayment income** for an *income year is:

- (a) for the 2005-06 income year—\$36,184; or
- (b) for a later income year—that amount as indexed under section 154-25.

154-15 Repayable debt for an income year

- (1) A person's **repayable debt** for an *income year is:
 - (a) the person's *accumulated HELP debt referred to in paragraph 154-1(1)(b) in relation to that income year; or
 - (b) if one or more amounts:
 - (i) have been paid in reduction of that debt; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 154-20

- (ii) have been assessed under section 154-35 to be payable in respect of that debt;
the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.
- (2) A reference in paragraph (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

154-20 Amounts payable to the Commonwealth

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 following table:

Applicable percentages		
Item	If the person's repayment income is:	The percentage applicable is:
1	More than the * minimum repayment income, but less than: (a) for the 2005-06 *income year—\$40,307; or (b) for a later income year—that amount indexed under section 154-25.	4%
2	More than the amount under item 1, but less than: (a) for the 2005-06 *income year—\$44,428; or (b) for a later income year—that amount indexed under section 154-25.	4.5%
3	More than the amount under item 2, but less than: (a) for the 2005-06 *income year—\$46,763; or (b) for a later income year—that amount indexed under section 154-25.	5%

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Applicable percentages

Item	If the person's repayment income is:	The percentage applicable is:
4	More than the amount under item 3, but less than: (a) for the 2005-06 *income year—\$50,267; or (b) for a later income year—that amount indexed under section 154-25.	5.5%
5	More than the amount under item 4, but less than: (a) for the 2005-06 *income year—\$54,440; or (b) for a later income year—that amount indexed under section 154-25.	6%
6	More than the amount under item 5, but less than: (a) for the 2005-06 *income year—\$57,305; or (b) for a later income year—that amount indexed under section 154-25.	6.5%
7	More than the amount under item 6, but less than: (a) for the 2005-06 *income year—\$63,063; or (b) for a later income year—that amount indexed under section 154-25.	7%
8	More than the amount under item 7, but less than: (a) for the 2005-06 *income year—\$67,200; or (b) for a later income year—that amount indexed under section 154-25.	7.5%
9	More than the amount under item 8.	8%

154-25 Indexation

- (1) The following amounts for the 2006-07 *income year, or a later income year:
- (a) the *minimum repayment income;
 - (b) 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:

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 154-30

- (2) **AWE**, for an *income year, is the number of dollars in the sum of:
 - (a) 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
 - (b) 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.
- (3) 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.
- (4) If an amount worked out under this section is an amount made up of dollars and cents, round the amount down to the nearest dollar.

154-30 Publishing indexed amounts

The Minister must cause to be published in the *Gazette*, before the start of the 2006-07 *income year or a later income year:

- (a) the *minimum repayment income; and
- (b) the amounts referred to in paragraph (b) of the second column of items 1 to 8 of the table in section 154-20; for that income year.

Subdivision 154-C—Assessments

154-35 Commissioner may make assessments

The *Commissioner may, from any information in the Commissioner's possession, whether from a *return or otherwise, make an assessment of:

- (a) the person's *accumulated HELP debt on 1 June immediately before the making of the assessment; and
- (b) the amount required to be paid in respect of that debt under section 154-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-40 Notification of notices of assessment of tax

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;

notice of the assessment under that section may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

154-45 Commissioner may defer making assessments

- (1) 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.
- (2) The application must specify:
 - (a) the *income year for which the deferral is being sought; and
 - (b) the reasons for seeking the deferral.
- (3) The *income year specified in the application must be:
 - (a) the income year in which the person makes the application; or
 - (b) the immediately preceding income year; or
 - (c) the immediately succeeding income year.
- (4) The *Commissioner may, on application by a person under this section, defer making an assessment in respect of the person under section 154-35 if the Commissioner is of the opinion that:
 - (a) if the assessment were made, payment of the assessed amount would cause serious hardship to the person; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 154-50

- (b) there are other special reasons that make it fair and reasonable to defer making the assessment.
- (5) The *Commissioner may defer making the assessment for any period that he or she thinks appropriate.
- (6) The *Commissioner must, as soon as practicable after an application is made under this section:
 - (a) consider the matter to which the application relates; and
 - (b) notify the applicant of the Commissioner's decision on the application.

Note: Deferrals of making assessments, or refusals of applications, are reviewable under Part 5-7.

154-50 Commissioner may amend assessments

- (1) 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:
 - (a) the amount payable under the assessment is reduced; or
 - (b) no amount is payable under the assessment.
- (2) The application:
 - (a) must be made no later than 2 years after the end of the *income year to which the assessment relates; or
 - (b) must specify the reasons justifying a later application.
- (3) The *Commissioner may, on application by a person under this section, amend an assessment made in respect of the person under section 154-35 so that:
 - (a) the amount payable under the assessment is reduced; or
 - (b) no amount is payable under the assessment;if the Commissioner is of the opinion that:
 - (c) payment of the assessed amount has caused or would cause serious hardship to the person; or
 - (d) there are other special reasons that make it fair and reasonable to make the amendment.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) The *Commissioner must, as soon as practicable after an application is made under this section:
- (a) consider the matter to which the application relates; and
 - (b) notify the applicant of the Commissioner's decision on the application.

Note: Amendments of assessments, or refusals of applications, are reviewable under Part 5-7.

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

- (1) A higher education provider must give to the *Commissioner, if asked by the Commissioner to do so, any information:
- (a) that is in its possession relating to students who have applied for:
 - (i) *HECS-HELP assistance or *FEE-HELP assistance for a unit of study; or
 - (ii) *OS-HELP assistance in relation to a period of 6 months; and
 - (b) that the Commissioner reasonably requires for the purposes of this Chapter.
- (2) *Open Learning Australia must give to the *Commissioner, if asked by the Commissioner to do so, any information:
- (a) that is in its possession relating to students who have applied for *FEE-HELP assistance for a unit of study; and
 - (b) that the Commissioner reasonably requires for the purposes of this Chapter.

Subdivision 154-D—Application of tax legislation

154-60 Returns, assessments, collection and recovery

Subject to this Part:

- (a) Part IV, and Division 1 of Part VI, of the *Income Tax Assessment Act 1936*; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4 Repayment of loans

Part 4-2 Discharge of indebtedness

Division 154 How is indebtedness compulsorily discharged?

Section 154-65

(b) 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*.

Note: Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* deals with collection and recovery of amounts on and after 1 July 2000, replacing some provisions in Division 1 of Part VI of the *Income Tax Assessment Act 1936*.

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

(1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:

(a) 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

(b) this Chapter, and Part 5-5, were *income tax laws.

(2) Subsection (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 this subsection.

154-70 Pay as you go (PAYG) withholding

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 *compulsory repayment amount of a person as if the compulsory repayment amount were *income tax.

154-75 Provisional tax

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 *compulsory repayment amount of a person as if the compulsory repayment amount were *income tax.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

154-80 Pay as you go (PAYG) instalments

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 *compulsory repayment amount of a person as if the compulsory repayment amount were *income tax.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5—Administration

Division 159—Introduction

159-1 What this Chapter is about

This Chapter deals with the following administrative matters:

- payments made by the Commonwealth under this Act (see Part 5-1);
- administrative requirements that are imposed on higher education providers (see Part 5-2);
- electronic communication between higher education providers and students (see Part 5-3);
- protection of personal information gained in the administration of Chapters 3 and 4 (see Part 5-4);
- tax file numbers of students (see Part 5-5);
- indexation of certain amounts (see Part 5-6);
- reconsideration and administrative review of certain decisions (see Part 5-7).

159-5 The Administration Guidelines

Administrative matters are also dealt with in the Administration Guidelines. The provisions of this Chapter may indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Administration Guidelines are made by the Minister under section 238-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-1—Payments by the Commonwealth

Division 164—Payments by the Commonwealth

164-1 What this Part is about

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

164-5 Time and manner of payments

- (1) 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.
- (2) Payments of amounts payable by the Commonwealth to a higher education provider or other body under this Act are to be made at such times as the *Secretary determines.

164-10 Advances

- (1) The *Secretary may determine that an advance is to be made to a higher education provider or other body on account of an amount that is expected to become payable under a provision of this Act to the provider or other body.
- (1A) If the advance exceeds the amount that becomes payable, an amount equal to the excess may be:
 - (a) deducted from any amount that is payable, or to be paid, to the provider or body under this Act; or
 - (b) recovered by the Commonwealth from the provider or body as a debt due to the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-1 Payments by the Commonwealth

Division 164 Payments by the Commonwealth

Section 164-15

- (1B) If the provider or other body uses the advance for a purpose other than that for which it was given, an amount equal to the advance may be:
- (a) deducted from any amount that is payable, or to be paid, to the provider or body under this Act; or
 - (b) recovered by the Commonwealth from the provider or body as a debt due to the Commonwealth.
- (2) The conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.
- (3) This section does not affect the Minister's power to determine under section 33-40 that an advance is payable to a higher education provider.

164-15 Overpayments

An overpayment of an amount made to a higher education provider or other body under Part 2-2, 2-3 or 2-4 may, in whole or part, be:

- (a) deducted from any amount that is payable, or to be paid, to that provider or body under Part 2-2, 2-3 or 2-4; or
- (b) recovered by the Commonwealth from that provider or body as a debt due to the Commonwealth.

164-20 Rounding of amounts

If an amount payable by the Commonwealth under this Act is an amount made up of dollars and cents, round the amount down to the nearest dollar.

164-25 Appropriation

Amounts payable by the Commonwealth under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-2—Administrative requirements on higher education providers

Division 169—Administrative requirements on higher education providers

169-1 What this Part is about

This Part imposes a number of administrative requirements on higher education providers.

Note: It is a quality and accountability requirement that a higher education provider comply with this Act: see section 19-65.

169-5 Notices

Who gets a notice?

- (1) A higher education provider must give such notices as are required by the Administration Guidelines to a person:
 - (a) who is enrolled with the provider for a unit of study; and
 - (b) who:
 - (i) is seeking Commonwealth assistance under this Act for the unit; or
 - (ii) is a *Commonwealth supported student for the unit.

Contents of notice

- (2) A notice must contain the information set out in the Administration Guidelines as information that must be provided in such a notice.

Date by which notice to be given

- (3) A notice must be given within the period set out in the Administration Guidelines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 169-10

Purpose and effect of notice

- (4) A notice under this section is given for the purpose only of providing information to a person. Any liability or entitlement of a person under this Act (including the person's *Student Learning Entitlement) is not affected by:
- (a) the failure of a higher education provider to give a notice under this section; or
 - (b) the failure of a higher education provider to give such a notice by the date required under the Administration Guidelines; or
 - (c) the notice containing an incorrect statement.

169-10 Correction of notices

Higher education provider to correct notice

- (1) 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.

Person may request correction of notice

- (2) A person who receives a notice from a higher education provider under section 169-5 may give to the provider a written request for the notice to be corrected in respect of a material particular if the person considers that the notice was not, or has ceased to be, correct in that particular.
- (3) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) The request must:
 - (a) specify the particular in the notice that the person considers is incorrect; and
 - (b) specify the reasons the person has for considering that the particular is incorrect.
- (5) The making of the request does not affect any liability or entitlement of the person under this Act (including the person's *Student Learning Entitlement).

Higher education provider to process request

- (6) If a higher education provider receives a request under this section the provider must, as soon as practicable:
 - (a) determine the matter to which the request relates; and
 - (b) notify the person in writing of the provider's determination; and
 - (c) if the provider determines that a material particular in the notice was not, or has ceased to be, correct—give a further notice under subsection (1).

169-15 Charging student contribution amounts and tuition fees

- (1) A higher education provider:
 - (a) must require any student who:
 - (i) is a *Commonwealth supported student in relation to a unit of study; and
 - (ii) is enrolling in the unit with the provider; and
 - (iii) is not an *exempt student for the unit;to pay to the provider the student's *student contribution amount for the unit; and
 - (b) must not require the student to pay any of his or her *tuition fee or any other *fee for the unit.
- (2) A higher education provider:
 - (a) must require any *domestic student who:
 - (i) is not a *Commonwealth supported student in relation to a unit of study; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-2 Administrative requirements on higher education providers

Division 169 Administrative requirements on higher education providers

Section 169-20

- (ii) is enrolling in the unit with the provider; and
 - (iii) is not an *exempt student for the unit;
to pay to the provider the student's *tuition fee for the unit;
and
 - (b) must not require any domestic student to pay any other *fee,
or any of his or her *student contribution amount, for the unit.
- (3) However, a higher education provider must repay to a person any payment of his or her *student contribution amount or *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.

Note: Other provisions about student contribution amounts and tuition fees are set out in Subdivision 19-F and Parts 2-2 and 3-2.

169-20 Exempt students

- (1) The Minister may determine in writing that all students, or students of a specified kind, are exempt from payment of their *student contribution amounts and *tuition fees for:
- (a) any units of study undertaken as part of a specified *course of study; or
 - (b) any units of study undertaken as part of a course of study of a specified kind.
- A student, or a student of such a kind, (as the case requires) is an *exempt student* for those units.
- (2) The Administration Guidelines may provide that:
- (a) in all circumstances; or
 - (b) in the circumstances specified in those guidelines;
- all students are exempt from payment of their *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, (as the case requires) an *exempt student* for such units.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) A student is an *exempt student* for a unit of study undertaken with a higher education provider as part of a *course of study with that provider if:
- (a) the provider has awarded the student an exemption scholarship for the course; and
 - (b) the provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines.
- (3A) A student is an *exempt student* for a unit of study undertaken with one higher education provider as part of a *course of study with another (the *home provider*) if:
- (a) the home provider has awarded the student an exemption scholarship for the course; and
 - (b) the home provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines; and
 - (c) the student must undertake the unit, because it is required to complete the course.
- (3B) A student is an *exempt student* for a unit of study undertaken with one higher education provider (the *host provider*) as part of a *course of study undertaken with another if:
- (a) the host provider has awarded the student an exemption for the unit; and
 - (b) the host provider awarded the scholarship in accordance with any requirements specified in the Administration Guidelines.
- (4) Without limiting the matters that may be specified in the Administration Guidelines for the purposes of paragraph (3)(b), those matters may include one or both of the following:
- (a) the maximum number of exemption scholarships that a particular higher education provider may award in respect of a year;
 - (b) which students are eligible to receive exemption scholarships.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

169-25 Determining census dates and EFTSL values

- (1) A higher education provider must, for each unit of study it provides or proposes to provide during a year, determine, for that year:
 - (a) a particular date to be the *census date for the unit; and
 - (b) the *EFTSL value for the unit.

Note: 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.
- (2) A date determined under paragraph (1)(a) must not occur less than 20% of the way through the period during which the unit is undertaken.
- (3) The provider must publish:
 - (a) the *census date for the unit by the date, and in the manner, specified in the Administration Guidelines; and
 - (b) the *EFTSL value for the unit by the date, and in the manner, specified in the Administration Guidelines.
- (4) The provider must not vary the *census date for the unit, or the *EFTSL value for the unit, after publication under subsection (3), unless the provider has the written approval of the Minister to do so. The provider must publish the variation by the date and in the manner specified by the Minister in the approval.

169-30 Communications with the Commonwealth concerning students etc.

In communications under, or for the purposes of, this Act between the Commonwealth and a higher education provider concerning a person who:

- (a) is enrolled, or seeking to enrol, in a unit of study with the provider; and
- (b) has indicated that the person is seeking Commonwealth assistance under this Act for the unit, or is a *Commonwealth supported student for the unit;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the provider must use any identifier for that person that the
*Secretary has indicated must be used in such communications.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-3—Electronic communications

Division 174—Electronic communications

174-1 What this Part is about

<p>Certain documents that this Act requires or permits to be given between students and higher education providers may be transmitted electronically.</p>

174-5 Electronic communications from students to higher education providers

- (1) If:
- (a) a provision of this Act requires or permits a document, notice, request or other form (the *document*) that is to be given by a student to a higher education provider; and
 - (b) the student gives the document to the provider by *electronic communication using an *information system in respect of which:
 - (i) there is a declaration by the provider under subsection (2); and
 - (ii) there is a declaration by the Minister under subsection (3);
- the student complies with the provision so far as it requires or permits the student to give the document to the provider.
- (2) 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 to the provider a document permitted or required by this Act to be given by the student to the provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (3) The Minister may declare, in writing given to a higher education provider, that an *information system declared by the provider under subsection (2) meets the Administration Guidelines referred to in subsection (4).
- (4) The Administration Guidelines may set out the requirements relating to *information systems that may be used by students to give to higher education providers documents that, under this Act, they are required or permitted to be given to higher education providers.

174-10 Electronic communication by students of students' signatures

- (1) If:
 - (a) a provision of this Act requires a student to sign a document notice, request or other form (the *document*) that is to be given to a higher education provider; and
 - (b) the student's identity and approval of the document are made apparent by a method in respect of which:
 - (i) there is a declaration by the provider under subsection (2); and
 - (ii) there is a declaration by the Minister under subsection (3);the student complies with the requirement.
- (2) A higher education provider may declare, in writing given to the Minister, that a specified method may be used, in connection with a document required to be signed by a student, to indicate the student's identity and approval of the document.
- (3) The Minister may declare, in writing given to a higher education provider, that a method declared by the provider under subsection (2) meets the Administration Guidelines referred to in subsection (4).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 174-15

- (4) 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.

174-15 The effect of sections 174-5 and 174-10

Only apply when Electronic Transactions Act does not apply

- (1) Sections 174-5 and 174-10 only apply at a time when sections 9, 10 and 11 of the *Electronic Transactions Act 1999* do not apply to:
- (a) 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
 - (b) a permission under this Act for a student to give a document to a higher education provider.

Note: An exemption from the operation of a section of the *Electronic Transactions Act 1999* may be given under regulations made under that Act.

Not a limit on how a student may comply with this Act

- (2) Neither section 174-5 nor section 174-10 limit how a student may comply with a provision of this Act.

174-20 Notices electronically communicated from higher education providers to students

If:

- (a) a higher education provider gives a student a notice that under section 169-5 the provider is required to give in writing; and
- (b) 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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) 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.

Note: This means that the requirement to give notice in writing is met by the
electronic communication of the notice.

**174-25 Guidelines may deal with electronic communications from
higher education providers to students**

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-4—Protection of personal information

Division 179—Protection of personal information

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.

179-5 Meaning of *personal information*

Personal information is:

- (a) information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (b) obtained or created by an *officer for the purposes of Chapters 3 and 4.

179-10 Use of personal information

An *officer commits an offence if the officer:

- (a) either:
 - (i) discloses information; or
 - (ii) makes a copy or other record of information; and
- (b) the information is *personal information; and
- (c) the information was acquired by the officer in the course of the officer's *official employment; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (d) the disclosure did not occur, or the copy or record was not made, in the course of that official employment.

Penalty: Imprisonment for 2 years.

179-15 Meanings of *officer* etc. and *official employment*

Meaning of officer

- (1) A person is an ***officer*** if:
- (a) the person is or was a *Commonwealth officer (see subsection (2)); or
 - (b) the person is or was an *officer of a higher education provider (see subsection (3)); or
 - (c) the person is or was an *officer of Open Learning Australia (see subsection (3A)).
- (2) A ***Commonwealth officer*** is a person who holds office under, or is employed by, the Commonwealth, and includes the following:
- (a) a person appointed or engaged under the *Public Service Act 1999*;
 - (b) a person permanently or temporarily employed:
 - (i) in the Public Service of a Territory (other than the Northern Territory); or
 - (ii) in, or in connection with, the Defence Force; or
 - (iii) in the Service of any authority or body constituted by or under a law of the Commonwealth or of a Territory (other than the Northern Territory);
 - (c) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);
 - (d) a person who, although not holding office under, or employed by:
 - (i) the Commonwealth; or
 - (ii) a Territory (other than the Northern Territory); or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 179-15

- (iii) any authority or body constituted by or under a law of the Commonwealth or of a Territory (other than the Northern Territory);
performs services for or on behalf of the Commonwealth, a Territory (other than the Northern Territory), or such an authority or body;
 - (e) a person who is an employee of the Australian Postal Corporation;
 - (f) a person who performs services for or on behalf of the Australian Postal Corporation;
 - (g) an employee of a person who performs services for or on behalf of the Australian Postal Corporation.
- (3) A person is an *officer of a higher education provider* if the person is:
- (a) an officer or employee of the provider; or
 - (b) a person who, although not an officer or employee of the provider, performs services for or on behalf of the provider.
- (3A) A person is an *officer of Open Learning Australia* if the person is:
- (a) an officer or employee of *Open Learning Australia; or
 - (b) a person who, although not an officer or employee of Open Learning Australia, performs services for or on behalf of Open Learning Australia.

Meaning of official employment

- (4) *Official employment* of an *officer is:
- (a) for a *Commonwealth officer—the performance of duties or functions, or the exercise of powers, under, or for the purposes of, this Act; or
 - (b) for an *officer of a higher education provider—service as such an officer; or
 - (c) for an *officer of Open Learning Australia—service as such an officer.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

179-20 When information is disclosed in the course of official employment

Without limiting the matters that are disclosures that occur in the course of an *officer's *official employment for the purposes of paragraph 179-10(d), the following disclosures are taken to be disclosures that occur in the course of an officer's official employment:

- (a) disclosure by a *Commonwealth officer of *personal information to another Commonwealth officer to assist that other officer in the other officer's official employment;
- (b) disclosure by an officer of personal information to the Administrative Appeals Tribunal in connection with a *reviewable decision;
- (c) disclosure by a Commonwealth officer of personal information to an *officer of a higher education provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (ca) disclosure by a Commonwealth officer of personal information to an *officer of Open Learning Australia to assist *Open Learning Australia in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act;
- (d) disclosure by an officer of a higher education provider of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (e) disclosure by an officer of Open Learning Australia of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;
- (f) disclosure by an officer of Open Learning Australia of personal information to an officer of a higher education provider to assist the provider's officer in performing duties or functions or in exercising powers, under, or for the purposes of, this Act;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (g) disclosure by an officer of a higher education provider of personal information to an officer of Open Learning Australia to assist the officer of Open Learning Australia in performing duties or functions or in exercising powers, under, or for the purposes of, this Act.

179-25 Commissioner may disclose information

- (1) Despite anything in an Act of which the *Commissioner has the general administration, the Commissioner, or a person authorised by the Commissioner, may communicate *personal information to an *officer for use by that officer:
 - (a) in the case of a *Commonwealth officer—in the course of the officer's *official employment; or
 - (b) in the case of an *officer of a higher education provider—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act; or
 - (c) in the case of an *officer of Open Learning Australia—to assist the officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act.
- (2) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the *Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this section applies to a communication of *personal information.

179-30 Oath or affirmation to protect information

- (1) An *officer must, if and when required by the *Secretary or the *Commissioner to do so, make an oath or affirmation to protect information in accordance with this Part.
- (2) The *Secretary may determine, in writing:
 - (a) the form of the oath or affirmation that the Secretary will require; and
 - (b) the manner in which the oath or affirmation must be made.
- (3) The *Commissioner may determine, in writing:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the form of the oath or affirmation that the Commissioner will require; and
- (b) the manner in which the oath or affirmation must be made.

179-35 Unauthorised access to, or modification of, personal information

- (1) A person commits an offence if:
 - (a) the person causes any unauthorised access to, or modification of, *personal information that is:
 - (i) held in a computer; and
 - (ii) to which access is restricted by an access control system associated with a function of the computer; and
 - (b) the person intends to cause the access or modification; and
 - (c) the person knows that the access or modification is unauthorised; and
 - (d) one or more of the following apply:
 - (i) the personal information is held in a computer of a higher education provider;
 - (ii) the personal information is held on behalf of a provider;
 - (iii) the personal information is held in a computer of *Open Learning Australia;
 - (iv) the personal information is held on behalf of Open Learning Australia.

Penalty: 2 years imprisonment.

- (2) Absolute liability applies to paragraph (1)(d).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-5—Tax file numbers

Division 184—Introduction

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, or where appropriate Open Learning Australia, of matters relating to tax file numbers.

Higher education providers, and where appropriate Open Learning Australia, have obligations relating to notifying students about tax file number requirements.

Higher education providers have obligations relating to cancelling the enrolment of students who do not have tax file numbers.

Note: Part VA of the *Income Tax Assessment Act 1936* provides for issuing, cancelling or altering tax file numbers.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 187—What are the tax file number requirements for assistance under Chapter 3?**187-1 Meeting the tax file number requirements**

- (1) A student who is enrolled, or proposes to enrol, with a higher education provider in a unit of study access to which was not provided by *Open Learning Australia, ***meets the tax file number requirements*** for assistance under Chapter 3 if:
 - (a) the student notifies his or her *tax file number to an *appropriate officer of the provider, and the provider is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.
- (1A) A student who accesses, or proposes to access, a unit of study through *Open Learning Australia, ***meets the tax file number requirements*** for assistance under Chapter 3 if:
 - (a) the student notifies his or her *tax file number to an *appropriate officer of Open Learning Australia, and Open Learning Australia is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.
- (2) If the student is seeking *HECS-HELP assistance or *FEE-HELP assistance for a unit of study, he or she does not meet the tax file number requirements for the assistance unless he or she complies with subsection (1) or (1A) (as the case requires) on or before the *census date for the unit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 187-2

- (3) A notification under paragraph (1)(a) may be included in a *request for Commonwealth assistance that the student has given to the provider in relation to:
 - (a) the unit of study for which the assistance is sought, or any other unit of study; or
 - (b) the *course of study of which the unit, or the other unit, forms a part, or any other course of study.
- (3A) A notification under paragraph (1A)(a) may be included in a *request for Commonwealth assistance that the student has given to *Open Learning Australia in relation to the unit of study for which the assistance is sought, or any other unit of study.
- (4) The *Commissioner may issue guidelines about the circumstances in which:
 - (a) a higher education provider is to be, or is not to be, satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(a); and
 - (b) *Open Learning Australia is to be, or is not to be, satisfied that a number is a valid tax file number for the purposes of paragraph (1A)(a).
- (5) A certificate under paragraph (1)(b) must be in a form approved by the *Commissioner.
- (6) A certificate under paragraph (1A)(b) must be in a form approved by the *Commissioner.

187-2 Who is an appropriate officer?

- (1) An *appropriate officer* of a higher education provider, means a person, or a person included in a class of persons, whom:
 - (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider;has appointed to be an appropriate officer of the provider for the purposes of this Act.
- (2) An *appropriate officer* of *Open Learning Australia, means a person, or a person included in a class of persons, whom:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 187-5

- (a) the chief executive officer of Open Learning Australia; or
- (b) a delegate of the chief executive officer of Open Learning Australia;

has appointed to be an appropriate officer of Open Learning Australia for the purposes of this Act.

187-5 Student to notify tax file number when issued

- (1) If a student *meets the tax file number requirements for the assistance under paragraph 187-1(1)(b):
 - (a) the student must notify his or her *tax file number to an *appropriate officer of the higher education provider within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
 - (b) the provider must be satisfied (in accordance with subsection 187-1(4)) that this number is a valid *tax file number.
- (2) If a student *meets the tax file number requirements for assistance under paragraph 187-1(1A)(b):
 - (a) the student must notify his or her *tax file number to an *appropriate officer of *Open Learning Australia within 21 days from the day on which the *Commissioner issues the tax file number to the student; and
 - (b) Open Learning Australia must be satisfied (in accordance with subsection 187-1(4)) that this number is a valid *tax file number.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 190—In what circumstances can higher education providers and Open Learning Australia be notified of tax file number matters?

190-1 When tax file numbers are issued etc.

- (1) The *Commissioner may give to 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:
 - (a) issues the tax file number to the student; or
 - (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.
- (2) The *Commissioner may give to *Open Learning Australia written notice of the *tax file number of a student to whom Open Learning Australia provides access to a unit of study if the Commissioner:
 - (a) issues the tax file number to the student; or
 - (b) refuses to issue a tax file number to the student on the ground that the student already has a tax file number.

190-5 When tax file numbers are altered

- (1) The *Commissioner may give to 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.
- (2) That new number is taken to be the number that the student notified to the provider.
- (3) The *Commissioner may give to *Open Learning Australia written notice of the *tax file number of a student to whom Open Learning Australia provides access to a unit of study if the Commissioner issues a new tax file number to the student in place of a tax file number that has been withdrawn.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

In what circumstances can higher education providers and Open Learning Australia be notified of tax file number matters? **Division 190**

Section 190-10

- (4) That new number is taken to be the number that the student notified to *Open Learning Australia.

190-10 When tax file numbers are incorrectly notified—students with tax file numbers

- (1) If the *Commissioner is satisfied:
- (a) that the *tax file number that a student has notified to a higher education provider:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and
 - (b) that the student has a tax file number;
- the Commissioner may give to the provider written notice of the incorrect notification and of the student's tax file number.
- (2) That number is taken to be the number that the student notified to the provider.
- (3) If the *Commissioner is satisfied:
- (a) that the *tax file number that a student has notified to *Open Learning Australia:
 - (i) has been cancelled or withdrawn since the notification was given; or
 - (ii) is otherwise wrong; and
 - (b) that the student has a tax file number;
- the Commissioner may give to Open Learning Australia written notice of the incorrect notification and of the student's tax file number.
- (4) That number is taken to be the number that the student notified to *Open Learning Australia.

190-15 When tax file numbers are incorrectly notified—students without tax file numbers

- (1) If:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-5 Tax file numbers

Division 190 In what circumstances can higher education providers and Open Learning Australia be notified of tax file number matters?

Section 190-20

- (a) the *Commissioner is satisfied that the *tax file number that a student notified to a higher education provider:
 - (i) has been cancelled since the notification was given; or
 - (ii) is for any other reason not the student's tax file number;and
- (b) the Commissioner is not satisfied that the student has a tax file number;

the Commissioner may give to the provider a written notice informing the provider accordingly.

(1A) If:

- (a) the *Commissioner is satisfied that the *tax file number that a student notified to *Open Learning Australia:
 - (i) has been cancelled since the notification was given; or
 - (ii) is for any other reason not the student's tax file number;and
- (b) the Commissioner is not satisfied that the student has a tax file number;

the Commissioner may give Open Learning Australia a written notice informing Open Learning Australia accordingly.

- (2) The *Commissioner must give a copy of any notice under subsection (1) or (1A) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) or (1A) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

190-20 When applications are refused or tax file numbers are cancelled

- (1) If the *Commissioner:
 - (a) refuses a student's application for the issue of a *tax file number; or
 - (b) cancels a tax file number issued to a student;

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

In what circumstances can higher education providers and Open Learning Australia be notified of tax file number matters? **Division 190**

Section 190-20

(1A) If the *Commissioner:

(a) refuses a student's application for the issue of a *tax file number; or

(b) cancels a tax file number issued to a student;

the Commissioner may, if access to a unit of study is provided to the student by *Open Learning Australia, give to Open Learning Australia written notice informing Open Learning Australia accordingly.

(2) The *Commissioner must give a copy of any notice under subsection (1) or (1A) to the student concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) or (1A) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 193—What are the requirements on higher education providers and Open Learning Australia relating to tax file numbers?

193-1 Giving information about tax file number requirements

Requests for HECS-HELP assistance or FEE-HELP assistance—requirements on higher education providers

- (1) A higher education provider must notify a person in writing how to *meet the tax file number requirements if:
 - (a) the person is enrolled in a unit of study with the provider; and
 - (b) the person has, on or before the *census date for the unit, completed, signed and given to the *appropriate officer of the provider a *request for Commonwealth assistance in relation to the unit or, where the *course of study of which the unit forms a part is undertaken with the provider, in relation to the course of study.
 - (c) in that request, the person requests *HECS-HELP assistance or *FEE-HELP assistance for the unit or the course; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2) The provider must notify the person under subsection (1):
 - (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives the provider the *request for Commonwealth assistance;whichever is earlier.

Requests for FEE-HELP assistance—requirements on Open Learning Australia

- (2A) *Open Learning Australia must notify a person in writing how to *meet the tax file number requirements if:
 - (a) Open Learning Australia provides access to a unit of study to the person; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

What are the requirements on higher education providers and Open Learning Australia relating to tax file numbers? **Division 193**

Section 193-1

- (b) the person has, on or before the *census date for the unit, completed, signed and given to an *appropriate officer of Open Learning Australia a *request for Commonwealth assistance in relation to the unit; and
 - (c) in that request, the person requests *FEE-HELP assistance for the unit; and
 - (d) the request does not include a number that purports to be the person's *tax file number.
- (2B) *Open Learning Australia must notify the person under subsection (2A):
- (a) on or before the *census date for the unit; or
 - (b) within 7 days after the person gives Open Learning Australia the *request for Commonwealth assistance;
- whichever is earlier.
- (2C) A *request for Commonwealth assistance*, in relation to a person to whom *Open Learning Australia provides access to a unit of study, means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the unit; and
 - (b) that is in the form approved by the Minister.

Requests for OS-HELP assistance

- (3) A higher education provider must notify a person in writing how to *meet the tax file number requirements if:
- (a) the person is enrolled in a *course of study with the provider; and
 - (b) the person has, before receiving *OS-HELP assistance, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance; and
 - (c) in that request, the person requests OS-HELP assistance in relation to a period of 6 months; and
 - (d) the request does not include a number that purports to be the person's *tax file number.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5 Administration

Part 5-5 Tax file numbers

Division 193 What are the requirements on higher education providers and Open Learning Australia relating to tax file numbers?

Section 193-5

- (4) The provider must notify the person under subsection (3) within 7 days after the person gives the provider the *request for Commonwealth assistance.

Cases where there is no obligation to notify

- (5) This section does not apply to the person if:
- (a) 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
 - (b) 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 person's *student contribution amount for the unit.

Note: In the circumstances set out in paragraph (5)(b), the HECS-HELP assistance would not involve any loan by the Commonwealth to the person.

193-5 Cancelling enrolments of people without tax file numbers

- (1) A higher education provider must cancel a person's enrolment in a unit of study with the provider if:
- (a) the provider receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and
 - (b) 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 (3)) is a valid tax file number.
- (2) The provider must not accept a further enrolment of the person in that unit.
- (3) A higher education provider must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(b), comply with the guidelines issued by the *Commissioner under subsection 187-1(4).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

What are the requirements on higher education providers and Open Learning
Australia relating to tax file numbers? **Division 193**

Section 193-5

- (4) 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 (1) or (3) of the need to obtain a valid *tax file number.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-6—Indexation

Division 198—Indexation

198-1 What this Part is about

Several amounts referred to in provisions of this Act are indexed. This Part sets out how those amounts are indexed.

- Note 1: Different methods of indexation are used for the indexing of accumulated HELP debts under sections 140-10 and 140-15, and for the indexing of HELP repayment thresholds under section 154-25.
- Note 2: The Other Grants and Payments Guidelines and the Commonwealth Scholarship Guidelines may provide for amounts to be indexed using the method of indexation set out in this Part.

198-5 The amounts that are to be indexed

This table sets out the amounts that are to be indexed.

Amounts that are to be indexed			
Item	Amounts:	See:	First year of indexation
1	*Commonwealth contribution amounts	Section 33-10	2005
2	*Maximum student contribution amounts for places	Section 93-10	2005
3	The *FEE-HELP limit	Section 104-20	2006
4	The *maximum OS-HELP amount	Section 121-5	2006

198-10 Indexing amounts

- (1) 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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the amount, and on each subsequent 1 January, by multiplying it by the *indexation factor for the relevant year.

- (2) However an amount is not indexed if its *indexation factor is 1 or less.

198-15 Meaning of *indexation factor*

- (1) The *indexation factor* for the relevant year is:

$$\frac{\text{The *index number for the relevant year}}{\text{The *index number for the year immediately preceding the relevant year}}$$

- (2) Work out the *indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it is rounded up to 1.103.

198-20 Meaning of *index number*

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.

198-25 Review of indexation

- (1) The Minister will initiate and undertake a review of the cost adjustment factor indexation mechanism for the Commonwealth funding of universities from 2007/08.
- (2) The review must be completed by February 2005 and the Government must respond to the review by April 2005 and give effect to its response when introducing the annual Higher Education Support Amendment Bill in the 2005 May sittings of the Parliament.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 198-25

- (3) Without limiting the scope of the review, the reviewers must, among other things, consider the following:
 - (a) the alternative indices to use for wage costs—for example, the relative merits of average weekly earnings, the Commonwealth's education wage cost index, baskets of domestic professional wage rates and purchasing power parity adjusted indices for academic labour;
 - (b) the alternative indices for non-wage costs, noting the high reliance of universities on advanced equipment, information technology, research infrastructure and international book and periodical stocks;
 - (c) the application of any agreed index or indices to the actual Commonwealth-funded staffing and financial profile of each university rather than the application of an assumed uniform profile.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5-7—Review of decisions

Division 203—Introduction

203-1 What this Part is about

Some decisions made under this Act are subject to reconsideration and then review by the Administrative Appeals Tribunal.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 206—Which decisions are subject to review?

206-1 Reviewable decisions etc.

The table sets out:

- (a) the *reviewable decisions* under this Act; and
- (b) the *decision maker*, for the purposes of this Division, in respect of each of those decisions.

Reviewable decisions			
Item	Decision	Provision under which decision is made	Decision maker
1A	A decision that section 36-22 does not apply to a person	section 36-22	the higher education provider with whom the student is enrolled in the unit
1	Refusal to re-credit some or all of a person's *student learning entitlement for a unit of study	section 79-1	the higher education provider with whom the student is enrolled in the unit
2	Refusal to re-credit a person's *FEE-HELP balance	subsection 104-25(1)	the higher education provider with whom the student is enrolled in the unit
2A	Refusal to re-credit a person's FEE-HELP balance	subsection 104-25(2)	*Open Learning Australia
3	Deferral of making an assessment or refusal to defer the making of an assessment	section 154-45	the *Commissioner
4	Amending the assessment or refusal to amend an assessment	section 154-50	the *Commissioner

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 206-1

Reviewable decisions			
Item	Decision	Provision under which decision is made	Decision maker
5	Refusal to approve a person as a self-accrediting entity in relation to an external Territory	section 225-5	the Minister
6	Refusal to accredit a *course of study in relation to an external Territory	section 225-10	the Minister
7	Amendment of an approval as a self-accrediting entity in relation to an external Territory	subsection 225-20(1)	the Minister
8	Revocation of an approval as a self-accrediting entity in relation to an external Territory	subsection 225-20(1)	the Minister
9	Amendment of an accreditation of a *course of study, in relation to an external Territory	subsection 225-20(2)	the Minister
10	Revocation of an accreditation of a *course of study, in relation to an external Territory	subsection 225-20(2)	the Minister

Note 1: The decisions referred to in items 1 and 2 of the table are made by a higher education provider on the Secretary's behalf.

Note 2: The decisions referred to in item 2A of the table are made by Open Learning Australia on the Secretary's behalf.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 206-5

206-5 Deadlines for making reviewable decisions

If:

- (a) this Act provides for a person to apply to a *decision maker to make a *reviewable decision; and
- (b) a period is specified under this Act for giving notice of the decision to the applicant; and
- (c) the decision maker has not notified the applicant of the decision maker's decision within that period;

the decision maker is taken, for the purposes of this Act, to have made a decision to reject the application.

206-10 Decision maker must give reasons for reviewable decisions

- (1) If this Act requires the *decision maker to notify a person of the making of a *reviewable decision, the notice must include reasons for the decision.
- (2) Subsection (1) does not affect an obligation, imposed upon the *decision maker by any other law, to give reasons for a decision.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 209—How are decisions reconsidered?

209-1 Reviewer of decisions

- (1) The *reviewer* of a *reviewable decision is:
 - (a) if the *decision maker was a higher education provider acting on behalf of the *Secretary—the Secretary; or
 - (b) if the *decision maker was *Open Learning Australia acting on behalf of the *Secretary—the Secretary; or
 - (c) in any other case—the decision maker, but see subsection (2).
- (2) If:
 - (a) a *reviewable decision was made by a delegate of a *decision maker; and
 - (b) 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:
 - (c) was not involved in making the decision; and
 - (d) occupies a position that is senior to that occupied by any person involved in making the decision.

Note 1: The Secretary may delegate to a review officer of a higher education provider the power to reconsider reviewable decisions made under Chapter 3: see subsection 238-1(2).

Note 2: The Secretary may also delegate to a review officer of Open Learning Australia the power to reconsider reviewable decisions made under Chapter 3: see subsection 238-1(2A).

209-5 Reviewer may reconsider reviewable decisions

- (1) The *reviewer of a *reviewable decision may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.
- (2) The *reviewer may reconsider the decision even if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 209-10

- (a) an application for reconsideration of the decision has been made under section 209-10; or
 - (b) 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.
- (3) After reconsidering the decision, the *decision maker must:
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (4) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
- (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (5) The *reviewer must give written notice of the decision on review to the person to whom that decision relates.
- (6) The notice:
- (a) must be given within a reasonable period after the decision is made; and
 - (b) must contain a statement of the reasons for the *reviewer's decision on review.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

209-10 Reconsideration of reviewable decisions on request

- (1) A person whose interests are affected by a *reviewable decision may request the *reviewer to reconsider the decision.
- (2) 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.
- (3) The notice must set out the reasons for making the request.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) After receiving the request, the *reviewer must reconsider the decision and:
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
- (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day on which the decision on review was made.
- (6) The *reviewer is taken, for the purposes of this Part, 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.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 212—Which decisions are subject to AAT review?

212-1 AAT review of reviewable decisions

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 6—The provision of higher education in the external Territories

Division 217—Introduction

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6-1—Approval and accreditation

Division 222—Introduction

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 do not have approval or accreditation 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 225—How does a person obtain approval and accreditation?

225-1 Application for approval as self-accrediting entity or for accreditation of course

A person (other than a natural person) who:

- (a) is not a *listed self-accrediting entity; and
- (b) wishes to *operate in an external Territory as a *university or other provider of *courses of study leading to *higher education awards;

must apply in writing to the Minister either:

- (c) for approval of the person as a self-accrediting entity in relation to that Territory; or
- (d) for accreditation, in relation to that Territory, of each course of study it proposes to *offer.

225-5 Approving a person as a self-accrediting entity

The Minister may approve a person as a self-accrediting entity in relation to an external Territory if:

- (a) the person applies for approval, under section 225-1, as a self-accrediting entity in relation to that Territory; and
- (b) 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; and
- (c) the person's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research.

Note: Refusal to approve a person as a self-accrediting entity is reviewable under Part 5-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 225-10

225-10 Accrediting a course of study

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; and
- (c) the person's principal purpose is either or both of the following:
 - (i) to provide education;
 - (ii) to conduct research.

Note: Refusal to accredit a course of study is reviewable under Part 5-7.

225-15 Duration of approval and accreditation

- (1) An approval of a person as a self-accrediting entity by the Minister under section 225-5:
 - (a) remains in force for the period that the Minister determines; and
 - (b) is subject to any conditions that the Minister imposes.
- (2) An accreditation of a particular *course of study by the Minister under section 225-10:
 - (a) remains in force for the period that the Minister determines; and
 - (b) is subject to any conditions that the Minister imposes.

225-20 Amending or revoking an approval or accreditation

- (1) The Minister may amend or revoke an approval of a person, under section 225-5, as a self-accrediting entity in relation to an external Territory at any time if the Minister is satisfied that:
 - (a) the person has breached a condition to which the person's approval is subject; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) following a reassessment of the person's approval made having regard to the *National Protocols—the person's circumstances have so changed that it is no longer appropriate that the person be empowered to issue its own qualifications; or
- (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-5(c).

Note: Amendment or revocation of an approval is reviewable under Part 5-7.

- (2) 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 of study leading to a *higher education award at any time if the Minister is satisfied that:
 - (a) the person *offering the course has breached a condition to which the course accreditation is subject; or
 - (b) following a reassessment of the course accreditation made having regard to the *National Protocols—the content of, or manner of providing, the course has so changed that it is no longer appropriate to the award; or
 - (c) the person's circumstances have changed so that it no longer satisfies paragraph 225-10(c).

Note: Amendment or revocation of an accreditation is reviewable under Part 5-7.

225-25 Fees

- (1) The regulations may:
 - (a) prescribe fees to be paid in respect of applications made under section 225-1; and
 - (b) for that purpose, take into account such costs as are directly or indirectly incurred by, or in assisting, the Minister to make a decision on such an application; and
 - (c) set out the manner and times of payment of such fees.
- (2) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 228—Limitations upon operations of certain persons in the external Territories

228-1 Persons without accreditation not to operate as universities or other provider in external Territories

- (1) A person commits an offence if:
- (a) the person *operates, or purports to operate:
 - (i) as a *university, or a part of a university, providing *courses of study leading to *higher education awards; or
 - (ii) as another provider of courses of study leading to higher education awards; and
 - (b) the operation or purported operation is in an external Territory; and
 - (c) the person is not:
 - (i) a *listed self-accrediting entity; or
 - (ii) approved by the Minister under section 225-5 as a self-accrediting entity in relation to that Territory; and
 - (d) any course *offered by the person is not accredited by the Minister under section 225-10 in relation to that Territory.

Penalty: 40 penalty units.

- (2) For the purposes of an offence against subsection (1), strict liability applies:
- (a) to the circumstance in subparagraph (1)(c)(ii) that the power of approval is under section 225-5; and
 - (b) to the circumstance in paragraph (1)(d) that the power of accreditation is under section 225-10.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

228-5 Persons without accreditation not to offer higher education awards or courses in external Territories

- (1) A person commits an offence if:
- (a) the person *offers, or purports to offer, a *course of study leading to a *higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and
 - (c) the person is not:
 - (i) a *listed self-accrediting entity; or
 - (ii) approved by the Minister under section 225-5 as a self-accrediting entity in relation to that Territory; and
 - (d) the course is not accredited by the Minister under section 225-10 in relation to that Territory.

Penalty: 40 penalty units.

- (2) A person commits an offence if:
- (a) the person *offers, or purports to offer, a *higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and
 - (c) the person is not:
 - (i) a *listed self-accrediting entity; or
 - (ii) approved by the Minister under section 225-5 as a self-accrediting entity in relation to that Territory; and
 - (d) the offer, or purported offer, of the award is not dependent 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.

Penalty: 40 penalty units.

- (3) For the purposes of an offence against subsection (1) or (2), strict liability applies:
- (a) to the circumstance in subparagraph (1)(c)(ii) or (2)(c)(ii), as the case requires, that the power of approval is under section 225-5; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 228-10

- (b) to the circumstance in paragraph (1)(d) or (2)(d), as the case requires, that the power of accreditation is under section 225-10.

228-10 Persons without accreditation not to describe themselves as universities in external Territories

- (1) A person commits an offence if:
 - (a) the person uses the word “university”, “university college” or any like words (whether or not in combination with other words):
 - (i) to identify the person in the person’s operation or purported operation in an external Territory; or
 - (ii) to identify the person’s operation or purported operation in an external Territory; and
 - (b) the person, or the person’s operation or purported operation, as so identified, is not:
 - (i) a *listed self-accrediting entity; or
 - (ii) approved by the Minister under section 225-5 as a self-accrediting entity in relation to that Territory; and
 - (c) the Minister has not approved the use of that word or those words:
 - (i) to identify the person in the person’s operation or purported operation in that external Territory; or
 - (ii) to identify the person’s operation or purported operation in that external Territory.

Penalty: 40 penalty units.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the circumstance in subparagraph (1)(b)(ii) that the power of approval is under section 225-5.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

228-15 Meanings of *operating* and *offering*

- (1) A reference to a person *operating*, or purporting to operate, in an external Territory:
- (a) as a *university, or part of a university, providing *courses of study leading to *higher education awards; or
 - (b) 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:
- (c) a computer adapted for communicating by way of the Internet or another communications network;
 - (d) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;
 - (e) a telephone;
 - (f) any other electronic device.
- (2) 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 (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 6 The provision of higher education in the external Territories

Part 6-2 Use of company names and business names

Division 233 Use of company names and business names

Section 233-1

Part 6-2—Use of company names and business names

Division 233—Use of company names and business names

233-1 Law in force in external Territory not to allow company or business names using the word “university” etc.

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:

- (a) registration, or purported registration of; or
- (b) 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 7—Miscellaneous

238-1 Delegations by Secretary

- (1) The *Secretary may, in writing, delegate to an APS employee in the Department all or any of the powers of the Secretary under this Act, the regulations or any Guidelines made under section 238-10.
- (2) 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.
- (2A) The *Secretary may, in writing, delegate to a *review officer of *Open Learning Australia the Secretary's powers under Division 209 to reconsider *reviewable decisions made by Open Learning Australia relating to Chapter 3.
- (2B) A *review officer* of *Open Learning Australia is a person, or a person included in a class of persons, whom:
 - (a) the chief executive officer of Open Learning Australia; or
 - (b) a delegate of the chief executive officer of Open Learning Australia;has appointed to be a review officer of Open Learning Australia for the purposes of reviewing decisions made by it relating to assistance under Chapter 3.
- (3) In exercising powers under the delegation, the delegate must comply with any directions of the *Secretary.

238-5 Delegations by Minister

- (1) The Minister may, by writing, delegate to:
 - (a) the *Secretary; or
 - (b) an APS employee in the Department;all or any of the Minister's powers under this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 238-7

- (2) In exercising powers under the delegation, the delegate must comply with any directions of the Minister.

238-7 Review of impact of Act

Before 31 December 2006, the Minister must cause a review to be commenced of the impact on the higher education sector of the higher education reforms enacted through this Act.

238-10 Guidelines

- (1) The Minister may make Guidelines, specified in the second column of the table, providing for matters:
- (a) required or permitted by the corresponding Chapter, Part or section specified in the third column of the table to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

Guidelines		
Item	Guidelines	Chapter/Part/section
1	Administration Guidelines	Chapter 5
2	Commonwealth Grant Scheme Guidelines	Part 2-2; section 93-10
3	Commonwealth Scholarships Guidelines	Part 2-4
4	FEE-HELP Guidelines	Part 3-3
5	HECS-HELP Guidelines	Part 3-2
6	Higher Education Provider Guidelines	Part 2-1
7	OS-HELP Guidelines	Part 3-4
8	Other Grants Guidelines	Part 2-3
9	Reduction and Repayment Guidelines	Part 2-5
10	Student Learning Entitlement Guidelines	Part 3-1
11	Tuition Fee Guidelines	Part 2-2

- (2) Guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

238-15 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1—Dictionary

Note: Section 1-10 describes how asterisks are used to identify terms that are defined in this Act.

1 Definitions

In this Act, unless the contrary intention appears:

accredited course means a course that:

- (a) is a *course of study; and
- (b) is accredited by the Commonwealth or by a State or Territory accreditation agency listed in the *Australian Qualifications Framework Register.

accumulated HELP debt has the meaning given by section 140-25.

additional SLE, of a person, means the amount of *Student Learning Entitlement that the person has under section 73-20, as reduced (if applicable) under Division 76.

annual financial reporting period has the meaning given by subsection 19-10(3).

appropriate officer has the meaning given by section 187-2.

assessing body has the meaning given by section 104-55.

assessing body of a State or Territory has the meaning given by subsection 104-55(3).

assessment statement has the meaning given by section 104-50.

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications established by the Council:

- (a) comprised of the Ministers responsible for education, employment, training and youth affairs for the Commonwealth and each State; and
- (b) known as the Ministerial Council on Education, Employment, Training and Youth Affairs;

to give effect to agreed standards in relation to the provision of education in Australia.

Australian Qualifications Framework Register means the Register:

- (a) that is called the Register of Recognised Education Institutions and Authorised Accreditation Authorities in Australia; and
- (b) that is maintained by the advisory board to the *Australian Qualifications Framework.

Australian Statistician means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

available, in relation to the amount of a person's *Student Learning Entitlement, has the meaning given by section 82-5.

AWE has the meaning given by subsection 154-25(2).

basic grant amount has the meaning given in section 33-5.

bridging course for overseas-trained professionals has the meaning given by section 104-45.

census date, for a unit of study for a year, means:

- (a) if the student undertaking the unit has not accessed it through *Open Learning Australia—the date determined under section 169-25; and
- (b) if the student undertaking the unit has accessed it through Open Learning Australia—the date determined under subsection 104-4(5).

Commissioner means the Commissioner of Taxation.

Commonwealth contribution amount means an amount specified in section 33-10.

Commonwealth officer has the meaning given by subsection 179-15(2).

Commonwealth scholarship means a scholarship payable under Part 2-4.

Commonwealth supported student has the meaning given by section 36-5.

compliance requirements are the requirements set out in Subdivision 19-E.

compulsory repayment amount means an amount that:

- (a) is required to be paid in respect of an *accumulated HELP debt under section 154-1; and
- (b) is included in a notice of an assessment made under section 154-35.

consent includes consent that can reasonably be inferred from the conduct of the person concerned.

contribution and fee requirements are the requirements set out in Subdivision 19-F.

corrected basic amount has the meaning given by subsection 33-25(5).

course of study means:

- (a) an *enabling course; or
- (b) a single course leading to a *higher education award; or
- (c) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to 1 or more *higher education awards.

Example: An example of a combined or double course covered by paragraph (c) is a course that leads to the higher education awards of Bachelor of Arts and Bachelor of Laws.

course of study in medicine has the meaning given by subsection 36-35(4).

covered: Division 82 defines whether a unit of study is covered by a person's *Student Learning Entitlement.

decision maker, for a *reviewable decision, means the person listed in column 3 of the table in section 206-1, in respect of a decision in column 2 of the table, as the decision maker in respect of that decision.

domestic student means a student who is not an *overseas student.

EFTSL has the meaning given by section 73-10.

EFTSL value, of a unit of study, has the meaning given by section 73-15.

electronic communication has the meaning given by the *Electronic Transactions Act 1999*.

eligible person has the meaning given by subsection 73-5(3).

eligible scholarship provider has the meaning given by subsection 46-15(3).

employer contribution amount, for a unit of study, is the amount that an employer has contributed, towards the cost of the unit, for a student enrolled in the unit under a *restricted access arrangement for the *course of study of which the unit forms a part.

employer reserved place means a place, in a *course of study, made available under a *restricted access arrangement for the course.

enabling course means a course of instruction provided to a person for the purpose of enabling the person to undertake a course leading to a *higher education award, but does not include:

- (a) a course leading to a higher education award; or
- (b) any course that the Minister determines is not an enabling course for the purposes of this Act.

enrolled: a person **enrolled** in a *course of study includes a person undertaking the course of study.

exempt foreign income has the meaning given by subsection 154-5(4).

exempt student has the meaning given by section 169-20.

fairness requirements are the requirements set out in Subdivision 19-D.

fee, for a unit of study for a year:

- (a) if the student undertaking the unit has not accessed it through *Open Learning Australia—has the meaning given by section 19-102; and

(b) if the student undertaking the unit has accessed it through Open Learning Australia—has the meaning given by subsections 104-4(3) and (4).

FEE-HELP assistance means assistance payable under Part 3-3.

FEE-HELP balance has the meaning given by section 104-15.

FEE-HELP debt has the meaning given by section 137-10.

FEE-HELP limit has the meaning given by section 104-20.

financial viability requirements are the requirements set out in Subdivision 19-B.

former accumulated HELP debt has the meaning given by section 140-5.

funding clusters has the meaning given by section 30-15.

HECS-HELP assistance means assistance payable under Part 3-2.

HECS-HELP debt has the meaning given by section 137-5.

HECS-HELP discount has the meaning given by subsection 96-5(4).

HELP debt has the meaning given by section 137-1.

HELP debt indexation factor has the meaning given by section 140-10.

higher education award means:

- (a) a degree, status, title or description of bachelor, master or doctor; or
- (b) an award of graduate diploma or graduate certificate; or
- (c) any other award specified as a higher education award under the *Australian Qualifications Framework.

higher education provider has the meaning given by section 16-1.

income tax has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income tax law has the meaning given by section 14ZAAA of the *Taxation Administration Act 1953*.

income year has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

indexation factor has the meaning given by section 198-15.

index number:

- (a) for the purposes of Part 4-1, has the meaning given by section 140-15; and
- (b) for the purposes of Part 5-6, has the meaning given by section 198-20.

information system has the meaning given by the *Electronic Transactions Act 1999*.

life long SLE, of a person, means the amount of *Student Learning Entitlement that the person has under section 73-22, as reduced (if applicable) under Division 76.

listed professional occupation has the meaning given by section 104-60.

listed provider has the meaning given by section 16-10.

listed self-accrediting entity means a person who:

- (a) is included; or
- (b) who owns or controls a business name that is included; in the *Australian Qualifications Framework Register as the name of a higher education institution empowered to issue its own qualifications.

maximum BOTP student load has the meaning given by subsection 104-75(2).

maximum OS-HELP amount has the meaning given by section 121-5.

maximum student contribution amount for a place has the meaning given by section 93-10.

Medicare levy means the Medicare levy imposed by the *Medicare Levy Act 1986*.

meets the tax file number requirements has the meaning given by section 187-1.

minimum OS-HELP amount means an amount determined under section 121-10.

minimum repayment income has the meaning given by section 154-10.

national priority has the meaning given by section 30-20.

National Protocol 1 means “Protocol 1—Criteria and processes for recognition of universities”, in the *National Protocols.

National Protocol 3 means “Protocol 3—The accreditation of higher education courses to be offered by non self-accrediting providers”, in the *National Protocols.

National Protocols means the National Protocols for Higher Education Approval Processes (first endorsed by the Ministerial Council on Employment, Education, Training and Youth Affairs on 31 March 2000), as in force from time to time.

non-award basis: an enrolment in:

- (a) a subject or unit that a person may undertake with a higher education provider as part of a *course of study; or
- (b) a course of instruction with a higher education provider; or
- (c) a tuition and training program with a higher education provider;

is an enrolment on a ***non-award basis*** if the unit, course or program is not being undertaken as part of a course of study.

non self-accrediting provider has the meaning given by subsection 16-25(4).

number of Commonwealth supported places means:

- (a) in relation to an allocation of a number of Commonwealth supported places under section 30-10 in relation to a *funding cluster—the number allocated under that section in relation to that funding cluster; or
- (b) in relation to the provision of a number of Commonwealth supported places—the number worked out under section 33-30.

occupation includes the meaning given by section 104-65.

offering has the meaning given by subsection 228-15(2).

officer has the meaning given by subsection 179-15(1).

officer of a higher education provider has the meaning given by subsection 179-15(3).

officer of Open Learning Australia has the meaning given by subsection 179-15(3A).

official employment has the meaning given by subsection 179-15(4).

Open Learning Australia means Open Learning Agency of Australia Pty Ltd (ACN 053 431 888).

operating has the meaning given by subsection 228-15(1).

ordinary SLE of a person means the amount of *Student Learning Entitlement that the person has under section 73-5, as reduced (if applicable) under Division 76.

OS-HELP assistance means assistance payable under Part 3-4.

OS-HELP debt has the meaning given by section 137-15.

overseas student means a person who:

- (a) is not an Australian citizen; and
- (b) is enrolled, or proposes to become enrolled, in a *course of study with a higher education provider;

but does not include:

- (c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or
- (d) a New Zealand citizen; or
- (e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse or dependent relative of such a representative.

permanent humanitarian visa holder means the holder of a visa that is, or has at any time been, defined as a permanent humanitarian visa for the purposes of the regulations made under the *Migration Act 1958*.

permanent visa holder means the holder of a permanent visa within the meaning of subsection 30(1) of the *Migration Act 1958*.

personal information has the meaning given by section 179-5.

postgraduate course of study means a *course of study that:

- (a) leads to one or more of the following *higher education awards:
 - (i) a graduate diploma;
 - (ii) a graduate certificate;
 - (iii) a master's degree;
 - (iv) a doctoral degree; and
- (b) does not lead to any other higher education award.

qualified auditor means:

- (a) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
- (b) a person registered as a company auditor or a public accountant under a law in force in a State, the Australian Capital Territory or the Northern Territory; or
- (c) a member of the Institute of Chartered Accountants in Australia, or of the Australian Society of Certified Practising Accountants; or
- (d) a person approved by the Minister in writing as a qualified auditor for the purposes of this Act.

quality and accountability requirements has the meaning given by section 19-1.

quality auditing body means a body listed in the Higher Education Provider Guidelines as such a body.

quality requirements are the requirements set out in Subdivision 19-C.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

reference period has the meaning given by subsection 154-25(3).

related body corporate has the meaning given by section 9 of the *Corporations Act 2001*.

rental property loss has the meaning given by subsection 154-5(2).

repayable debt, for an *income year, has the meaning given by section 154-15.

repayment income has the meaning given by section 154-5.

request for Commonwealth assistance:

- (a) in relation to a person enrolling in a unit of study with a higher education provider (where access to the unit is not provided by *Open Learning Australia)—has the meaning given by subsection 36-40(3); and
- (b) in relation to a person to whom access to a unit of study is provided by Open Learning Australia—has the meaning given by subsection 193-1(2C).

requirements for entry, to a *listed professional occupation, has the meaning given by section 104-70.

restricted access arrangement, for a *course of study, means an arrangement:

- (a) that was entered into between the higher education provider providing the course and an employer or industry body; and
- (b) that limits or restricts enrolments in some or all of the places in the course.

return means an income tax return within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

reviewable decision means a decision listed in the table in section 206-1.

reviewer has the meaning given by section 209-1.

review officer:

- (a) of a higher education provider—has the meaning given by subsection 19-50(2); and
- (b) of *Open Learning Australia—has the meaning given by subsection 238-1(2B).

Secretary means the Secretary of the Department.

self-accrediting provider has the meaning given by subsection 16-25(3).

SLE means *Student Learning Entitlement.

student means a person who is enrolled in a *course of study with a higher education provider.

student cohort has the meaning given by section 19-101.

student contribution amount has the meaning given by section 93-5.

student contribution amount for a place has the meaning given by subsection 93-5(1).

Student Learning Entitlement has the meaning given by section 73-1.

student load has the meaning given by subsection 104-75(1).

Table A provider means a body listed in Table A in section 16-15.

Table B provider means a body listed in Table B in section 16-20.

taxable income has the meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

tax file number: a person's tax file number is a number that the *Commissioner has issued to the person and that is either:

- (a) a number issued under Part VA of the *Income Tax Assessment Act 1936*; or
- (b) a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*; or
- (c) a number that the Commissioner notified to the person as the person's income tax file number.

tuition assurance requirements means the requirements set out in subsection 16-30(1).

tuition fee:

- (a) in relation to a unit of study access to which is not provided by *Open Learning Australia—has the meaning given by section 19-105; and

-
- (b) in relation to a unit of study access to which is provided by Open Learning Australia—means a fee determined under subsection 104-4(2).

undergraduate course of study means a *course of study that is neither an *enabling course nor a *postgraduate course of study.

unit of study means:

- (a) a subject or unit that a person may undertake with a higher education provider as part of a *course of study; or
- (b) a subject or unit made available by a higher education provider:
- (i) access to which was provided by *Open Learning Australia; and
- (ii) that a person could undertake as part of a course of study leading to a *higher education award; or
- (c) a part of a *bridging course for overseas-trained professionals.

If a higher education provider provides the same such subject or unit in respect of more than one period, the subject or unit is taken to be a different unit of study in respect of each period.

university has the meaning given by subsection 16-25(2).

up-front payment, in relation to a unit of study, has the meaning given by section 93-15 or 107-5.

voluntary repayment means a payment made to the *Commissioner in discharge of an *accumulated HELP debt or a *HELP debt. It does not include a payment made in discharge of a *compulsory repayment amount.

work experience in industry means work:

- (a) that is done as a part of, or in connection with, a *course of study undertaken with a higher education provider; and
- (b) in respect of which student learning and performance is not directed by the provider; and
- (c) the purpose of which is to obtain work experience relevant to the course of study; and
- (d) that meets any other requirements specified in the Administration Guidelines.

Table of Acts**Notes to the *Higher Education Support Act 2003*****Note 1**

The *Higher Education Support Act 2003* as shown in this compilation comprises Act No. 149, 2003 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Higher Education Support Act 2003</i>	149, 2003	19 Dec 2003	Ss. 1-10-238-15 and Schedule 1: 1 Jan 2004 Remainder: Royal Assent	
<i>Higher Education Legislation Amendment Act 2004</i>	45, 2004	21 Apr 2004	21 Apr 2004	—
<i>Higher Education Legislation Amendment Act (No. 2) 2004</i>	114, 2004	13 July 2004	Schedule 2 (items 39-45, 80): 14 July 2004 Remainder: Royal Assent	Sch. 2 (item 85)
<i>Higher Education Legislation Amendment Act (No. 3) 2004</i>	157, 2004	17 Dec 2004	Schedule 1 (items 1-43, 46-52): Royal Assent Schedule 1 (items 44, 45): (a)	—

Act Notes

(a) Subsection 2(1) (item 3) of the *Higher Education Legislation Amendment Act (No. 3) 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1, items 44 and 45	Immediately after the commencement of items 59 and 61 of Schedule 2 to the <i>Higher Education Legislation Amendment Act (No. 2) 2004</i> .	13 July 2004

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 2	
Part 2-1	
Division 16	
Subdivision 16-C	
S. 16-25	am. No. 114, 2004
S. 16-30	am. No. 45, 2004
Division 19	
Subdivision 19-D	
S. 19-35	am. No. 114, 2004
S. 19-45	am. No. 114, 2004
Subdivision 19-F	
S. 19-87	ad. No. 45, 2004 am. No. 157, 2004
S. 19-88	ad. No. 45, 2004 am. No. 114, 2004
S. 19-90	rs. No. 45, 2004
S. 19-91	ad. No. 45, 2004 am. No. 114, 2004
Heading to s. 19-95.....	am. No. 45, 2004
S. 19-95	am. No. 45, 2004
S. 19-97	ad. No. 45, 2004
S. 19-100.....	rs. No. 45, 2004 am. No. 157, 2004
S. 19-101	ad. No. 45, 2004
S. 19-102	ad. No. 45, 2004
S. 19-105	rs. No. 45, 2004 am. No. 157, 2004
Division 22	
Subdivision 22-B	
S. 22-7	ad. No. 114, 2004
Part 2-2	
Division 30	
Subdivision 30-A	
S. 30-5	am. Nos. 45, 114 and 157, 2004
Subdivision 30-C	
S. 30-25	am. No. 157, 2004
Division 33	
Subdivision 33-C	
S. 33-25	am. No. 45, 2004
Division 36	

Table of Amendments

Provision affected	How affected
ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Subdivision 36-B	
S. 36-5	am. No. 157, 2004
S. 36-10	am. No. 157, 2004
S. 36-15	am. No. 157, 2004
S. 36-20	am. No. 45, 2004
S. 36-22	ad. No. 45, 2004 am. No. 157, 2004
Subdivision 36-C	
S. 36-25	rs. No. 157, 2004
S. 36-35	am. No. 157, 2004
S. 36-40	am. Nos. 45, 114 and 157, 2004
Subdivision 36-D	
S. 36-45	am. No. 45, 2004
S. 36-50	am. No. 45, 2004
Subdivision 36-E	
S. 36-55	am. No. 45, 2004
Part 2-3	
Division 41	
S. 41-45	am. Nos. 45 and 114, 2004
Part 2-4	
Division 46	
S. 46-15	am. No. 114, 2004
S. 46-20	am. No. 114, 2004
S. 46-30	am. No. 114, 2004
S. 46-40	am. No. 114, 2004
Chapter 3	
Part 3-1	
Division 73	
S. 73-10	am. No. 45, 2004
Division 76	
S. 76-1	am. No. 157, 2004
Division 79	
S. 79-1	am. No. 157, 2004
Note to s. 79-5(2)	am. No. 45, 2004
Part 3-2	
Division 87	
S. 87-1	rs. No. 45, 2004
Division 90	
S. 90-1	am. Nos. 45 and 157, 2004
S. 90-5	am. No. 114, 2004
Division 93	
S. 93-1	am. No. 45, 2004

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
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Provision affected	How affected
S. 93-5	am. Nos. 45 and 157, 2004
Heading to s. 93-10.....	rs. No. 45, 2004
S. 93-10.....	am. No. 45, 2004
Note 2 to s. 93-10	am. No. 45, 2004
S. 93-15.....	am. No. 45, 2004
Division 96	
S. 96-1	am. No. 45, 2004
S. 96-5.....	am. Nos. 45 and 114, 2004
S. 96-10.....	am. No. 45, 2004
Note to s. 96-10.....	am. No. 45, 2004
Part 3-3	
Division 101	
S. 101-1.....	rs. No. 45, 2004 am. No. 114, 2004
Division 104	
Subdivision 104-A	
S. 104-1.....	am. Nos. 114 and 157, 2004
S. 104-2.....	ad. No. 114, 2004 am. No. 157, 2004
S. 104-3.....	ad. No. 114, 2004
S. 104-4.....	ad. No. 114, 2004
S. 104-5.....	am. No. 114, 2004
Subdivision 104-B	
S. 104-25.....	am. No. 114, 2004
Note to s. 104-25	rep. No. 114, 2004
S. 104-30.....	am. No. 114, 2004
S. 104-35.....	am. No. 114, 2004
S. 104-40.....	am. No. 114, 2004
Division 107	
S. 107-1.....	am. No. 45, 2004
S. 107-5.....	am. No. 45, 2004
S. 107-10.....	am. No. 114, 2004
Example to s. 107-10(2)	rs. No. 45, 2004
Division 110	
Heading to s. 110-1.....	rs. No. 114, 2004
S. 110-1.....	am. Nos. 45 and 114, 2004
S. 110-5.....	am. No. 114, 2004
Part 3-4	
Division 115	
S. 115-1.....	am. No. 157, 2004
Division 118	
S. 118-1.....	am. No. 157, 2004

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 118-5.....	am. No. 114, 2004		
S. 118-7.....	ad. No. 157, 2004		
S. 118-10.....	am. No. 157, 2004		
S. 118-15.....	am. No. 157, 2004		
Chapter 4			
Part 4-1			
Division 137			
S. 137-5.....	am. No. 45, 2004		
S. 137-10.....	am. Nos. 45 and 157, 2004		
Chapter 5			
Part 5-1			
Division 164			
S. 164-10.....	am. No. 157, 2004		
Part 5-2			
Division 169			
S. 169-15.....	am. No. 45, 2004		
S. 169-20.....	am. Nos. 45 and 157, 2004		
S. 169-25.....	am. No. 114, 2004		
Part 5-4			
Division 179			
S. 179-15.....	am. No. 114, 2004		
S. 179-20.....	am. No. 114, 2004		
S. 179-25.....	am. No. 114, 2004		
S. 179-35.....	am. No. 114, 2004		
Part 5-5			
Division 184			
S. 184-1.....	rs. No. 114, 2004		
Division 187			
S. 187-1.....	am. No. 114, 2004		
S. 187-2.....	ad. No. 114, 2004		
S. 187-5.....	ad. No. 45, 2004 am. No. 114, 2004		
Division 190			
Heading to Div. 190 of Part 5-5.....	rs. No. 114, 2004		
S. 190-1.....	am. No. 114, 2004		
S. 190-5.....	am. No. 114, 2004		
S. 190-10.....	am. No. 114, 2004		
S. 190-15.....	am. No. 114, 2004		
Note to s. 190-15.....	am. No. 157, 2004		
S. 190-20.....	am. No. 114, 2004		
Note to s. 190-20.....	am. No. 157, 2004		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
Division 193			
Heading to Div. 193 of Part 5-5	rs. No. 114, 2004		
Subhead. to s. 193-1(1)	am. No. 114, 2004		
S. 193-1	am. Nos. 45, 114 and 157, 2004		
Part 5-6			
Division 198			
S. 198-5	am. No. 45, 2004		
Part 5-7			
Division 206			
S. 206-1	am. Nos. 45 and 114, 2004		
Note to s. 206-1	rep. No. 114, 2004		
Notes 1, 2 to s. 206-1	ad. No. 114, 2004		
Division 209			
S. 209-1	am. No. 114, 2004		
Note to s. 209-1	rep. No. 114, 2004		
Notes 1, 2 to s. 209-1	ad. No. 114, 2004		
Part 6-1			
Division 225			
S. 225-5	am. No. 114, 2004		
S. 225-10	am. No. 114, 2004		
S. 225-20	am. No. 114, 2004		
Chapter 7			
S. 238-1	am. No. 114, 2004		
Schedule 1			
Schedule 1	am. Nos. 45, 114 and 157, 2004		

Table A

Table A

Application, saving or transitional provisions

Higher Education Legislation Amendment Act (No. 2) 2004 (No. 114, 2004)

Schedule 2

85 Saving of guidelines

- (1) Guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003* that were in force immediately before the commencement of this item continue to have effect on and after that commencement as if they had been issued under that subsection as in force after that commencement.
- (2) Subitem (1) does not prevent the amendment or revocation of the guidelines.