





# **Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003**

**No. 150, 2003**

**An Act to deal with transitional and consequential matters arising from the enactment of the *Higher Education Support Act 2003*, and for other purposes**

Note: An electronic version of this Act is available in SCALEplus (<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



---

## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	4
4	Meanings of expressions defined in the <i>Higher Education Support Act 2003</i> .....	4
<b>Schedule 1—Transitional provisions</b>		5
Part 1—Transitional arrangement for students under the Higher Education Contribution Scheme		5
Part 2—Transitional arrangement for students under the Post-graduate education loan scheme		9
Part 3—Debts under the Higher Education Funding Act 1988		12
Part 4—The University of Notre Dame Australia		15
Part 5—Avondale College		16
Part 6—Other transitional provisions		17
<b>Schedule 2—Amendments</b>		21
Part 1—Appropriations		21
<i>Higher Education Funding Act 1988</i>		21
Part 2—Transitional financial assistance		22
<i>Higher Education Funding Act 1988</i>		22
Part 2A—HEC repayment thresholds for the 2004-05 year of income		23
<i>Higher Education Funding Act 1988</i>		23
Part 3—Discontinuance of provisions of the Higher Education Funding Act 1988		24
<i>Higher Education Funding Act 1988</i>		24
Part 4—The Australian National University		26
<i>Australian National University Act 1991</i>		26
Part 5—Australian Maritime College		36
<i>Maritime College Act 1978</i>		36

---

---

Part 6—Marcus Oldham College	44
<i>Higher Education Funding Act 1988</i>	44
Part 7—Other amendments	45
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	45
<i>Bankruptcy Act 1966</i>	45
<i>Disability Services Act 1986</i>	45
<i>Equal Opportunity for Women in the Workplace Act 1999</i>	46
<i>Fringe Benefits Tax Assessment Act 1986</i>	46
<i>Higher Education Funding Act 1988</i>	46
<i>Income Tax Assessment Act 1936</i>	50
<i>Income Tax Assessment Act 1997</i>	51
<i>Social Security Act 1991</i>	52
<i>Taxation Administration Act 1953</i>	54
<i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>	55
<i>Veterans' Entitlements Act 1986</i>	56



# Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003

No. 150, 2003

---

---

**An Act to deal with transitional and consequential matters arising from the enactment of the *Higher Education Support Act 2003*, and for other purposes**

*[Assented to 19 December 2003]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

---

## 2 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 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. Section 4	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
3. Schedule 1	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
4. Schedule 2, Parts 1 to 3	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
5. Schedule 2, Part 4	The later of: (a) 1 July 2004; and (b) the 28th day after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
6. Schedule 2, Part 5	The later of: (a) 1 March 2004; and (b) the 28th day after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 2, Part 6	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
8. Schedule 2, items 95 to 103	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
9. Schedule 2, item 104	18 September 2001	18 September 2001
10. Schedule 2, items 105 to 108	4 April 2002	4 April 2002
11. Schedule 2, item 109	18 September 2001	18 September 2001
12. Schedule 2, item 110	4 April 2002	4 April 2002
13. Schedule 2, item 111	18 September 2001	18 September 2001
14. Schedule 2, item 112	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
15. Schedule 2, items 113 to 119A	The later of: (a) 1 January 2005; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	
16. Schedule 2, items 120 to 169	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	

---

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.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Meanings of expressions defined in the *Higher Education Support Act 2003***

Expressions used in this Act that are defined in the *Higher Education Support Act 2003* have in this Act, unless the contrary intention appears, the same meanings as in that Act.

## **Schedule 1—Transitional provisions**

### **Part 1—Transitional arrangement for students under the Higher Education Contribution Scheme**

#### **1 Student contribution amounts for students under the Higher Education Contribution Scheme**

- (1) If:
- (a) a person is enrolled with an institution in a unit of study that forms part of a course of study that the person started before 1 January 2005; and
  - (b) the period over which the person is undertaking the unit ends on or before 31 December 2008; and
  - (c) the person is a contributing student within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*; and
  - (d) the course is a designated course of study within the meaning of that Chapter; and
  - (f) the person:
    - (i) is entitled to HECS-HELP assistance for the unit; or
    - (ii) would be entitled to HECS-HELP assistance for the unit but for paragraph 90-1(1)(a) or (c), or paragraphs 90-1(1)(a) and (c), of the *Higher Education Support Act 2003*; and
  - (g) the person has neither:
    - (i) discontinued his or her enrolment in the course since that commencement (see item 2); nor
    - (ii) completed the requirements of the course;
- then:
- (h) if the institution is not (apart from this item) a higher education provider—the institution is taken, for the purposes of the application of the *Higher Education Support Act 2003* in relation to the person and the unit, to be a higher education provider; and
  - (i) if subparagraph (f)(ii) applies and the person is not an excepted student—the person is taken, for the purposes of that Act, to be entitled to HECS-HELP assistance for the unit; and

**Schedule 1** Transitional provisions

**Part 1** Transitional arrangement for students under the Higher Education Contribution Scheme

---

- (j) the person is taken, for the purposes of that Act, to be a Commonwealth supported student in relation to the unit; and
  - (k) the student contribution amount for the unit is taken, for the purposes of that Act, not to exceed the amount that would be worked out under section 93-5 of that Act if the maximum student contribution amount per place for the unit were worked out under item 3.
- (2) However, this item does not apply if the person has notified an appropriate officer of the institution, under subsection 36-5(3) of the *Higher Education Support Act 2003*, that he or she does not wish to be a Commonwealth supported student in relation to the unit.
- (3) In this item:  
*excepted student* has the meaning given by subsection 41(3) of the *Higher Education Funding Act 1988*.

**2 Discontinuance of enrolments**

A person is not taken, for the purposes of subparagraph (1)(g)(i) of item 1, to have discontinued his or her enrolment in a course of study merely because:

- (a) the person has taken leave of absence from, or has deferred, the course, with the approval of the institution with which the person is undertaking the course; or
- (b) the person transfers his or her enrolment in the course to another course of study at the same level with the same or another institution or higher education provider; or
- (c) circumstances have occurred that are specified in the guidelines under item 5 as not amounting to a discontinuance of enrolment.

**3 Maximum student contribution amounts per place**

- (1) If a person to whom item 1 applies started the course of study in question before 1 January 1997, the *maximum student contribution amount per place* for the unit is \$2,830.
  - (2) If a person to whom item 1 applies started the course of study in question on or after 1 January 1997, the *maximum student contribution amount per place* for the unit is the amount specified in the following table in relation to the funding cluster in which the unit is included.
-

<b>Maximum amounts per place</b>		
<b>Item</b>	<b>Funding clusters</b>	<b>Maximum student contribution amount per place</b>
1	Law	\$6,283
2	Accounting, Administration, Economics, Commerce	\$5,367
3	Humanities	\$3,768
4	Mathematics, Statistics	\$5,367
5	Behavioural Science, Social Studies	\$3,768
6	Computing, Built Environment, Health	\$5,367
7	Foreign Languages, Visual and Performing Arts	\$3,768
8	Engineering, Science, Surveying	\$5,367
9	Dentistry, Medicine, Veterinary Science	\$6,283
10	Agriculture	\$5,367
11	Education	\$3,768
12	Nursing	\$3,768

Note: 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 of the *Higher Education Support Act 2003*.

- (3) A maximum student contribution amount per place under this item is indexed under Part 5-6 of the *Higher Education Support Act 2003* as if:
- (a) it was an amount referred to in the table in section 198-5 of that Act; and
  - (b) the first year of indexation in relation to the amount was the year 2005.

#### **4 Guidelines**

- (1) The Minister may, in writing, make guidelines providing for matters:
- (a) required or permitted by this Schedule to be provided; or
  - (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.

**Schedule 1** Transitional provisions

**Part 1** Transitional arrangement for students under the Higher Education Contribution Scheme

---

- (2) Without limiting subitem (1), the guidelines may provide for:
- (a) when a person is taken to have commenced a course of study; and
  - (b) when a person is taken to have completed the requirements of a course of study.

Any such guidelines have effect, for the purposes of this Schedule, accordingly.

- (3) The guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**5 Meaning of *institution***

In this Schedule:

***institution*** has the same meaning as in the *Higher Education Funding Act 1988*.

## **Part 2—Transitional arrangement for students under the Post-graduate education loan scheme**

### **6 FEE-HELP assistance for existing students under the Post-graduate education loan scheme**

If:

- (a) a person is enrolled with an institution in a unit of study that forms part of a course of study that the person started before 1 January 2005; and
- (b) the period over which the person is undertaking the unit ends on or before 31 December 2008; and
- (c) the person is an eligible student, within the meaning of section 98B of the *Higher Education Funding Act 1988*, for the semester; and
- (d) the course is an eligible post-graduate course of study within the meaning of section 98A of that Act; and
- (e) the Commonwealth had, under section 98G of that Act, discharged a liability that the person had incurred in relation to the course; and
- (f) the person:
  - (i) is entitled to FEE-HELP assistance for the unit; or
  - (ii) would be entitled to FEE-HELP assistance for the unit but for paragraph 104-1(1)(a) of the *Higher Education Support Act 2003*; and
- (g) the person has neither:
  - (i) discontinued his or her enrolment in the course since that commencement (see item 7); nor
  - (ii) completed the requirements of the course;

then:

- (h) if the institution is not (apart from this item) a higher education provider—the institution is taken, for the purposes of the application of the *Higher Education Support Act 2003* in relation to the person and the unit, to be a higher education provider; and
- (i) if subparagraph (f)(ii) applies—the person is taken, for the purposes of that Act, to be entitled to FEE-HELP assistance for the unit; and

## Schedule 1 Transitional provisions

### Part 2 Transitional arrangement for students under the Post-graduate education loan scheme

---

- (j) the person is taken, for the purposes of that Act, to incur a HECS-HELP debt, and not a FEE-HELP debt, if the Commonwealth makes a loan to the person under section 104-1 of that Act in relation to the unit.

Note: The effects of the person incurring a HECS-HELP debt rather than a FEE-HELP debt are that the indexation of the debt is limited to changes in the Consumer Price Index (see section 140-5 of the *Higher Education Support Act 2003*), and that voluntary repayments may attract a 10% bonus (see section 151-5 of that Act).

## 7 Discontinuance of enrolments

A person is not taken, for the purposes of subparagraph (g)(i) of item 6, to have discontinued his or her enrolment in a course of study merely because:

- (a) the person has taken leave of absence from, or has deferred, the course, with the approval of the institution with which the person is undertaking the course; or
- (b) the person transfers his or her enrolment in the course to another course of study at the same level with the same or another institution or higher education provider; or
- (c) circumstances have occurred that are specified in the guidelines under item 8 as not amounting to a discontinuance of enrolment.

## 8 Guidelines

- (1) The Minister may, in writing, make guidelines providing for matters:
  - (a) required or permitted by this Schedule to be provided; or
  - (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.
- (2) Without limiting subitem (1), the guidelines may provide for:
  - (a) when a person is taken to have commenced a course of study; and
  - (b) when a person is taken to have completed the requirements of a course of study.

Any such guidelines have effect, for the purposes of this Schedule, accordingly.

- (3) The guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
-

## **9 Meaning of *institution***

In this Schedule:

*institution* has the same meaning as in the *Higher Education Funding Act 1988*.

## **Part 3—Debts under the Higher Education Funding Act 1988**

### **10 Conversion of accumulated HEC debts into accumulated HELP debts**

- (1) In working out, under section 140-25 of the *Higher Education Support Act 2003*, a person's accumulated HELP debt for the financial year starting on 1 July 2005, if a person incurs an accumulated HEC debt on 1 June 2005, add the debt to the amount under step 1 of the method statement in section 140-5 of that Act.
- (2) The accumulated HELP debt that a person incurs on 1 June 2006 discharges, or discharges the unpaid part of, any accumulated HEC debt that the person incurred on 1 June 2005.

### **11 Taking account of voluntary payments made under the Higher Education Funding Act 1988 on or after 1 June 2005**

If:

- (a) on or after 1 June 2005, a person makes a payment to the Commissioner under Division 1 of Part 5A.3 of the *Higher Education Funding Act 1988*; and
- (b) the payment would, but for subsection 106N(2A) of that Act, be used in working out the person's accumulated HEC debt incurred on 1 June in a particular financial year;

in working out, under section 140-25 of the *Higher Education Support Act 2003*, a person's accumulated HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 140-5 of that Act.

### **11A Taking account of voluntary payments made under the Higher Education Support Act 2003 before 1 June 2005**

- (1) If:
    - (a) on or after 1 January 2005 and before 1 June 2005, a person makes a voluntary repayment to the Commissioner under Division 151 of the *Higher Education Support Act 2003*; and
    - (b) the payment is in respect of one or more HECS-HELP debts;
-

in working out, under section 140-25 of that Act, a person's accumulated HECS-HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 140-5 of that Act.

(2) If:

- (a) on or after 1 January 2005 and before 1 June 2005, a person makes a voluntary repayment to the Commissioner under Division 151 of the *Higher Education Support Act 2003*; and
- (b) the payment is in respect of one or more HELP debts that are not HECS-HELP debts;

in working out, under section 143-15 of that Act, a person's accumulated FEE-HELP/OS-HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 143-5 of that Act.

## **12 Taking account of HEC assessment debts assessed on or after 1 June 2005**

If:

- (a) on or after 1 June 2005, the Commissioner makes an assessment under section 106T of the *Higher Education Funding Act 1988*; and
- (b) an amount is included in the notice of the assessment that is required to be paid in respect of an accumulated HEC debt under section 106Q of that Act; and
- (c) the amount would, but for subsection 106N(2A) of that Act, be used in working out the person's accumulated HEC debt incurred on 1 June in a particular financial year;

in working out, under section 140-25 of the *Higher Education Support Act 2003*, a person's accumulated HELP debt for the financial year, add the amount to the amount of the sum referred to in step 4 of the method statement in section 140-5 of that Act.

## **13 Taking account of amendments of assessments of HEC assessment debts on or after 1 June 2005**

(1) If:

- (a) on or after 1 June 2005, the Commissioner amends an assessment made under section 106T of the *Higher*

**Schedule 1** Transitional provisions

**Part 3** Debts under the Higher Education Funding Act 1988

---

*Education Funding Act 1988* of the amount of a person's HEC assessment debt; and

- (b) the HEC assessment debt is increased by the amendment (whether as a result of an increase in the person's taxable income of an income year or otherwise);

in working out, under section 140-25 of the *Higher Education Support Act 2003*, a person's accumulated HELP debt for the appropriate financial year, add the amount of the increase to the amount of the sum referred to in step 5 of the method statement in section 140-5 of that Act.

- (2) If:

- (a) on or after 1 June 2005, the Commissioner amends an assessment made under section 106T of the *Higher Education Funding Act 1988* of the amount of a person's HEC assessment debt; and

- (b) the HEC assessment debt is reduced by the amendment (whether as a result of a reduction in the person's taxable income of an income year or otherwise);

in working out, under section 140-25 of the *Higher Education Support Act 2003*, a person's accumulated HELP debt for the appropriate financial year, add the amount of the reduction to the amount of the sum referred to in step 6 of the method statement in section 140-5 of that Act.

- (3) For the purposes of this item, the ***appropriate financial year*** is:

- (a) if the amendment is made before 1 June in a financial year—that financial year; or
- (b) if the amendment is made on or after 1 June in a financial year—the immediately succeeding financial year.

## 14 Definitions

In this Part:

***accumulated HEC debt*** has the meaning given by section 106N of the *Higher Education Funding Act 1988*.

***HEC assessment debt*** has the meaning given by section 34 of the *Higher Education Funding Act 1988*.

## **Part 4—The University of Notre Dame Australia**

### **15 Allocation of Commonwealth Grant Scheme funding to The University of Notre Dame Australia**

Until the end of the year 2008, Parts 2-2 and 2-5 of the *Higher Education Support Act 2003* apply in relation to The University of Notre Dame Australia as if:

- (a) subparagraph 30-1(1)(a)(i) and subsections 36-30(1) and 36-35(1) of that Act included a reference to The University of Notre Dame Australia; and
- (b) subsections 30-1(2), 30-10(4), 36-10(5) and 36-30(3) of that Act did not apply.

### **16 Funding agreements with The University of Notre Dame Australia**

Without limiting section 30-25 of the *Higher Education Support Act 2003*, a funding agreement with The University of Notre Dame Australia in respect of the year 2008 or an earlier year may specify conditions relating to the enrolment of persons in places that are not allocated in respect of national priorities.

## **Part 5—Avondale College**

### **17 Allocation of Commonwealth Grant Scheme funding to Avondale College**

Until the end of the year 2008, Parts 2-2, 2-5 and 3-2 of the *Higher Education Support Act 2003* apply in relation to Avondale College as if Avondale College were a higher education provider, but not a Table A provider.

## **Part 6—Other transitional provisions**

### **18 Rollover of 2003 grants made under section 23 of the *Higher Education Funding Act 1988***

If:

- (a) a body receives a grant of financial assistance under section 23 of the old Act during the year 2003; and
- (b) the body fails to spend all of that grant in accordance with the old Act in respect of the year 2003; and
- (c) the Secretary determines in writing that this paragraph applies to the body;

then so much of the unspent grant amount as the Secretary specifies in relation to the grant will be taken to have been granted to the body under the new Act in respect of the year 2004:

- (d) under the section of the new Act that the Secretary specifies in the determination; and
- (e) on such conditions as the Secretary specifies in the determination.

### **19 Rollover of 2004 grants made under the *Higher Education Funding Act 1988***

If:

- (a) a body receives a grant of financial assistance under Chapter 2 of the old Act during the year 2004; and
- (b) the body fails to spend all of that grant in accordance with the old Act in respect of the year 2004; and
- (c) the Secretary determines in writing that this paragraph applies to the body;

then so much of the unspent grant amount as the Secretary specifies in relation to the grant will be taken to have been granted to the body under the new Act in respect of the year 2005:

- (d) under the section of the new Act that the Secretary specifies in the determination; and
- (e) on such conditions as the Secretary specifies in the determination.

### **20 Merit based equity scholarships**

---

- (1) A student who:
- (a) before the commencement of the new Act, was awarded a merit-based equity scholarship referred to in subsection 35(7) of the old Act for a course of study at an institution (within the meaning of the old Act); and
  - (b) continues to undertake that course at the institution after that commencement;
- is taken, for the purposes of the new Act, to be an exempt student for all of the units of study that he or she undertakes as part of that course at that institution.
- (2) However, this item does not apply if the institution is not a higher education provider.

## 21 Marginally funded places

- (1) A higher education provider's funding agreement under section 30-25 of the new Act for the year 2005, 2006 or 2007 (the *grant year*) may specify an allowable number of marginally funded places in respect of that year.
- (2) If such a funding agreement specifies such a number, then, for the purposes of:
- (a) deciding whether the provider has an adjustment under subsection 33-25(1) of the new Act for the year following the grant year; and
  - (b) working out the amount of any such adjustment for the year following the grant year;
- the number of Commonwealth supported places that are provided in the grant year is taken to be reduced by the number so specified in that funding agreement.

## 22 Assessment statements

- (1) A written statement that an assessing body for a listed professional occupation gave to a person, at a time before the commencement of the new Act, is taken to be an *assessment statement* for the purposes of the new Act if:
- (a) the person held a qualification awarded in a foreign country; and
  - (b) the qualification related to that occupation; and

- (c) the person proposed to seek entry to that occupation:
  - (i) in Australia; or
  - (ii) if the assessing body was an assessing body of a State or Territory—in that State or Territory; and
- (d) the body gave the person a written statement to the effect that, in the body's opinion, if the person were to do any or all of the following:
  - (i) successfully undertake additional studies of a kind specified in the statement;
  - (ii) be successful in one or more examinations specified in the statement;
  - (iii) successfully undertake a tuition and training program of a kind specified in the statement;the person would meet the requirements for entry to that occupation.

Note: A statement could specify one of the things mentioned in subparagraph (d)(i), (ii) or (iii) or any combination of the things mentioned in those subparagraphs.

- (2) In this item:

**assessing body** includes a person or body that, immediately before the commencement of the new Act, was an assessing body for the purposes of Chapter 4B of the old Act.

**listed professional occupation** includes an occupation that, immediately before that commencement, was a listed professional occupation for the purposes of that Chapter.

**occupation** includes a part of an occupation that, immediately before that commencement, was an occupation for the purposes of that Chapter.

## **22A Fee-waiver scholarships in the year 2004**

- (1) The amount or value of a scholarship in respect of the year 2004 is taken not to be income for the purposes of the *Social Security Act 1991* if:
- (a) the scholarship is provided by an institution (within the meaning of the old Act) or by an institution or body referred to in Schedule 1 to the old Act; and
  - (b) the scholarship is in the form of a waiver of all of the fees (within the meaning of the old Act) that the person would be

liable to pay to the institution or body in connection with a course of study (within the meaning of the old Act); and

(c) the course of study is not a designated course of study (within the meaning of Chapter 4 of the old Act).

- (2) Subitem (1) does not affect whether the amount or value of a scholarship in relation to which that subitem does not apply is income for the purposes of the *Social Security Act 1991*.

### **23 Saving of regulations made for Chapter 5C of the *Higher Education Funding Act 1988***

- (1) Regulations made for the purposes of paragraphs 106ZQ(2)(a) and (c) and subsection 106ZQ(3) of the old Act that were in force immediately before the repeal of Chapter 5C of the old Act are, on the commencement day, taken to have been made for the purposes of paragraphs 225-25(1)(a) and (c) and subsection 225-25(2) respectively of the new Act.
- (2) On the commencement day, a reference in the regulations made for the purposes of paragraph 106ZQ(2)(a) of the old Act to an application under subsection 106ZQ(1) of the old Act is to be read as a reference to an application under section 225-1 of the new Act.
- (3) In this item:  
*commencement day* is the day that Chapter 6 of the new Act commences.

### **24 Definitions**

In this Schedule:

*new Act* means the *Higher Education Support Bill 2003*.

*old Act* means the *Higher Education Funding Act 1988*.

## **Schedule 2—Amendments**

### **Part 1—Appropriations**

#### *Higher Education Funding Act 1988*

**1 Paragraph 17(p)**

Omit “\$2,872,293,000”, substitute “\$2,990,161,000”.

**2 Paragraph 20(3)(p)**

Omit “\$121,259,000”, substitute “\$124,340,000”.

**3 Paragraph 22A(5)(l)**

Omit “\$241,000”, substitute “\$247,000”.

**4 Paragraph 23C(2)(l)**

Omit “\$1,137,649,000”, substitute “\$1,070,788,000”.

**5 Paragraph 24(3)(p)**

Omit “\$5,402,000”, substitute “\$5,539,000”.

**6 Paragraph 27A(6)(k)**

Omit “\$42,101,000”, substitute “\$43,170,000”.

**7 Paragraph 27D(2)(g)**

Omit “\$5,400,000”, substitute “\$5,537,000”.

## **Part 2—Transitional financial assistance**

### ***Higher Education Funding Act 1988***

#### **8 After section 110**

Insert:

#### **110A Transitional financial assistance**

- (1) There is payable, to an institution to which financial assistance was payable under Chapter 2 in respect of the year 2004, such amount as the Minister determines in respect of a year referred to in subsection (2).
- (2) The total of the amounts that are payable under this section must not exceed:
  - (a) for the year 2005—\$21,536,000; and
  - (b) for the year 2006—\$9,411,000; and
  - (c) for the year 2007—\$7,393,000.

## **Part 2A—HEC repayment thresholds for the 2004-05 year of income**

### *Higher Education Funding Act 1988*

#### **8A Subsection 106Q(1)**

Omit “subsection (7)”, substitute “subsections (7) and (8)”.

#### **8B Subparagraph 106Q(4)(a)(ii)**

After “year of income”, insert “(other than the 2004-05 year of income)”.

#### **8C After subparagraph 106Q(4)(a)(ii)**

Insert:

; or (iii) for the 2004-05 year of income—\$35,000;

#### **8D At the end of section 106Q**

Add:

- (8) This section applies in relation to the 2004-05 year of income as if the table in subsection (1) were omitted and the following table were substituted:

---

<b>HEC repayment thresholds for the 2004-05 year of income</b>		
<b>Item</b>	<b>Person’s HEC repayment income in respect of year of income</b>	<b>Percentage applicable</b>
1	More than \$35,000, but less than \$38,988	4%
2	\$38,988 or more, but less than \$42,973	4.5%
3	\$42,973 or more, but less than \$45,233	5%
4	\$45,233 or more, but less than \$48,622	5.5%
5	\$48,622 or more, but less than \$52,658	6%
6	\$52,658 or more, but less than \$55,430	6.5%
7	\$55,430 or more, but less than \$60,972	7%
8	\$60,972 or more, but less than \$65,000	7.5%
9	\$65,000 or more	8%

---

## **Part 3—Discontinuance of provisions of the Higher Education Funding Act 1988**

### ***Higher Education Funding Act 1988***

#### **9 Section 2B**

Repeal the section.

#### **10 Section 3 (paragraphs (a) to (ab) of the definition of year to which this Chapter applies)**

After “or any subsequent year” (wherever occurring), insert “up to and including the year 2004”.

#### **11 Section 3 (paragraph (b) of the definition of year to which this Chapter applies)**

Omit “, being a year mentioned in section 17”, substitute “up to and including the year 2004”.

#### **12 Section 98L**

After “each year”, insert “up to and including the year 2004”.

#### **13 After section 98N**

Insert:

#### **98NA No financial assistance payable**

No financial assistance is payable under this Chapter to an institution referred to in section 4 after 31 December 2004.

#### **14 Before section 98ZA**

Insert:

#### **98ZAA Application of Division**

This Division does not apply in relation to a BOTP course for a study period that ends after 31 December 2004.

#### **15 Section 98ZE**

---

After “each year”, insert “up to and including the year 2004”.

**16 Section 106FA**

After “each year”, insert “up to and including the year 2004”.

**17 After section 106K**

Insert:

**106KA Semester debts do not arise after 1 January 2005**

Despite sections 106J to 106K, a person does not incur a semester debt if the census date, in respect of the course of study or study period in respect of which the debt would (apart from this section ) arise, occurs on or after 1 January 2005.

**18 After subsection 106N(2)**

Insert:

(2A) A person cannot incur an accumulated HEC debt on 1 June 2006 or on 1 June in any later year.

Note: A person’s accumulated HELP debt, worked out under section 140-25 of the *Higher Education Support Act 2003*, for the financial year starting on 1 July 2005 can include an amount for the person’s accumulated HEC debt incurred on 1 June 2005: see Part 3 of Schedule 1 to the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

**19 Chapter 5C**

Repeal the Chapter.

## Part 4—The Australian National University

### *Australian National University Act 1991*

**20 Section 3 (definition of *Chair of the Education Committee*)**

Repeal the definition.

**21 Section 3 (definition of *Chair of the Research Committee*)**

Repeal the definition.

**22 Section 3 (definition of *dean*)**

Repeal the definition, substitute:

*dean* means the head, by whatever name called, of any faculty.

**23 Section 3 (paragraph (c) of the definition of *ex officio member*)**

Omit “Vice-Chancellor; or”, substitute “Vice-Chancellor.”.

**24 Section 3 (paragraphs (d) to (g) of the definition of *ex officio member*)**

Repeal the paragraphs.

**25 Section 3 (definition of *Institute of the Arts*)**

Repeal the definition.

**26 Section 3**

Insert:

*Nominations Committee of Council* means the persons referred to in subsection 10(2).

**27 Section 3 (definition of *president of the postgraduate students’ association*)**

Repeal the definition.

**28 Section 3 (definition of *president of the undergraduate students’ association*)**

---

Repeal the definition.

**29 Section 3 (definition of *statutory Board*)**

Repeal the definition.

**30 Section 3 (paragraph (b) of the definition of *University body*)**

Omit “Convocation; or”, substitute “Convocation.”.

**31 Section 3 (paragraph (c) of the definition of *University body*)**

Repeal the paragraph.

**32 Paragraph 7(1)(b)**

Repeal the paragraph, substitute:

- (b) a group of faculties and other bodies determined by the Council, to be known as the “The Faculties”.

**33 Subsection 7(2)**

Omit “a school or other organisational structure”, substitute “an organisational structure”.

**34 Paragraphs 10(1)(d) to (j)**

Repeal the paragraphs.

**35 Paragraphs 10(1)(o), (p) and (q)**

Repeal the paragraphs, substitute:

- (o) one postgraduate student of the University elected by the postgraduate students of the University;
- (p) one undergraduate student of the University elected by the undergraduate students of the University;
- (q) 6 members appointed by the Minister on the recommendation of the Nominations Committee of Council.

**36 Subsections 10(2) to (4)**

Repeal the subsections, substitute:

- (2) The Nominations Committee of Council consists of:
  - (a) the Chancellor; and

- (b) 6 other persons appointed by the Chancellor in accordance with guidelines determined by the Council.
- (3) In making recommendations to the Minister under paragraph (1)(q), the Nominations Committee of Council must have regard to the desirability of ensuring that there is a balance of skills, expertise and gender among members of the Council.
- (4) At least 2 of the members appointed under paragraph 10(1)(q) must have a high level of relevant financial expertise.
- (5) At least one member appointed under paragraph 10(1)(q) must have a high level of relevant commercial expertise.
- (6) The Nominations Committee of Council must not recommend under paragraph 10(1)(q) a person who is:
  - (a) a current member of:
    - (i) the Commonwealth Parliament; or
    - (ii) a State Parliament; or
    - (iii) the legislature of a Territory; or
  - (b) a current member of the academic or general staff of the University; or
  - (c) a student of the university; or
  - (d) a member of the Nominations Committee of Council.
- (7) The Minister must, within 28 days after receiving written advice from the Nominations Committee of Council recommending that a person be appointed to the Council:
  - (a) appoint the person specified to the Council for a period not exceeding 4 years; or
  - (b) decide not to appoint the person specified if, in the Minister's opinion, the appointment is not in the best interests of the University.
- (8) If the Minister decides under paragraph (7)(b) not to appoint a person, the Minister must:
  - (a) notify the Council, in writing, of the refusal; and
  - (b) give reasons for the refusal.
- (9) In deciding under paragraph (7)(b) not to appoint a person, the Minister must only consider the balance of skills, expertise and

gender, and the periods of appointment (or proposed periods of appointment) of proposed and continuing members of the Council.

- (10) Subject to this Act, the members of the Council referred to in paragraphs (1)(k), (l), (m), (n), (o) and (p) hold office for such periods as the Statutes provide.

### **37 Operation of Nominations Committee prior to commencement**

If, because of section 4 of the *Acts Interpretation Act 1901*, persons are appointed to the Nominations Committee of the Council prior to the commencement of this item:

- (a) the Nominations Committee may make recommendations to the Minister for appointment of persons to the Council as if this item had commenced; and
- (b) despite subsection 4(2) of that Act, the appointment of persons to the Nominations Committee of the Council is taken to have taken effect before the making of any such recommendation.

### **38 Paragraphs 15(1)(e) and (f)**

Repeal the paragraphs.

### **39 Paragraph 15(1)(g)**

Omit “paragraph 10(1)(j), (k), (l), (m) or (n)”, substitute “paragraph 10(1)(k), (l), (m), (n), (o) or (p)”.

### **40 Paragraph 15(1)(h)**

Repeal the paragraph.

### **41 After paragraph 15(1)(i)**

Insert:

- or (j) is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
- (k) has, in the Council’s opinion, breached his or her duties under section 18A, 18B, 18C, 18D, 18E or 18F as a member of the Council; or
- (l) is, in the Council’s opinion, incapable (other than on a temporary basis) of performing his or her duties;

**42 Subsection 15(2)**

Omit “paragraph (a), (b), (c), (d), (e), (o) or (p)”, substitute “paragraph (a), (b) or (c)”.

**43 Paragraph 15(2)(c)**

Omit “or”.

**44 Paragraphs 15(2)(d) to (g)**

Repeal the paragraphs.

**45 Subsection 15(3)**

Repeal the subsection.

**46 At the end of section 16**

Add:

- (3) Subsection (2) does not apply, and does not prevent paragraph 10(7)(a) applying, to the filling of a vacancy in the membership of the Council if the vacancy is one to which paragraph 10(1)(q) relates.

**47 Subsection 17(1)**

Omit “The Council”, substitute “Subject to this section, the Council”.

**48 At the end of section 17**

Add:

- (3) The Council must not delegate its power to:
  - (a) appoint the Chancellor, Pro-Chancellor or Vice-Chancellor;  
or
  - (b) approve the University’s annual budget or its business plan;  
or
  - (c) approve the annual report of the University; or
  - (d) monitor its commercial activities, and its subsidiaries and any other entities that it controls, to the extent required to ensure they do not have any significant adverse impact on, or pose an unreasonable risk to, the University’s finances and operations; or

- (e) review and monitor the management of the University as a whole or the University's performance as a university (as defined by the *Higher Education Support Act 2003*).

**49 Subsection 18(1)**

Omit "The Council", substitute "Subject to this section, the Council".

**50 At the end of section 18**

Add:

- (4) The Council must not delegate its power to:
  - (a) appoint the Chancellor, Pro-Chancellor or Vice-Chancellor; or
  - (b) approve the University's annual budget or its business plan; or
  - (c) approve the annual report of the University; or
  - (d) monitor its commercial activities, and its subsidiaries and any other entities that it controls, to the extent required to ensure they do not have any significant adverse impact on, or pose any reasonable risk to, the University's finances and operations; or
  - (e) review and monitor the management of the University as a whole or the University's performance as a university (as defined by the *Higher Education Support Act 2003*).

**51 After section 18**

Insert:

**18A Member to act solely in interest of University**

A member of the Council must act solely in the interests of the University taken as a whole, having regard to its functions.

**18B Member to exercise care and diligence**

- (1) A member of the Council must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
  - (a) were a member of the Council in the Council's circumstances; and

- (b) occupied the office held by, and had the same responsibilities within the Council as, the member.
- (2) A member of the Council who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
- (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
  - (d) rationally believes that the judgment is in the best interests of the University.

The member's belief that the judgment is in the best interests of the University is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

### **18C Member to act in good faith**

A member of the Council must exercise his or her powers and discharge his or her duties:

- (a) in good faith in the best interests of the University; and
- (b) for a proper purpose.

### **18D Member not to use position improperly**

A member of the Council must not improperly use his or her position to:

- (a) gain an advantage for him or her or someone else; or
- (b) cause detriment to the University or to another person.

### **18E Member not to use information improperly**

A member of the Council who obtains information because of his or her position must not improperly use the information to:

---

- (a) gain an advantage for himself or herself or someone else; or
- (b) cause detriment to the University or to another person.

### **18F Material personal interest**

- (1) A member of the Council who has a material personal interest in a matter that relates to the affairs of the University must give the other members of the Council notice of the interest.
- (2) Subsection (1) does not apply if the member of the Council is not, because of subsection 27F(2) of the *Commonwealth Authorities and Companies Act 1997*, required to give such a notice under subsection 27F(1) of that Act.
- (3) A member of the Council who has an interest in a matter may give the other members of the Council standing notice of the nature and extent of the interest in the matter in accordance with section 27G of the *Commonwealth Authorities and Companies Act 1997*.
- (4) A member of the Council who has a material personal interest in a matter that is being considered at a meeting of the Council must not:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter;except as allowed under section 27J of the *Commonwealth Authorities and Companies Act 1997*.

### **18G Application of *Commonwealth Authorities and Companies Act 1997***

Nothing in sections 18A to 18F affects the application of the *Commonwealth Authorities and Companies Act 1997* to members of the Council.

### **52 Sections 20 to 29**

Repeal the sections.

### **53 Paragraph 39(2)(d)**

Omit “, a statutory Board or a committee of the Council or such a Board”, substitute “or a committee of the Council”.

**54 Subsection 41(1)**

Repeal the subsection.

**55 Subsection 41(2)**

After “University”, insert “, including student contribution amounts and tuition fees within the meaning of the *Higher Education Support Act 2003*,”.

**56 Section 43**

Repeal the section, substitute:

**43 Application of fees and other money**

The Council must apply the following solely for the purposes of the University:

- (a) all financial assistance paid to the University under the *Higher Education Support Act 2003*;
- (b) student contribution amounts within the meaning of the *Higher Education Support Act 2003*;
- (c) tuition fees within the meaning of the *Higher Education Support Act 2003*;
- (d) other money received by the University under this Act or otherwise.

**57 Subparagraph 50(2)(f)(iii)**

Omit “or of a statutory Board”.

**58 Subparagraph 50(2)(g)(iv)**

Repeal the subparagraph.

**59 Paragraph 50(2)(u)**

Repeal the paragraph, substitute:

- (u) the payment to the University of fees, including student contribution amounts and tuition fees within the meaning of the *Higher Education Support Act 2003*;

**60 Paragraph 51(1)(b)**

Omit “not exceeding \$200”.

---

**61 Subsections 52(1) and (2)**

Repeal the subsections, substitute:

- (1) When a Statute has been made by the Council:
  - (a) it must be sealed with the seal of the University; and
  - (b) the Council must cause the Statute to be notified in the *Gazette*; and
  - (c) the Statute has the force of law from the day on which it is so notified.

Note: The heading to section 52 is altered by omitting “**approved by Governor-General and**”.

**62 Subsection 52(4)**

Repeal the subsection.

**63 Division 4 of Part 5**

Repeal the Division.

## **Part 5—Australian Maritime College**

### *Maritime College Act 1978*

#### **64 Section 4 (definition of *ex officio member*)**

Omit “, the Chairperson”.

#### **65 Section 4 (definition of *non-teaching staff member*)**

Repeal the definition.

#### **66 Section 4 (definition of *student member*)**

Repeal the definition.

#### **67 Section 4 (definition of *teaching staff member*)**

Repeal the definition.

#### **68 Section 4 (definition of *term of office*)**

Repeal the definition.

#### **69 Paragraph 7(a)**

Repeal the paragraph, substitute:

- (a) to conduct an institution for the provision of such maritime and maritime-related education and training (including logistics education and training) as the Council, with the Minister’s approval, determines, or as the Minister requires; and

#### **70 At the end of paragraphs 7(b) and (c)**

Add “and”.

#### **71 Paragraph 7(d)**

Repeal the paragraph.

#### **72 Section 11**

Repeal the section, substitute:

## **11 Constitution of the Council**

- (1) The Council is to consist of the following members:
  - (a) the Principal;
  - (b) the Chairperson of the Academic Board of the College;
  - (c) up to 6 other members.
- (2) The Minister may appoint in writing the members referred to in paragraph (1)(c).
- (3) In making an appointment under subsection (2), the Minister must have regard to the advice of the Council.
- (4) In appointing members to the Council under paragraph (1)(c), the Minister must try to ensure that there is a balance of skills and expertise among members of the Council, in particular financial and commercial skills.
- (5) The Minister must not appoint to the Council:
  - (a) a current member of:
    - (i) the Commonwealth Parliament; or
    - (ii) a State Parliament; or
    - (iii) the legislature of a Territory; or
  - (b) a member of the academic or general staff of the College; or
  - (c) a student of the College.
- (6) If a person other than the Principal is for the time being performing the duties of the office of Principal, that person may attend meetings of the Council and, for the purposes of those meetings, is taken to be a member.

### **73 Subsection 13(3)**

Omit “paragraph 11(1)(b) or (e)”, substitute “paragraph 11(1)(c)”.

### **74 Subsection 13(4)**

After “Academic Board” (second occurring), insert “, unless the person is removed from the Council under section 17”.

### **75 Subsections 13(5) to (8)**

Repeal the subsections.

**76 Paragraph 15(1)(a)**

Omit “person (whether a member or not)”, substitute “member”.

**77 Subsection 15(3)**

Repeal the subsection.

**78 Section 17**

Repeal the section, substitute:

**17 Removal from office**

- (1) The Minister may remove a person from the Council on the ground of misbehaviour, physical or mental incapacity or a breach of his or her duties under the *Commonwealth Authorities and Companies Act 1997*.
- (2) The Minister must remove a member from the Council if:
  - (a) the member becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
  - (b) the member has, in the Council’s opinion, breached his or her duties under section 22A, 22B, 22C, 22D, 22E or 22F as a member; or
  - (c) the member is, in the Minister’s opinion, incapable of performing his or her duties.
- (3) In forming an opinion for the purposes of paragraph (2)(c), the Minister must have regard to the advice of the Council.

**79 Subsections 19(2) to (3)**

Repeal the subsections.

**80 Section 20**

Repeal the section.

**81 After section 22**

Insert:

## **22A Member to act solely in interest of College**

A member must act solely in the interests of the College taken as a whole, having regard to its functions.

## **22B Member to exercise care and diligence**

- (1) A member must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
  - (a) were a member of the Council in the Council's circumstances; and
  - (b) occupied the office held by, and had the same responsibilities within the Council as, the member.
- (2) A member who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
  - (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
  - (d) rationally believes that the judgment is in the best interests of the College.

The member's belief that the judgment is in the best interests of the College is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

## **22C Member to act in good faith**

A member must exercise his or her powers and discharge his or her duties:

- (a) in good faith in the best interests of the College; and
- (b) for a proper purpose.

### **22D Member not to use position improperly**

A member must not improperly use his or her position to:

- (a) gain an advantage for him or her or someone else; or
- (b) cause detriment to the College or to another person.

### **22E Member not to use information improperly**

A member who obtains information because of his or her position must not improperly use the information to:

- (a) gain an advantage for himself or herself or someone else; or
- (b) cause detriment to the College or to another person.

### **22F Material personal interest**

- (1) A member who has a material personal interest in a matter that relates to the affairs of the College must give the other members notice of the interest.
- (2) Subsection (1) does not apply if the member is not, because of subsection 27F(2) of the *Commonwealth Authorities and Companies Act 1997*, required to give such a notice under subsection 27F(1) of that Act.
- (3) A member who has an interest in a matter may give the other members standing notice of the nature and extent of the interest in the matter in accordance with section 27G of the *Commonwealth Authorities and Companies Act 1997*.
- (4) A member who has a material personal interest in a matter that is being considered at a meeting of the Council must not:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter;except as allowed under section 27J of the *Commonwealth Authorities and Companies Act 1997*.

### **22G Application of *Commonwealth Authorities and Companies Act 1997***

Nothing in sections 22A to 22F affects the application of the *Commonwealth Authorities and Companies Act 1997* to members.

---

**82 Paragraphs 24(1)(d) to (e)**

Repeal the paragraphs.

**83 After paragraph 24(1)(j)**

Insert:

- (ja) the payment to the College of fees, including student contribution amounts and tuition fees within the meaning of the *Higher Education Support Act 2003*; and

**84 Subsection 26(2)**

Omit all the words from and including “first Principal” to and including “succeeding Principals”, substitute “Principal”.

**85 After subsection 26(2)**

Insert:

- (2A) In making an appointment under subsection (2), the Minister must have regard to the advice of the Council.

**86 Subsection 26(4)**

After “office”, insert “, unless he or she is removed from the Council under section 17,”.

**87 Subsection 26(6)**

Repeal the subsection, substitute:

- (6) Subject to this section, the Principal holds office on such terms and conditions as are determined by the Minister.

**88 Section 32**

Repeal the section, substitute:

**32 Fees**

Fees that are payable to the College, including student contribution amounts and tuition fees within the meaning of the *Higher Education Support Act 2003*, are payable in accordance with the Statutes.

### **32A Corporate plan**

- (1) The members must prepare a corporate plan at least once a year and give it to the Minister.
- (2) If the Minister asks the members to give the plan to the Minister by a specified day, the members must give the plan to the Minister by that day.
- (3) The plan must cover a period of at least 3 years.
- (4) The members must keep the Minister informed about:
  - (a) significant changes to the plan; and
  - (b) matters that arise that might significantly affect the achievement of the objectives of the plan.
- (5) The plan must include details of the following matters:
  - (a) assumptions about the College's operational environment;
  - (b) the College's strategic directions;
  - (c) performance indicators for the College;
  - (d) a review of the College's performance against previous corporate plans;
  - (e) analysis of risk factors affecting the College's performance;
  - (f) human resource strategies and industrial relations strategies.
- (6) The plan must also cover any other matters the Minister requires, which may include further details about the matters in subsection (5).
- (7) In preparing the plan, the members must take account of any notices the Minister gives to the Council under subsection (8).
- (8) The Minister may give a written notice to the Council concerning the Minister's views about:
  - (a) the appropriate strategic directions of the College; and
  - (b) the manner in which the College should perform its non-academic functions.

### **32B Minister's response to corporate plan**

- (1) The Minister must respond to a corporate plan within 60 days of being given the plan.
-

- (2) The Minister's response may include a direction to the members to vary the plan.
- (3) A direction under subsection (2) must be in writing and must set out the Minister's reasons for the direction.
- (4) If directing a variation of the corporate plan, the Minister must consider:
  - (a) the objectives and policies of the Commonwealth; and
  - (b) the objects of this Act; and
  - (c) any other matters the Minister thinks appropriate.
- (5) If the Minister's response includes a direction to vary the corporate plan, the members must prepare a revised plan and give it to the Minister within 28 days after being given the response.

### **32C Performance indicators**

When including details of the performance indicators for the College in the corporate plan, the members must consider:

- (a) the College's financial viability and its financial viability in the future; and
- (b) the capacity of the College to:
  - (i) provide to students places in courses of study; and
  - (ii) to conduct research;  
at a level appropriate to a reputable higher education provider; and
- (c) the College's capacity to comply with the *Higher Education Support Act 2003*; and
- (d) any other consideration that the members think appropriate affecting the performance of the College.

### **89 Transitional provision**

A person who, immediately before the commencement of this Part, had been appointed under section 26 of the *Maritime College Act 1978* as Principal continues to hold office as Principal on and after the commencement of this Part for the balance of the term of his or her appointment.

## **Part 6—Marcus Oldham College**

### ***Higher Education Funding Act 1988***

#### **90 Subsection 4(1) (Table B)**

Omit “Marcus Oldham College”.

#### **91 Paragraph 18(2)(a)**

Repeal the paragraph.

#### **92 After section 20A**

Insert:

#### **20B Grant to Marcus Oldham College**

- (1) There is payable to Marcus Oldham College, in respect of the year 2004, such amount as the Minister determines.
- (2) The amount payable under this section must not exceed \$2,095,000.

#### **93 Paragraph 34(4)(a)**

Omit “other than Marcus Oldham College”.

#### **94 Subsection 98A(1) (paragraph (b) of the definition of *appropriate officer*)**

Omit “Marcus Oldham College or”.

## **Part 7—Other amendments**

### ***A New Tax System (Family Assistance) (Administration) Act 1999***

#### **95 Subsection 3(1) (after subparagraph (c)(i) of the definition of *income tax refund*)**

Insert:

- (ia) section 154-60 of the *Higher Education Support Act 2003*; or

### ***Bankruptcy Act 1966***

#### **96 Subsection 82(1) (note)**

Repeal the note.

#### **97 After subsection 82(3AA)**

Insert:

- (3AB) A debt incurred under Part 4-1 of the *Higher Education Support Act 2003* is not provable in bankruptcy.

### ***Disability Services Act 1986***

#### **98 Subsection 22(1)**

Omit “subsection (1A)”, substitute “subsections (1A) and (1B)”.

#### **99 After subsection 22(1A)**

Insert:

(1B) If:

- (a) a rehabilitation program provided for a pensioner or beneficiary includes a course of study with a higher education provider; and
- (b) the person owes one or more HELP debts to the Commonwealth in respect of undertaking the course of study;

the pensioner's or beneficiary's HELP debts in respect of the course must not be borne by the Commonwealth unless the *Higher Education Support Act 2003*, or another Act, provides otherwise.

**100 Subsection 22(4)**

Insert:

*HELP debt* has the same meaning as in the *Higher Education Support Act 2003*.

**101 Subsection 22(4)**

Insert:

*higher education provider* has the same meaning as in the *Higher Education Support Act 2003*.

***Equal Opportunity for Women in the Workplace Act 1999***

**102 Subsection 3(1) (definition of *higher education institution*)**

Omit "section 106ZL of the *Higher Education Funding Act 1988*", substitute "*Higher Education Support Act 2003*".

***Fringe Benefits Tax Assessment Act 1986***

**103 Section 135M**

After "*Higher Education Funding Act 1988*", insert "or the *Higher Education Support Act 2003*".

***Higher Education Funding Act 1988***

**104 Subsection 106L(1)**

After "HEC semester debt", insert "or PELS semester debt".

**105 Subsection 106L(2)**

After "person's", insert "BOTP study period debt or".

**106 Paragraph 106L(2)(a)**

Omit “one or more of the units of study”, substitute “the BOTP course, or one or more of the units of study”.

**107 Paragraph 106L(2)(c)**

Omit “a unit of study”, substitute “the BOTP course, or a unit of study”.

**108 Subsection 106L(3B)**

Omit “or a unit of study”, substitute “or a BOTP course, or a unit of study”.

**109 Subparagraphs 106L(3B)(a)(i) and (b)(i)**

Omit “an HEC semester debt”, substitute “a semester debt”.

**110 After paragraph 106L(3B)(b)**

Insert:

(ba) if the person:

- (i) has incurred a BOTP semester debt for the BOTP course; and
- (ii) withdraws his or her enrolment for the course for the study period; and
- (iii) the institution at which the person was enrolled gives notice to the person that the withdrawal has taken effect; the day specified by the institution in the notice as the day the withdrawal takes effect; or

(bb) if:

- (i) the person has incurred a BOTP semester debt; and
- (ii) paragraph (ba) does not apply to the person; and
- (iii) the person does not complete the BOTP course for which he or she was enrolled for the study period; the last day of the study period; or

**111 Paragraph 106M(1)(a)**

Omit “an HEC semester debt or OL study period debt”, substitute “a semester debt”.

**112 Actions by appropriate officers of institutions**

---

Any action by an appropriate officer of an institution before the commencement of this item that could have been done by the Secretary under section 106L or 106M of the *Higher Education Funding Act 1988* is taken, after that commencement, to have been done as if, at the time it was done, the Secretary:

- (a) had the power under section 112 of that Act to delegate his or her powers under sections 106L and 106M of that Act to that appropriate officer; and
- (b) had so delegated those powers.

**113 Subsection 106PA(2)**

Repeal the subsection.

**114 Subsection 106PA(3)**

Omit “If the amount of the debt is \$500 or more, the”, substitute “The”.

**115 Subsection 106PA(3) (formula)**

Repeal the formula, substitute:

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

**116 Subsection 106PA(4) (formula)**

Repeal the formula, substitute:

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

**117 Subsection 106PA(4) (example)**

Omit “\$690” (wherever occurring), substitute “\$660”.

**118 Subsection 106PA(4) (example)**

Omit “1.15”, substitute “1.1”.

**119 Subsection 106PA(4) (example)**

Omit “\$1,010”, substitute “\$1,040”.

**119A Subsection 106PA(5)**

Omit “(2),”.

**120 Paragraph 106Q(1)(b)**

Omit “the person had an accumulated HEC debt”, substitute:

the person:

- (i) had an accumulated HEC debt; or
- (ii) if the 1 June occurs in the year 2006 or a later year—  
had an accumulated HELP debt;

**121 At the end of subparagraph 106Y(2)(e)(ii)**

Add “; or”.

**122 At the end of subsection 106Y(2)**

Add:

- ; (f) fourthly, 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.

**123 At the end of section 106Y**

Add:

- (3) In this section, *HECS-HELP debt*, *FEE-HELP debt* and *OS-HELP debt* have the same meanings as in the *Higher Education Support Act 2003*.

**124 At the end of section 112**

Add:

- (3) The Secretary may delegate to a review officer of an institution the Secretary’s powers under sections 106L and 106M so far as those powers relate to persons who are, or have been, enrolled with the institution.
- (4) In exercising powers under a delegation made under subsection (3), the delegate must comply with any directions of the Secretary.
- (5) In this subsection:  
*review officer*, in relation to an institution, means a person, or a person included in a class of persons, appointed by, or by a delegate of, the chief executive officer of the institution to be an

appropriate officer of the institution for the purposes of subsection (3).

***Income Tax Assessment Act 1936***

**125 After paragraph 24ABZE(2)(j)**

Insert:

- (ja) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);

**126 Subsection 51(6AA) (note)**

Omit “(HECS and student assistance)”, substitute “(Assistance to students)”.

**127 Subsection 51(6AA) (note)**

After “*Higher Education Funding Act 1988*”, insert “the *Higher Education Support Act 2003*”.

**128 Subsection 82A(2) (after paragraph (b) of the definition of expenses of self-education)**

Insert:

- (ba) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
- (bb) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth under Chapter 4 of that Act; or

**129 Subsection 163B(3) (paragraph (d) of the definition of Tax liabilities)**

After “HEC assessment debt”, insert “or compulsory repayment amount”.

**130 Subsection 163B(10)**

Insert:

***compulsory repayment amount*** has the same meaning as in the *Higher Education Support Act 2003*.

**131 Section 202A (after paragraph (a) of the definition of *tax file number*)**

Insert:

- (aa) a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*; or

**132 After paragraph 202F(1)(f)**

Insert:

- (fa) a decision to give a notice under subsection 190-15(1) of the *Higher Education Support Act 2003*;
- (fb) a decision to give a notice under subsection 190-20(1) of the *Higher Education Support Act 2003*;

***Income Tax Assessment Act 1997***

**136 Section 3-1 (table item 2)**

Repeal the item.

**137 Section 12-5 (table item headed “Higher Education Contribution Scheme (HECS)”)**

Repeal the item, substitute:

**higher education assistance** 26-20

**138 Section 26-20 (heading)**

Repeal the heading, substitute:

**26-20 Assistance to students**

**139 After paragraph 26-20(1)(c)**

Insert:

- (ca) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
- (cb) a payment made to reduce a debt to the Commonwealth under Chapter 4 of that Act; or

**140 Subsection 30-25(1) (table item 2.1.3, column 2)**

Omit “*Employment, Education and Training Act 1988*”, substitute “*Higher Education Funding Act 1988*”.

**141 Subsection 30-25(1) (table item 2.1.6, column 2)**

Omit “*Employment, Education and Training Act 1988*”, substitute “*Higher Education Funding Act 1988*”.

**142 After paragraph 52-140(3)(x)**

Insert:

- (xa) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);

**143 Section 995-1**

Insert:

*accumulated HELP debt* has the meaning given by section 140-25 of the *Higher Education Support Act 2003*.

***Social Security Act 1991***

**144A After paragraph 8(8)(zj)**

Insert:

- (zja) the amount or value of:
  - (i) a scholarship known as a Commonwealth Education Costs Scholarship; or
  - (ii) a scholarship known as a Commonwealth Accommodation Scholarship;provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*;

**145 At the end of section 23**

Add:

- (20) For the purposes of this Act, a *full-time student load*, for a course of study, is the study load represented by units of study, forming part of the course, that have a total EFTSL value of one EFTSL.

- (21) Expressions used in subsection (20) that are defined in the *Higher Education Support Act 2003* have in that subsection, unless the contrary intention appears, the same meaning as in that Act.

**146 Paragraph 541B(2)(a)**

Repeal the paragraph, substitute:

- (a) if:
- (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
  - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;  
the full-time student load for the course; or

**147 Paragraph 541B(2)(b)**

Omit “designated”.

**148 Paragraph 569E(1)(a)**

Repeal the paragraph, substitute:

- (a) if:
- (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
  - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;  
the full-time student load for the course; or

**149 Paragraph 569E(1)(b)**

Omit “designated”.

**150 Paragraph 1061PF(1)(a)**

Repeal the paragraph, substitute:

- (a) if:
- (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
  - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;  
the full-time student load for the course; or

**151 Paragraph 1061PF(1)(b)**

---

Omit “designated”.

### ***Taxation Administration Act 1953***

#### **152 Section 8AAZA**

Insert:

*compulsory repayment amount* has the same meaning as in the *Higher Education Support Act 2003*.

#### **153 After paragraph 8AAZLD(a)**

Insert:

(aa) secondly, against any compulsory repayment amount of the entity; and

Note: The heading to section 8AAZLD is altered by inserting “**and compulsory repayment amounts**” after “**debts**”.

#### **154 Section 6-1 in Schedule 1**

After “(HECS)”, insert “, liability to repay debts under the Higher Education Loan Program (HELP)”.

#### **155 After paragraph 11-1(c) in Schedule 1**

Insert:

(ca) amounts of liabilities to the Commonwealth under Chapter 4 of the *Higher Education Support Act 2003*; and

#### **156 Paragraph 15-30(c) in Schedule 1**

After “*Higher Education Funding Act 1988*”, insert “for any financial year ending before 1 July 2005”.

#### **157 After paragraph 15-30(c) in Schedule 1**

Insert:

(ca) the percentages specified in section 154-20 (about repayments of accumulated HELP debt) of the *Higher Education Support Act 2003* for any financial year starting on or after 1 July 2005;

#### **158 After paragraph 45-5(1)(c) in Schedule 1**

Insert:

---

(ca) amounts of liabilities to the Commonwealth under Chapter 4 of the *Higher Education Support Act 2003*; and

**159 Section 45-340 in Schedule 1 (method statement, step 3)**

After “*Higher Education Funding Act 1988*”, insert “, or an \*accumulated HELP debt under the *Higher Education Support Act 2003*,”.

**160 Section 45-375 in Schedule 1 (method statement, step 3)**

After “*Higher Education Funding Act 1988*”, insert “, or an \*accumulated HELP debt under the *Higher Education Support Act 2003*,”.

***Taxation (Interest on Overpayments and Early Payments) Act 1983***

**161 Subsection 3(1)**

Insert:

*compulsory repayment amount* has the same meaning as in the *Higher Education Support Act 2003*.

**162 Subsection 3(1) (after subparagraph (a)(vii) of the definition of *relevant tax*)**

Insert:

(viiia) amounts that are treated under Subdivision 154-D of the *Higher Education Support Act 2003* as if they were income tax;

**163 After subparagraph 8A(1)(a)(ii)**

Insert:

(iia) compulsory repayment amount; or

**164 After paragraph 8A(2)(b)**

Insert:

(ba) compulsory repayment amount; or

**165 Subparagraph 8E(1)(d)(iii)**

After “HEC assessment debt”, insert “or compulsory repayment amount”.

**166 Subparagraph 8E(2)(d)(iii)**

After “HEC assessment debt”, insert “or compulsory repayment amount”.

**167 After sub-subparagraph 12A(1)(a)(iv)(B)**

Insert:

(BA) compulsory repayment amount; or

**168 After paragraph 12A(2)(b)**

Insert:

(ba) compulsory repayment amount; or

***Veterans’ Entitlements Act 1986***

**169 After paragraph 5H(8)(ha)**

Insert:

(hb) the amount or value of:

(i) a scholarship known as a Commonwealth Education Costs Scholarship; or

(ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*;

---

*[Minister's second reading speech made in—  
House of Representatives on 17 September 2003  
Senate on 27 October 2003]*

(157/03)

---

*Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*

*No. 150, 2003*      57