





# **Higher Education Legislation Amendment Act (No. 3) 2004**

**No. 157, 2004**

**An Act to amend higher education legislation, and  
for related purposes**

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



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## **An Act to amend higher education legislation, and for related purposes**

*[Assented to 17 December 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Higher Education Legislation  
Amendment Act (No. 3) 2004*.

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## 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.

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<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.	17 December 2004
2. Schedule 1, items 1 to 43	The day on which this Act receives the Royal Assent.	17 December 2004
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
4. Schedule 1, items 46 to 52	The day on which this Act receives the Royal Assent.	17 December 2004
5. Schedule 2, items 1 to 8	The day on which this Act receives the Royal Assent.	17 December 2004
6. Schedule 2, item 9	Immediately after the commencement of item 24 of Schedule 1 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	1 January 2004
7. Schedules 3 and 4	The day on which this Act receives the Royal Assent.	17 December 2004

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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.

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### **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.

## Schedule 1—Amendment of the Higher Education Support Act 2003

### 1 Paragraph 19-87(1)(b)

After “the provider”, insert “or, where the provider is a \*Table A provider, another Table A provider”.

### 2 Section 19-100

After “units of study undertaken”, insert “with the provider”.

### 3 After subparagraph 19-105(a)(i)

Insert:

- (ia) the person is undertaking the unit with the provider;

### 4 Paragraphs 30-5(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) for the year 2005—\$3,066,122,000; or
- (b) for the year 2006—\$3,200,648,000; or

### 5 Subparagraph 30-25(3)(a)(i)

Repeal the subparagraph, substitute:

- (i) places in \*undergraduate courses of study;

### 6 Subparagraph 30-25(3)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) places in non-research \*postgraduate courses of study;

### 7 Paragraph 36-5(1)(b)

Repeal the paragraph, substitute:

- (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.

### **8 Paragraph 36-10(1)(b)**

After “with the provider”, insert “or, where the provider is a \*Table A provider, with another Table A provider”.

### **9 At the end of section 36-10**

Add:

#### *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.

### **10 Paragraph 36-15(2)(a)**

Omit “a specified undergraduate or postgraduate course is not a \*course of study”, substitute “a specified \*course of study is not one”.

### **11 Paragraph 36-15(2)(b)**

Omit “an undergraduate or postgraduate course of a specified type is not a \*course of study”, substitute “a \*course of study of a specified type is not one”.

**12 Paragraph 36-22(1)(a)**

Repeal the paragraph, substitute:

- (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

**13 Paragraph 36-22(1)(d)**

After “the provider”, insert “with which the person is enrolled in the unit”.

**14 Paragraph 36-22(1)(e)**

Omit “the provider”, substitute “that provider”.

**15 Section 36-25**

Repeal the section, substitute:

**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:
  - (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.

**16 Paragraph 36-35(1)(a)**

Omit “undergraduate \*course of study”, substitute “\*undergraduate course of study”.

**17 Subsection 36-35(2)**

Repeal the subsection, substitute:

- (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).

**18 Subparagraph 36-40(1)(b)(i)**

Repeal the subparagraph, substitute:

- (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

**19 Paragraph 36-40(3)(a)**

Omit “, or in relation to the \*course of study of which the unit forms a part”, substitute “or, where the unit forms part of a \*course of study undertaken with the provider, in relation to the course of study”.

**20 Paragraph 36-40(3)(b)**

Omit “; and”.

**21 Paragraph 36-40(3)(c)**

Repeal the paragraph.

**22 Paragraph 76-1(1)(d)**

Omit “and signed”, substitute “, signed and given to an \*appropriate officer of the provider”.

**23 Subparagraph 76-1(1)(d)(ii)**

Repeal the subparagraph, substitute:

- (ii) where the course of study of which the unit forms a part is undertaken with the provider—the course of study.

**24 Paragraph 79-1(a)**

Repeal the paragraph, substitute:

- (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

**25 Paragraph 90-1(g)**

Repeal the paragraph, substitute:

- (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.

**26 After subparagraph 93-5(1)(a)(i)**

Insert:

- (ia) the person is undertaking the unit with the provider;

**27 Paragraph 104-1(1)(i)**

Repeal the paragraph, substitute:

- (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 \*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.

**28 Section 104-2**

After “unit of study”, insert “access to which is provided by \*Open Learning Australia”.

**29 Paragraph 104-2(a)**

Omit “\*Open Learning Australia”, substitute “Open Learning Australia”.

**30 At the end of section 115-1 (before the note)**

Add:

The purpose of OS-HELP assistance is to help students based in Australia to do part of their course of study overseas.
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**31 Paragraph 118-1(1)(c)**

Omit “undergraduate \*course of study with a \*Table A provider”, substitute “\*undergraduate course of study with a higher education provider (the *home provider*)”.

**32 Paragraph 118-1(1)(d)**

Repeal the paragraph, substitute:

- (d) the student meets the prior study requirements under section 118-7; and

**33 Paragraph 118-1(1)(h)**

Omit “and signed”, substitute “, signed and given to an \*appropriate officer of the home provider”.

**34 Paragraph 118-1(1)(i)**

Omit “the provider”, substitute “the home provider”.

**35 After section 118-5**

Insert:

**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.

**36 Subparagraph 118-10(a)(i)**

After “overseas higher education institution”, insert “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”.

**37 Paragraph 118-10(c)**

Omit “the provider”, substitute “the home provider”.

**38 Subsection 118-15(1)**

After “set out”, insert “principles and”.

**39 Paragraph 137-10(2)(a)**

Omit “undergraduate \*course of study”, substitute “\*undergraduate course of study”.

**40 After subsection 164-10(1)**

Insert:

- (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.

- (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.

**41 Subsection 164-10(2)**

Repeal the subsection, substitute:

- (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.

**42 Subsection 169-20(3)**

Repeal the subsection, substitute:

- (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.

**43 After subsection 169-20(3)**

Insert:

- (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.

**44 Section 190-15 (note)**

After “subsection (1)”, insert “or (1A)”.

**45 Section 190-20 (note)**

After “subsection (1)”, insert “or (1A)”.

**46 Paragraph 193-1(1)(b)**

Repeal the paragraph, substitute:

- (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.

**47 Paragraph 193-1(2A)(b)**

Omit “and signed”, substitute “, signed and given to an \*appropriate officer of Open Learning Australia”.

**48 Paragraph 193-1(2C)(b)**

Omit “; and”.

**49 Paragraph 193-1(2C)(c)**

Repeal the paragraph.

**50 Paragraph 193-1(3)(b)**

Omit “and signed”, substitute “, signed and given to an \*appropriate officer of the provider”.

**51 Clause 1 of Schedule 1**

Insert:

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***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.

## **52 Clause 1 of Schedule 1**

Insert:

***undergraduate course of study*** means a \*course of study that is neither an \*enabling course nor a \*postgraduate course of study.

## **Schedule 2—Amendment of the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003**

### **1 Item 5 of Schedule 1**

Omit “In this Schedule”, substitute “In this Part”.

### **2 Item 9 of Schedule 1**

Repeal the item, substitute:

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

In this Part:

*institution* has the same meaning as in Chapter 4A of the old Act.

### **3 Before item 18 of Part 6 of Schedule 1**

Insert:

### **17A Reductions in new grants to take account of grants made under section 20A of the *Higher Education Funding Act 1988***

- (1) If the Minister determines a special purpose grant under section 20A of the old Act for an institution (as defined in section 4 of that Act) in respect of a transitional adjustment year, then the amounts of grant payable to the institution under section 33-1 of the new Act 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 special purpose grant.
- (2) In this item:

*transitional adjustment year* means the year 2002, 2003 or 2004.

**4 Paragraph 20(1)(a) of Schedule 1**

Omit “(within the meaning of the old Act)”, substitute “(as defined for the purposes of Chapter 4 of the old Act)”.

**5 Paragraph 22A(1)(a) of Schedule 1**

Omit “(within the meaning of the old Act) or by an institution or body referred to in Schedule 1 to the old Act”.

**6 Paragraph 22A(1)(b) of Schedule 1**

Omit “or body”.

**7 At the end of item 22A of Schedule 1**

Add:

(3) In this item:

*institution* means an institution or body mentioned in any of the following:

- (a) subsection 34(4) of the old Act;
- (b) the definition of *institution* in subsection 98A(1) of the old Act;
- (c) Schedule 1 to the old Act.

**8 After item 23 of Schedule 1**

Insert:

**23A OS-HELP—prior study requirements**

(1) This item applies where:

- (a) a student has completed a unit of study in Australia that counts towards the course requirements for a course of study at an institution; and
- (b) the student undertook the unit of study at the institution in a semester; and
- (c) the census date for the course for the semester is before 1 January 2005; and
- (d) either:
  - (i) the course of study was a designated course of study and the student was a contributing student in relation to the course; or

- (ii) the student was a merit-based equity scholarship holder in relation to the course; and
  - (e) on or after 1 January 2005, the student is enrolled in an undergraduate course of study with a higher education provider (the *OS-HELP course*) and the unit of study counts towards the requirements of that course.
- (2) For the purposes of this item, such a unit is a *pre-HESA unit* and is taken to have an EFTSL value equal to its EFTSU value.
- (3) Where this item applies, the prior study requirements in relation to the OS-HELP course for the purposes of paragraph 118-1(1)(d) of the new Act are that the sum of:
  - (a) the total EFTSL value of all the pre-HESA units of study completed by the student; and
  - (b) the total EFTSL value of all other units of study (if any):
    - (i) that the student has completed in Australia that count towards the course requirements for the OS-HELP course; and
    - (ii) in relation to which the student was a Commonwealth supported student;is at least one EFTSL.
- (4) In this item:
  - census date* has the same meaning as in Chapter 4 of the old Act.
  - contributing student* has the same meaning as in Chapter 4 of the old Act.
  - designated course of study* has the same meaning as in Chapter 4 of the old Act.
  - EFTSU value* has the same meaning as in the guidelines made under subsection 39(2) of the old Act.
  - institution* means an institution or body mentioned in any of the following:
    - (a) subsection 34(4) of the old Act;
    - (b) the definition of *institution* in subsection 98A(1) of the old Act;
    - (c) Schedule 1 to the old Act.

*merit-based equity scholarship holder* means a student who is exempt  
under subsection 35(7) of the old Act.

**9 Item 24 of Schedule 1 (definition of *new Act*)**

Omit “*Bill*”, substitute “*Act*”.

## **Schedule 3—Amendment of the Australian National University Act 1991**

### **1 Subsection 10(7)**

Omit “28”, substitute “60”.

## **Schedule 4—Amendment of the Australian Research Council Act 2001**

### **1 At the end of subsection 48(2)**

Add:

; (d) the financial year starting on 1 July 2007.

### **2 Paragraphs 49(e), (f) and (g)**

Repeal the paragraphs, substitute:

(e) for the financial year starting on 1 July 2004—\$481,406,000;  
and

(f) for the financial year starting on 1 July 2005—\$546,401,000;  
and

(g) for the financial year starting on 1 July 2006—\$545,847,000;  
and

(h) for the financial year starting on 1 July 2007—\$545,750,000.

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*[Minister's second reading speech made in—  
House of Representatives on 17 November 2004  
Senate on 9 December 2004]*

(184/04)

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