



Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005

No. 56, 2005

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

[Assented to 25 May 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation
Amendment (2005 Measures No. 1) Act 2005*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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.	25 May 2005
2. Schedule 1	The day on which this Act receives the Royal Assent.	25 May 2005
3. Schedule 2, item 1	The day on which this Act receives the Royal Assent.	25 May 2005
4. Schedule 2, item 2	Immediately after the commencement of the provision(s) covered by table item 5.	
5. Schedule 2, items 3 to 17	The day on which this Act receives the Royal Assent.	25 May 2005
6. Schedules 3 and 4	The day on which this Act receives the Royal Assent.	25 May 2005
7. Schedule 5	Immediately after the commencement of item 120 of Schedule 2 to the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> .	1 January 2004

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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.

Schedule 1—Amendments relating to grants for higher education assistance

Higher Education Support Act 2003

1 Paragraphs 30-5(1)(a) to (d)

Repeal the paragraphs, substitute:

- (a) for the year 2005—\$3,066,956,000; or
- (b) for the year 2006—\$3,203,943,000; or
- (c) for the year 2007—\$3,349,013,000; or
- (d) for the year 2008—\$3,414,711,000.

2 Subsection 41-10(1) (cell at table item 5, column headed “Who is eligible”)

Repeal the cell, substitute:

*Table A providers and *Table B
providers

3 Subsection 41-45(1) (table)

Repeal the table, substitute:

Maximum payments for other grants under this Part		
Item	Year	Amount
1	2005	\$1,545,004,000
2	2006	\$1,668,851,000
3	2007	\$1,632,330,000
4	2008	\$1,645,505,000

Schedule 2—Amendments relating to assistance to students

Part 1—Amendments

Higher Education Support Act 2003

1 Paragraph 16-25(1)(c)

Repeal the paragraph, substitute:

- (c) the body either fulfilled the *tuition assurance requirements on the date of making an application under section 16-40 or is exempted from those requirements under section 16-31; and

2 Subsection 16-30(1)

Omit “(1)”.

3 Subsection 16-30(1)

Omit “, on the date of an application under section 16-40”.

4 Paragraph 16-30(1)(a)

Omit “making the application”.

5 Subsection 16-30(2)

Repeal the subsection.

6 After section 16-30

Insert:

16-31 Tuition assurance requirements exemption for approvals

- (1) The Minister may, in writing, exempt a body corporate from the *tuition assurance requirements for the purposes of approving the body under section 16-25.

Note: This section only deals with exemptions from the tuition assurance requirements when approving bodies as higher education providers. For exemptions from the tuition assurance requirements after approval has happened, see subsection 19-40(2).

- (2) An exemption is subject to such conditions as are specified in the exemption.

Note: A body will not be exempt if a condition of the exemption is not complied with.

- (3) An exemption given under this section is not a legislative instrument.

7 At the end of section 19-40

Add:

- (3) An exemption:
- (a) is subject to such conditions as are specified in the exemption; and
 - (b) may be expressed to be in force for a period specified in the exemption.

Note: A body will not be exempt if a condition of the exemption is not complied with.

- (4) An exemption given under this section is not a legislative instrument.

8 Before section 79-1

Insert:

Subdivision 79-A—Main case of re-crediting a person’s SLE

79-1A Application of this Subdivision

If Subdivision 79-B applies to re-credit a person’s *SLE with an amount equal to the *EFTSL value of a unit of study, then this Subdivision does not apply in relation to that unit.

Note: The heading to section 79-1 is replaced by the heading “**Main case of re-crediting a person’s SLE**”.

9 At the end of Division 79

Add:

Subdivision 79-B—Re-crediting a person’s SLE if provider is unable to provide unit

79-20 Re-crediting a person’s SLE if provider unable to provide unit

A higher education provider must, on the *Secretary’s behalf, re-credit a person’s *SLE with an amount equal to the *EFTSL value of a unit of study if:

- (a) the person has been enrolled in the unit as part of a *course of study with the provider; and
- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to be able to provide the unit; and
- (c) the *tuition assurance requirements applied to the provider at the time the provider ceased to be able to provide the unit.

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

10 Before subsection 104-25(1)

Insert:

- (1A) If section 104-42 applies to re-credit a person’s *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study, then this section does not apply in relation to that unit.

Note: The heading to section 104-25 is replaced by the heading “**Main case of re-crediting a person’s FEE-HELP balance**”.

11 At the end of Subdivision 104-B

Add:

104-42 Re-crediting a person’s FEE-HELP balance if provider is unable to provide unit

A higher education provider must, on the *Secretary’s behalf, re-credit a person’s *FEE-HELP balance with an amount equal to

the amounts of *FEE-HELP assistance that the person received for a unit of study if:

- (a) the person has been enrolled in the unit with the provider;
and
- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to be able to provide the unit; and
- (c) the *tuition assurance requirements applied to the provider at the time the provider ceased to be able to provide the unit.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see subsection 137-10(4).

12 Subsection 110-5(1)

Omit “, a higher education provider re-credits a person’s *FEE-HELP balance”, substitute “or section 104-42, a person’s *FEE-HELP balance is re-credited”.

13 Subsection 137-10(4)

After “section 104-25”, insert “or 104-42”.

14 Clause 1 of Schedule 1 (definition of *tuition assurance requirements*)

Omit “subsection 16-30(1)”, substitute “section 16-30”.

Part 2—Application of amendments

15 Application of items 3 and 4

The amendments made by items 3 and 4 of this Schedule apply in relation to bodies corporate that became higher education providers before or after the commencement of this item.

16 Application of item 5

Despite the repeal of subsection 16-30(2) of the *Higher Education Support Act 2003* by item 5 of this Schedule, that subsection continues to apply, in relation to exemptions that are in force immediately before the repeal, as if the repeal had not happened.

17 Application of items 6 and 7

The amendments made by items 6 and 7 of this Schedule apply in relation to exemptions given after the commencement of this item.

Schedule 3—Amendments relating to voluntary repayment of debts

Higher Education Funding Act 1988

1 Paragraph 61(1)(b)

After “to be refunded”, insert “, other than amounts paid under section 106P or 106PC or referred to in subsection 106YA(4)”.

2 Application

The amendment made by item 1 of this Schedule applies to all amounts paid under section 106P or 106PC or referred to in subsection 106YA(4) of the *Higher Education Funding Act 1988*, whether the amounts were paid before or after the commencement of this item.

Schedule 4—Amendment of the Maritime College Act 1978

1 Paragraph 15(4)(b)

Omit “Minister”, substitute “Council”.

2 After subsection 15(4)

Insert:

- (4A) If a member appointed as Chairperson or Deputy Chairperson resigns his or her office as Chairperson or Deputy Chairperson under paragraph 15(4)(b), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

3 Paragraph 17(2)(b)

Repeal the paragraph.

4 At the end of section 17

Add:

- (4) The Council must remove a member from the Council if the member has, in the Council’s opinion formed by resolution as mentioned in subsection (5), breached his or her duties under section 22A, 22B, 22C, 22D, 22E or 22F as a member of the Council.
- (5) For the purposes of subsection (4), the Council forms its opinion by resolution if the resolution is passed at a meeting of the Council by at least a two-thirds majority of the members of the Council.
- (6) If a member is removed from the Council under subsection (4), the Council must notify the Minister in writing of the removal as soon as practicable after the member has been removed.

5 Subsections 26(2) and (2A)

Repeal the subsections, substitute:

- (2) The Council must appoint the Principal.

- (2A) The Council must not appoint the Principal under subsection (2) without the Minister's agreement.

6 Subsection 26(4)

After "he or she", insert "resigns from office under subsection (5) or".

7 After subsection 26(4)

Insert:

- (5) The Principal may resign his or her office as Principal by writing signed by him or her and delivered to the Council.
- (5A) If the Principal resigns under subsection (5), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

8 Subsection 27(4)

Omit "Minister", substitute "Council".

9 After subsection 27(4)

Insert:

- (4A) If an acting Principal resigns under subsection (4), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

10 Application and savings

- (1) A person who, immediately before the commencement of this item, 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 item for the balance of the term of his or her appointment, as if the person had been appointed under that section (as amended by this Act).
- (2) The amendment made by item 4 of this Schedule applies to each person holding office as a member of the Council under the *Maritime College Act 1978* on or after the commencement of that item, whether that person was appointed to that office before or after that commencement.

Schedule 5—Technical correction

Higher Education Funding Act 1988

1 Subsection 106Y(3)

Repeal the subsection, substitute:

(3) In this section:

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

[*Minister's second reading speech made in—
House of Representatives on 17 February 2005
Senate on 9 March 2005*]

(14/05)
