Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005

No. 83, 2005

An Act to amend legislation relating to higher education, 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)

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Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005

No. 83, 2005

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

[*Assented to 6 July 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation Amendment (2005 Measures No. 2) 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.	6 July 2005
2. Schedule 1, Part 1	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 9 of Schedule 2 to the *Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	6 July 2005
3. Schedule 1, Part 2	The 28th day after the day on which the provision(s) covered by table item 2 commence.	3 August 2005
4. Schedule 1, Part 3	Immediately after the commencement of Schedule 1 to the *Higher Education Support Act 2003*.	1 January 2004
5. Schedule 2	Immediately after the commencement of item 2 of Schedule 1 to the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.	1 January 2004
6. Schedule 3	The day on which this Act receives the Royal Assent.	6 July 2005

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—Amendment of the Higher Education Support Act 2003

Part 1—Amendments commencing on Royal Assent

1 Subsection 19-45(4)

Repeal the subsection, substitute:

Guidelines may provide for matters relating to reviews

(4) The Higher Education Provider Guidelines may provide for matters relating to reviews of decisions made by higher education providers:

(a) under section 36-22; or

(b) relating to assistance under Chapter 3;

including procedures that are to be followed by *review officers when reviewing those decisions.

2 Transitional—section 19-45 of the *Higher Education Support Act 2003*

The amendment of section 19-45 of the *Higher Education Support Act 2003* made by this Part does not affect the continuity of any Higher Education Provider Guidelines made before the commencement of this item.

3 Paragraph 19-87(1)(a)

Omit “year”, substitute “period ascertained in accordance with the Higher Education Provider Guidelines”.

4 Subsection 19-87(2)

Omit “year”, substitute “period”.

5 At the end of section 19-87

Add:

(3) The provider must not vary a *student contribution amount unless the provider:

(a) does so:

(i) before the date ascertained in accordance with the Higher Education Provider Guidelines; and

(ii) in circumstances specified in the Higher Education Provider Guidelines; or

(b) does so with the written approval of the Minister.

6 Subsection 19-90(1)

Omit "year", substitute "period ascertained in accordance with the Higher Education Provider Guidelines".

7 Subsection 19-90(2)

Omit "year", substitute "period".

8 At the end of section 19-90

Add:

(4) The provider must not vary a *fee unless the provider:

(a) does so:

(i) before the date ascertained in accordance with the Higher Education Provider Guidelines; and

(ii) in circumstances specified in the Higher Education Provider Guidelines; or

(b) does so with the written approval of the Minister.

9 Subsection 19-95(1)

Omit "the year", substitute "a period ascertained in accordance with the Higher Education Provider Guidelines".

10 Paragraph 19-95(2)(b)

Omit all the words after "particular", substitute "period by the date ascertained in accordance with the Higher Education Provider Guidelines; and".

11 At the end of section 19-95

Add:

Replacement schedules

(3) If:

(a) the provider has given the Minister a schedule (the ***previous schedule***) under:
  (i) subsection (1); or
  (ii) this subsection; and
(b) the provider:
  (i) varies a *student contribution amount in the previous schedule; or
  (ii) varies a *tuition fee in the previous schedule;

the provider must:

(c) by written notice given to the Minister:
  (i) withdraw the previous schedule; and
  (ii) inform the Minister of the variation; and
(d) give the Minister a replacement schedule incorporating the variation.

Note 1: The provider must comply with subsection 19-87(3) when varying a student contribution amount.

Note 2: The provider must comply with subsection 19-90(4) when varying a tuition fee.

(4) Subsections (1) and (2) apply to the replacement schedule in a corresponding way to the way in which they apply to the previous schedule.

12 Application of amendments—sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003*

(1) A higher education provider may, by written notice given to the Secretary, choose to have the amendments of sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2005.

(2) The choice has effect accordingly.

(3) The choice cannot be revoked.

(4) If a higher education provider does not make a choice under subitem (1), the amendments of sections 19-87, 19-90 and 19-95 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2006.

(5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

13 After section 36-22

Insert:

36-23 Providers to repay amounts etc. for units wholly consisting of work experience in industry—no tax file numbers

(1) This section applies to a person if:

(a) a higher education provider cancels the person's enrolment in a unit of study under subsection 193-5(1); and

(b) the unit wholly consists of *work experience in industry.

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

(2) The provider must:

(a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to his or her *student contribution amount for the unit; and

(b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.

Note: The heading to section 36-22 is altered by omitting "**industry in special**" and substituting "**industry—special**".

14 After paragraph 79-1(aa)

Insert:

(ab) the unit does not wholly consist of *work experience in industry; and

15 At the end of Division 79

Add:

Subdivision 79-C—Students without tax file numbers

79-25 Re-crediting a person's SLE—no tax file number

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 provider cancels the person's enrolment in the unit under subsection 193-5(1); and

(b) the unit does not wholly consist of *work experience in industry.

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.

16 Subsection 104-4(1)

Omit "year", substitute "period ascertained in accordance with the FEE-HELP Guidelines".

17 Subsection 104-4(2)

Omit "year", substitute "period".

18 After subsection 104-4(2)

Insert:

(2A) *Open Learning Australia must not vary a *fee unless Open Learning Australia:

(a) does so:

(i) before the date ascertained in accordance with the FEE-HELP Guidelines; and

(ii) in circumstances specified in the FEE-HELP Guidelines; or

(b) does so with the written approval of the Minister.

19 Subsection 104-4(5)

Omit "year", substitute "period".

20 After subsection 104-4(5)

Insert:

(5A) *Open Learning Australia must not vary a *census date unless Open Learning Australia:

(a) does so:

(i) before the date ascertained in accordance with the FEE-HELP Guidelines; and

(ii) in circumstances specified in the FEE-HELP Guidelines; or

(b) does so with the written approval of the Minister.

21 Paragraphs 104-4(6)(a) and (b)

Omit “year”, substitute “period”.

22 Subsection 104-4(6)

Omit “that year”, substitute “that period”.

23 Application of amendments—section 104-4 of the *Higher Education Support Act 2003*

(1) Open Learning Australia may, by written notice given to the Secretary, choose to have the amendments of section 104-4 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study access to which was provided by Open Learning Australia during periods that commence on or after 1 January 2005.

(2) The choice has effect accordingly.

(3) The choice cannot be revoked.

(4) If Open Learning Australia does not make a choice under subitem (1), the amendments of section 104-4 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study access to which was provided by Open Learning Australia during periods that commence on or after 1 January 2006.

(5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

24 After section 104-25

Insert:

104-27 Re-crediting a person's FEE-HELP balance—no tax file number

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

(a) the person has been enrolled in the unit with the provider; and

(b) subsection 193-10(1) applies to the person in relation to the unit.

(2) *Open Learning Australia must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person has received for a unit of study if subsection 193-10(2) applies to the person in relation to 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 section 137-10.

25 Subsection 110-5(1)

After "104-25(1)", insert ", 104-27(1)".

26 Subsection 110-5(2)

After "104-25(2)", insert "or 104-27(2)".

27 Paragraph 118-1(1)(f)

Omit "one EFTSL", substitute "0.5 EFTSL".

28 Subsection 137-5(5)

After "36-22", insert "or 36-23".

29 Subsection 137-10(4)

After "104-25", insert ", 104-27".

30 Subsection 140-25(1) (example)

Omit "143-B", substitute "140-B".

31 Subsection 169-25(1)

Omit “a year”, substitute “a period ascertained in accordance with the Administration Guidelines”.

32 Subsection 169-25(1)

Omit “that year”, substitute “that period”.

33 Paragraphs 169-25(3)(a) and (b)

Omit “date, and in the manner, specified in”, substitute “date ascertained in accordance with, and in the manner specified in,”.

34 Subsection 169-25(4)

Repeal the subsection, substitute:

Variations

(4) The provider must not vary the *census date for the unit, or the *EFTSL value for the unit, after publication under subsection (3), unless the provider:

(a) does so:

(i) before the date ascertained in accordance with the Administration Guidelines; and

(ii) in circumstances specified in the Administration Guidelines; or

(b) does so with the written approval of the Minister.

(5) If paragraph (4)(a) applies, the provider must publish the variation by the date ascertained in accordance with, and in the manner specified in, the Administration Guidelines.

(6) If paragraph (4)(b) applies, the provider must publish the variation by the date, and in the manner, specified by the Minister in the approval.

35 Application of amendments—section 169-25 of the *Higher Education Support Act 2003*

(1) A higher education provider may, by written notice given to the Secretary, choose to have the amendments of section 169-25 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2005.

(2) The choice has effect accordingly.

(3) The choice cannot be revoked.

(4) If a higher education provider does not make a choice under subitem (1), the amendments of section 169-25 of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study provided, or proposed to be provided, by the provider during periods that commence on or after 1 January 2006.

(5) A notice given under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

36 After subsection 187-1(1)

Insert:

(1AA) Compliance by a person with subsection (1) in relation to a *course of study is to be ignored in determining whether there has been compliance by the person with subsection (1) in relation to any other course of study.

37 Paragraphs 187-1(3)(a) and (b)

Repeal the paragraphs, substitute:

(a) the unit of study for which the assistance is sought; or
(b) the *course of study of which the unit forms a part; or
(c) any other unit of study forming part of that course.

38 Subsection 187-1(3A)

Omit “, or any other unit of study”.

39 At the end of section 187-1

Add:

(7) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

40 Division 193 (heading)

Repeal the heading, substitute:

Division 193—Other provisions relating to tax file numbers

41 At the end of subsection 193-5(1)

Add:

; and (c) the person is entitled to *HECS-HELP assistance for the unit (ignoring paragraph 90-1(f)); and

(d) the person has not paid, as one or more *up-front payments in relation to the unit, 80% of his or her *student contribution amount for the unit.

Note 1: If the unit does not wholly consist of work experience in industry, the person's SLE in relation to the unit is re-credited: see section 79-25.

Note 2: If the unit wholly consists of work experience in industry, the provider has certain payment obligations: see section 36-23.

Note: The heading to section 193-5 is replaced by the heading "**No entitlement to HECS-HELP assistance for students without tax file numbers**".

42 At the end of subsection 193-5(2)

Add "as a *Commonwealth supported student".

43 At the end of section 193-5

Add:

(5) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

44 After section 193-5

Insert:

193-10 No entitlement to FEE-HELP assistance for students without tax file numbers

(1) This subsection applies to a person in relation to a unit of study if:

(a) the person is enrolled with a higher education provider in the unit; and

(b) access to the unit was not provided by *Open Learning Australia; and

(c) the provider receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and

(d) at the end of 28 days after the provider receives that notice, the provider has not been notified of a number that the provider is satisfied (in accordance with subsection (3)) is a valid tax file number; and

(e) the person is entitled to *FEE-HELP assistance for the unit (ignoring paragraph 104-1(1)(h)).

Note: The person's FEE-HELP balance in relation to the unit is re-credited: see subsection 104-27(1).

(2) This subsection applies to a person in relation to a unit of study if:

(a) the person is enrolled in the unit; and

(b) access to the unit was provided by *Open Learning Australia; and

(c) Open Learning Australia receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and

(d) at the end of 28 days after Open Learning Australia receives that notice, Open Learning Australia has not been notified of a number that it is satisfied (in accordance with subsection (3)) is a valid tax file number; and

(e) the person is entitled to *FEE-HELP assistance for the unit (ignoring paragraph 104-1(1)(h)).

Note: The person's FEE-HELP balance in relation to the unit is re-credited: see subsection 104-27(2).

(3) A higher education provider or *Open Learning Australia must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(d) or (2)(d), as the case may be, comply with the guidelines issued by the *Commissioner under subsection 187-1(4).

(4) A higher education provider or *Open Learning Australia must comply with any requirements, set out in guidelines issued by the *Commissioner, relating to procedures for informing persons of the need to obtain a valid *tax file number, where the persons may be affected by subsection (1) or (2), as the case may be, applying to them.

(5) A guideline issued under subsection (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

45 Section 198-1 (note 2)

Omit "The Other Grants and Payments Guidelines and the Commonwealth Scholarship".

46 At the end of section 198-10

Add:

(3) If an amount worked out under subsection (1) is an amount made up of dollars and cents, round the amount down to the nearest dollar.

47 Application of amendment—subsection 198-10(3) of the *Higher Education Support Act 2003*

Subsection 198-10(3) of the *Higher Education Support Act 2003* applies to amounts indexed after the commencement of this item.

48 After subsection 209-10(5)

Insert:

(5A) The *reviewer must give the person written notice of the decision on review.

(5B) The notice:

(a) must be given within a reasonable period after the decision on review is made; and

(b) must contain a statement of the reasons for the decision on review.

49 Application of amendment—subsections 209-10(5A) and (5B) of the *Higher Education Support Act 2003*

Subsections 209-10(5A) and (5B) of the *Higher Education Support Act 2003* apply to a decision on review that is made after the commencement of this item.

50 At the end of section 238-10

Add:

Indexation

(3) Guidelines may provide for the indexation of any or all amounts in the Guidelines, using the method of indexation set out in Part 5-6.

Part 2—Amendments commencing 28 days after Royal Assent

51 Paragraph 19-45(1)(c)

Repeal the paragraph, substitute:

(c) a review procedure for dealing with review of decisions made by the provider:

(i) under section 36-22; or

(ii) relating to assistance under Chapter 3.

52 Subsection 19-50(1)

Omit "provider relating to assistance under Chapter 3.", substitute:

provider:

(a) under section 36-22; or

(b) relating to assistance under Chapter 3.

53 Subsection 19-50(2)

Omit "provider relating to assistance under Chapter 3.", substitute:

provider:

(c) under section 36-22; or

(d) relating to assistance under Chapter 3.

54 Subsection 19-60(1)

After "purposes of", insert "section 36-22 or".

55 Subsection 36-22(1)

Omit "This section applies to a person", substitute "A higher education provider must, on the *Secretary's behalf, determine that this section applies to a person".

56 Paragraph 36-22(1)(a)

Omit "a higher education", substitute "the".

57 Section 206-1 (note 1)

After "items", insert "1A,".

58 Subsection 209-1(2) (note 1)

After “under”, insert “section 36-22 or”.

59 Subsection 238-1(2)

Omit “provider relating to Chapter 3.”, substitute:

provider:

(a) under section 36-22; or

(b) relating to Chapter 3.

Part 3—Amendments commencing on 1 January 2004

60 Clause 1 of Schedule 1 (paragraph (b) of the definition of *overseas student*)

Repeal the paragraph, substitute:

(b) is enrolled, or proposes to become enrolled, in:

(i) a *course of study with a higher education provider; or

(ii) a unit of study access to which was provided by *Open Learning Australia;

61 Clause 1 of Schedule 1 (at the end of the definition of *student*)

Add “, and includes a person who is enrolled in a unit of study access to which was provided by *Open Learning Australia”.

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

1 Paragraph 2(c) of Schedule 1

Omit “item 5”, substitute “item 4”.

Schedule 3—Amendment of the Taxation Administration Act 1953

1 Subsection 15-25(1) in Schedule 1

After “(c),”, insert “(ca),”.

2 Paragraph 15-50(1)(b) in Schedule 1

After “(c),”, insert “(ca),”.

[*Minister’s second reading speech made in—*
House of Representatives on 10 March 2005
Senate on 14 June 2005]

(15/05)