





**Higher Education Legislation  
Amendment (2005 Measures No. 3) Act  
2005**

**No. 143, 2005**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005**

**No. 143, 2005**

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

*[Assented to 14 December 2005]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Higher Education Legislation  
Amendment (2005 Measures No. 3) Act 2005*.

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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.

| <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.   | 14 December 2005    |
| 2. Schedules 1 and 2  | The day on which this Act receives the Royal Assent.   | 14 December 2005    |
| 3. Schedule 3   | The 14th day after the day on which this Act receives the Royal Assent.  | 28 December 2005    |
| 4. Schedules 4 and 5  | The day on which this Act receives the Royal Assent.   | 14 December 2005    |
| 5. Schedule 6   | 23 November 2004.  | 23 November 2004    |
| 6. Schedule 7, items 1 to 6   | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 7. Schedule 7, item 7   | Immediately after the commencement of item 6 of Schedule 1 to the <i>Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005</i> .<br><br>However, if item 6 of Schedule 1 to the <i>Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005</i> does not commence, the provision(s) do not commence at all. |                     |
| 8. Schedule 7, item 8   | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |

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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> |
| 9. Schedule 7, item 9           | Immediately after the commencement of item 18 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 18 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 10. Schedule 7, item 10         | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 11. Schedule 7, item 11         | Immediately after the commencement of item 20 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 20 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 12. Schedule 7, items 12 to 14  | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 13. Schedule 7, item 15         | Immediately after the commencement of item 24 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 24 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 14. Schedule 7, items 16 to 36  | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |

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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> |
| 15. Schedule 7, items 37 and 38 | Immediately after the commencement of item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 16. Schedule 7, items 39 to 43  | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 17. Schedule 7, item 44         | Immediately after the commencement of item 60 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 60 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 1 January 2004      |
| 18. Schedule 7, items 45 and 46 | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 19. Schedule 7, item 47         | Immediately after the commencement of item 61 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br><br>However, if item 61 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 1 January 2004      |
| 20. Schedule 7, items 48 and 49 | Immediately after the commencement of the provisions covered by table item 5.  | 23 November 2004    |
| 21. Schedule 7, items 50 to 56  | Immediately after the commencement of the provisions covered by table item 6.  | 23 November 2004    |

| <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> |
| 22. Schedule 7, item 57         | Immediately after the commencement of the provisions covered by table item 9.<br>However, if the provisions covered by table item 9 do not commence, the provision(s) do not commence at all.  | 6 July 2005         |
| 23. Schedule 7, item 58         | Immediately after the commencement of the provisions covered by table item 11.<br>However, if the provisions covered by table item 11 do not commence, the provision(s) do not commence at all.  | 6 July 2005         |
| 24. Schedule 7, items 59 to 81  | Immediately after the commencement of the provisions covered by table item 6.  | 23 November 2004    |
| 25. Schedule 7, item 82         | Immediately after the commencement of item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br>However, if item 44 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 26. Schedule 7, items 83 to 91  | Immediately after the commencement of the provisions covered by table item 6.  | 23 November 2004    |
| 27. Schedule 7, item 92         | Immediately after the commencement of item 23 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> .<br>However, if item 23 of Schedule 1 to the <i>Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005</i> does not commence, the provision(s) do not commence at all. | 6 July 2005         |
| 28. Schedule 8                  | The day on which this Act receives the Royal Assent.   | 14 December 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.   |                     |

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- (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—Student load etc.**

### ***Higher Education Support Act 2003***

#### **1 Subsection 73-10(1)**

Omit “\*student load”, substitute “student load”.

#### **2 Paragraph 104-45(1)(d)**

Omit “total \*student load”, substitute “total student load”.

#### **3 Paragraph 104-45(1)(d)**

Omit “the provider’s \*maximum BOTP student load”, substitute “the student load that, in the provider’s opinion, represents the load imposed on a full-time student for one year”.

#### **4 Paragraph 104-45(2)(d)**

Omit “total \*student load”, substitute “total student load”.

#### **5 Paragraph 104-45(2)(d)**

Omit “the provider’s \*maximum BOTP student load”, substitute “the student load that, in the provider’s opinion, represents the load imposed on a full-time student for one year”.

#### **6 Paragraph 104-45(3)(d)**

Omit “total \*student load”, substitute “total student load”.

#### **7 Paragraph 104-45(3)(d)**

Omit “the institution’s \*maximum BOTP student load”, substitute “the student load that, in the provider’s opinion, represents the load imposed on a full-time student for one year”.

#### **8 Section 104-75**

Repeal the section.

#### **9 Clause 1 of Schedule 1 (definition of *maximum BOTP student load*)**

Repeal the definition.

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**10 Clause 1 of Schedule 1 (definition of *student load*)**

Repeal the definition.

**11 Application**

The amendments made by this Schedule only apply to a bridging course for overseas-trained professionals in which a person enrolls on or after the commencement of this Schedule.

## **Schedule 2—Fairness requirements**

### ***Higher Education Support Act 2003***

#### **1 Subsection 19-35(2)**

After “in the provider’s”, insert “reasonable”.

#### **2 Subsection 19-35(4)**

After “in the provider’s”, insert “reasonable”.

#### **3 Application**

The amendments made by this Schedule only apply to the meeting of the fairness requirements on or after the commencement of this Schedule.

## Schedule 3—Fees

### *Higher Education Support Act 2003*

#### **1 Paragraph 19-102(3)(d)**

Omit “Commonwealth Grant Scheme Guidelines”, substitute “Higher Education Provider Guidelines”.

#### **2 Paragraph 19-102(3)(f)**

Repeal the paragraph, substitute:

- (f) determined, in accordance with the Higher Education Provider Guidelines, to be a fee of a kind that is incidental to studies that may be undertaken with a higher education provider; or

#### **3 Application**

The amendments made by this Schedule only apply to the determination of fees after the commencement of this Schedule.

## **Schedule 4—Auditing requirements**

### ***Higher Education Support Act 2003***

#### **1 At the end of Subdivision 19-E of Division 19 of Part 2-1**

Add:

#### **19-80 Compliance assurance—provider (other than Table A provider)**

- (1) The Minister may require a higher education provider (other than a \*Table A provider) to be audited as to compliance with any one or more of the following requirements:
  - (a) the \*financial viability requirements;
  - (b) the \*fairness requirements;
  - (c) the \*compliance requirements;
  - (d) the \*contribution and fee requirements.
- (2) The audit must be conducted:
  - (a) by a body determined in writing by the Minister; and
  - (b) at such time or times, and in such manner, as the Minister requires.
- (3) The provider must:
  - (a) fully co-operate with the auditing body in the course of its audit; and
  - (b) pay to the auditing body any charges payable for such an audit.
- (4) A determination made under paragraph (2)(a) is not a legislative instrument.

## **Schedule 5—Commonwealth supported student**

### ***Higher Education Support Act 2003***

#### **1 Subsection 36-5(1)**

Omit all the words after “in relation to a unit of study,”, substitute:  
if:

- (a) the higher education provider with which he or she is enrolled in that unit has advised the person in writing that he or she is a Commonwealth supported student:
  - (i) in relation to the unit; or
  - (ii) 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; and
- (b) at the end of the \*census date for the unit, the higher education provider would not have been prohibited, under section 36-10 or 36-15, or both, from so advising the person.

#### **2 Subsection 36-5(2)**

Repeal the subsection.

#### **3 Paragraph 36-10(1)(e)**

Repeal the paragraph, substitute:

- (e) the person:
  - (i) enrolled in the unit on or before the \*census date for the unit; and
  - (ii) at the end of the census date, remained so enrolled.

#### **4 Paragraph 36-25(1)(b)**

After “under section 36-10”, insert “or section 36-15, or both”.

#### **5 Paragraph 36-25(2)(c)**

After “under section 36-10”, insert “or section 36-15, or both”.

#### **6 At the end of section 36-25**

Add:

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- (3) If a higher education provider has, under subparagraph 36-5(1)(a)(ii), advised a person that he or she is a Commonwealth supported student in relation to a \*course of study with the provider, then the higher education provider is taken to have advised the person that he or she is a Commonwealth supported student in relation to each unit of study undertaken with the provider, as part of that course.

#### **7 Paragraph 36-30(1)(b)**

After “under section 36-10”, insert “or section 36-15, or both”.

#### **8 Application**

The amendments made by this Schedule only apply to the giving of advice under section 36-5 of the *Higher Education Support Act 2003* after the commencement of this Schedule.

## **Schedule 6—Amendment of reference from Open Learning Australia to Open Universities Australia**

### ***Higher Education Support Act 2003***

#### **1 Subsection 179-15(3A)**

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

#### **2 Division 190 of Part 5-5 (heading)**

Repeal the heading, substitute:

**Division 190—In what circumstances can higher education providers and Open Universities Australia be notified of tax file number matters?**

#### **3 Division 193 of Part 5-5 (heading)**

Repeal the heading, substitute:

**Division 193—What are the requirements on higher education providers and Open Universities Australia relating to tax file numbers?**

#### **4 Clause 1 of Schedule 1 (definition of *officer of Open Learning Australia*)**

Repeal the definition.

#### **5 Clause 1 of Schedule 1**

Insert:

*officer of Open Universities Australia* has the meaning given by subsection 179-15(3A).

#### **6 Clause 1 of Schedule 1 (definition of *Open Learning Australia*)**

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Repeal the definition.

## **7 Clause of Schedule 1**

Insert:

*Open Universities Australia* means Open Universities Australia Pty Ltd (ACN 053 431 888).

## **Schedule 7—General amendments to change references**

### **Part 1—Amendments to change asterisked references**

#### **1 Amendment of Act—asterisked references**

The specified provisions of the Act listed in this Part are amended by omitting “\*Open Learning Australia” and substituting “\*Open Universities Australia”.

#### ***Higher Education Support Act 2003***

##### **2 Subsection 36-40(3)**

##### **3 Subparagraph 104-1(1)(f)(ii)**

##### **4 Section 104-2**

##### **5 Subsection 104-3(1)**

##### **6 Paragraphs 104-3(2)(a) and (3)(a)**

##### **7 Subsection 104-3(5)**

##### **8 Subsections 104-4(1) and (2)**

##### **9 Subsection 104-4(2A)**

##### **10 Subsections 104-4(3) and (5)**

##### **11 Subsection 104-4(5A)**

##### **12 Subsection 104-4(6)**

##### **13 Paragraph 104-25(1)(aa)**

##### **14 Subsection 104-25(2)**

##### **15 Subsection 104-27(2)**

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- 16 Subsection 104-30(3)**
  - 17 Paragraph 104-35(1A)(b)**
  - 18 Paragraph 104-40(1A)(b)**
  - 19 Subsections 107-10(3) and (4)**
  - 20 Subsections 110-1(1) and (2)**
  - 21 Subsection 110-5(2)**
  - 22 Subsection 154-55(2)**
  - 23 Paragraph 179-15(3A)(a)**
  - 24 Paragraph 179-20(ca)**
  - 25 Subparagraph 179-35(1)(d)(iii)**
  - 26 Subsections 187-1(1), (1A) and (3A)**
  - 27 Paragraph 187-1(4)(b)**
  - 28 Subsection 187-2(2)**
  - 29 Paragraph 187-5(2)(a)**
  - 30 Subsection 190-1(2)**
  - 31 Subsections 190-5(3) and (4)**
  - 32 Paragraph 190-10(3)(a)**
  - 33 Subsection 190-10(4)**
  - 34 Paragraph 190-15(1A)(a)**
  - 35 Subsection 190-20(1A)**
  - 36 Subsections 193-1(2A), (2B) and (2C)**
  - 37 Paragraphs 193-10(1)(b) and (2)(b)**
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- 38 Subsections 193-10(3) and (4)
- 39 Section 206-1 (table item 2A, column headed “Decision maker”)
- 40 Paragraph 209-1(1)(b)
- 41 Subsections 238-1(2A) and (2B)
- 42 Clause 1 of Schedule 1 (paragraph (a) of the definition of *census date*)
- 43 Clause 1 of Schedule 1 (paragraph (a) of the definition of *fee*)
- 44 Clause 1 of Schedule 1 (subparagraph (b)(ii) of the definition of *overseas student*)
- 45 Clause 1 of Schedule 1 (paragraph (a) of the definition of *request for Commonwealth assistance*)
- 46 Clause 1 of Schedule 1 (paragraph (b) of the definition of *review officer*)
- 47 Clause 1 of Schedule 1 (definition of *student*)
- 48 Clause 1 of Schedule 1 (paragraph (a) of the definition of *tuition fee*)
- 49 Clause 1 of Schedule 1 (subparagraph (b)(i) of the definition of *unit of study*)

## **Part 2—Amendments to change other references**

### **50 Amendment of Acts—other references**

The specified provisions of the Acts listed in this Part are amended by omitting “Open Learning Australia” (wherever occurring) and substituting “Open Universities Australia”.

### ***Higher Education Support Act 2003***

#### **51 Section 101-1**

#### **52 Subparagraph 104-1(1)(i)(i)**

#### **53 Paragraph 104-2(a)**

Note: The heading to section 104-2 is altered by omitting “Open Learning Australia” and substituting “Open Universities Australia”.

#### **54 Subsection 104-3(1)**

#### **55 Paragraphs 104-3(2)(b), (c), (e) and (f)**

Note: The heading to section 104-3 is altered by omitting “Open Learning Australia” and substituting “Open Universities Australia”.

#### **56 Subsection 104-4(2)**

#### **57 Subsection 104-4(2A)**

#### **58 Subsection 104-4(5A)**

#### **59 Subsection 104-4(6)**

Note: The heading to section 104-4 is altered by omitting “Open Learning Australia” and substituting “Open Universities Australia”.

#### **60 Paragraphs 104-25(2)(a), (c) and (d)**

#### **61 Subparagraph 104-25(2)(e)(ii)**

#### **62 Subsection 104-40(1A)**

#### **63 Paragraphs 107-10(4)(a) and (b)**

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- 64 Paragraph 110-1(2)(b)**
  - 65 Subsection 110-5(2)**
  - 66 Paragraphs 179-15(1)(c), (3A)(b) and (4)(c)**
  - 67 Paragraphs 179-20(ca), (e), (f) and (g)**
  - 68 Paragraph 179-25(1)(c)**
  - 69 Subparagraph 179-35(1)(d)(iv)**
  - 70 Section 184-1**
  - 71 Paragraph 187-1(1A)(a)**
  - 72 Paragraphs 187-2(2)(a) and (b)**
  - 73 Subsection 187-2(2)**
  - 74 Paragraph 187-5(2)(b)**
  - 75 Subsection 190-1(2)**
  - 76 Subsection 190-5(3)**
  - 77 Subsection 190-10(3)**
  - 78 Subsection 190-15(1A)**
  - 79 Subsection 190-20(1A)**
  - 80 Paragraphs 193-1(2A)(a) and (b)**
- Note: The heading to subsection 193-1(2A) is altered by omitting “*Open Learning Australia*” and substituting “*Open Universities Australia*”.
- 81 Paragraph 193-1(2B)(b)**
  - 82 Paragraphs 193-10(2)(c) and (d)**
  - 83 Section 206-1 (note 2)**
  - 84 Subsection 209-1(2) (note 2)**
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**85 Subsection 238-1(2A)**

**86 Paragraphs 238-1(2B)(a) and (b)**

**87 Subsection 238-1(2B)**

**88 Clause 1 of Schedule 1 (paragraph (b) of the definition of  
*census date*)**

**89 Clause 1 of Schedule 1 (paragraph (b) of the definition of  
*fee*)**

**90 Clause 1 of Schedule 1 (paragraph (b) of the definition of  
*request for Commonwealth assistance*)**

**91 Clause 1 of Schedule 1 (paragraph (b) of the definition of  
*tuition fee*)**

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

**92 Subitems 23(1) and (4) of Schedule 1**

## **Schedule 8—Technical amendment**

### ***Australian National University Act 1991***

#### **1 Division 4 of Part 2 (heading)**

Repeal the heading.

### ***Higher Education Support Act 2003***

#### **2 Paragraph 36-15(1)(b)**

Omit “overseas trained professionals”, substitute “overseas-trained professionals”.

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*[Minister’s second reading speech made in—  
Senate on 23 June 2005  
House of Representatives on 7 December 2005]*

(125/05)

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