





**Higher Education Legislation  
Amendment (2005 Measures No. 4) Act  
2005**

**No. 158, 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. 4) Act 2005**

**No. 158, 2005**

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

*[Assented to 19 December 2005]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Higher Education Legislation  
Amendment (2005 Measures No. 4) Act 2005*.

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## **2 Commencement**

This Act commences on the day after it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—Overseas higher education providers**

### *Higher Education Support Act 2003*

#### **1 After Division 3**

Insert:

### **Division 5—Application of Act to Table C providers**

#### **5-1 Application of Act to Table C providers**

##### *General application to Table C providers*

- (1) The provisions of this Act not listed in the table in subsection (2) or in subsection (4) apply to a \*Table C provider, the \*Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.

##### *Modified application to Table C providers*

- (2) The provisions of this Act listed in the table apply to a \*Table C provider in the way set out in the table.

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#### **Application of Act to Table C providers**

<b>Item</b>	<b>Provision</b>	<b>Application</b>
1	Subdivision 19-C (quality requirements)	Applies to the *Australian branch of the provider. However, an audit by a *quality auditing body may need to assess the overall performance of the provider as it relates to that branch.
2	Subdivision 19-D (fairness requirements)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.

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**Schedule 1** Overseas higher education providers

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**Application of Act to Table C providers**

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<b>Item</b>	<b>Provision</b>	<b>Application</b>
3	Subdivision 19-F (contribution and fee requirements)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
4	Part 3-3 (FEE-HELP assistance)	Applies to eligible students of the *Australian branch of the provider, but only for units of study in which the students are enrolled at the Australian branch.
5	Part 3-4 (OS-HELP assistance)	Applies to eligible students of the *Australian branch of the provider.
6	Chapter 4 (Repayment of loans)	Applies to the *Australian branch of the provider and to students undertaking, or students who undertook, units of study at that branch.
7	Part 5-2 (Administrative requirements on higher education providers)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
8	Part 5-3 (Electronic communications)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
9	Part 5-4 (Protection of personal information)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
10	Part 5-5 (Tax file numbers)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.
11	Part 5-7 (Review of decisions)	Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch.

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*Provisions that do not apply to Table C providers*

(3) The provisions of this Act listed in subsection (4) do not apply to:

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- (a) a \*Table C provider; or
  - (b) the \*Australian branch of the provider; or
  - (c) students in their capacity as students of that provider or of that branch.
- (4) The provisions are:
- (a) Part 2-2 (Commonwealth Grant Scheme);
  - (b) Part 2-3 (Other grants);
  - (c) Part 2-4 (Grants for Commonwealth scholarships);
  - (d) Part 2-5 (Reduction and repayment of grants);
  - (e) Part 3-2 (HECS-HELP assistance).

## **2 Section 13-1**

After “commencement of this Act.”, insert “Table C providers have that approval from the time they are included in Table C.”.

## **3 After subsection 16-5(1)**

Insert:

- (1A) A \*Table C provider is taken to be approved as a higher education provider from the commencement of the provision that included the provider in Table C in section 16-22.

## **4 Paragraph 16-5(2)(a)**

After “listed provider”, insert “or a \*Table C provider”.

## **5 Paragraph 16-5(2)(b)**

After “listed provider”, insert “or a Table C provider”.

## **6 After section 16-20**

Insert:

### **16-22 Table C providers**

- (1) The following are *Table C providers*:

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**Table C providers**

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**Providers**

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Carnegie Mellon University, a non-profit organisation established under Pennsylvania law

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- (2) However, a body is not a *Table C provider* if its approval as a higher education provider is revoked or suspended.

Note: A Table C provider is not entitled to receive a grant under this Chapter: see section 5-1.

**7 Subsection 19-65(1)**

Omit “, the regulations and the Guidelines made under section 238-10”, substitute “and the regulations, and the requirements of the Guidelines made under section 238-10 that apply to the provider”.

**8 At the end of section 27-1**

Add:

Note: This Part does not apply to Table C providers: see section 5-1.

**9 At the end of section 41-1**

Add:

Note: This Part does not apply to Table C providers: see section 5-1.

**10 At the end of section 46-1**

Add:

Note: This Part does not apply to Table C providers: see section 5-1.

**11 At the end of section 51-1**

Add:

Note: This Part does not apply to Table C providers: see section 5-1.

**12 Section 87-1 (note)**

Omit “Note”, substitute “Note 1”.

**13 At the end of section 87-1**

Add:

Note 2: This Part does not apply to Table C providers: see section 5-1.

**14 After subsection 238-10(1)**

Insert:

- (1A) The Minister may, by legislative instrument, make Guidelines, called Guidelines for Overseas Higher Education Providers, specifying additional requirements or conditions applicable to \*Table C providers.

**15 Clause 1 of Schedule 1**

Insert:

*Australian branch*, of a \*Table C provider, means:

- (a) if that provider conducts its higher education operations in Australia through a branch of the body corporate that is listed in Table C in section 16-23—that branch; or
- (b) otherwise—the body corporate through which that provider conducts its higher education operations in Australia.

**16 Clause 1 of Schedule 1**

Insert:

*Table C provider* means a body listed in Table C in section 16-22.

## Schedule 2—Tuition assurance requirements

### *Higher Education Support Act 2003*

#### **1 Section 16-30**

Repeal the section, substitute:

#### **16-30 The tuition assurance requirements**

The *tuition assurance requirements* are that the body corporate complies with the requirements for tuition assurance set out in the Higher Education Provider Guidelines.

#### **2 Section 36-20**

Before “If a”, insert “(1)”.

#### **3 At the end of section 36-20**

Add:

- (2) Subsection (1) does not apply to the provider if:
  - (a) the person’s \*Student Learning Entitlement was re-credited under section 79-1 (main case of re-crediting a person’s SLE); and
  - (b) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the \*tuition assurance requirements.
- (3) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to the re-crediting of a person’s \*Student Learning Entitlement in circumstances to which subsection (2) applies:
  - (a) the amount (if any) that is to be paid to the person; and
  - (b) the amount (if any) that is to be paid to the Commonwealth; and
  - (c) the person (if any) who is to pay the amounts.

#### **4 After subsection 36-22(2)**

Insert:

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- (2A) Subsection (2) does not apply to the provider if the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the \*tuition assurance requirements.
- (2B) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to circumstances to which subsection (2A) applies:
  - (a) the amount (if any) that is to be paid to the person; and
  - (b) the amount (if any) that is to be paid to the Commonwealth; and
  - (c) the person (if any) who is to pay the amounts.

**5 At the end of section 36-22**

Add:

*Secretary may act if provider is unable to*

- (9) If the provider is unable to act for one or more of the purposes of subsection (1), or subsection (3), (5) or (7), the \*Secretary may act as if one or more of the references in those subsections to the provider were a reference to the Secretary.

**6 After section 36-22**

Insert:

**36-22A Providers to repay amounts etc. for units wholly consisting of work experience in industry—provider ceases to provide course**

- (1) A higher education provider must, on the \*Secretary's behalf, determine that this section applies to a person if:
  - (a) the person has been enrolled as a \*Commonwealth supported student with the provider in a unit of study; and
  - (b) the unit would, if completed, form part of a \*course of study undertaken with the provider; and
  - (c) the unit wholly consists of \*work experience in industry; and
  - (d) 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 provide the unit as a result of ceasing to provide the course of which the unit formed part; and

- (e) the \*tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
- (f) the person chose the option designated under the \*tuition assurance requirements as student contribution/fee repayment in relation to the unit.

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.
- (3) The \*Secretary may determine that this section applies to a person if the provider is unable to do so.

## **7 After subsection 76-1(4) (before the notes)**

Insert:

- (5) This section does not apply to a unit that is a replacement unit within the meaning of the \*tuition assurance requirements.

## **8 Section 79-1**

Before “A higher”, insert “(1)”.

## **9 At the end of section 79-1**

Add:

- (2) If the provider is unable to act for any one or more of the purposes of subsection (1), or section 79-5, 79-10 or 79-15, the \*Secretary may act as if any one or more of the references in those provisions to the provider were a reference to the Secretary.

## **10 Subsection 79-5(1)**

Omit “paragraph 79-1(c)”, substitute “paragraph 79-1(1)(c)”.

## **11 Paragraph 79-10(1)(a)**

Omit “paragraph 79-1(d)”, substitute “paragraph 79-1(1)(d)”.

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**12 Subdivision 79-B (heading)**

Repeal the heading, substitute:

**Subdivision 79-B—Re-crediting a person’s SLE if provider ceases to provide course of which unit forms part**

**13 Section 79-20**

Before “A higher”, insert “(1)”.

Note: The heading to section 79-20 is altered by omitting “unable to provide unit” and substituting “ceases to provide course of which unit forms part”.

**14 Paragraph 79-20(b)**

Omit “ceased to be able to provide the unit”, substitute “ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part”.

**15 After paragraph 79-20(b)**

Insert:

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

**16 Paragraph 79-20(c)**

Omit “be able to”.

**17 After paragraph 79-20(c)**

Insert:

- ; and (d) the person chose the option designated under the tuition assurance requirements as student contribution/tuition fee repayment in relation to the unit.

**18 At the end of section 79-20**

Add:

- (2) The \*Secretary may re-credit the person’s \*SLE under subsection (1) if the provider is unable to do so.

**19 Section 79-25**

Before “A higher”, insert “(1)”.

**20 At the end of section 79-25**

Add:

- (2) The \*Secretary may re-credit the person's \*SLE under subsection (1) if the provider is unable to do so.

**21 At the end of section 104-25**

Add:

- (3) If the provider is unable to act for one or more of the purposes of subsection (1) or (2), or section 104-30, 104-35 or 104-40, the \*Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary.

**22 At the end of section 104-27**

Add:

- (3) The \*Secretary may re-credit the person's \*FEE-HELP balance under subsection (1) or (2) if the provider or \*Open Universities Australia is unable to do so.

**23 Section 104-42**

Before "A higher", insert "(1)".

Note: The heading to section 104-42 is altered by omitting "is unable to provide unit" and substituting "ceases to provide course of which unit forms part".

**24 Paragraph 104-42(b)**

Omit "ceased to be able to provide the unit", substitute "ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part".

**25 Paragraph 104-42(c)**

Omit "be able to".

**26 After paragraph 104-42(c)**

Insert:

- ; and (d) the person chose the option designated under the tuition assurance requirements as student contribution/tuition fee repayment in relation to the unit.

**27 At the end of section 104-42**

Add:

- (2) The \*Secretary may re-credit the person's \*FEE-HELP balance under subsection (1) if the provider is unable to do so.

**28 After subsection 110-5(1)**

Insert:

- (1A) Subsection (1) does not apply to the provider if:
  - (a) the person's \*FEE-HELP balance was re-credited under subsection 104-25(1) (main case of re-crediting a person's FEE-HELP balance); and
  - (b) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the \*tuition assurance requirements.
- (1B) The Higher Education Provider Guidelines may, in setting out the tuition assurance requirements, specify, in relation to the re-crediting of a person's \*FEE-HELP balance in circumstances to which subsection (1A) applies:
  - (a) the amount (if any) that is to be paid to the Commonwealth; and
  - (b) the person (if any) who is to pay the amounts.

**29 Subsection 137-5(5)**

After "36-22", insert ", 36-22A".

**30 At the end of subsection 137-5(5)**

Add "(even if subsection 36-22(2A) applies to the provider in relation to the person)".

**31 After subsection 169-15(1)**

Insert:

- (1A) Despite subsection (1), a higher education provider must not require a student who is enrolling in a unit in circumstances that make it a replacement unit within the meaning of the \*tuition assurance requirements to pay to the provider the student's \*student contribution amount for the unit.

**32 After subsection 169-15(2)**

- (2A) Despite subsection (2), a higher education provider must not require a domestic student who is enrolling in a unit in circumstances that make it a replacement unit within the meaning of the \*tuition assurance requirements to pay to the provider the student's \*tuition fee for the unit.

**33 Subsection 169-15(3)**

After "However", insert "(unless subsection (4) applies)".

**34 At the end of section 169-15**

Add:

- (4) Subsection (3) does not apply if:
- (a) the student is no longer enrolled in the unit at the end of the census date because the provider has ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
  - (b) the \*tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
  - (c) the student chose the option designated under those requirements as course assurance in relation to the unit.

**35 Section 206-1 (table items 1A, 1, 2 and 2A)**

Repeal the table items, substitute:

1A	A decision that section 36-22 does not apply to a person	section 36-22	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision that the section does not apply—the Secretary
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1	Refusal to re-credit some or all of a person's *student learning entitlement for a unit of study	section 79-1	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary
2	Refusal to re-credit a person's *FEE-HELP balance	subsection 104-25(1)	(a) the higher education provider with whom the student is enrolled in the unit; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary
2A	Refusal to re-credit a person's *FEE-HELP balance	subsection 104-25(2)	(a) *Open Universities Australia; or (b) if the *Secretary made the decision to refuse the re-crediting—the Secretary

**36 Transitional provision relating to name change for Open Universities Australia**

- (1) This item applies if, at the time this Act receives the Royal Assent, the *Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005* has not received the Royal Assent.
- (2) The references in subsection 104-27(3) and table item 2A of section 206-1 of the *Higher Education Support Act 2003*, as inserted by this Schedule, to “Open Universities Australia” are taken to be references to “Open Learning Australia”, during the period:
  - (a) beginning on the day after this Act receives the Royal Assent; and

(b) ending on the day the *Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

(3) After the end of that period, the references are taken always to have been references to “Open Universities Australia”.

Note: Schedules 6 and 7 to the *Higher Education Legislation Amendment (2005 Measures No. 3) Act 2005* change the name “Open Learning Australia” to “Open Universities Australia” with effect from 23 November 2004.

## **Schedule 3—Technical amendments relating to legislative instruments**

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

#### **1 Subsection 23(1E) (note)**

Omit “disallowable”, substitute “legislative”.

#### **2 Subsection 98AA(2) (note 2)**

Omit “disallowable”, substitute “legislative”.

#### **3 Subsection 98Q(1) (note 2)**

Omit “disallowable”, substitute “legislative”.

#### **4 Subsection 98S(1) (note 1)**

Repeal the note.

#### **5 Subsection 98S(1) (note 2)**

Repeal the note, substitute:

Note: A determination under this subsection is a legislative instrument—see paragraph 110(b).

#### **6 Section 110**

Omit “disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instruments for the purposes of the *Legislative Instruments Act 2003*”.

Note: The heading to section 110 is altered by omitting “**Disallowable**” and substituting “**Legislative**”.

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

#### **7 Subsection 16-55(1)**

Repeal the subsection, substitute:

(1) A notice of approval under paragraph 16-50(1)(b) is a legislative instrument.

Note: The heading to section 16-55 is replaced by the heading “**Approvals are legislative instruments**”.

**8 Paragraph 16-55(2)(a)**

Omit “48(4) of the *Acts Interpretation Act 1901*”, substitute “42(1) of the *Legislative Instruments Act 2003*”.

**9 Subsection 22-35(1)**

Repeal the subsection, substitute:

- (1) A notice of revocation under subsection 22-20(3) is a legislative instrument.

Note: The heading to section 22-35 is replaced by the heading “**Revocations are legislative instruments**”.

**10 Paragraph 22-35(2)(a)**

Omit “48(4) of the *Acts Interpretation Act 1901*”, substitute “42(1) of the *Legislative Instruments Act 2003*”.

**11 Subsection 36-15(2)**

Omit “determine in writing”, substitute “, by legislative instrument, determine”.

**12 Subsection 36-15(5)**

Repeal the subsection.

**13 Subsection 41-50(1)**

Omit “(1) Before the start of a year, the Minister must”, substitute “Before the start of a year, the Minister must, by legislative instrument,”.

Note: The heading to section 41-50 is replaced by the heading “**List of maximum grant amounts**”.

**14 Subsection 41-50(2)**

Repeal the subsection.

**15 Subsection 104-3(1)**

Omit “in writing”, substitute “by legislative instrument”.

**16 Subsection 104-3(4)**

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Repeal the subsection.

**17 Subsection 104-10(2)**

Omit “determine in writing”, substitute “, by legislative instrument, determine”.

**18 Subsection 104-10(5)**

Repeal the subsection.

**19 Subsection 238-10(1)**

After “The Minister may”, insert “, by legislative instrument,”.

**20 Subsection 238-10(2)**

Repeal the subsection.

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

**21 Subitem 4(1) of Schedule 1**

Omit “in writing”, substitute “by legislative instrument”.

**22 Subitem 4(3) of Schedule 1**

Repeal the subitem.

**23 Subitem 8(1) of Schedule 1**

Omit “in writing”, substitute “by legislative instrument”.

**24 Subitem 8(3) of Schedule 1**

Repeal the subitem.

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*[Minister's second reading speech made in—  
House of Representatives on 14 September 2005  
Senate on 7 November 2005]*

(142/05)