





# **Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006**

**No. 121, 2006**

**An Act to amend legislation relating to higher  
education and to research funding, 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 (2006 Budget and Other Measures) Act 2006

No. 121, 2006

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

*[Assented to 4 November 2006]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Higher Education Legislation  
Amendment (2006 Budget and Other Measures) Act 2006*.

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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.	4 November 2006
2. Schedule 1, items 1 and 2	The day on which this Act receives the Royal Assent.	4 November 2006
3. Schedule 1, items 3 to 5	1 January 2007.	1 January 2007
4. Schedule 1, items 6 and 7	The day on which this Act receives the Royal Assent.	4 November 2006
5. Schedule 2	1 January 2007.	1 January 2007
6. Schedules 3 to 9	The day on which this Act receives the Royal Assent.	4 November 2006

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amounts relating to grants

### *Higher Education Funding Act 1988*

#### **1 Paragraph 110A(2)(c)**

Omit “\$7,691,000”, substitute “\$7,845,000”.

### *Higher Education Support Act 2003*

#### **2 Paragraphs 30-5(1)(c), (d) and (e)**

Repeal the paragraphs, substitute:

(c) for the year 2007—\$3,512,501,000; or

(d) for the year 2008—\$3,605,670,000; or

(e) for the year 2009—\$3,654,404,000; or

(f) for the year 2010—\$3,694,619,000.

#### **3 Section 33-10 (table item 12)**

Repeal the item, substitute:

12	Nursing	\$10,189
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#### **4 Transitional provision—indexation**

The amount in item 12 of the table in section 33-10 of the *Higher Education Support Act 2003*, as amended by this Schedule, is not to be indexed on 1 January 2007.

#### **5 Transitional provision—adjustment of basic grant amount**

For the purposes of working out if and how a higher education provider’s basic grant amount for the grant year 2007 or an earlier grant year is to be adjusted under Subdivision 33-C of the *Higher Education Support Act 2003*, disregard the amendment made by item 3 of this Schedule.

#### **6 Subsection 41-45(1) (table items 3 to 5)**

Repeal the items, substitute:

3	2007	\$1,760,510,000
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**Schedule 1** Amounts relating to grants

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4	2008	\$1,742,840,000
5	2009	\$1,729,877,000
6	2010	\$1,729,877,000

**7 Section 46-40 (table items 4 to 6)**

Repeal the items, substitute:

4	2007	\$209,569,000
5	2008	\$218,048,000
6	2009	\$219,201,000
7	2010	\$220,323,000

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## Schedule 2—FEE-HELP limit

### *Higher Education Support Act 2003*

#### 1 Subsection 104-15(1)

Repeal the subsection, substitute:

(1) A person's *FEE-HELP balance* at a particular time is:

- (a) if the \*FEE-HELP limit in relation to the person at the time exceeds the sum of all of the amounts of \*FEE-HELP assistance that have previously been payable to the person, being that sum as reduced by any amounts previously re-credited under this Subdivision—that excess; and
- (b) otherwise—zero.

Note: If an amount is to be re-credited to a FEE-HELP balance, the balance that is to be re-credited is worked out immediately before that re-crediting. The balance is worked out after the re-crediting by taking account of the amount re-credited. If a person's FEE-HELP limit has been reduced, the balance might not increase, or might not increase by the same amount as the amount re-credited.

#### 2 Section 104-20

Repeal the section, substitute:

##### 104-20 The FEE-HELP limit

The *FEE-HELP limit* is:

- (a) \$80,000; or
- (b) in relation to a person who is enrolled in a \*course of study in medicine, a \*course of study in dentistry or a \*course of study in veterinary science, while the person is enrolled in that course—\$100,000.

Note: The FEE-HELP limit is indexed under Part 5-6.

#### 3 Application of amendment of FEE-HELP limit

Paragraph 104-20(b) of the *Higher Education Support Act 2003*, as amended by this Schedule, applies only in relation to a person who is enrolled in a course of study mentioned in that paragraph on or after 1 January 2007.

#### **4 Transitional provision**

The amounts in section 104-20 of the *Higher Education Support Act 2003*, as amended by this Schedule, are not to be indexed on 1 January 2007.

#### **5 At the end of subsection 110-5(1)**

Add:

Note: The provider must repay the amount under subsection (1) even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

#### **6 At the end of subsection 137-10(4)**

Add:

Note: The debt is taken to be remitted even if the person's FEE-HELP balance is not increased by an amount equal to the amount re-credited.

#### **7 Clause 1 of Schedule 1**

Insert:

*course of study in dentistry* means a \*course of study, completion of which would satisfy the academic requirements for registration as a dentist by an authority of a State, a Territory or the Commonwealth.

#### **8 Clause 1 of Schedule 1**

Insert:

*course of study in veterinary science* means a \*course of study, completion of which would satisfy the academic requirements for registration as a veterinary surgeon or veterinary practitioner by an authority of a State, a Territory or the Commonwealth.

## **Schedule 3—Setting student contribution amounts and tuition fees**

### **Part 1—Amendments**

#### *Higher Education Support Act 2003*

##### **1 Subsection 19-87(2)**

Repeal the subsection, substitute:

- (2) The provider must determine, for places in the unit, one or more \*student contribution amounts that are to apply to students who may enrol in the unit during the period.
- (2A) In determining more than one \*student contribution amount under subsection (2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must not have regard.

##### **2 Section 19-88**

Repeal the section.

##### **3 Subsections 19-90(2) and (3)**

Repeal the subsections, substitute:

- (2) The provider must determine, for the unit, one or more \*fees that are to apply to students who may enrol in the unit during the period.
- (3) In determining more than one \*fee under subsection (2), the provider may have regard to any matters the provider considers appropriate, other than matters specified in the Higher Education Provider Guidelines as matters to which a provider must not have regard.

##### **4 Section 19-91**

Repeal the section.

##### **5 Paragraph 19-95(2)(a)**

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Repeal the paragraph, substitute:

- (a) ensure that the schedule provides sufficient information to enable a person to work out, for each unit of study the provider provides or is to provide:
  - (i) the person's \*student contribution amount; and
  - (ii) if the provider determined more than one student contribution amount for places in a unit under section 19-87—which of those student contribution amounts applies to the person; and
- (aa) ensure that the schedule provides sufficient information to enable a person to work out, for each unit of study the provider provides or is to provide:
  - (i) the person's \*tuition fee; and
  - (ii) if the provider determined more than one tuition fee for a unit under section 19-90—which of those tuition fees applies to the person; and

## **6 Sections 19-97 and 19-101**

Repeal the sections.

## **7 Section 19-105**

Repeal the section, substitute:

### **19-105 Meaning of *tuition fee***

A person's *tuition fee* for a unit of study is:

- (a) if only one fee has been determined for the unit under subsection 19-90(2)—that fee; or
- (b) if more than one fee has been determined for the unit under that subsection—the fee determined under that subsection that applies to the person.

## **8 Subsection 93-5(1)**

Repeal the subsection, substitute:

- (1) A person's *student contribution amount* for a unit of study is the amount worked out as follows:

$$\frac{\text{The person's student contribution amount for a place in the unit}}{\text{The *EFTSL value of the unit}}$$

where the person's *student contribution amount for a place* in the unit is:

- (a) if only one student contribution amount has been determined for places in the unit under subsection 19-87(2)—that student contribution amount; or
- (b) if more than one student contribution amount has been determined for places in the unit under that subsection—the student contribution amount determined under that subsection that applies to the person.

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

Repeal the subsection, substitute:

- (2) \*Open Universities Australia must determine, for the unit, one or more \*fees that are to apply to students to whom Open Universities Australia provides access to the unit during the period.
- (2AA) In determining more than one \*fee under subsection (2), \*Open Universities Australia may have regard to any matters Open Universities Australia considers appropriate, other than matters specified in the FEE-HELP Guidelines as matters to which Open Universities Australia must not have regard.

## **10 Clause 1 of Schedule 1 (definition of *student cohort*)**

Repeal the definition.

## **11 Clause 1 of Schedule 1 (paragraph (b) of the definition of *Tuition fee*)**

Repeal the paragraph, substitute:

- (b) in relation to a unit of study access to which is provided by Open Universities Australia—means:
  - (i) if only one fee has been determined for the unit under subsection 104-4(2)—that fee; or
  - (ii) if more than one fee has been determined for the unit under that subsection—the fee determined under that subsection that applies to the person.

## Part 2—Saving provisions

### 12 Saving provision relating to substitution of subsection 19-90(3) (determination of different tuition fees for different courses)

If, immediately before subsection 19-90(3) of the *Higher Education Support Act 2003* was repealed and substituted by this Schedule, a determination made in accordance with that subsection had effect, the determination is taken to continue in effect as if it had been made in accordance with subsection 19-90(3) of that Act as in force after the commencement of this Schedule.

### 13 Saving provision for determinations of student contribution amounts for student cohorts

- (1) This item applies to a determination (the *saved determination*) made by a higher education provider under section 19-88 of the *Higher Education Support Act 2003* before that section was repealed by this Schedule.
- (2) Section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by this Schedule.
- (3) The definition, in subsection 93-5(1) of the *Higher Education Support Act 2003*, of a person's *student contribution amount* for a unit is modified, if:
  - (a) the person is in the student cohort to which the saved determination relates; and
  - (b) the saved determination has not been revoked under subitem (4); and
  - (c) the unit forms part of a course of study with the provider who made the saved determination; and
  - (d) the person is undertaking the unit with the provider; and
  - (e) the person satisfies any conditions that apply to the cohort under the saved determination;

so that the person's *student contribution amount for a place* in the unit is the student contribution amount for the unit specified in the saved determination.

- (4) The provider may revoke the saved determination if the provider:
  - (a) does so:
    - (i) before the date set out in the Higher Education Provider Guidelines; and
    - (ii) in the circumstances (if any) specified in the Higher Education Provider Guidelines; or
  - (b) does so with the written approval of the Minister.
- (5) From the time the provider revokes the saved determination, a determination in effect under section 19-87 starts to apply, according to its terms, to the students who were in the cohort.
- (6) Before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to revoke the determination.
- (7) The Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters:
  - (a) required or permitted by this item to be provided; or
  - (b) necessary or convenient to be provided in order to carry out or give effect to this item.
- (8) Expressions used in this item that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.

#### **14 Saving provision for determinations of tuition fees for student cohorts**

- (1) This item applies to a determination (the *saved determination*) made by a higher education provider under section 19-91 of the *Higher Education Support Act 2003* before that section was repealed by this Schedule.
- (2) Section 19-97 of the *Higher Education Support Act 2003* continues to apply in relation to the saved determination despite the repeal of that section by this Schedule.
- (3) The definition, in section 19-105 of the *Higher Education Support Act 2003*, of a person's *tuition fee* for a unit is modified, if:
  - (a) the person is in the student cohort to which the saved determination relates; and

**Schedule 3** Setting student contribution amounts and tuition fees

**Part 2** Saving provisions

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- (b) the saved determination has not been revoked under subitem (4); and
  - (c) the unit forms part of a course of study with the provider who made the saved determination; and
  - (d) the person is undertaking the unit with the provider; and
  - (e) the person satisfies any conditions that apply to the cohort under the saved determination;
- so that the person's *tuition fee* for the unit is the fee for the unit specified in the saved determination.
- (4) The provider may revoke the saved determination if the provider:
    - (a) does so:
      - (i) before the date set out in the Higher Education Provider Guidelines; and
      - (ii) in the circumstances (if any) specified in the Higher Education Provider Guidelines; or
    - (b) does so with the written approval of the Minister.
  - (5) From the time the provider revokes the saved determination, a determination in effect under section 19-90 starts to apply, according to its terms, to the students who were in the cohort.
  - (6) Before revoking the saved determination, the provider must notify the students who are in the cohort of the provider's intention to revoke the determination.
  - (7) The Higher Education Provider Guidelines made under the *Higher Education Support Act 2003* may provide for matters:
    - (a) required or permitted by this item to be provided; or
    - (b) necessary or convenient to be provided in order to carry out or give effect to this item.
  - (8) Expressions used in this item that are defined in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.
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## Schedule 4—Rounding in calculation of HELP debts

### *Higher Education Support Act 2003*

#### **1 Subsection 140-5(1) (method statement, step 2)**

Repeal the step, substitute:

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Step 2.</i> Take the HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year. Group them according to whether the debts are in relation to:</p> <ul style="list-style-type: none"><li>(a) units undertaken with a *higher education provider that formed part of one particular *course of study with that provider; or</li><li>(b) units undertaken with a higher education provider that formed part of one particular course of study with another provider; or</li><li>(c) units that formed part of one particular *bridging course for overseas-trained professionals; or</li><li>(d) units access to which was provided by *Open Universities Australia; or</li><li>(e) *OS-HELP assistance, the entitlement to which relates to the person's enrolment in an *undergraduate course of study with one particular higher education provider (see paragraph 118-1(1)(c)).</li></ul> <p>Note: There will be more than one group of debts under paragraph (a) if the person incurred debts in relation to more than one course of study with a provider. Similarly, there could be more than one group of debts under paragraph (b), (c) or (e).</p> <p><i>Step 2A.</i> Work out the total for each group of debts. If the total for a particular group is an amount consisting of a number of</p> |
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whole dollars and a number of cents, the total for that group is taken to be the number of whole dollars. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

*Step 2B.* If there is more than one group of debts for the person, add together the totals for all of the groups.

**2 Subsection 140-5(1) (method statement, step 3)**

Omit “in steps 1 and 2”, substitute “above”.

**3 Subsection 140-25(1) (definition of *HELP debts incurred*)**

Repeal the definition (but not the example), substitute:

*HELP debts incurred* means the amount worked out using the method statement in subsection (1A).

**4 After subsection 140-25(1)**

Insert:

(1A) For the purposes of the definition of *HELP debts incurred* in subsection (1), use the following method statement:

*Step 1.* Take the HELP debts (if any) that the person incurred during the first 6 months of the financial year. Group them according to whether the debts are in relation to:

- (a) units undertaken with a \*higher education provider that formed part of one particular \*course of study with that provider; or
- (b) units undertaken with a higher education provider that formed part of one particular course of study with another provider; or
- (c) units that formed part of one particular \*bridging course for overseas-trained professionals; or
- (d) units access to which was provided by \*Open Universities Australia; or

- (e) \*OS-HELP assistance, the entitlement to which relates to the person's enrolment in an \*undergraduate course of study with one particular higher education provider (see paragraph 118-1(1)(c)).

Note: There will be more than one group of debts under paragraph (a) if the person incurred debts in relation to more than one course of study with a provider. Similarly, there could be more than one group of debts under paragraph (b), (c) or (e).

*Step 2.* Work out the total for each group of debts. If the total for a particular group is an amount consisting of a number of whole dollars and a number of cents, the total for that group is taken to be the number of whole dollars. If the total for a group is an amount of less than one dollar, the total for the group is taken to be zero.

*Step 3.* If there is more than one group of debts for the person, add together the totals for all of the groups.

## **5 Application of amendments**

The amendments made by this Schedule apply to the calculation of HELP debts incurred on or after 1 January 2005.

## **Schedule 5—Repeal of the Higher Education (HECS) Account**

### *Higher Education Funding Act 1988*

#### **1 Subsection 34(1) (definition of *Account*)**

Repeal the definition.

#### **2 Part 4.3**

Repeal the Part.

## **Schedule 6—Winter schools**

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

#### **1 Paragraph 36-10(7)(a)**

After “*period*”, insert “or a winter school period (the *current winter school period*)”.

Note: The heading to subsection 36-10(7) is altered by inserting “*or winter*” after “*summer*”.

#### **2 Subsection 36-10(8)**

After “current summer school period”, insert “or current winter school period”.

#### **3 Subsection 36-10(8)**

After “a summer school period”, insert “or winter school period”.

#### **4 Subsection 36-10(9)**

Repeal the subsection, substitute:

- (9) The higher education provider must make the determination:
- (a) before the start of the current summer school period, if the determination relates to a unit undertaken during a summer school period; or
  - (b) before the start of the current winter school period, if the determination relates to a unit undertaken during a winter school period.

#### **5 Subsection 36-10(10)**

Insert:

*winter school period* means a period that starts on or after 1 June in a year and ends on or before 31 August in that year.

## Schedule 7—Electronic communications

### *Higher Education Support Act 2003*

#### **1 Sections 174-5, 174-10, 174-15, 174-20 and 174-25**

Repeal the sections, substitute:

#### **174-5 Guidelines may deal with electronic communications**

- (1) The Administration Guidelines may make provision for or in relation to requiring or permitting information or documents to be given by students to higher education providers, or by higher education providers to students, in accordance with particular information technology requirements:
  - (a) on a particular kind of data storage device; or
  - (b) by means of a particular kind of electronic communication.
- (2) The Administration Guidelines may make provision for or in relation to requiring, in relation to an electronic communication from a student to a higher education provider:
  - (a) that the communication contain an electronic signature (however described); or
  - (b) that the communication contain a unique identification in an electronic form; or
  - (c) that a particular method be used to identify the originator of the communication and to indicate the originator's approval of the information communicated.
- (3) The reference in subsection (1) to giving information includes a reference to anything that is *giving information* for the purposes of section 9 of the *Electronic Transactions Act 1999*.
- (4) In this section:

*data storage device* has the same meaning as in the *Electronic Transactions Act 1999*.

*electronic communication* has the same meaning as in the *Electronic Transactions Act 1999*.

**information** has the same meaning as in the *Electronic Transactions Act 1999*.

**information technology requirements** has the same meaning as in the *Electronic Transactions Act 1999*.

## **Schedule 8—Regulation of higher education in external territories**

### *Higher Education Support Act 2003*

#### **1 At the end of Division 217**

Add:

##### **217-5 The Higher Education in External Territories Guidelines**

Matters relating to the provision of higher education in the external Territories are also dealt with in the Higher Education in External Territories Guidelines.

Note: The Higher Education in External Territories Guidelines are made by the Minister under section 238-10.

#### **2 Section 225-1**

Before “A person”, insert “(1)”.

#### **3 At the end of section 225-1**

Add:

- (2) An application under this section:
  - (a) must be in the form approved by the Minister; and
  - (b) must be accompanied by the information (if any) specified in the Higher Education in External Territories Guidelines.
- (3) The Higher Education in External Territories Guidelines may provide for matters relating to applications under this section, including matters relating to either or both of the following:
  - (a) requests by the Minister for further information;
  - (b) processes and deadlines that applicants must comply with.

#### **4 Paragraphs 225-5(b), 225-10(b), 225-20(1)(b) and 225-20(2)(b)**

After “Protocols”, insert “and any matters set out in the Higher Education in External Territories Guidelines”.

**5 Subsection 225-25(1)**

Omit “The regulations”, substitute “The Higher Education in External Territories Guidelines”.

**6 Paragraph 225-25(1)(a)**

Omit “prescribe”, substitute “set out”.

**7 Subsection 225-25(2)**

Omit “in the regulations”, substitute “in the Higher Education in External Territories Guidelines”.

**8 Subsection 225-25(2)**

Omit “as the regulations”, substitute “as the Guidelines”.

**9 Subsection 238-10(1) (after table item 6)**

Insert:

6A	Higher Education in External Territories Guidelines	Chapter 6
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## **Schedule 9—Amounts relating to research funding**

### ***Australian Research Council Act 2001***

#### **1 Paragraph 49(g)**

Omit “\$560,569,000”, substitute “\$570,302,000”.

#### **2 Paragraph 49(h)**

Omit “\$550,583,000”, substitute “\$560,314,000”.

#### **3 Paragraph 49(i)**

Omit “\$552,945,000”, substitute “\$562,720,000”.

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*[Minister’s second reading speech made in—  
House of Representatives on 6 September 2006  
Senate on 10 October 2006]*

(118/06)

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