



**Higher Education Support Amendment
(Demand Driven Funding System and
Other Measures) Act 2011**

No. 104, 2011

**An Act to amend the *Higher Education Support Act
2003*, 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 Support Amendment (Demand Driven Funding System and Other Measures) Act 2011

No. 104, 2011

An Act to amend the *Higher Education Support Act 2003*, and for related purposes

[Assented to 26 September 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011*.

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 this Act receives the Royal Assent.	26 September 2011
2. Schedule 1	The day this Act receives the Royal Assent.	26 September 2011
3. Schedule 2	1 January 2012.	1 January 2012
4. Schedule 3	The day this Act receives the Royal Assent.	26 September 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to demand driven funding system

Part 1—Amendments

Higher Education Support Act 2003

1 Section 8-1

Omit “Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider.”, substitute “These grants are paid in relation to Commonwealth supported places.”.

2 Section 27-1

Omit “Amounts of grants are based largely on the number of Commonwealth supported places that the Minister allocates to each provider.”, substitute “These grants are paid in relation to Commonwealth supported places.”.

3 Paragraphs 30-1(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) the provider:
 - (i) is a *Table A provider; and
 - (ii) has entered into a funding agreement with the Commonwealth under section 30-25 in respect of a period that includes that year; or
- (b) all of the following apply:
 - (i) the provider is a higher education provider specified in the Commonwealth Grant Scheme Guidelines as a higher education provider that can be paid grants under this Part;
 - (ii) the Minister has allocated a *number of Commonwealth supported places to the provider for that year under section 30-10;
 - (iii) the provider has entered into a funding agreement with the Commonwealth under section 30-25 in respect of a period that includes that year.

4 Section 30-5

Repeal the section.

5 Subsection 30-10(1)

Repeal the subsection, substitute:

- (1) Before the commencement of a year, the Minister may, for that year, allocate a specified *number of Commonwealth supported places to:
 - (a) a *Table A provider in relation to *designated courses of study; and
 - (b) a higher education provider referred to in subparagraph 30-1(1)(b)(i).

Note: The Minister does not allocate places to Table A providers in relation to non-designated courses of study.

6 Subsection 30-10(3)

Repeal the subsection.

7 At the end of section 30-10

Add:

- (5) If the allocation made under subsection (1) is made in writing, the allocation is not a legislative instrument.

8 After section 30-10

Insert:

30-12 Designated courses of study

- (1) Each of the following are *designated courses of study* in relation to a *Table A provider:
 - (a) non-research *postgraduate courses of study;
 - (b) *courses of study in medicine;
 - (c) courses of study specified by the Minister under subsection (2).
- (2) The Minister may, by legislative instrument, specify *courses of study for the purposes of paragraph (1)(c).

9 Before paragraph 30-25(3)(a)

Insert:

- (aa) the *number of Commonwealth supported places allocated to the provider under section 30-10 for the grant year; and

10 At the end of Subdivision 30-C

Add:

30-27 Funding agreement may specify maximum basic grant amounts

- (1) A funding agreement may:
 - (a) for a higher education provider that is a *Table A provider—specify a *maximum basic grant amount* payable to the provider for a grant year for:
 - (i) *designated courses of study; and
 - (ii) *non-designated courses of study; and
 - (b) for a higher education provider that is not a Table A provider—specify a *maximum basic grant amount* payable to the provider for a grant year.

Table A providers—maximum basic grant amounts for designated courses of study

- (2) The *maximum basic grant amount for a *Table A provider for *designated courses of study must not be less than the amount worked out under subsection 33-5(4) for the provider for the grant year.

Table A providers—maximum basic grant amounts for non-designated courses of study

- (3) The *maximum basic grant amount for a *Table A provider for *non-designated courses of study must not be less than:
 - (a) if a maximum basic grant amount was specified in the provider's funding agreement for the preceding year for non-designated courses of study—the amount that was so specified; or
 - (b) if a maximum basic grant amount was not specified in the provider's funding agreement for the preceding year for

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non-designated courses of study—the amount worked out under paragraph 33-5(5)(a) for the provider for the preceding year.

Non-Table A providers—maximum basic grant amounts

- (4) The *maximum basic grant amount for a provider that is not a *Table A provider must not be less than the amount worked out under subsection 33-5(8) for the provider for the grant year.

11 Paragraph 33-1(1)(b)

Repeal the paragraph.

12 Paragraph 33-1(1)(c)

Repeal the paragraph, substitute:

(b) adding:

- (i) the amount of any regional loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year; and
- (ii) the amount of any medical student loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year; and
- (iii) the amount of any enabling loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year; and
- (iv) the amount of any transitional loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year; and
- (v) the amount of any performance funding grant amount worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year.

13 Subsection 33-1(1A)

Repeal the subsection.

14 Section 33-5

Repeal the section, substitute:

33-5 Basic grant amounts

- (1) This section sets out how to work out the *basic grant amount* for a higher education provider for a year.

Basic grant amounts for Table A providers

- (2) For a *Table A provider, the *basic grant amount for a year is the sum of:
- (a) the amount for *designated courses of study (see subsection (3)); and
 - (b) the amount for *non-designated courses of study (see subsections (5) and (6)).

Table A providers—amount for designated courses of study

- (3) For the purposes of paragraph (2)(a), the amount for *designated courses of study is the lesser of:
- (a) the sum of the amounts worked out, for each *funding cluster in which the provider has provided places in *designated courses of study, by multiplying:
 - (i) the *number of Commonwealth supported places provided by the provider in designated courses of study in that funding cluster; by
 - (ii) the *Commonwealth contribution amount for a place in that funding cluster; and
 - (b) either:
 - (i) if there is a *maximum basic grant amount specified in the provider's funding agreement for designated courses of study—that specified amount; or
 - (ii) if there is no maximum basic grant amount specified in the provider's funding agreement for designated courses of study—the amount worked out under subsection (4).
- (4) For the purposes of subparagraph (3)(b)(ii), the amount is the sum of the amounts worked out, for each *funding cluster to which the Minister has allocated places to the provider under section 30-10, by multiplying:
- (a) the *number of Commonwealth supported places allocated to that funding cluster; by

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- (b) the *Commonwealth contribution amount for a place in that funding cluster.

Table A providers—amount for non-designated courses of study

- (5) For the purposes of paragraph (2)(b) and subject to subsection (6), the amount for *non-designated courses of study is the lesser of:
 - (a) the sum of the amounts worked out, for each *funding cluster in which the provider has provided places in non-designated courses of study, by multiplying:
 - (i) the *number of Commonwealth supported places provided by the provider in non-designated courses of study in that funding cluster; by
 - (ii) the *Commonwealth contribution amount for a place in that funding cluster; and
 - (b) the *maximum basic grant amount specified in the provider's funding agreement in relation to non-designated courses of study.
- (6) If a *maximum basic grant amount is not specified in the provider's funding agreement in relation to *non-designated courses of study, the amount for non-designated courses of study is the amount worked out under paragraph (5)(a).

Basic grant amounts for non-Table A providers

- (7) For a provider that is not a *Table A provider, the *basic grant amount for a year is the lesser of:
 - (a) the sum of the amounts worked out, for each *funding cluster in which the provider has provided places, by multiplying:
 - (i) the *number of Commonwealth supported places provided by the provider in that funding cluster; by
 - (ii) the *Commonwealth contribution amount for a place in that funding cluster; and
 - (b) either:
 - (i) if there is a *maximum basic grant amount specified in the provider's funding agreement—that specified amount; or
 - (ii) if there is no maximum basic grant amount specified in the provider's funding agreement—the amount worked out under subsection (8).

- (8) For the purposes of subparagraph (7)(b)(ii), the amount is the sum of the amounts worked out, for each *funding cluster to which the Minister has allocated places to the provider under section 30-10, by multiplying:
- (a) the *number of Commonwealth supported places allocated to that funding cluster; by
 - (b) the *Commonwealth contribution amount for a place in that funding cluster.

15 Subdivision 33-C (heading)

Repeal the heading.

16 Section 33-25

Repeal the section.

17 At the end of section 33-30

Add:

- (3) To work out the *number of Commonwealth supported places that a higher education provider has provided as mentioned in an item of column 1 of the following table, apply the method statement in subsection (1) to the units of study mentioned in column 2 of that item.

Item	Column 1	Column 2
	To work out the number of Commonwealth supported places provided in ...	apply the method statement in subsection (1) to ...
1	a *funding cluster	units provided by the provider in the funding cluster.
2	*designated courses of study in a funding cluster	units provided by the provider in the funding cluster in designated courses of study.
3	*non-designated courses of study in a funding cluster	units provided by the provider in the funding cluster in non-designated courses of study.

18 Before section 33-37

Insert:

Subdivision 33-C—Adjustments

19 Subsection 33-37(2) (formula)

Repeal the formula, substitute:

Reduction amount × Total places provided

20 Subsection 33-37(2) (definition of *total places allocated*)

Repeal the definition.

21 Subsection 33-37(2)

Insert:

total places provided is the total *number of Commonwealth supported places provided by the higher education provider for the grant year.

22 Subsection 33-40(1)

Omit “may determine”, substitute “may, if an amount has been specified under subsection (3A), determine”.

23 Subsection 33-40(3)

Omit “set out in section 30-5 in respect of the following year”, substitute “specified by the Minister under subsection (3A)”.

24 After subsection 33-40(3)

Insert:

(3A) The Minister may, by legislative instrument, specify an amount for the purposes of subsection (3).

25 Paragraph 36-10(1)(a)

Omit “a *number of Commonwealth supported places has been allocated to the provider under section 30-10”, substitute “the provider has entered into a funding agreement under section 30-25”.

26 Subsection 41-10(1) (table item 12)

Repeal the item, substitute:

- | | | |
|----|--|--|
| 12 | Grants to assist higher education providers with the transitional costs of changes to maximum student contribution amounts | Higher education providers that have provided Commonwealth-supported places for any year |
|----|--|--|

27 Subparagraph 46-13(c)(ii)

Omit “subparagraph 30-1(1)(a)(ii)”, substitute “subparagraph 30-1(1)(b)(i)”.

28 Subsection 46-15(1)

Omit “subparagraph 30-1(1)(a)(ii)”, substitute “subparagraph 30-1(1)(b)(i)”.

29 Subclause 1(1) of Schedule 1, (definition of *corrected basic amount*)

Repeal the definition.

30 Subclause 1(1) of Schedule 1

Insert:

designated courses of study has the meaning given by subsection 30-12(1).

31 Subclause 1(1) of Schedule 1

Insert:

maximum basic grant amount has the meaning given by subsection 30-27(1).

32 Subclause 1(1) of Schedule 1

Insert:

non-designated courses of study means *courses of study other than *designated courses of study.

Part 2—Application, savings and transitional provisions

33 Definitions

In this Part:

commencement means the commencement of this Schedule.

new Act means the *Higher Education Support Act 2003* as in force on and after commencement.

old Act means the *Higher Education Support Act 2003* as in force immediately before commencement.

34 Application of amendments—general

The amendments made by this Schedule apply in relation to the year commencing on 1 January 2012 or a later year.

35 Transitional—maximum basic grant amount for non-designated courses of study for Table A providers for 2012

For the purposes of working out the amount mentioned in paragraph 30-27(3)(b) of the new Act for the year 2012, the amount is to be worked out as if paragraph 33-5(5)(a) of the new Act applied to the year 2011.

36 Transitional—adjustment of basic grant amount for 2012

A higher education provider's basic grant amount for the year 2012 (as worked out under the new Act) is to be adjusted as if the amendments made by items 11, 15, 16 and 18 of this Schedule had not been made.

Note: Adjustments of basic grant amounts for 2011 or an earlier year are not affected by the amendments in this Schedule.

Schedule 2—Amendments relating to student learning entitlement

Part 1—Amendments

Higher Education Support Act 2003

1 Section 3-10

Omit “Chapter 3 also provides for the Student Learning Entitlement.”.

2 Subparagraph 19-45(1)(c)(i)

Omit “36-22”, substitute “36-20”.

3 Paragraph 19-45(4)(a)

Omit “36-22”, substitute “36-20”.

4 Paragraph 19-50(1)(a)

Omit “36-22”, substitute “36-20”.

5 Paragraph 19-50(2)(c)

Omit “36-22”, substitute “36-20”.

6 Subsection 19-60(1)

Omit “36-22”, substitute “36-20”.

7 Paragraph 33-30(2)(b)

Omit “73-15(2)”, substitute “169-28(2)”.

8 Paragraph 36-10(1)(d)

Repeal the paragraph.

9 Sections 36-20, 36-22, 36-22A and 36-23

Repeal the sections, substitute:

36-20 Providers to repay amounts—special circumstances

- (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 that provider or another higher education provider; and
 - (c) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (d) the provider is satisfied that special circumstances apply to the person (see section 36-21); and
 - (e) the person applies in writing to that provider for either or both:
 - (i) the repayment of any amounts that the person paid in relation to his or her *student contribution amount for the unit; or
 - (ii) the remission of the person's *HECS-HELP debt in relation to the unit; and
 - (f) either:
 - (i) the application is made before the end of the application period under section 36-22; or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.
- Note 1: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(4).
- Note 2: A decision that this section does not apply to a person is reviewable under Part 5-7.
- (2) If the provider determines that this section applies to a person, 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) Subsection (2) does not apply to the provider if:
 - (a) the person enrolled in the unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements; or
 - (b) it is determined that section 36-24A applies to the person.
- (4) The Higher Education Provider Guidelines may, in setting out the *tuition assurance requirements, specify, in relation to circumstances to which paragraph (3)(a) 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) If a determination made under subsection (1) is made in writing, the determination is not a legislative instrument.

36-21 Special circumstances

- (1) For the purposes of paragraph 36-20(1)(d), special circumstances apply to the person if and only if the higher education provider is satisfied that circumstances apply to the person that:
 - (a) are beyond the person's control; and
 - (b) do not make their full impact on the person until on or after the *census date for the unit of study; and
 - (c) make it impracticable for the person to complete the requirements for the unit during the period during which the person undertook, or was to undertake, the unit.
- (2) The Administration Guidelines may specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph (1)(a), (b) or (c). A decision of a higher education provider under this section must be in accordance with any such guidelines.

Note: Guidelines made for the purposes of this subsection also have effect for the purposes of subsection 104-30(2) (re-crediting a person's FEE-HELP balance).

36-22 Application period

- (1) For the purposes of subparagraph 36-20(1)(f)(i), if:
 - (a) the person has withdrawn his or her enrolment in the unit of study; and
 - (b) the higher education provider gives notice to the person that the withdrawal has taken effect;the application period for the application is the period of 12 months after the day specified in the notice as the day the withdrawal takes effect.
- (2) If subsection (1) does not apply, the application period for the application is the period of 12 months after the end of the period during which the person undertook, or was to undertake, the unit.

36-23 Dealing with applications

- (1) If:
 - (a) the application under paragraph 36-20(1)(e) is made before the end of the application period under section 36-22; or
 - (b) the higher education provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period;the provider must, as soon as practicable, consider the matter to which the application relates and notify the applicant of the decision on the application.
- (2) The notice must include a statement of the reasons for the decision.

36-24A Providers to repay amounts—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 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

- (d) the *tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
- (e) the person chose the option designated under the tuition assurance requirements as student contribution/tuition 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(4).

- (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) If a determination made under subsection (1) is made in writing, the determination is not a legislative instrument.

36-24B Providers to repay amounts—no tax file numbers

- (1) This section applies to a person if a higher education provider cancels the person's enrolment in a unit of study under subsection 193-5(1).

Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(4).

- (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.

36-24C Secretary may act if provider is unable to

If a higher education provider is unable to act for one or more of the purposes of subsection 36-20(1), section 36-21, 36-22 or 36-23 or subsection 36-24A(1), the *Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary.

10 Paragraph 36-30(1)(a)

Omit “that is *covered by the person’s *Student Learning Entitlement”.

11 Subsection 36-30(3)

Omit “that is *covered by a person’s *Student Learning Entitlement”.

12 Section 65-1

Omit “the Student Learning Entitlement and for”.

13 Section 65-1

Omit all the words from and including “A sufficient” to and including “places that are funded under Part 2-2 (Commonwealth Grants Scheme)”.

14 Part 3-1

Repeal the Part.

15 Paragraph 90-1(d)

Repeal the paragraph.

16 Subsection 104-30(2)

Repeal the subsection, substitute:

- (2) If the Administration Guidelines specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph 36-21(1)(a), (b) or (c), any decision of a higher education provider under this section must be in accordance with any such guidelines.

Note: The matters referred to in paragraphs 36-21(1)(a), (b) and (c) (which relate to special circumstances that apply to repaying an amount of student contribution or HECS-HELP) are identical to the matters referred to in paragraphs (1)(a), (b) and (c) of this section.

17 Subsections 137-5(4) and (5)

Repeal the subsections, substitute:

Remission of HECS-HELP debts

- (4) A person's *HECS-HELP debt in relation to a unit of study is taken to be remitted if section 36-20, 36-24A or 36-24B applies to the person (even if subsection 36-20(3) applies to the provider in relation to the person).

18 Subsection 169-5(4)

Omit "(including the person's *Student Learning Entitlement)".

19 Subsection 169-10(5)

Omit "(including the person's *Student Learning Entitlement)".

20 After section 169-25

Insert:

169-27 Meaning of *EFTSL*

- (1) An *EFTSL* is an equivalent full-time student load for a year. It is a measure, in respect of a *course of study, of the study load for a year of a student undertaking that course of study on a full-time basis.
- (2) A particular amount of *EFTSL* is an amount of study, undertaken with a higher education provider as part of a *course of study, represented by units of study with **EFTSL* values the sum of which equals that amount.

169-28 Meaning of *EFTSL value*

- (1) The *EFTSL value* of a unit of study is the value that the higher education provider with which the unit may be undertaken determines in writing to be the *EFTSL* value of the unit, expressed as a fraction of one **EFTSL*.
- (2) If the unit can form part of more than one *course of study, the provider may determine an *EFTSL* value of the unit for each such course.

Schedule 2 Amendments relating to student learning entitlement

Part 1 Amendments

(3) If a unit of study is subject to separate determinations in relation to different *courses of study, a reference in this Act to the EFTSL value of the unit is, when the unit forms part of such a course, a reference to the EFTSL value of the unit determined under subsection (2) for the course.

(4) Determinations under this section must be in accordance with any requirements set out in the Administration Guidelines.

21 Subsection 193-5(1) (notes 1 and 2)

Repeal the notes, substitute:

Note: If a person's enrolment is cancelled under this section, the provider has certain payment obligations: see section 36-24B.

22 Section 206-1 (table items 1A and 1)

Repeal the items, substitute:

- | | | | |
|----|--|---------------|--|
| 1A | A decision that section 36-20 does not apply to a person | section 36-20 | (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 |
|----|--|---------------|--|

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

Omit "section 36-22", substitute "36-20".

24 Paragraph 238-1(2)(a)

Omit "36-22", substitute "36-20".

25 Subsection 238-10(1) (table item 1)

Omit "Chapter 5", substitute "Section 36-21; Chapter 5".

26 Subsection 238-10(1) (table item 10)

Repeal the item.

27 Subclause 1(1) of Schedule 1 (definition of *additional SLE*)

Repeal the definition.

28 Subclause 1(1) of Schedule 1 (definition of *available*)

Repeal the definition.

29 Subclause 1(1) of Schedule 1 (definition of *covered*)

Repeal the definition.

30 Subclause 1(1) of Schedule 1 (definition of *EFTSL*)

Omit “73-10”, substitute “169-27”.

31 Subclause 1(1) of Schedule 1 (definition of *EFTSL value*)

Omit “73-15”, substitute “169-28”.

32 Subclause 1(1) of Schedule 1 (definition of *eligible person*)

Repeal the definition.

33 Subclause 1(1) of Schedule 1 (definition of *life long SLE*)

Repeal the definition.

34 Subclause 1(1) of Schedule 1 (definition of *ordinary SLE*)

Repeal the definition.

35 Subclause 1(1) of Schedule 1 (definition of *SLE*)

Repeal the definition.

36 Subclause 1(1) of Schedule 1 (definition of *Student Learning Entitlement*)

Repeal the definition.

Part 2—Application, savings and transitional provisions

37 Definitions

In this Part:

commencement means the commencement of this Schedule.

new Act means the *Higher Education Support Act 2003* as in force on and after commencement.

old Act means the *Higher Education Support Act 2003* as in force immediately before commencement.

38 Application of amendments—general

The amendments made by this Schedule apply in relation to units of study whose census dates are on or after 1 January 2012.

39 Saving—review procedures and appointments of review officers

- (1) A review procedure referred to in paragraph 19-45(1)(c) of the old Act that was in force immediately before commencement, so far as it relates to review of decisions made under section 36-22 of the old Act, has effect on and after commencement as if it also related to decisions made under section 36-20 of the new Act.
- (2) An appointment referred to in subsection 19-50(1) of the old Act that was in force immediately before commencement, so far as it relates to review of decisions made under section 36-22 of the old Act, has effect on and after commencement as if it also related to decisions made under section 36-20 of the new Act.

40 Saving—determination of EFTSL values

A determination of an EFTSL value for a unit of study that was in force immediately before commencement under section 73-15 of the old Act has effect on and after commencement as if it were made in accordance with section 169-28 of the new Act.

41 Effect of abolition of SLE on persons who have used some or all of their SLE

To avoid doubt, a person may be enrolled as a Commonwealth supported student on or after commencement regardless of whether the person has, before commencement, used some or all of the person's SLE.

Schedule 3—Other amendments

Part 1—Amendments

Higher Education Support Act 2003

1 At the end of paragraph 2-1(a)

Add:

- (iv) promotes and protects free intellectual inquiry in learning, teaching and research; and

2 At the end of subsection 19-1(1)

Add:

- ; and (f) the *compact and academic freedom requirements (see Subdivision 19-G).

3 At the end of Division 19

Add:

Subdivision 19-G—The compact and academic freedom requirements

19-110 Table A providers and Table B providers must enter into mission based compacts

- (1) A higher education provider that is a *Table A provider or a *Table B provider must, in respect of each year for which a grant is paid to the provider under this Act, enter into a mission based compact with the Commonwealth for a period that includes that year.
- (2) The Minister may, on behalf of the Commonwealth, enter into a mission based compact with a *Table A provider or a *Table B provider.
- (3) The mission based compact must include:
 - (a) a statement of the provider's mission; and
 - (b) a statement of the provider's strategies for teaching and learning; and

- (c) a statement of the provider's strategies for:
- (i) undertaking research; and
 - (ii) research training; and
 - (iii) innovation.

Note: A mission based compact may include other matters.

- (4) The *Secretary must cause a copy of each mission based compact to be published on the Department's website within 28 days after the making of the compact.

19-115 Provider to have policy upholding free intellectual inquiry

A higher education provider that is a *Table A provider or a *Table B provider must have a policy that upholds free intellectual inquiry in relation to learning, teaching and research.

4 Subsection 30-25(4)

Repeal the subsection.

5 After section 30-27

Insert:

30-28 Funding agreement to be published

The *Secretary must cause a copy of each funding agreement to be published on the Department's website within 28 days after the making of the agreement.

6 Section 36-32

Repeal the section.

7 Subclause 1(1) of Schedule 1

Insert:

compact and academic freedom requirements are the requirements set out in Subdivision 19-G.

Part 2—Application, savings and transitional provisions

8 Definitions

In this Part:

commencement means the commencement of this Schedule.

new Act means the *Higher Education Support Act 2003* as in force on and after commencement.

9 Application of amendments—general

The amendments made by this Schedule apply in relation to the year commencing on 1 January 2012 or a later year.

10 Transitional—mission based compacts

- (1) This item applies if:
 - (a) the Minister entered into a mission based compact with a Table A provider or a Table B provider before commencement; and
 - (b) the compact satisfies the requirements of subsection 19-110(3) of the new Act; and
 - (c) the compact is still in force immediately before commencement.
- (2) The compact is taken to have been entered into under section 19-110 of the new Act.
- (3) If it has not previously been published on the Department's website, the Secretary must cause a copy of the compact to be published on the Department's website within 28 days after commencement.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2011
Senate on 4 July 2011]*

(96/11)

Higher Education Support Amendment (Demand Driven Funding System and Other Measures)

Act 2011 No. 104, 2011 27