





# **Education Legislation Amendment (Overseas Debt Recovery) Act 2015**

**No. 154, 2015**

**An Act to amend the *Higher Education Support Act 2003* and the *Trade Support Loans Act 2014*, and for other purposes**

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



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# Education Legislation Amendment (Overseas Debt Recovery) Act 2015

No. 154, 2015

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**An Act to amend the *Higher Education Support Act 2003* and the *Trade Support Loans Act 2014*, and for other purposes**

[Assented to 26 November 2015]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*.

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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>Provisions</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 this Act receives the Royal Assent.	26 November 2015
2. Schedule 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.	1 January 2016 (paragraph (b) applies)
3. Schedule 2, items 1 to 3	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.	1 January 2016 (paragraph (b) applies)
4. Schedule 2, item 4	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.  However, if item 124 of Schedule 2 to the <i>Social Services and Other Legislation Amendment (Student Measures) Act 2015</i> commences before the day after this Act receives the Royal Assent, the provision does not commence at all.	
5. Schedule 2, item 5	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of item 124 of Schedule 2 to the <i>Social</i>	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Services and Other Legislation Amendment (Student Measures) Act 2015.</i>	
	However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 2, items 6 to 10	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.	1 January 2016 (paragraph (b) applies)
7. Schedule 3	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.	1 January 2016 (paragraph (b) applies)
8. Schedule 4	The day this Act receives the Royal Assent.	26 November 2015
9. Schedule 5	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2016.	1 January 2016 (paragraph (b) applies)

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 Schedules**

Legislation 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—Repayment of accumulated HELP debts by overseas debtors**

### **Part 1—Amendments**

#### *Higher Education Support Act 2003*

##### **1 After section 148-1**

Insert:

##### **148-3 The Overseas Debtors Repayment Guidelines**

Repayments by \*foreign residents are also dealt with in the Overseas Debtors Repayment Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Overseas Debtors Repayment Guidelines are made by the Minister under section 238-10.

##### **2 After Subdivision 154-A**

Insert:

##### **Subdivision 154-AA—Liability of overseas debtors to repay amounts**

##### **154-16 Liability of overseas debtors to repay amounts**

If:

- (a) a person is a \*foreign resident during an \*income year; and
  - (b) the person's \*assessed worldwide income for the income year exceeds the \*minimum repayment income for the income year; and
  - (c) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an \*accumulated HELP debt;
- the person is liable to pay to the Commonwealth, in accordance with this Division, a levy of the amount worked out under section 154-32.

Note: An amount a person is liable to pay under this section is imposed as a levy under the *Student Loans (Overseas Debtors Repayment Levy) Act 2015*.

### **154-17 Assessed worldwide income**

- (1) A person's **assessed worldwide income** for an \*income year is an amount equal to the sum of:
  - (a) the person's \*repayment income for the income year; and
  - (b) the person's foreign-sourced income for the income year, converted into Australian currency.
- (2) The Overseas Debtors Repayment Guidelines may provide for how to work out a person's foreign-sourced income for an \*income year, including how to convert it into Australian currency.
- (3) Without limiting subsection (2), the Overseas Debtors Repayment Guidelines may provide for a person's foreign-sourced income for an income year to be worked out in relation to a period that does not correspond to that \*income year.

### **154-18 Notices to be given to the Commissioner**

#### *Notice relating to leaving Australia*

- (1) A person who:
  - (a) has an \*accumulated HELP debt or otherwise has a \*HELP debt that has not yet been discharged; and
  - (b) leaves Australia (other than in circumstances specified in the Overseas Debtors Repayment Guidelines) with the intention of remaining outside Australia for at least 183 days;must, no later than 7 days after leaving Australia, give a notice to the \*Commissioner in the \*approved form.

#### *Notice relating to absence from Australia*

- (2) A person who:
  - (a) has an \*accumulated HELP debt or otherwise has a \*HELP debt that has not yet been discharged; and
  - (b) has been outside Australia for at least 183 days (other than in circumstances specified in the Overseas Debtors Repayment Guidelines) in any 12 month period; and

(c) was not required under subsection (1) to give a notice to the \*Commissioner in connection with that absence from Australia;

must, no later than 7 days after the end of those 183 days, give a notice to the Commissioner in the \*approved form.

*Notice relating to income (including foreign-sourced income)*

(3) A person who:

(a) is a \*foreign resident; and

(b) on 1 June immediately preceding an \*income year, had an \*accumulated HELP debt;

must (other than in circumstances specified in the Overseas Debtors Repayment Guidelines) give to the \*Commissioner, in the \*approved form, a notice relating to the person's income (including foreign-sourced income) for the income year. The notice must be given within the period specified in the form.

Note: The Commissioner may defer the time for giving the return: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

*Content of notices under this section*

(4) The Overseas Debtors Repayment Guidelines may provide for the content of notices under this section.

### **3 At the end of Subdivision 154-B**

Add:

#### **154-32 Amounts payable to the Commonwealth by overseas debtors**

The amount of levy that a person is liable to pay under section 154-16, in respect of an \*income year, is an amount equal to the difference between:

(a) the amount that the person would have been liable to pay under section 154-1 if:

(i) the person had a \*repayment income for the income year of an amount equal to the person's \*assessed worldwide income for the income year; and

(ii) subsection 154-1(2) did not apply to the person; and

(b) the amount (if any) the person is liable to pay under section 154-1, in respect of the income year.

**4 Paragraph 154-35(b)**

After “section 154-1”, insert “or 154-16”.

**5 At the end of Subdivision 154-D**

Add:

**154-90 Failures to comply with section 154-18**

Part III of the *Taxation Administration Act 1953* applies in relation to a failure to comply with section 154-18 of this Act as if that section were a taxation law (within the meaning of section 2 of that Act).

**6 Subsection 238-10(1) (after table item 8)**

Insert:

8A Overseas Debtors Repayment Guidelines Part 4-2

**7 Subclause 1(1) of Schedule 1**

Insert:

*assessed worldwide income* has the meaning given by section 154-17.

**8 Subclause 1(1) of Schedule 1 (paragraph (a) of the definition of *compulsory repayment amount*)**

After “section 154-1”, insert “or 154-16”.

**9 Subclause 1(1) of Schedule 1**

Insert:

*foreign resident* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

## **Part 2—Application provisions**

### **10 Application of amendments**

Except as provided by this Part, the amendments made by this Schedule apply in relation to the 2016-17 income year and later income years.

### **11 Application of subsections 154-18(1) and (2)**

- (1) Subsections 154-18(1) and (2) of the *Higher Education Support Act 2003*, as inserted by this Act, apply:
  - (a) to persons who leave Australia after the commencement of this item; and
  - (b) subject to subitem (2), to persons who, immediately before that commencement, were outside Australia.
- (2) If, immediately before the commencement of this item, a person was outside Australia, subsection 154-18(2) of the *Higher Education Support Act 2003*, as inserted by this Act, applies in relation to that absence from Australia (but not in relation to any later absence starting after that commencement) as if:
  - (a) the 183 days referred to in paragraph 154-18(2)(b) of that Act as so inserted were days occurring after that commencement; and
  - (b) that subsection as so inserted required the person to notify the Commissioner no later than 1 July 2017.

## **Schedule 2—Repayment of accumulated TSL debts by overseas debtors**

### **Part 1—Amendments**

#### ***Trade Support Loans Act 2014***

##### **1 Section 5**

Insert:

*assessed worldwide income* has the meaning given by section 47B.

##### **2 Section 5 (paragraph (a) of the definition of *compulsory TSL repayment amount*)**

After “section 46”, insert “or 47A”.

##### **3 Section 5**

Insert:

*foreign resident* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

##### **4 Subsection 46(1) (definition of *HELP liability*)**

Omit “any amount the person is liable to pay under section 154-1”, substitute “the sum of any amounts the person is liable to pay under section 154-1 or 154-16”.

##### **5 Subsection 46(1) (paragraph (a) of the definition of *relevant income-contingent loans liability*)**

Omit “any amount the person is liable to pay under section 154-1”, substitute “the sum of any amounts the person is liable to pay under section 154-1 or 154-16”.

##### **6 After Subdivision A of Division 4 of Part 3-2**

Insert:

## Subdivision AA—Liability of overseas debtors to repay amounts

### 47A Liability of overseas debtors to repay amounts

- (1) If:
- (a) a person is a foreign resident during an income year; and
  - (b) the person's assessed worldwide income for the income year exceeds the minimum repayment income for the income year; and
  - (c) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an accumulated TSL debt;
- the person is liable to pay to the Commonwealth, in accordance with this Division, a levy of the amount worked out under subsection (2).

Note: An amount a person is liable to pay under this section is imposed as a levy under the *Student Loans (Overseas Debtors Repayment Levy) Act 2015*.

- (2) The amount of levy that a person is liable to pay under this section, in respect of an income year, is an amount equal to the difference between:
- (a) the amount that the person would have been liable to pay under section 46 if:
    - (i) the person had a repayment income for the income year of an amount equal to the person's assessed worldwide income for the income year; and
    - (ii) subsection 46(3) did not apply to the person; and
  - (b) the amount (if any) the person is liable to pay under section 46, in respect of the income year.

### 47B Assessed worldwide income

- (1) A person's *assessed worldwide income* for an income year is an amount equal to the sum of:
- (a) the person's repayment income for the income year; and
  - (b) the person's foreign-sourced income for the income year, converted into Australian currency.

- (2) The rules may provide for how to work out a person's foreign-sourced income for an income year, including how to convert it into Australian currency.
- (3) Without limiting subsection (2), the rules may provide for a person's foreign-sourced income for an income year to be worked out in relation to a period that does not correspond to that income year.

#### **47C Notices to be given to the Commissioner**

##### *Notice relating to leaving Australia*

- (1) A person who:
  - (a) has an accumulated TSL debt or otherwise has a TSL debt that has not yet been discharged; and
  - (b) leaves Australia (other than in circumstances specified in the rules) with the intention of remaining outside Australia for at least 183 days;must, no later than 7 days after leaving Australia, give a notice to the Commissioner in the approved form.

##### *Notice relating to absence from Australia*

- (2) A person who:
  - (a) has an accumulated TSL debt or otherwise has a TSL debt that has not yet been discharged; and
  - (b) has been outside Australia for at least 183 days (other than in circumstances specified in the rules) in any 12 month period; and
  - (c) was not required under subsection (1) to give a notice to the Commissioner in connection with that absence from Australia;must, no later than 7 days after the end of those 183 days, give a notice to the Commissioner in the approved form.

##### *Notice relating to income (including foreign-sourced income)*

- (3) A person who:
  - (a) is a foreign resident; and

(b) on 1 June immediately preceding an income year, had an accumulated TSL debt;

must (other than in circumstances specified in the rules) give to the Commissioner, in the approved form, a notice relating to the person's income (including foreign-sourced income) for the income year. The notice must be given within the period specified in the form.

Note: The Commissioner may defer the time for giving the return: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

*Content of notices under this section*

(4) The rules may provide for the content of notices under this section.

**7 Paragraph 48(b)**

After "section 46", insert "or 47A".

**8 After section 56**

Insert:

**56A Failures to comply with section 47C**

Part III of the *Taxation Administration Act 1953* applies in relation to a failure to comply with section 47C of this Act as if that section were a taxation law (within the meaning of section 2 of that Act).

## **Part 2—Application provisions**

### **9 Application of amendments**

Except as provided by this Part, the amendments made by this Schedule apply in relation to the 2016-17 income year and later income years.

### **10 Application of subsections 47C(1) and (2)**

- (1) Subsections 47C(1) and (2) of the *Trade Support Loans Act 2014*, as inserted by this Act, apply:
  - (a) to persons who leave Australia after the commencement of this item; and
  - (b) subject to subitem (2), to persons who, immediately before that commencement, were outside Australia.
- (2) If, immediately before the commencement of this item, a person was outside Australia, subsection 47C(2) of the *Trade Support Loans Act 2014*, as inserted by this Act, applies in relation to that absence from Australia (but not in relation to any later absence starting after that commencement) as if:
  - (a) the 183 days referred to in paragraph 47C(2)(b) of that Act as so inserted were days occurring after that commencement; and
  - (b) that subsection as so inserted required the person to notify the Commissioner no later than 1 July 2017.

## Schedule 3—Tax file numbers

### *Higher Education Support Act 2003*

#### **1 Paragraph 187-1(1)(a)**

Repeal the paragraph, substitute:

- (a) the student notifies his or her \*tax file number to:
  - (i) an \*appropriate officer of the provider; and
  - (ii) the \*Secretary;and the provider is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or

#### **2 Paragraph 187-1(1A)(a)**

Repeal the paragraph, substitute:

- (a) the student notifies his or her \*tax file number to:
  - (i) an \*appropriate officer of Open Universities Australia; and
  - (ii) the \*Secretary;and Open Universities Australia is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or

#### **3 Paragraph 187-1(3B)(a)**

Repeal the paragraph, substitute:

- (a) the student notifies his or her \*tax file number to:
  - (i) an \*appropriate officer of the provider; and
  - (ii) the \*Secretary;and the provider is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or

#### **4 Paragraph 187-5(1)(a)**

Repeal the paragraph, substitute:

- (a) the student notifies his or her \*tax file number to:
  - (i) an \*appropriate officer of the higher education provider; and
  - (ii) the \*Secretary;

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within 21 days from the day on which the \*Commissioner issues the tax file number to the student; and

**5 Paragraph 187-5(2)(a)**

Repeal the paragraph, substitute:

(a) the student notifies his or her \*tax file number to:

(i) an \*appropriate officer of \*Open Universities Australia;  
and

(ii) the \*Secretary;

within 21 days from the day on which the \*Commissioner issues the tax file number to the student; and

**6 Division 190 (heading)**

Repeal the heading, substitute:

**Division 190—Who can the Commissioner notify of tax file number matters?****7 Subsections 190-1(1) and (2) and 190-5(1)**

Before “written notice”, insert “, and to the \*Secretary,”.

**8 At the end of subsection 190-5(2)**

Add “and to the \*Secretary”.

**9 Subsection 190-5(3)**

Before “written notice”, insert “, and to the \*Secretary,”.

**10 At the end of subsection 190-5(4)**

Add “and to the \*Secretary”.

**11 Paragraph 190-10(1)(a)**

After “higher education provider”, insert “or the \*Secretary (or both)”.

**12 Subsection 190-10(1)**

After “the provider”, insert “and the Secretary”.

**13 At the end of subsection 190-10(2)**

Add “and to the \*Secretary”.

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**14 Paragraph 190-10(3)(a)**

After “\*Open Universities Australia”, insert “or the \*Secretary (or both)”.

**15 Subsection 190-10(3)**

After “Open Universities Australia”, insert “and the Secretary”.

**16 At the end of subsection 190-10(4)**

Add “and to the \*Secretary”.

**17 Paragraph 190-15(1)(a)**

After “higher education provider”, insert “or the \*Secretary (or both)”.

**18 Subsection 190-15(1)**

Omit “a written notice informing the provider”, substitute “and the Secretary a written notice informing the provider and the Secretary”.

**19 Paragraph 190-15(1A)(a)**

After “\*Open Universities Australia”, insert “or the \*Secretary (or both)”.

**20 Subsection 190-15(1A)**

Omit “a written notice informing Open Universities Australia”, substitute “and the Secretary a written notice informing Open Universities Australia and the Secretary”.

**21 Subsection 190-20(1)**

Omit “a written notice informing the provider”, substitute “, and to the \*Secretary, a written notice informing the provider and the Secretary”.

**22 Subsection 190-20(1A)**

Omit “written notice informing Open Universities Australia”, substitute “, and to the \*Secretary, a written notice informing Open Universities Australia and the Secretary”.

### **23 Transitional provision**

The amendments made by this Schedule to Division 187 of the *Higher Education Support Act 2003* do not apply in relation to a student and a course of study if, immediately before the commencement of this item, the student met the tax file number requirements, as set out in that Division, in relation to the course of study.

## Schedule 4—Confidentiality of taxpayer information

### *Taxation Administration Act 1953*

#### **1 Subsection 355-65(8) in Schedule 1 (at the end of the table)**

Add:

- 8 a \*foreign government agency of a foreign country or part of a foreign country, or an entity acting on behalf of such an agency
- (a) is of information relating to the address, contact information or income of a person who has an obligation to repay a student loan issued by or on behalf of:
- (i) that agency; or
  - (ii) another \*foreign government agency of that country, or that part of that country; and
- (b) is for the purposes of contacting the person, and recovering from the person outstanding amounts relating to the loan.

#### **2 Application**

The amendment made by this Schedule applies, on and after the commencement of this Schedule, in relation to protected information whether it became protected information before or after that commencement.

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## Schedule 5—Other amendments

### *Income Tax Assessment Act 1936*

#### **1 Subsection 82A(2) (after paragraph (bd) of the definition of expenses of self-education)**

Insert:

- (be) a payment made in respect of, or in respect of the reduction or discharge of, any liability to overseas debtors repayment levy under the *Student Loans (Overseas Debtors Repayment Levy) Act 2015*; or

### *Income Tax Assessment Act 1997*

#### **2 Section 12-5 (at the end of table item headed “education expenses”)**

Add:

see also *overseas debtors repayment levy*

#### **3 Section 12-5 (after table item headed “offshore banking units”)**

Insert:

##### **overseas debtors repayment levy**

limit on deduction .....	<b>82A</b>
payment made to reduce a liability to overseas debtors repayment levy under the <i>Student Loans (Overseas Debtors Repayment Levy) Act 2015</i> , no deduction unless provided as fringe benefit .....	26-20

#### **4 After paragraph 26-20(1)(cd)**

Insert:

- (ce) a payment made to reduce a liability to overseas debtors repayment levy under the *Student Loans (Overseas Debtors Repayment Levy) Act 2015*; or

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*[Minister's second reading speech made in—  
House of Representatives on 17 September 2015  
Senate on 15 October 2015]*

(169/15)

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