Education Legislation Amendment (2019 Measures No. 1) Act 2019

No. 103, 2019

An Act to amend the law relating to higher education, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Education Legislation Amendment (2019 Measures No. 1) Act 2019

No. 103, 2019

An Act to amend the law relating to higher education, and for related purposes

[*Assented to 28 November 2019*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education Legislation Amendment (2019 Measures No. 1) Act 2019*.

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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.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**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.	28 November 2019
2. Schedules 1 and 2	Immediately after the commencement of Schedule 3 to the *Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018*.	1 January 2020
3. Schedule 3, Part 1	Immediately after the commencement of Schedule 4 to the *Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018*.	1 January 2019
4. Schedule 3, Part 2	The day this Act receives the Royal Assent.	28 November 2019

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Increased HELP loan limit for specified aviation courses

Part 1—Amendments

Higher Education Support Act 2003

1 Section 128-20

Repeal the section, substitute:

128-20 HELP loan limit

(1) The ***HELP loan limit*** is:
  (a) $106,319; or
  (b) in relation to a person who is enrolled in a *course of study in medicine, a *course of study in dentistry, a *course of study in veterinary science or a *course of study in aviation, while the person is enrolled in that course—$152,700.

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

(2) A ***course of study in aviation*** is a *course of study specified in the FEE-HELP Guidelines for the purposes of this subsection.

2 Subsection 238-10(1) (cell at table item 4, column headed "Chapter/Part/section")

After "Part 3-3", insert "; section 128-20".

3 Subclause 1(1) of Schedule 1

Insert:

course of study in aviation: see subsection 128-20(2).

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Part 2—Application and transitional provisions

4 Application of amendments

The amendments of section 128-20 of the *Higher Education Support Act 2003* made by this Schedule, so far as those amendments relate to a course of study in aviation, apply in relation to a student who is enrolled in such a course of study on or after the commencement of this item, whether the student enrolled in the course before or after that commencement.

5 Transitional—indexation

Despite anything in subsection 198-10(1) of the *Higher Education Support Act 2003*, the HELP loan limit is not to be indexed on 1 January 2020.

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Schedule 2—HELP debt arrangements for very remote HELP debtors

Part 1—Amendments

Higher Education Support Act 2003

1 At the end of section 128-25

Add:

(3) If, under section 142-15, the *Secretary determines, during a financial year, that an amount is to be reduced from a person's *accumulated HELP debt, the Secretary must re-credit the person's *HELP balance with an amount equal to the amount reduced as soon as practicable after the end of that financial year.

2 Section 129-1 (after paragraph beginning "Under Part 4-2")

Insert:

> A very remote HELP debtor's accumulated debt, or the indexation of that debt, may be reduced (see Division 142).

3 After section 134-1

Insert:

134-5 The Very Remote HELP Debtor Guidelines

Matters relating to *very remote HELP debtors are also dealt with in the Very Remote HELP Debtor Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in those Guidelines.

Note: The Very Remote HELP Debtor Guidelines are made by the Minister under section 238-10.

4 After paragraph 140-1(3)(c)

Insert:

; and (d) reductions of those debts under section 142-15.

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5 Paragraph 140-5(1)(b)

After "factor", insert "for the person".

6 Subsection 140-10(1)

Omit all the words before the method statement, substitute:

(1) The ***HELP debt indexation factor*** for a person for 1 June in a financial year is the number (rounded to 3 decimal places):

(a) if the *Secretary has determined, under section 142-10, that the indexation of the person's *accumulated HELP debt for the financial year is to be reduced—worked out using the formula in subsection (1A); and

(b) in any other case—worked out as follows:

7 After subsection 140-10(1)

Insert:

(1A) For the purposes of paragraph (1)(a), the formula to work out the *HELP debt indexation factor for the person is:

$$1 + \left(\left[\frac{A - 1}{365} \right] \times \left[365 - B \right] \right)$$

where:

A means the *HELP debt indexation factor for 1 June in the financial year worked out using the method statement in subsection (1).

B means the number of days in the applicable calendar year determined for the person by the *Secretary under subsection 142-10(2).

8 Section 140-20

After "factor", insert "worked out using the method statement in subsection 140-10(1)".

9 Subsection 140-25(1) (formula)

Repeal the formula, substitute:

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Former accumulated HELP debt	+	HELP debts incurred	−	HELP debt repayments	−	Very remote HELP debtor reduction

10 Subsection 140-25(1)

Insert:

very remote HELP debtor reduction means the amount by which the person's *accumulated HELP debt is to be reduced as a result of a determination made by the *Secretary in relation to the person under section 142-15:

(a) on or after 1 June in the preceding financial year; and
(b) before 1 June in the financial year.

11 At the end of Part 4-1

Add:

Division 142—Special measures for very remote HELP debtors

142-1 Meaning of *very remote HELP debtor*

(1) A person is a ***very remote HELP debtor*** on a day if:
  (a) the person carries out work as a teacher on that day at a school located in an area that is classified as very remote Australia under the *ABS Remoteness Structure; and
  (b) the person has completed a *course of study in education; and
  (c) the person incurred a *HECS-HELP debt or a *FEE-HELP debt in relation to that course of study.

(2) For the purposes of paragraph (1)(a), a ***school*** is any of the following:
  (a) an early childhood education and care service that includes a preschool education program;
  (b) a preschool;
  (c) a school providing primary or secondary education.

(3) For the purposes of this Division, the Very Remote HELP Debtor Guidelines may set out:

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(a) circumstances in which a person is taken, or is taken not, to carry out work as a teacher on a day; or
(b) circumstances in which a person is taken, or is taken not, to carry out such work at a school located in an area that is classified as very remote Australia under the *ABS Remoteness Structure; or
(c) circumstances in which a person is taken, or is taken not, to be a *very remote HELP debtor for particular periods.

142-5 Meaning of *course of study in education*

(1) Subject to subsection (2), a ***course of study in education*** means a *course of study, completion of which would satisfy the minimum academic requirements for registration as a teacher by an authority of a State or Territory.

(2) The Very Remote HELP Debtor Guidelines may specify *courses of study that are, or are not, *courses of study in education.

142-10 Reducing indexation of accumulated HELP debts

(1) The *Secretary must, on the application of a person under subsection (4), determine that the indexation of the person's *accumulated HELP debt for a financial year is to be reduced if:
(a) on 1 June of the financial year in which the application is made, the person has an *accumulated HELP debt; and
(b) the Secretary is satisfied that the person:
(i) was a *very remote HELP debtor at any time during the calendar year (the ***applicable calendar year***) ending on 31 December in the financial year; and
(ii) has met such other requirements (if any) as are specified in the Very Remote HELP Debtor Guidelines for the purposes of this subparagraph.

(2) If the *Secretary determines that the indexation of the person's *accumulated HELP debt for a financial year is to be reduced, the Secretary must determine the number of days in the applicable calendar year in respect of which the person was a *very remote HELP debtor.

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(3) The *Secretary must, within 28 days after the day the Secretary receives the application under subsection (4), give notice to the person of the Secretary's decision on that application. The notice must:
  (a) be in writing; and
  (b) if the Secretary determines that the indexation of the person's accumulated HELP debt for a financial year is to be reduced—state the number of days determined by the Secretary under subsection (2).

Note: The Secretary is taken to have made a decision to reject the application if the Secretary does not notify the person of the decision within 28 days: see section 206-5.

(4) A person may apply to the *Secretary for a determination under subsection (1) that the indexation of the person's *accumulated HELP debt for a financial year be reduced. The application must:
  (a) be in writing; and
  (b) be in the form (if any) approved by the Secretary and accompanied by the information (if any) required by the Secretary; and
  (c) include the person's *tax file number; and
  (d) meet any requirements specified by the Very Remote HELP Debtor Guidelines for the purposes of this paragraph.

142-15 Reducing accumulated HELP debts

(1) The *Secretary must, on the application of a person under subsection (5), determine that the person's *accumulated HELP debt is to be reduced in relation to a *course of study in education by a specified amount if:
  (a) the Secretary is satisfied that the person:
    (i) has been a *very remote HELP debtor for a period of 4 years, or for periods within a continuous 6 year period that total 4 years; and
    (ii) has met such other requirements (if any) as are specified in those Guidelines for the purposes of this subparagraph; and
  (b) the Secretary has not previously determined under this section that the person's accumulated HELP debt is to be reduced in relation to a course of study in education.

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(2) If the *Secretary determines that a person's *accumulated HELP debt is to be reduced, the amount by which that debt is reduced is the amount equal to the lesser of the following:
  (a) the sum of the amounts of *HECS-HELP debt and *FEE-HELP debt incurred by the person in respect of units of study:
    (i) with a total *EFTSL value of not more than 5.0 *EFTSL; and
    (ii) undertaken as part of the *course of study in education mentioned in subsection (1);
  (b) the amount of the person's accumulated HELP debt at the start of the period of 4 years, or at the start of the first period of the periods totalling 4 years, referred to in subparagraph (1)(a)(i).

(3) To avoid doubt, subsection (2) may have the effect of reducing a person's *accumulated HELP debt for a financial year to less than zero.

(4) The *Secretary must, within 28 days after the day the Secretary receives an application under subsection (5), notify the person of the Secretary's decision on that application. The notice must:
  (a) be in writing; and
  (b) if the Secretary has determined that the person's *accumulated HELP debt is to be reduced—state the amount by which that debt is to be reduced.

Note: The Secretary is taken to have made a decision to reject the application if the Secretary does not notify the person of the decision within 28 days: see section 206-5.

(5) A person may apply to the *Secretary for a determination under subsection (1) that the person's *accumulated HELP debt be reduced. The application must:
  (a) be in writing; and
  (b) be in the form (if any) approved by the Secretary and accompanied by the information (if any) required by the Secretary; and
  (c) include the person's *tax file number; and
  (d) meet any requirements specified by the Very Remote HELP Debtor Guidelines for the purposes of this paragraph.

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142-20 Refunding amounts

If:

(a) the *Secretary has determined, for the purposes of section 142-15, that a person's *accumulated HELP debt is to be reduced by an amount; and

(b) the amount exceeds the sum of:

(i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Chapter; and

(ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

12 Section 206-1 (after table item 2A)

Insert:

2AA	A decision that the indexation of a person's *accumulated HELP debt is not to be reduced, or is to be reduced in respect of a particular number of days	section 142-10	the *Secretary
2AB	A decision that a person's accumulated HELP debt is not to be reduced, or is to be reduced by a particular amount	section 142-15	the *Secretary

13 Subsection 238-10(1) (after table item 8)

Insert:

8AA	Very Remote HELP Debtor Guidelines	Part 4-1

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14 Subclause 1(1) of Schedule 1

Insert:

ABS Remoteness Structure means the Remoteness Structure described in:

(a) the document titled "Australian Statistical Geography Standard (ASGS): Volume 5—Remoteness Structure, July 2016", published by the Australian Statistician, as amended from time to time; or

(b) the most recent replacement of the document referred to in paragraph (a) that is published by the Australian Statistician, as amended from time to time.

Note: The Australian Statistical Geography Standard (ASGS): Volume 5—Remoteness Structure, July 2016 could in 2019 be viewed on the Australian Bureau of Statistics website (https://www.abs.gov.au).

course of study in education: see section 142-5.

very remote HELP debtor: see section 142-1.

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Part 2—Application and transitional provisions

15 Application of amendments

(1) The amendments of sections 140-5 and 140-10 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to the 2019-2020 financial year and each later financial year.

(2) Despite subsection 142-10(2) of the *Higher Education Support Act 2003*, as inserted by this Schedule, a day that occurs before 14 February 2019 must not be counted for the purposes of that subsection.

(3) Section 142-15 of the *Higher Education Support Act 2003*, as inserted by this Schedule, applies in relation to a course of study whether completed before or after 1 January 2020.

(4) Despite subparagraph 142-15(1)(a)(i) of the *Higher Education Support Act 2003*, as inserted by this Schedule, the Secretary must not determine that a person was a very remote HELP debtor in respect of a period if any part of the period occurs before 1 January 2019.

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Schedule 3—Other amendments

Part 1—Amendments commencing 1 January 2019

Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018

1 Item 2 of Schedule 4

Omit "a loan made", substitute "a unit of study if the census date for the unit is".

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Part 2—Amendments commencing on Royal Assent

Division 1—Amendments

Higher Education Support Act 2003

2 Subsection 16-15(1) (table)

Omit "Curtin University of Technology", substitute "Curtin University".

3 Subsection 16-15(1) (table)

Insert "Flinders University".

4 Subsection 16-15(1) (table)

Omit "The Flinders University of South Australia".

5 Subsection 16-15(1) (table)

Omit "Technology, Sydney", substitute "Technology Sydney".

6 Subsection 16-20(1) (table)

Omit "MCD University", substitute "University".

7 At the end of section 179-1

Add "unless an exception applies".

8 Section 179-10 (after the heading)

Insert:

Offence

9 Section 179-10

Before "An", insert "(1)".

10 At the end of section 179-10

Add:

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Exception—consent

(2) Subsection (1) does not apply if the person to whom the *personal information relates has consented to the disclosure, or the making of the copy or record.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Exception—authorised or required by a Commonwealth law

(3) Subsection (1) does not apply if the disclosure, or the making of the copy or record, is authorised or required by a law of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Exception—authorised or required by certain State or Territory laws

(4) Subsection (1) does not apply if the disclosure, or the making of the copy or record, is authorised or required by a law of a State or Territory:

(a) that relates to the administration, regulation or funding of education; or

(b) that is specified in the Administration Guidelines for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

11 Paragraph 179-15(4)(a)

After "this Act", insert "or the *VET Student Loans Act 2016*".

12 After section 180-20

Insert:

180-23 Disclosure of information to certain agencies

(1) The *Secretary may disclose *Higher Education Support Act information to a person who is employed or engaged by an agency covered by subsection (2) for the purposes of exercising powers, or performing functions or duties, of the agency.

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(2) An agency is covered by this subsection if the agency is administered by a Minister who administers any of the following:
  (a) the *Human Services (Centrelink) Act 1997*;
  (b) the *Social Security Act 1991*;
  (c) the *Student Assistance Act 1973*;
  (d) a law of the Commonwealth prescribed by the Administration Guidelines for the purposes of this paragraph.

(3) If *Higher Education Support Act information is disclosed to an agency under subsection (1), the agency may use the information for the purposes of exercising powers, or performing functions or duties, of the agency.

13 At the end of clause 71 of Schedule 1A

Add "unless an exception applies".

14 Clause 73 of Schedule 1A (after the heading)

Insert:

Offence

15 Clause 73 of Schedule 1A

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

16 At the end of clause 73 of Schedule 1A

Add:

Exception—consent

(2) Subclause (1) does not apply if the person to whom the *VET personal information relates has consented to the disclosure, or the making of the copy or record.

Note: A defendant bears an evidential burden in relation to the matter in this subclause: see subsection 13.3(3) of the *Criminal Code*.

Exception—authorised or required by a Commonwealth law

(3) Subclause (1) does not apply if the disclosure, or the making of the copy or record, is authorised or required by a law of the Commonwealth.

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Note: A defendant bears an evidential burden in relation to the matter in this subclause: see subsection 13.3(3) of the *Criminal Code*.

Exception—authorised or required by certain State or Territory laws

(4) Subclause (1) does not apply if the disclosure, or the making of the copy or record, is authorised or required by a law of a State or Territory:

(a) that relates to the administration, regulation or funding of vocational education or training; or

(b) that is specified in the *VET Guidelines for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in this subclause: see subsection 13.3(3) of the *Criminal Code*.

17 Subclause 1(1) of Schedule 1 (definition of *Australian Qualifications Framework Register*)

Repeal the definition.

18 Subclause 1(1) of Schedule 1 (paragraph (c) of the definition of *higher education award*)

Repeal the paragraph, substitute:

(c) any other award offered or conferred by a higher education provider under the *Australian Qualifications Framework, except an award offered or conferred for completing a *VET course of study.

VET Student Loans Act 2016

19 At the end of subsection 93(2)

Add:

; (f) an agency that is administered by a Minister who administers any of the following:

(i) the *Human Services (Centrelink) Act 1997*;

(ii) the *Social Security Act 1991*;

(iii) the *Student Assistance Act 1973*;

(iv) a law of the Commonwealth prescribed by the rules for the purposes of this paragraph.

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20 At the end of section 93

Add:

(3) If VET information is disclosed to an agency, body or person under subsection (1), the agency, body or person may use the information for the purposes of exercising powers, or performing functions or duties, of the agency, body or person.

21 At the end of section 99

Add:

(3) Subsection (1) does not apply if the person to whom the personal information relates has consented to the use or disclosure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

22 After subsection 100(2)

Insert:

(2A) Subsection (1) does not apply if the person to whom the personal information relates has consented to the use.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

23 At the end of section 100

Add:

(5) Subsection (3) does not apply if the person to whom the personal information relates has consented to the disclosure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Division 2—Application and transitional provisions

24 Application of amendments

(1) The amendments of Divisions 179 and 180 of Part 5-4 of the *Higher Education Support Act 2003*, and Division 14 of Part 3 of Schedule 1A to that Act, made by this Part, apply in relation to the disclosure, or the making of a copy or record, of information after the commencement of

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this item, whether the information was obtained or created before or after that commencement.

(2) The amendments of the *VET Student Loans Act 2016* made by this Part apply in relation to the use or disclosure of information after the commencement of this item, whether the information was obtained or created before or after that commencement.

[*Minister's second reading speech made in—*
House of Representatives on 16 October 2019
Senate on 11 November 2019]

(195/19)

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