THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT BILL (NO. 2) 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations)
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GENERAL OUTLINE

The main purpose of this Bill is to implement 2011-12 Budget measures and update maximum payment amounts to provide for increases in enrolments of Commonwealth supported students and indexation. The Bill also clarifies the Government’s policy in relation to eligibility for Commonwealth supported places and the Higher Education Loans Program (HELP) for Australian citizens studying primarily at overseas campuses of Australian providers.

Schedule 1 amends sections 30-5, 41-45 and 46-40 of the Higher Education Support Act 2003 (HESA) to increase the maximum payments for the Commonwealth Grant Scheme in 2011, and for other grants and Commonwealth scholarships for the 2012-14 calendar years to account for indexation and to include the 2015 calendar year.

Schedule 2 amends HESA to provide for a reduction in the HECS-HELP up-front discount from 20 per cent to 10 per cent. This discount is paid for up-front student contribution payments of $500 or more.

Schedule 3 amends HESA to provide for a reduction in the HELP voluntary repayment bonus from 10 per cent to 5 per cent. This bonus reduces a person’s HELP debt when the person makes a voluntary payment of $500 or more.

Schedule 4 amends HESA to clarify that Australian citizens are not entitled to Commonwealth support or to access HECS-HELP, FEE-HELP and VET FEE-HELP schemes when they are undertaking a course of study primarily at an overseas campus.

Application, savings and transitional provisions will:

• provide 1 January 2012 as the principal date from which providers and the Commonwealth will be subject to the new provisions (although some provisions will commence on Royal Assent)
• provide that the amendments made by Schedule 2 apply only in relation to units of study whose census dates are on or after commencement
• provide that the amendments made by Schedule 3 apply only in relation to payments made on or after commencement
• provide that the amendments made by Schedule 4 apply only in relation to units of study whose census dates are on or after commencement
• maintain the eligibility of students studying at overseas campuses of Australian providers for the duration of their current courses for the following:
  o Commonwealth support under the Commonwealth Grant Scheme
  o HECS-HELP assistance
  o FEE-HELP assistance
  o VET FEE-HELP assistance.
FINANCIAL IMPACT STATEMENT

The total financial impact of the amendments is $1.13 billion (2011-2015).
Clause 1 - Short title

This clause provides for the Bill, when it is enacted, to be cited as the Higher Education Support Amendment Act (No. 2) 2011.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for:

- Clauses 1 to 3 and anything else in the Bill not otherwise covered by the table to commence on the day the Bill (once enacted) receives Royal Assent;
- Schedule 1 to commence on Royal Assent; and
- Schedules 2 to 4 to commence on the later of 1 January 2012 and Royal Assent.

A Note makes it clear that these commencement times will not be amended by any later amendments of the Bill (once enacted).

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

Clause 3 - Schedule(s)

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

For ease of description, this Explanatory Memorandum uses the following abbreviations:


‘HECS-HELP assistance’ means assistance payable under Part 3-2 of HESA.
‘FEE-HELP assistance’ means assistance payable under Part 3-3 of HESA.

‘VET course of study’ means a structured and integrated program of vocational education or vocational training, usually consisting of a number of modules (units of study) or shorter programs, and leading to the award of a VET diploma, a VET advanced diploma, a VET graduate diploma or a VET graduate certificate.

‘VET FEE-HELP assistance’ means assistance payable to students for VET units of study under Part 2 of Schedule 1A of HESA.
Schedule 1

Maximum grants and payments

Summary

Schedule 1 of the Bill makes amendments to sections 30-5, 41-45 and 46-40 of HESA to reflect the indexation of grant amounts and to give effect to measures contained in the 2011–12 Budget.

Background

Section 30-5 provides for maximum Commonwealth grant scheme payments for a year. Although repealed by the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011, an application provision in that Act will mean that the repeal will not affect the maximum payments for the years 2005 to 2011 inclusive.

Section 41-45 provides for maximum other grants payments for a year. The maximum other grants payment amounts are amended annually to account for indexation and other variations and to add an additional funding year.

Section 46-40 provides for maximum Commonwealth scholarships payments for a year. The maximum Commonwealth scholarships payment amounts are amended annually to account for indexation and other variations and to add an additional funding year.

Detailed explanation

Higher Education Support Act 2003

Item 1 – Continued and modified application of section 30-5

Parliament has passed the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011. On Royal Assent, the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011 will repeal section 30-5 of HESA – but an application provision in that Act will mean that the repeal will not affect the maximum payments for the years 2005 to 2011 inclusive.

The effect of Item 1 is that, notwithstanding the repeal of section 30-5 by the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011, the maximum grant amount for the year 2011 will be read as being $5,061,668,000 (instead of $5,011,996,000).
The increased funding is for over enrolment of Commonwealth supported places that has occurred in 2011.

**Item 2 – Section 41-45 (table items 8 to 10)**

*Item 2* repeals items 8 to 10 in the table at subsection 41-45(1) of HESA and inserts new items 8 to 11 in the table for the years 2012 to 2015. The table sets out maximum payments for other grants under Part 2-3 of HESA for a year. Subsection 41-45(1) provides that the total payments under Part 2-3 of HESA in respect of a year referred to in the table must not exceed the amount specified next to that year in the table.

New items 8 to 11 provide that the maximum payments for other grants under Part 2-3 are:

- $2,111,577,000 for 2012
- $2,303,230,000 for 2013
- $2,247,086,000 for 2014
- $2,247,086,000 for 2015.

**Item 3 – Section 46-40 (table items 9 to 11)**

*Item 3* repeals items 9 to 11 in the table at section 46-40 of HESA and inserts new items 9 to 12 in the table for the years 2012 to 2015. The table sets out the maximum payments for Commonwealth scholarships for a year.

New items 9 to 12 provide that the maximum payments for Commonwealth scholarships are:

- $319,056,000 for 2012
- $288,948,000 for 2013
- $293,711,000 for 2014
- $287,601,000 for 2015.
Schedule 2
Up-front payments

Summary

Schedule 2 would amend sections 36-50, 90-1, 93-15, 96-5, 96-10, 193-1 and 193-5 of HESA to reduce the HECS-HELP up-front discount from 20 per cent to 10 per cent.

Background

The Government announced in the 2011–12 Budget that it would reduce the HECS-HELP discount, given to eligible higher education students who pay $500 or more of their student contribution amount up-front, from 20 per cent to 10 per cent from 1 January 2012.

Currently students enrolled in a Commonwealth supported place can make a full up-front payment by paying 80 per cent of the student contribution amount for all of their units in a course of study with the same census date. The Commonwealth pays the remaining 20 per cent of the student contribution amount if this occurs. Students can also pay part of their student contribution up-front and receive a 20 per cent discount for any payments totalling $500 or more for units in a course of study with the same census date. The amount of the discount is paid by the Commonwealth to the student’s higher education provider.

Detailed explanation

Higher Education Support Act 2003

Item 1 – Section 36-50 (heading)

Item 1 is a consequential amendment to Item 2 and amends the heading to section 36-50 of HESA to replace the reference to 80% with 90%. The amended heading would read “Provider must not accept up-front payments of more than 90% of student contribution amounts”.

Item 2 – Section 36-50

Section 36-50 of HESA currently restricts a higher education provider from accepting from students enrolled in units of study and who are entitled to HECS-HELP assistance, up-front payments of more than 80 per cent of their student contribution for the unit. In other words, this limits the student contribution to 80 per cent in the event of up-front payments being made.
Item 2 would amend section 36-50 by replacing references to 80 per cent with references to 90 per cent. The effect of this would be to reduce the HECS-HELP up-front discount from 20 per cent to 10 per cent.

Item 3 – Subparagraph 90-1(f)(ii)

Section 90-1 of HESA provides for students’ entitlement to HECS-HELP assistance. Among other things, a student is entitled to HECS-HELP assistance for a unit if they have either met the tax file number requirements, or they have paid 80 per cent of their student contribution amount for the unit up-front (paragraph 90(1)(f)).

Item 3 would amend subparagraph 90(1)(f)(ii) by replacing the reference to 80 per cent with a reference to 90 per cent of the student contribution amount.

Item 4 – Subsection 93-15(3)

Section 93-15 deals with up-front payments of HECS-HELP assistance and subsection 93-15(3) provides that a payment made in respect of a person is not to be treated as an up-front payment if that payment, in conjunction with other payments made by the person (or on their behalf), exceeds 80 per cent of the student contribution amount for a unit.

Item 4 would replace the reference to 80 per cent with a reference to 90 per cent.

Items 5 and 6 – Section 93-15 (notes 1 and 2)

Consequent upon the reduction of the HECS-HELP up-front discount to 10 per cent, Item 5 would repeal and substitute note 1 to section 93-15. The new note would replace the reference to the Commonwealth paying one quarter with a reference to one ninth and would replace the reference to 80 per cent with a reference to 90 per cent. Item 6 would similarly replace the reference to 80 per cent in note 2 with a reference to 90 per cent.

Items 7 and 8 – Paragraph 96-5(1)(c) and subsection 96-5(4)

Section 96-5 of HESA deals with the partial up-front payment of the student contribution amount.

Consequent upon the reduction of the HECS-HELP up-front discount from 20 per cent to 10 per cent:

- Item 7 would replace the reference to 80 per cent in paragraph 96-5(1)(c) with reference to 90 per cent; and
- Item 8 would repeal and substitute subsection 96-5(4), including a new example which explains the effect of a student making a partial up-front payment.
Items 9 and 10 – Paragraph 96-10(c) and Section 96-10 (note)

Section 96-10 provides for payments by the Commonwealth to a higher education provider where a student has made one or more up-front payments of their student contribution amount for a unit of study. Items 9 and 10 would replace the reference to 80 per cent with a reference to 90 per cent in paragraph 96-10(c) and in the note to section 96-10.

Item 11 – Paragraph 193-1(5)(b)

Section 193-1 of HESA deals with the requirement for a higher education provider to notify its students about meeting the tax file number requirements (see section 187-1). Paragraph 193-1(5)(b) provides that this does not apply where the student has requested HECS-HELP assistance for a unit, but has made one or more up-front payments totalling 80 per cent of the student’s contribution amount. Item 11 would replace the reference to 80 per cent with a reference to 90 per cent.

Item 12 – Paragraph 193-5(1)(d)

Under section 193-5 of HESA, if the Commissioner of Taxation notifies a provider that a student does not have, or no longer has, a tax file number, the provider must cancel the student’s enrolment as a Commonwealth supported student in the unit of study for which the student was seeking HECS-HELP assistance if, at the end of 28 days after receipt of the notice from the Commissioner, the provider has not been notified of a number that the provider is satisfied is a valid tax file number.

This does not apply where the student has made one or more up-front payments totalling 80 per cent of the student’s contribution amount (paragraph 193-5(1)(d)) – ie there would be no need for a tax file number for the unit as the student would not incur a HECS-HELP debt for the unit. Item 12 would replace the reference to 80 per cent in paragraph 193-5(1)(d) with a reference to 90 per cent.

Item 13 – Application provision

Item 13 provides that the amendments to be made by Schedule 2 will only apply to units that have census dates that fall on or after Schedule 2 commences. Clause 2 provides that Schedule 2 will commence on the later of 1 January 2012 and the day on which this Bill (if passed by Parliament) receives Royal Assent. In other words, the reduction in the up-front discount from 20 per cent to 10 per cent will only apply from this commencement date.
Schedule 3
Voluntary repayment bonus

Summary

Schedule 3 would reduce the voluntary repayment bonus for HELP debts from 10 per cent to five per cent.

Background

Higher education students can make a voluntary repayment towards their HELP debt to the Australian Taxation Office at any time. Voluntary repayments of $500 or more currently attract a 10 per cent bonus on the payment amount. This means a student’s account will be credited with an additional 10 per cent of their payment amount. This reduces the student’s debt to the Commonwealth.

The Government announced in the 2011–12 Budget that it would reduce the 10 per cent HELP voluntary repayment bonus, for payments of $500 or more, to 5 per cent from 1 January 2012.

The HELP debts are:

- HECS-HELP (see Part 3-2 of HESA)
- FEE-HELP (see part 3-3 of HESA)
- OS-HELP (see part 3-4 of HESA)
- VET FEE-HELP (see Part 2 of Schedule 1A of HESA).

For the purpose of voluntary repayments, a payment is not taken to have been made until it is received by the Commissioner of Taxation or a person acting on behalf of the Commissioner.

Detailed explanation

Higher Education Support Act 2003

Item 1 – Subsection 140-5(1) (example)

Section 140-5 of HESA explains how a person’s former accumulated HELP debt is calculated. Subsection 140-5(1) sets out a method statement and an example. Item 1 would repeal the example and replace it with a new example with updated date references and which takes into account the reduction in the voluntary repayment bonus for HELP debts from 10 per cent to five per cent.
Item 2 – Section 148-1 (first paragraph)

Section 148-1 of HESA explains what Part 4-2 of HESA is about (discharge of indebtedness). Item 2 would amend the first paragraph of the explanation by replacing the reference to a 10 per cent repayment bonus with a reference to a 5 per cent repayment bonus.

Item 3 - Subsections 151-5(2) and (3)

Section 151-5 of HESA explains the effect of a person making voluntary repayments towards his or her HELP debt.

Subsection 151-5(2) explains (including through the use of an example) how much a person needs to pay in order to pay off the total amount of his or her debt – with the current 10 per cent repayment bonus taken into account.

Subsection 151-5(3) explains (including through the use of an example) the effect of making a partial repayment of the debt – with the current 10 per cent repayment bonus taken into account.

Item 3 would amend subsections 151-5(2) and (3) (including the examples) consequent upon the reduction of the 10 per cent repayment bonus to 5 per cent.

Item 4 – Application provision

Item 4 provides that the amendments to be made by Schedule 3 will only apply to voluntary payments made under Division 151 of HESA on or after the commencement of Schedule 3. Clause 2 provides that Schedule 3 will commence on the later of 1 January 2012 and the day on which this Bill (if passed by Parliament) receives Royal Assent. In other words, voluntary payments to reduce a person’s HELP debt made on or after this commencement date will only attract a 5 per cent voluntary repayment bonus.
Schedule 4

Overseas campuses

Summary

Schedule 4 would clarify that higher education students studying primarily at an overseas campus are not entitled to Commonwealth support, HECS-HELP assistance or FEE-HELP assistance.

Schedule 4 would also clarify that a student studying a VET course of study primarily at an overseas campus is not entitled to VET FEE-HELP.

Background

HESA provides for the funding of higher education providers and students’ eligibility for the Commonwealth’s income contingent loans including HECS-HELP, FEE-HELP, OS-HELP and VET FEE-HELP. There is currently ambiguity in HESA as to whether higher education students who are Australian citizens studying at an overseas campus of an Australia provider are entitled to Commonwealth support, HECS-HELP assistance and FEE-HELP assistance. This has resulted in some Australian universities offering a small number of Commonwealth supported places to Australian citizens studying at their overseas campuses.

The same ambiguity exists as to whether students studying a VET course of study at an overseas campus of an Australian provider are entitled to VET FEE-HELP assistance.

Detailed explanation

Higher Education Support Act 2003

Item 1 – Before subsection 36-15(1)

Section 36-15 of HESA sets out the circumstances when higher education providers are prevented from informing their students that they are Commonwealth supported students in relation to a unit of study.

Item 1 would insert a new subsection 36-15(1A) which would prevent a higher education provider from informing a person that he or she is a Commonwealth supported student in relation to a unit of study that contributes towards the requirements of a course of study in circumstances where the person is, or is to be, undertaking that course of study primarily at an overseas campus.
Higher education providers make offers to students to undertake a course of study that is being provided at a particular campus. A student will be considered to be undertaking the course of study at that campus. For example, a student may be offered a place in a Bachelor of Commerce at an Australian provider’s Hong Kong campus.

The word ‘primarily’ in this item is intended to mean “chiefly, principally” rather than “at first, originally”.

**Item 2 – Section 90-1**

Section 90-1 of HESA specifies the prerequisites that must be satisfied in relation to a unit of study before a student is eligible for HECS-HELP assistance for the unit. Item 2 would qualify section 90-1, so that it would operate subject to the new section 90-10 that would be inserted by Item 3 of Schedule 4.

**Item 3 – At the end of Division 90**

Item 3 would add a new section 90-10 into Division 90 of HESA which deals with who is entitled to HECS-HELP assistance. The new section 90-10 would make it clear that a student cannot receive HECS-HELP assistance for a unit of study if that unit of study forms part of a course of study that the student is, or is to be, undertaking primarily at an overseas campus.

**Item 4 – Subsection 104-1**

Section 104-1 of HESA specifies the prerequisites that must be satisfied in relation to a unit of study before a student is entitled to FEE-HELP assistance for the unit. Item 4 is a consequential amendment to Item 5 that would add in a new subsection 104-1(2).

The effect of Item 4 is to make it clear that the FEE-HELP prerequisites are subject to section 104-1 itself (including the new subsection 104-1(2)), as well as sections 104-2, 104-3 and 104-4.

**Item 5 – At the end of section 104-1**

Item 5 would add a new subsection 104-1(2) to HESA. The effect of this would be to make it clear that a student cannot receive FEE-HELP assistance for a unit of study if that unit of study forms part of a course of study that the student is, or is to be, undertaking primarily at an overseas campus.
Item 6 – Clause 43 of Schedule 1A

Clause 43 of Schedule 1A of HESA specifies the prerequisites that must be satisfied in relation to a VET unit of study before a student is entitled to VET FEE-HELP assistance for the unit. Item 6 is a consequential amendment to Item 7 that would add a new subclause 43(2) to Schedule 1A.

The effect of Item 6 would simply be to note that the VET FEE-HELP prerequisites are subject to clause 43 itself (including the new subclause 43(2)).

Item 7 – At the end of clause 43 of Schedule 1A (after the note)

Item 7 would add a new subclause 43(2) to Schedule 1A of HESA. The effect of this would be to make it clear that a student cannot receive VET FEE-HELP assistance for a VET unit of study if that unit of study forms part of a VET course of study that the student is, or is to be, undertaking primarily at an overseas campus.

Item 8 – Application provision

Item 8 provides that, subject to Item 9 of this Schedule, the amendments to be made by Schedule 4 will only apply in relation to units of study that have a census date that is on or after the commencement of Schedule 4. Clause 2 provides that Schedule 4 will commence on the later of 1 January 2012 and the day on which this Bill (if passed by Parliament) receives Royal Assent. In other words, the overseas campuses measure will only take effect after this commencement date.

Item 9 – Transitional provisions

Item 9 is a transitional provision, the intention of which is – notwithstanding the amendments that would be made by Schedule 4 – to continue a person’s eligibility for any of the following where the person was undertaking a course of study at an overseas campus prior to the commencement of Schedule 4:

- Commonwealth support under the Commonwealth Grant Scheme
- HECS-HELP assistance
- FEE-HELP assistance
- VET FEE-HELP assistance.

Subitem 9(1) preserves the position of any person who has undertaken part of a course of study being primarily undertaken at an overseas campus as a Commonwealth supported student.

If such a person undertakes, at an overseas campus, a further unit of study in that course of study where the census date for the unit falls on or after the commencement of Schedule 4 – then the person will continue to be regarded as Commonwealth supported student for the unit (even though he or she would otherwise not be regarded as a Commonwealth supported student due to the effect of Item 1 of Schedule 4).
For example – Sarah was offered a Commonwealth supported place for a Bachelor of Commerce at the Singapore campus of an Australian higher provider in 2009. Sarah has been studying in Singapore since 2010 and has eight units of study remaining. Under the transitional provisions, Sarah will continue to be a Commonwealth supported student in relation to each unit of study she undertakes at the Singapore campus until she completes the requirements for the Bachelor of Commerce.

**Subitem 9(2)** preserves the eligibility of certain persons for HECS-HELP assistance, notwithstanding the effect of Items 1, 2 and 3 of Schedule 4.

If a person, currently regarded as a Commonwealth supported student, has undertaken, at an overseas campus, a unit of study that contributes towards the requirements of a course of study, and the person undertakes a further unit of study in that course of study where the census date for the unit falls on or after the commencement of Schedule 4 – then the person will continue to be regarded as a Commonwealth supported student for the unit and be eligible for HECS-HELP assistance (as long as he or she meets other applicable prerequisites).

For example – Peter was offered a Commonwealth supported place for a Bachelor of Arts at the Dubai campus of an Australian higher education provider in 2010. Peter has been studying in Dubai since 2011 and has 16 units of study remaining. Peter is currently receiving HECS-HELP assistance. Under the transitional provisions, Peter will continue to be a Commonwealth supported student and receive HECS-HELP assistance for each unit of study he undertakes at the Dubai campus until he completes the requirements for the Bachelor of Arts.

**Subitem 9(3)** preserves the eligibility of certain persons for FEE-HELP assistance, notwithstanding the effect of Items 4 and 5 of Schedule 4.

If a person, before the commencement of Schedule 4, had received an amount of FEE-HELP assistance for a unit of study, undertaken at an overseas campus, that contributed towards a course of study and the person undertakes a further unit of study in that course of study where the census date for the unit falls on or after the commencement of Schedule 4 – then the person will still be eligible to receive FEE-HELP assistance (as long as he or she meets other applicable prerequisites).

For example – Jan was offered a fee paying place for a Masters of Public Policy at the Shanghai campus of an Australian provider in 2010. Jan has been studying in Shanghai since 2011 and has four units of study remaining. Jan is currently receiving FEE-HELP assistance. Under the transitional provisions, Jan will continue to receive FEE-HELP assistance for each unit of study she undertakes at the Shanghai campus until she completes the requirements for the Masters of Public Policy.
**Subitem 9(4)** preserves the eligibility of certain persons for VET FEE-HELP assistance, notwithstanding the effect of Items 6 and 7 of Schedule 4.

If a person, before the commencement of Schedule 4, had received an amount of VET FEE-HELP assistance for a VET unit of study, undertaken at an overseas campus, that contributed towards a current VET course of study and the person undertakes a further VET unit of study in that VET course of study where the census date for the unit falls on or after the commencement of Schedule 4 – then the person will still be eligible to receive VET FEE-HELP assistance (as long as he or she meets other applicable prerequisites).

For example – Michael was offered a place in a VET diploma at the Manila campus of an Australian VET provider in 2011. Michael has been studying in Manila since 2011 and has two units of study remaining. Michael is currently receiving VET FEE-HELP assistance. Under the transitional provisions, Michael will continue to receive VET FEE-HELP assistance for each VET unit of study he undertakes at the Manila campus until he completes the requirements for the VET diploma.