THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT LEGISLATION AMENDMENT
(2016 MEASURES NO. 1) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Indigenous Affairs, Senator the Hon Nigel Scullion)
GENERAL OUTLINE

Schedule 1 of this Bill amends the *Higher Education Support Act 2003* to insert a new Part 2-2A providing for grants to higher education providers to assist Indigenous students.

These amendments are expected to allow universities to better respond to the needs of Indigenous students, and to improve the administration of assistance for Indigenous students.

Schedule 2 amends the *Higher Education Support Act 2003* to allow the Secretary to be notified of Tax File Numbers (TFNs) for the purpose of administering student assistance under VET FEE-HELP. Schedule 2 also includes provisions providing for the Secretary to require the Commissioner to provide TFNs of students that had previously met the TFN requirements for HELP assistance. The Schedule also authorises the use and disclosure of information related to the administration of HELP debts, including TFNs, to assist in future administration of the HELP program. Additionally, Schedule 2 amends the *Income Tax Assessment Act 1936* to ensure that Commonwealth officers are able to use and disclose TFNs under the *Higher Education Support Act 2003* for the purposes of administering VET FEE-HELP.

FINANCIAL IMPACT STATEMENT

None.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.
NOTES ON CLAUSES

List of abbreviations

- **ATO** means the Australian Taxation Office.
- **HELP** means the Higher Education Loan Program.
- **Income Tax Assessment Act** means the *Income Tax Assessment Act 1936*.
- **HESA Information** means information collectively defined in section 180-5 of the *Higher Education Support Act 2003*.
- **Higher Education Provider** has the meaning provided for by section 16-1 of the *Higher Education Support Act 2003*.
- **Higher Education Support Act** means the *Higher Education Support Act 2003*.
- **HELP program Commonwealth officer** has the meaning given by subsection 180-28(7) of the *Higher Education Support Act 2003* inserted by item 2 of Schedule 2 of this Bill.
- **Social Security Act** means the *Social Security Act 1991*.
- **Taxation Administration Act** means the *Taxation Administration Act 1953*.
- **TFN** means Tax File Number.
- **VET provider** means a provider as defined in clause 4 of Schedule 1A to the Higher Education Support Act.
Clause 1 – Short title

This clause provides for the Act to be cited as the Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016.

Clause 2 – Commencement

Subclause 2(1) inserts a 3 column table setting out commencement information for various provisions in the Act. Each provision of the Act 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 that:

(i) Sections 1 to 3, and anything in the Act not elsewhere covered by this table, is to commence on the day the Act receives the Royal Assent.

(ii) Schedule 1, Part 1 commences on a day fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Act receives Royal Assent, it commences on the day after the end of that period. Commencement by Proclamation is intended to facilitate a coordinated approach to preparing several instruments that are required to give full effect to the policy underpinning the Act.

(iii) Schedule 1, Part 2, Division 1, commences on the later of:

(a) the commencement of the provisions covered by table item 2; and

(b) immediately after the commencement of Schedule 11 to the Budget Savings (Omnibus) Act 2016.

However, if Schedule 11 to the Budget Savings (Omnibus) Act 2016 does not commence before or on the commencement of the provisions covered by table item 2, the provisions covered by table item 3 do not commence at all.

(iv) Schedule 1, Part 2, Division 2 commences at the same time as the provisions covered by table item 2. However, if Schedule 11 to the Budget
Savings (Omnibus) Act 2016 commences before or at that time, the provisions do not commence at all.

(v) Schedule 1, Part 2, Division 3 commences on the later of:
(a) The commencement of the provisions covered by table item 2 above; and
(b) Immediately after the commencement of Schedule 11 to the Budget Savings (Omnibus) Act 2016. However, if this Act does not commence, the provisions covered by table item 5 do not commence at all.

(vi) Schedule 2 commences on the day after the Act receives the Royal Assent.

The note provides that the commencement information only relates to the provisions of the Act as originally enacted. It will not be amended to deal with any later amendments to the Act.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information is not part of the Act.

Clause 3 – Schedules

This clause provides that legislation 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.
Schedule 1 – Indigenous student assistance

Summary

Schedule 1 creates a new Part 2-2A in Chapter 2 of the Higher Education Support Act to provide for grants to be paid to Table A providers (public universities) and Table B providers (private universities) to assist Indigenous students. The new part is similar in many respects to Part 2-3 of the Higher Education Support Act.

New Part 2-2A:

- Establishes eligibility for grants and specifies grant purposes (including for providing scholarships);
- Provides for Indigenous Student Assistance Grants Guidelines to deal with grants under the Part, including imposing conditions and setting the amounts of grants;
- Enables the Minister to approve ad hoc grants outside of the Guidelines, including imposing conditions and setting the amounts of grants;
- Enables the Secretary to rollover unspent grant amounts to the next following year; and
- Enables the Minister to set the maximum payments for grants under the Part for a year.

Consequential amendments to other legislation ensure that scholarships provided for under new Part 2-2A are treated in the same way as scholarships provided for under Part 2-4 of the Higher Education Support Act, particularly in relation to the calculation of income for social security purposes and eligibility for other forms of student assistance.

The policy intention is that grants under new Part 2-2A will be administered primarily under the Indigenous Student Assistance Guidelines issued under the Part. The Guidelines will:

- Simplify the way grants for Indigenous Students are provided to universities by using a standardised allocation formula;
• Give higher education providers greater flexibility in designing support for Indigenous students, including scholarships and supplementary tuition; and
• Reduce administrative requirements on higher education providers to enable them to focus on providing support and services to Indigenous students.
Background

Over the last decade there has been a 70 per cent increase in the number of Indigenous students in higher education award courses, compared to 43 per cent for all domestic undergraduate students.

However, only 48 per cent of Indigenous students who commenced their studies in 2005 had completed these studies by 2014, compared to 74 per cent of other Australian students.

This Bill creates the conditions where universities can capitalise on improvements in Indigenous students’ access to higher education and ensure Indigenous students are not only enrolling, but also successfully progressing and graduating, in greater numbers.

The 2012 Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes overall be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates (Recommendations 13 and 17). The Commonwealth worked closely with universities to build on these recommendations and develop the Indigenous Student Success in Higher Education measure announced in the 2016-17 Budget.

The Budget measure consolidates existing funding from three sources into the new Indigenous Student Success Programme to be administered under the Higher Education Support Act. The three funding sources are:

(i) the Indigenous Support Programme, currently administered under the Other Grants Guidelines (Education) 2002 issued under Part 2-3 of the Higher Education Support Act;

(ii) the Commonwealth Scholarships Programme, currently administered under the Commonwealth Scholarships Guidelines (Education) 2010 issued under Part 2-4 of the Higher Education Support Act; and
(iii) tutorial assistance offered under the Indigenous Advancement Strategy, authority for which is provided for by Schedule 1AB of the Financial Framework (Supplementary Powers) Regulations 1997.

No savings were taken through this Budget measure.
Explanation of the changes

Part 1 – Main Amendments

Amendments to the Higher Education Support Act 2003

Item 1

This item amends subsection 3-5(1) so that Chapter 2 can provide for grants for assisting Indigenous students. This clarifies the additional type of grants that will be provided in Chapter 2 of the Higher Education Support Act.

Item 2

Item 2 is a technical amendment to assist the interpretation of Item 3.

Item 3

This item amends subsection 5-1(4) to provide that the provisions of Part 2-2A (which provides for Indigenous student assistance grants) do not apply to a Table C provider (i.e. universities established under the law of another country), the Australian branch of the provider, or students in their capacity as students of that provider or of that branch.

Items 4 and 5

These items amend section 8-1 to reflect that a fourth kind of grant will be available under Chapter 2, Part 2-2A to Table A providers and Table B providers to assist Indigenous students.

Item 6

This item amends subparagraph 22-15(1)(a)(i) to enable the Minister to revoke a body’s approval as a higher education provider if the Minister is satisfied that the body has breached a condition of a grant made to the body under Part 2-2A. This is consistent with arrangements for grants under Parts 2-2, 2-3 and 2-4. The conditions to which this item refers are conditions imposed under new section 38-25 of the Higher Education Support Act.
Item 7

This item inserts a new Part 2-2A (Indigenous student assistance grants) after Part 2-2. It creates new Division 38 in Part 2-2A.

New section 38-1 provides a description of Part 2-2A. It provides that grants for assisting Indigenous students are payable under Part 2-2A to Table A providers and Table B providers. Table A providers are public universities listed under section 16-15 of the Higher Education Support Act, while Table B providers are private universities listed under section 16-20 of the Higher Education Support Act. The note clarifies that grants under Part 2-2A are not payable to Table C providers.

New section 38-5 provides for the Indigenous Student Assistance Grants Guidelines to deal with grants under Part 2-2A. Provisions in Part 2-2A indicate when a particular matter is or may be dealt with in these Guidelines. The note clarifies that the Guidelines are made by the Minister under section 238-10. The Guidelines are a legislative instrument.

New section 38-10 provides for the eligibility of Table A providers and Table B providers for grants under Part 2-2A in respect of the year 2017 or for a later year.

New subsection 38-10(1) provides that a Table A provider or a Table B provider is, subject to new subsection 38-10(3), eligible for grants under Part 2-2A for the year 2017 and onwards. The purposes of the grants are assisting Indigenous students to undertake higher education and to increase the number of Indigenous students enrolling in, progressing in, and completing courses leading to higher education awards.

New subsection 38-10(2) provides a non-exhaustive list of the means for achieving the grant purposes specified in new subsection 38-10(1). Higher education providers may also:

- assist students to undertake non-award courses or activities, such as providing extra bridging support for mathematics, as a pathway into higher education; and
• offer counselling to re-engage students that commenced higher education, but have subsequently withdrawn from studies or are at risk of withdrawing.

New subsection 38-10(3) provides that if the Indigenous Student Assistance Grants Guidelines provide for a grant and specify extra conditions of eligibility to receive the grant, then a Table A provider or a Table B provider must comply with those extra conditions in order to be eligible for the grant.

New section 38-15 allows for the Indigenous Student Assistance Grant Guidelines to provide for grants under Part 2-2A. New subsection 38-15(1) provides that the Guidelines may provide for grants to Table A providers and Table B providers that are to be paid under Part 2-2A for purposes specified in new subsection 38-10(1) (being to assist Indigenous students to undertake higher education and to increase the number of Indigenous students enrolling in, progressing in, and completing courses leading to higher education awards). New subsection 38-15(2) specifies the matters that the Guidelines may provide for, if the Guidelines provide for one or more grants of a particular type.

New subsection 38-20 allows the Minister to approve, by notifiable instrument, a grant under Part 2-2A in respect of a year to a particular higher education provider that is eligible for such a grant. This provision is structured in the same way as section 41-20 of the Higher Education Support Act and is intended to be administered in a similar manner. The intention is that this provision will allow the Minister to approve an ad hoc grant to an eligible higher education provider in a single year, in addition to any grants provided for by the Indigenous Student Assistance Grants Guidelines. The requirement for the Minister to approve grants under section 38-20 by notifiable instrument ensures grant approvals under this section are transparent.

*Example:* A grant is paid to an eligible higher education provider under the Indigenous Student Assistance Grants Guidelines linked to student enrolments, progression and completions. The provider uses the grant to provide academic support activities for Indigenous students. A cyclone hits the provider’s facilities, meaning that many Indigenous students may not complete required units in that year. Section 38-20 allows the Minister to approve a separate grant to the provider
so formula-driven entitlements can be augmented to account for the impact of this event.

New section 38-25 provides for conditions to be imposed on a grant in one of two ways:

(i) if the grant is provided for by the Indigenous Student Assistance Grants Guidelines, the grant will be subject to:

   (a) any conditions specified in the Guidelines applying to that grant; and

   (b) on the condition that the higher education provider receiving the grant must meet the quality and accountability requirements;

(ii) if the grant is provided for outside of the Indigenous Student Assistance Grants Guidelines or if the Guidelines do not impose conditions on the grant, the grant will be subject to:

   (a) any conditions (if any) determined by the Minister by notifiable instrument; and

   (b) on the condition that the higher education provider receiving the grant must meet the quality and accountability requirements.

The quality and accountability requirements are defined in section 19-1 of the Higher Education Support Act and relate to financial viability, and quality, fairness, compliance, contribution and fee, and compact and academic freedom requirements, as set out in Division 19 of Part 2-1 of the Higher Education Support Act.

Section 38-25 is structured in the same way as section 41-25 of the Higher Education Support Act, and is intended to be administered in a similar manner. The intention is that this provision will only enable the Minister to impose conditions on a grant if the Guidelines do not already impose conditions. If the Guidelines already specify conditions on a grant, the Minister cannot impose any additional conditions on that grant. The requirement for the Minister to determine conditions under new subsection 38-25(2) by notifiable instrument ensures the terms on which funding is provided are transparent.
New section 38-30 provides that the amount of a grant may be provided in one of two ways:

(i) if the grant is:

(a) made under the Indigenous Student Assistance Grants Guidelines; and

(b) the Guidelines specify the amount of the grant, or specify the method by which the amount of the grant is to be determined

the amount of the grant is the specified amount or the amount determined by the specified method.

(ii) if a grant is

(a) made outside of the Indigenous Student Assistance Grant Guidelines; or

(b) the Guidelines do not specify the amount of the grant or a method by which the amount is to be determined

the Minister may determine, by notifiable instrument, the amount of the grant.

Section 38-30 is structured in the same way as section 41-30 of the Higher Education Support Act, and is intended to be administered in a similar manner. The intention is that this provision will only enable the Minister to determine the amount of a grant when the grant is made outside of the Guidelines. If the Guidelines specify an amount of a grant, or the method to determine an amount, the Minister cannot alter the amount, or method of determination, of that grant. The requirement for the Minister to determine amounts by notifiable instrument ensures grant amounts are transparent.

New section 38-35 provides that an amount (as provided for in new section 38-30) will be payable under Part 2-2A to a higher education provider in respect of a year if:

- the provider meets the requirements, in respect of a year, of the Indigenous Student Assistance Grants Guidelines in relation to a grant; or
• the Minister approves, under section 38-20, a grant to the provider in respect of a year.

New section 38-40 enables the Secretary to rollover unspent grant amounts to the next following year.

New subsection 38-40(1) provides that if a higher education provider that received a grant in respect of a year under Part 2-2A fails to spend an amount of that grant and the Secretary determines, by notifiable instrument, that section 38-40 is to apply to that provider, then the unspent amount of money as determined by the Secretary is taken to be granted to the provider under Part 2-2A for the next following year.

New subsection 38-40(2) provides that this amount is taken to be granted under the same conditions as the original grant but for the following year, or under such other conditions as determined by the Secretary under subsection 38-40(4)) by notifiable instrument.

New subsection 38-40(3) enables the Secretary to determine, for the purposes of new subsection 38-40(1), that new section 38-40 is to apply to a particular higher education provider in respect of one or more grants, and for each grant, an amount of the unspent amount of that grant.

New subsection 38-40(4) provides that for the purposes of new paragraph 38-40(2)(b) (which deals with conditions on grant amounts that are rolled over), the Secretary may determine, by notifiable instrument, conditions that apply to one or more grants made to a particular higher education provider. The requirement for the Minister to determine conditions under new section 38-40(4) by notifiable instrument ensures the terms on which funding is rolled over are transparent.

New subsection 38-45(1) provides that the total payments made under Part 2-2A in respect of a year must not exceed the amount determined by the Minister in respect of the year. New subsection 38-45(2) provides that the Minister may, by legislative instrument, determine the total payments made under Part 2-2A in respect of a year. The note clarifies that a single legislative instrument may determine amounts for multiple years. New subsection 38-45(3) provides that a determination under new subsection 38-45(2) for a year must be made before the start of that year.
Under new subsection 38-45(4), the Minister may, by legislative instrument, vary, at any time before the end of a year, a determination made under new subsection 38-45(2) for the year.

New section 38-45 provides the Minister with flexibility to determine amounts for multiple years. Determining maximum amounts for up to five years is considered appropriate to give higher education providers an indication of the funding that is expected to be available. The requirement for the Minister to determine maximum payments for grants under Part 2-2A by legislative instrument is consistent with arrangements under section 41-45 of the Higher Education Support Act for Other Grants under Part 2-3 and under section 46-40 of the Higher Education Support Act for Commonwealth Scholarships under Part 2-4.

The administrative decisions to be made under new section 38-20, and new subsections 38-25(2), 38-30(2), 38-40(3), 38-40(4) and 38-45(2) will not be subject to review under section 206-1 of the Higher Education Support Act. This approach is consistent with the treatment of decisions about all other grants under Chapter 2. Decisions about the provision of grants to higher education providers are not usually subject to review.

There are factors lying in the nature of the decision that justify the exclusion of merits review. The decision to pay a grant under Part 2-2A relates to the allocation of a finite resource. A finite amount is appropriated each year for the Indigenous Student Success Programme. Once grants have been paid to higher education providers, the overturning of a particular decision would affect the allocation that has been made to other higher education providers.

The instruments required under section new 38-20, and new subsections 38-25(2), 38-30(2) and 38-40(4) are notifiable instruments within the meaning of section 11 of the *Legislation Act 2003*. As notifiable instruments, and to aid transparency for grants under Part 2-2A, these instruments will be registered on the Federal Register of Legislation and are available for public scrutiny.
Item 8

This item provides that new subsection 38-45(3), as amended by Part 1, does not apply to a determination for the year 2017. This provision allows a maximum payments determination for the year 2017 to be made after the start of year 2017.

Item 9

This item provides for sections 51-1 and 54-1 (dealing with reductions and repayments of grants) and section 164-15 (dealing with overpayments of grants) to apply to grants under Part 2-2A. This ensures that arrangements applying to grants made under Part 2-2A are consistent with arrangements applying to grants under Parts 2-2, 2-3 and 2-4.

Item 10

This item amends paragraphs 180-25(5)(e) and 180-25(6)(e) so that an officer that receives information about grants under Part 2-2A and any officer that receives the information from another officer within the same body will commit an offence if the information is personal information (within the meaning of section 179-5 of the Higher Education Support Act) and the information is not used or disclosed for a purpose permitted under the Higher Education Support Act.

This amendment ensures that rules about the use and disclosure of information are the same for grants under Part 2-2A and grants under Part 2-3.

Item 11

This item amends subsection 238-5(1) so that the Minister’s power under new section 38-45 to determine maximum payments for grants for a year under Part 2-2A cannot be delegated to the Secretary or an APS employee. This is consistent with arrangements for powers under section 41-45 in Part 2-3 (Other Grants) and 46-40 in Part 2-4 (Commonwealth Scholarships).
Item 12

This item provides for the inclusion of table item 6A in the table at subsection 238-10(1). This enables the Minister to make, by legislative instrument, the Indigenous Student Assistance Grants Guidelines permitted by new section 38-5.

Amendments to the Social Security Act 1991

Item 13

This item inserts subparagraph 8(8)(zja)(ia) to ensure that the amount or value of a scholarship provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary under subsection 8(8AAA) of the Social Security Act is not income for the purposes of the Social Security Act. This is consistent with arrangements in relation to the amount or value of Commonwealth Education Costs Scholarships and Commonwealth Accommodation Scholarships provided for under Part 2-4 of the Higher Education Support Act.

Item 14

This item inserts subsection 8(8AAA) to provide that the Secretary may, by legislative instrument, specify a scholarship for the purposes of new subparagraph 8(8)(zja)(ia). This power will enable the Secretary to specify any scholarship provided for under Part 2-2A of the Higher Education Support Act. If specified, then as a result of new subparagraph 8(8)(zja)(ia), a scholarship will not be income for the purposes of the Social Security Act.

Item 15

This item inserts two new definitions at subsection 23(1), being a ‘disqualifying accommodation scholarship’ and a ‘disqualifying education costs scholarship’.

A ‘disqualifying accommodation scholarship’ is:

- a scholarship provided for under Part 2-2A of the Higher Education Support Act (Indigenous student assistance grants) and specified by the Secretary under new paragraph 23(24)(a) of the Social Security Act for the purposes of
subparagraph (a)(ii) of the inserted definition of ‘disqualifying accommodation scholarship’ in subsection 23(1); or

- a ‘Commonwealth Accommodation Scholarship’.

A ‘disqualifying education costs scholarship’ is:

- a scholarship provided for under Part 2-2A of the Higher Education Support Act (Indigenous student assistance grants) and specified by the Secretary under new paragraph 23(24)(b) of the Social Security Act for the purposes of subparagraph (a)(ii) of the inserted definition of ‘disqualifying education costs scholarship’ in subsection 23(1); or

- a ‘Commonwealth Education Costs Scholarship’.

**Item 16**

This item adds that:

- under new paragraph 23(24)(a), the Secretary may, by legislative instrument, specify a scholarship for the purposes of new subparagraph 23(1)(a)(ii) for the definition of ‘disqualifying accommodation scholarship’.
- under new paragraph 23(24)(b), the Secretary may, by legislative instrument, specify a scholarship for the purposes of new subparagraph 23(1)(a)(ii) for the definition of ‘disqualifying education costs scholarships’.

New subsection 23(24) will enable the Secretary to specify scholarships provided for under Part 2-2A of the Higher Education Support Act that relate to accommodation and education costs. These subsections will not enable the Secretary to specify scholarships provided for under Part 2-2A that do not relate to these areas.

**Items 17 and 21**

These items replace references to ‘Commonwealth Education Costs Scholarships’ in paragraphs 592F(1)(e) and 2(e) and 592G(2)(e) and (f) and paragraphs 1061ZVBB(1)(b) and 2(b) with references to ‘disqualifying education costs scholarship.’
These amendments ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act that the Secretary specifies for the purposes of the definition of ‘disqualifying education costs scholarship’ under new paragraph 23(24)(b) of the Social Security Act does not qualify for:

- a ‘student start-up scholarship payment’ under sections 592F and 592G of the Social Security Act; or

- a ‘student start-up loan’ under section 1061ZVBB of the Social Security Act.

This is consistent with existing rules in relation to a person in receipt of Commonwealth Education Costs Scholarship provided for under Part 2-4 of the Higher Education Support Act.

No consequential amendments are made to paragraphs 592F(1)(aa) and 2(aa), because these paragraphs only apply to scholarships received before these paragraphs commenced.

**Items 18, 19 and 20**

These items replace references to ‘Commonwealth Accommodation Scholarship’ in paragraphs 592J(f) and 592K(2)(e) and (f), subparagraph 592K(5)(b)(v) and subsection 592L(7) (paragraph (e) of the definition of ‘student relocation payment’) with references to ‘disqualifying accommodation scholarship’.

These amendments ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act that the Secretary specifies for the purposes of the definition of ‘disqualifying accommodation scholarship’ under new paragraph 23(24)(a) of the Social Security Act does not qualify for a ‘relocation scholarship payment’ under sections 592J and 592K of the Social Security Act. This is consistent with existing rules in relation to a person in receipt of a Commonwealth Accommodation Scholarship provided for under Part 2-4 of the Higher Education Support Act.
Amendments to the Social Security (Administration) Act 1999

Item 22

This item amends subparagraphs 195(2)(i)(i) to (xvii) to insert the conjunction ‘and’ at the end of each subparagraph. This amendment clarifies that in relation to a course of study being undertaken by a person, the Secretary may require all the information at paragraph 195(2)(i).

Item 23

This item provides that at subparagraph 195(2)(i)(xvii) ‘Commonwealth Education Costs Scholarship’ or ‘Commonwealth Accommodation Scholarship’ is to be substituted with ‘disqualifying accommodation scholarship’ or ‘disqualifying education cost scholarship’.

This amendment ensures that the Secretary can require a person to give the Department of Human Services or Department of Social Services information about the amount or value of scholarships provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary under new subsection 23(24) of the Social Security Act in relation to a course of study being undertaken by the person. This is consistent with the Secretary's power to obtain information about the amount or value of scholarships provided for under Part 2-4 of the Higher Education Support Act.

Item 24

This item inserts paragraph 202(1)(da) to provide that a person may obtain protected information if the information is obtained for the purposes of administering scholarships that are provided for under Part 2-2A of the Higher Education Support Act and is specified by the Secretary under subsection 202(2DA) as a scholarship for the purposes of this subparagraph.

Item 25

This item inserts paragraph 202(2)(daaa) to provide that a person may make a record of protected information, or disclose such information or otherwise use such
information, if the record, disclosure or use is made for the purposes of the administration of scholarships that are provided for under Part 2-2A of the Higher Education Support Act and is specified by the Secretary under subsection 202(2DA) as a scholarship for the purposes of this subparagraph.

**Item 26**

This item inserts subsection 202(2DA) to allow the Secretary to specify, by legislative instrument, a scholarship for the purposes of new subparagraphs 202(1)(da)(ii) or 202(2)(daaa)(ii). This amendment will enable the Secretary to specify any scholarship provided for under Part 2-2A of the Higher Education Support Act.

The amendments effected by Items 24 to 26 ensure that arrangements pertaining to scholarships provided for under Part 2-2A are treated consistently with arrangements pertaining to scholarships provided for under Part 2-4 of the Higher Education Support Act.

**Amendments to the Student Assistance Act 1973**

**Item 27**

This item inserts a definition of ‘disqualifying education costs scholarship’ at subsection 3(1). A ‘disqualifying education costs scholarship’ is defined by reference to the new definition of disqualifying education costs scholarship in section 23 of the Social Security Act.

**Item 28**

This item substitutes the ‘Commonwealth Education Costs Scholarship’ with ‘disqualifying education costs scholarship’ at paragraph 7C(1)(b).

These amendments to the *Student Assistance Act 1973* ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act that the Secretary specifies for the purposes of the definition of ‘disqualifying education costs scholarship’ under new paragraph 23(24)(b) of the Social Security Act does not qualify for an ABSTUDY start-up loan under sections 7C and 7D of the *Student Assistance Act 1973*. This is consistent with
existing rules in relation to a person in receipt of Commonwealth Education Costs Scholarship provided for under Part 2-4 of the Higher Education Support Act.

**Amendments to the Veterans’ Entitlements Act 1986**

**Item 29**

This item inserts paragraph 5H(8)(hac) to ensure that the amount or value of a scholarship provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary under subsection 8(8AAA) of the Social Security Act is not income in relation to a person for the purposes of the *Veterans’ Entitlements Act 1986*. This is consistent with arrangements in relation to the amount or value of a Commonwealth Education Costs Scholarship and a Commonwealth Accommodation Scholarship provided for under Part 2-4 of the Higher Education Support Act.

Linking new paragraph 5H(8)(hac) to the specification under subsection 8(8AAA) of the Social Security Act will ensure that scholarships provided for under Part 2-2A of the Higher Education Support Act are treated consistently for payments and benefits purposes.

**Part 2 – Contingent amendments**

Part 2 of this Schedule amends subparagraphs 1061ZVBC(1)(b)(iii) and (iv) of the Social Security Act and subparagraphs 7D(1)(b)(iii) and (iv) of the *Student Assistance Act 1973* to replace ‘Commonwealth Education Costs Scholarship’ with ‘disqualifying education costs scholarship’. The specific amendments that will have effect depend on whether the *Budget Savings (Omnibus) Act 2016* commences before or after Part 1 of Schedule 1 to the Act.

These amendments ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act that the Secretary specifies for the purposes of the definition of ‘disqualifying education costs scholarship’ under new paragraph 23(24)(b) of the Social Security Act does not qualify for:

- a ‘student start-up loan’ under section 1061ZVBC of the Social Security Act;
  or
• an ABSTUDY start-up loan under section 7D of the *Student Assistance Act 1973*.

This is consistent with existing rules in relation to a person in receipt of a Commonwealth Education Costs Scholarship provided for under Part 2-4 of the Higher Education Support Act.

**Division 1 – Amendments commencing if the *Budget Savings (Omnibus) Act 2016* commences before Part 1 of this Schedule**

The *Budget Savings (Omnibus) Act 2016* omits (1) from subsection 1061ZVBC(1) of the Social Security Act and omits (1) from subsection 7D(1) of the *Student Assistance Act 1973*.

If the *Budget Savings (Omnibus) Act 2016* commences before Part 1 of this Schedule, Part 2 of this Schedule provides for contingent amendments to ensure that the amendments are correctly described.

**Item 30**

This item replaces ‘Commonwealth Education Costs Scholarship’ at subparagraphs 1061ZVBC(b)(iii) and (iv) of the Social Security Act with ‘disqualifying education costs scholarship’.

**Item 31**

This item replaces ‘Commonwealth Education Costs Scholarship’ at subparagraphs 7D(b)(iii) and (iv) of the *Student Assistance Act 1973* with ‘disqualifying education costs scholarship’.

**Division 2 – Amendments commencing if the *Budget Savings (Omnibus) Act 2016* does not commence before Part 1 of this Schedule**

If the *Budget Savings (Omnibus) Act 2016* does not commence before Part 1 of Schedule 1 of the Act, Part 2 of this Schedule will amend subparagraphs 1061ZVBC(1)(b)(iii) and (iv) of the Social Security Act and subparagraphs 7D(1)(b)(iii) and (iv) of the *Student Assistance Act 1973*.
Item 32

This item replaces ‘Commonwealth Education Costs Scholarship’ at subparagraphs 1061ZVBC(1)(b)(iii) and (iv) of the Social Security Act with ‘disqualifying education costs scholarship’.

Item 33

This item replaces ‘Commonwealth Education Costs Scholarship’ at subparagraphs 7D(1)(b)(iii) and (iv) of the Student Assistance Act 1973 and with ‘disqualifying education costs scholarship’.

Division 3 – Other amendments

Item 34

This item repeals the definition of Commonwealth Education Costs Scholarship from subsection 3(1) of the Student Assistance Act 1973.

As Item 27 inserts a definition of ‘disqualifying education costs scholarship’ at subsection 3(1) of the Student Assistance Act 1973, the definition of Commonwealth Education Costs Scholarship is no longer necessary.
Schedule 2 – HELP information management

Summary

Schedule 2 amends the Higher Education Support Act to allow the Department of Education and Training to access TFNs for VET FEE-HELP debtors, consistent with arrangements that apply for administering all other types of HELP debts. This is accomplished by requiring students to notify the Secretary and their VET provider of their TFN upon application for a HELP loan, as well as through provisions to enable the ATO to provide the Department of Education and Training with TFNs for existing HELP debtors. The aim is to streamline and improve the efficiency of transmission of data between the Department of Education and Training and the ATO, which will simplify administration, reduce the potential for fraud, and improve data accuracy and reliability. Amendments made to Division 180 to the Higher Education Support Act will authorise the Secretary to disclose HESA information that includes TFNs to the Commissioner of Taxation. HELP program Commonwealth officers will be authorised to disclose HESA information (other than a person’s TFN) to other HELP program Commonwealth officers who may use that information for purposes specified in the Act.
**Background**

Under Division 187 of the Higher Education Support Act (the TFN requirements for assistance under Chapter 3), students are required to notify the appropriate officer of their higher education provider, or Open Universities Australia, and the Secretary of their TFN. Under Division 190 (notification of TFNs), the Commissioner can currently give written notice of the TFN of a student to a higher education provider, Open Universities Australia and the Secretary. This contrasts with arrangements for VET FEE-HELP in Schedule 1A to the Higher Education Support Act, which do not currently require VET students to provide their TFNs to the Secretary of the Department of Education and Training, nor allow the Commissioner to provide TFNs to the Secretary.
Explanations of the changes

Part 1 – Amendments

Amendments to the Higher Education Support Act 2003

Items 1, 2 and 18

Division 180 authorises the use and disclosure of certain types of information obtained or created for the purposes of the Higher Education Support Act, including some types of personal information. This information is collectively defined in section 180-5 as Higher Education Support Act information (HESA information).

Items 1, 2 and 18 make amendments to provisions in Division 180 of the Higher Education Support Act and a related definition. The amendments are intended to support the HELP data improvement project that will link data held by the Department of Education and Training with data held by the ATO. This project will improve the ability to analyse HELP debt and debtors, better understand factors affecting the loan program, assess the impact of policy changes over time, and assist in future administration of that program.

Item 1 amends paragraph (d) of the definition of HESA information in section 180-5 by adding, “or the purposes referred to in subsection 180-28(5)”.

This amendment supports the operation of new section 180-28, inserted by item 2, by clarifying that HESA information includes information obtained or created by a Commonwealth officer for the purposes referred to in new subsection 180-28(5). The purpose of this amendment is to ensure that the information created as part of the HELP data improvement project can be disclosed back to officers of the Department of Education and Training under new subsection 180-28(1), to be used by those officers for the purposes set out in new subsection 180-28(5).

Item 2 inserts a new section 180-28 in Division 180 to authorise the use and disclosure of HESA information for certain purposes.
New subsection 180-28(1) provides that a HELP program Commonwealth officer may disclose HESA information (other than a person’s TFN) to another HELP program Commonwealth officer for the purposes referred to in new subsection (5).

New subsection 180-28(2) authorises the Secretary to disclose a person’s TFN to the Commissioner for the purposes referred to in new subsection (5).

New subsection 180-28(3) authorises a HELP program Commonwealth officer to use HESA information (other than a person’s TFN) for the purposes referred to in subsection (5).

New subsection 180-28(4) provides that if a person’s TFN is disclosed under new subsection (2), the Commissioner may use that TFN for the purposes referred to in subsection (5).

New subsection 180-28(5) provides that the purposes are to assist in the development of the HELP program, or the administration, or future administration of the HELP program, including by:

- policy formation; and
- financial planning and projection; and
- program design; and
- conducting research.

New subsection 180-28(6) defines the HELP program as the program consisting of:

- grants to higher education providers under Part 2-2; and
- assistance provided to students under Chapter 3 or Schedule 1A; and
- repayment of debts under Chapter 4 incurred in relation to that assistance.

New subsection 180-28(7) defines a HELP program Commonwealth officer as:

- the Secretary; or
- the Commissioner; or
• a Commonwealth officer specified to be a HELP program Commonwealth officer under new subsection (8).

New subsection 180-28(8) provides that the Minister may, by legislative instrument, specify that a Commonwealth officer, or a Commonwealth officer in a specified class, is a HELP program Commonwealth officer for the purposes of new paragraph (7)(c). This provision will enable the Minister to specify that persons are HELP program Commonwealth officers so that they may use and disclose HESA information for the purposes set out in new subsection 180-28(5), such as carrying out actuarial analysis of HELP debts.

Item 18 inserts two new definitions in the Dictionary of the Higher Education Support Act (clause 1 of Schedule 1 to the Higher Education Support Act).

It provides that ‘HELP program’ has the meaning provided for in new subsection 180-28(6).

It provides that ‘HELP program Commonwealth officer’ has the meaning given by new subsection 180-28(7).

**Item 3**

Item 3 amends the text of the introduction to Part 5-5 of Higher Education Support Act, to add ‘the Secretary’ to the persons the Commissioner of Taxation can currently notify of matters relating to TFNs. This amendment is a consequence of amendments to Division 190 of the Higher Education Support Act made by Schedule 3 to the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*.

**Item 4**

Paragraphs 187-5(1)(a) and (2)(a) of the Higher Education Support Act are intended to require students to notify their provider or Open Universities Australia, as well as the Secretary, of their TFN within 21 days of it being issued by the Commissioner of Taxation.
Item 4 amends these provisions by omitting ‘notifies’ and substituting it with ‘must notify’. This is intended to clarify that it is mandatory that a student meet this requirement.

**Item 5**

Division 15 of Schedule 1A to the Higher Education Support Act sets out the TFN requirements for assistance under Part 2 of Schedule 1A to the Higher Education Support Act (i.e. VET FEE-HELP assistance).

As a consequence of amendments to Division 15 to Schedule 1A made by items 8 to 17, item 5 amends the second paragraph of the overview of Division 15 at clause 79 to reflect that the Commissioner of Taxation may notify the Secretary of matters relating to TFNs.

**Item 6**

Subclause 80(1) of Schedule 1A to the Higher Education Support Act provides that a student who is enrolled, or proposes to enrol, with a VET provider in a VET unit of study meets the TFN requirements for VET FEE-HELP assistance if:

- the student notifies his or her TFN to an appropriate officer of the provider, and the provider is satisfied (in accordance with subclause 80(4)) that this number is a valid TFN; or

- the student gives the officer a certificate from the Commissioner of Taxation stating that the student has applied to the Commissioner to issue a TFN to the student.

Item 6 repeals and replaces paragraph 80(1)(a) so that the student must also notify his or her TFN to the Secretary.

**Item 7**

Paragraph 82(a) requires students applying for VET FEE-HELP assistance to notify their provider of their TFN within 21 days of it being issued by the Commissioner of Taxation.
Item 7 amends this paragraph to also require students to notify their TFNs to the Secretary.

Items 8 to 17

Subdivision 15-C of Schedule 1A to the Higher Education Support Act sets out the circumstances in which the Commissioner of Taxation can notify a VET provider of a student’s TFN.

The purpose of the amendments to Subdivision 15-C of Schedule 1A made by items 8 to 17 is to enable the Commissioner of Taxation to notify the Secretary of matters relating to students’ TFNs. Subdivision 15-C of Schedule 1A will therefore operate in the same fashion as the equivalent provisions in Division 190 of the Higher Education Support Act (which were amended with effect from 1 January 2016 by Schedule 3 to the Education Legislation Amendment (Overseas Debt Recovery) Act 2015).

Item 8 repeals and substitutes the heading for Subdivision 15-C so that it reads, *Who can the Commissioner notify of tax file number matters?*

The Commissioner of Taxation can notify a student’s VET provider of the student’s TFN in a number of circumstances:

- when TFNs are issued (clause 83)
- when TFNs are altered (clause 84)
- when TFNs are incorrectly notified for students with TFNs (clause 85)
- when TFNs are incorrectly notified for students without TFNs (clause 86)
- when applications for TFNs are refused or cancelled (clause 87).

Items 9 to 17 amend these clauses, by inserting references to the Secretary. This will enable the Commissioner to notify the Secretary of the student’s TFN or information about the student’s TFN (as the case may be) in each of these circumstances.
**Income Tax Assessment Act 1936**

**Item 19**

Item 19 amends paragraph 202(c) of the Income Tax Assessment Act so that it captures the Higher Education Support Act in its entirety, including those parts of the Higher Education Support Act providing for VET FEE-HELP assistance.

This amendment is intended to ensure that those parts of the Higher Education Support Act providing for VET FEE-HELP assistance can permit the recording, use and communication of TFNs that would otherwise be prohibited under section 8WB of the Taxation Administration Act.

This amendment is necessary to ensure that the Department of Education and Training is able use and disclose the TFNs of VET students in accordance with the provisions in the Higher Education Support Act. This will, for example, make it possible for the Department of Education and Training to remove the HELP debts of students who were misled into taking out loans.

**Part 2 – Application and transitional provisions**

**Item 20 (application provision)**

Item 20 is an application provision which provides that the TFN amendments made by Schedule 2 to Subdivisions 15-A and 15-B of Schedule 1A to the Higher Education Support Act (i.e. items 5 to 7) do not apply in relation to a student and a VET course of study if, immediately before the commencement of Schedule 2, the student met the TFN requirements in relation to a VET course of study. That is, a student who already met the TFN requirements prior to commencement of the amendments made by items 5 to 7 continues to meet the TFN requirements after commencement, and does not need to meet the amended TFN requirements.

**Items 21 and 22 (transitional provisions)**

Items 21 and 22 are both transitional provisions, empowering the Secretary to require the Commissioner to provide the Department of Education and Training with the TFNs of students that met TFN requirements for VET FEE-HELP assistance, and
the other forms of HELP assistance under Chapter 3, prior to the amendments made by this Schedule 2, and Schedule 3 to the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*.

Subitem 21(1) provides that item 21 applies in relation to a student who, immediately before the commencement of Schedule 2, met the TFN requirements for assistance under Part 2 of Schedule 1A to Higher Education Support Act in relation to a VET course of study.

Subitem 21(2) provides that the Secretary may require the Commissioner of Taxation to provide a Commonwealth officer with the student’s TFN for the purposes of:

- Division 5A of Part 1, or Part 2, of Schedule 1A; or
- Chapter 4 of that Act, to the extent that it relates to Schedule 1A.

A note to this subitem provides that when obtained by the officer, a student’s TFN becomes VET personal information and cross-refers to clause 72 of that Schedule.

Subitem 21(3) provides that the Commissioner of Taxation has the general administration of item 21. A note to subitem 21(4) provides that one effect is that item 21 is a taxation law for the purposes of the Taxation Administration Act. This provision has been included to ensure that the Commissioner’s disclosure of TFNs to the officers of the Department of Education and Training pursuant to item 21 is permitted for the purposes of subsection 8WB(1A) of the Taxation Administration Act.

Subitem 21(4) provides that despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the Commissioner of Taxation has the general administration, the defendant does not bear an evidential burden in relation to whether item 21 applies to a communication of VET personal information. Thus, for example, a defendant would not have to lead evidence to prove that a TFN provided to the Department of Education and Training in purported compliance with subitem 21(2) was the TFN of a student to whom subitem 21(1) applied; or that the
Secretary had required the Commissioner to provide the TFN under subitem 21(2). The prosecution would have to lead evidence of those matters.

Subitem 22(1) provides that Item 22 applies in relation to a student who, immediately before the commencement of Schedule 3 to the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015* (i.e. 1 January 2016), met the TFN requirements for assistance under Chapter 3 of the Higher Education Support Act in relation to a course of study.

Subitem 22(2) provides that the Secretary may require the Commissioner of Taxation to provide a Commonwealth officer with the student’s TFN for the purposes of Chapter 2, or Chapters 3 and 4, of the Higher Education Support Act.

A note to this subitem provides that when obtained by the officer, the student’s TFN becomes personal information and cross-refers to section 179-5 of that Act.

Subitem 22(3) provides that the Commissioner of Taxation has the general administration of item 22. A note to subitem 22(3) provides that one effect is that Item 22 is a taxation law for the purposes of the Taxation Administration Act.

This provision has been included to ensure that the Commissioner’s disclosure of TFNs to the officers of the Department of Education and Training pursuant to these items is permitted for the purposes of subsection 8WB(1A) of the Taxation Administration Act.

Subitem 22(4) provides that despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the Commissioner of Taxation has the general administration, the defendant does not bear an evidential burden in relation to whether item 22 applies to a communication of personal information. Thus, for example, a defendant would not have to lead evidence to prove that a TFN provided to the Department of Education and Training in purported compliance with subitem 22(2) was the TFN of a student to whom subitem 22(1) applied; or that the Secretary had required the Commissioner to provide the TFN under subitem 22(2). The prosecution would have to lead evidence of those matters.
Item 23

Item 23 enables the Secretary to delegate all or any of his or her powers under items 21 and 22, to an APS employee. The delegate must comply with any directions of the Secretary.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

HIGHER EDUCATION SUPPORT LEGISLATION AMENDMENT (2016 MEASURES NO.1) BILL 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Bill provides for two separate measures under the Higher Education Support Act 2003 (Higher Education Support Act). Schedule 1 amends the Higher Education Support Act to provide for grants to certain higher education providers to assist Indigenous students. Schedule 2 amends the Higher Education Support Act to allow the Secretary to be notified of Tax File Numbers (TFNs) for the purpose of administering student assistance under VET FEE-HELP, and amends the Income Tax Assessment Act 1936 to ensure Commonwealth officers are able to use and disclose TFNs under the Higher Education Support Act for the purposes of administering VET FEE-HELP.

Schedule 1 – Indigenous Student Assistance

The policy objective of the measures in Schedule 1 of the Bill is to address the current disparity between higher education outcomes of Indigenous students and the higher education outcomes of non-Indigenous students.

Over the last decade, there has been an increase in the number of Indigenous students in higher education award courses. However, the rates of completion of studies by Indigenous students still remains much lower compared to non-Indigenous higher education students.

Schedule 1 creates conditions where universities can capitalise on improvements in Indigenous students’ access to higher education and ensure Indigenous students are
not only enrolling, but also progressing and completing university awards, in greater numbers.

Schedule 1 creates a new Part 2-2A in the Higher Education Support Act, which enables grants to certain higher education providers to assist Indigenous students. Part 2-2A is similar in many respects to Part 2-3 of the Higher Education Support Act.

Schedule 1 also makes consequential amendments to other legislation to ensure that scholarships provided for under new Part 2-2A are treated in the same way as scholarships currently provided for under the Higher Education Support Act, particularly in relation to the calculation of income for social security purposes and eligibility for other forms of student assistance.

The amendments in Schedule 1 respond to the 2012 Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People (2012 Review), which recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes overall be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates (Recommendations 13 and 17). The Commonwealth worked closely with universities to build on these recommendations.

Schedule 2 – HELP Information Management

The main purpose of Schedule 2 is to enable the Secretary to access TFNs for students who obtain a VET FEE-HELP loan and to give the Secretary access to TFNs not previously provided to the Secretary.

A minor amendment to the Income Tax Assessment Act 1936 (Income Tax Assessment Act) is required to ensure that it captures the Higher Education Support Act in its entirety, including those parts of the Act providing for VET FEE-HELP assistance. This amendment is intended to ensure that those parts of the Higher Education Support Act providing for VET FEE-HELP assistance can permit the recording, use and communication of TFNs that would otherwise be prohibited under section 8WB of the Taxation Administration Act. Currently, section 202 of the Income
Tax Assessment Act only extends to the Higher Education Support Act insofar as it extends to higher education. As the Higher Education Loan Program (HELP) also extends to students at vocational education providers, the scope of this provision should be broadened to encompass VET students.

Schedule 2 supports improved data on the HELP scheme and assists in its future administration by authorising the use and disclosure of information related to the administration of HELP debts, including TFNs, for that purpose. The Secretary will be able to disclose HESA information including TFNs to the Commissioner of Taxation only. All other HESA information may only be disclosed between HELP program Commonwealth officers without the inclusion of the TFN.

Providing the Secretary with TFNs enables more efficient, accurate and secure administration of HELP loans. Access to student TFNs allows, for example, the more efficient removal of a HELP debt in cases where it has been attributed to an incorrect TFN.

**Human rights implications**

Careful consideration was given to Australia’s obligations under key human rights instruments throughout the development of the Bill, particularly those listed at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Instruments that were considered in drafting the Bill relevantly include:

- the International Covenant on Economic, Social and Cultural Rights
- the International Covenant on Civil and Political Rights
- the International Convention on the Elimination of All Forms of Racial Discrimination

This Bill engages the following human rights:

- Right to education: Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Right to social security: Article 9 of the ICESCR;
• Prohibition on interference with privacy: Article 17 of the International Covenant on Civil and Political Rights (ICCPR);

• Protection from economic and social exploitation: Article 10 of the ICESCR; and

• Right of equality and non-discrimination: Article 2 of the ICESCR, Articles 2, 16 and 26 of the ICCPR and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

To the extent that Schedule 1 of the Bill discriminates on the basis of race, it is intended as a ‘special measure’ within the meaning of Article 1(4) of the CERD.

**Right to Education**

The right to education is contained in Article 13 of the ICESCR, which recognises the 'right of everyone to education.'

Relevantly, Article 13(2)(c) of the ICESCR recognises that for the full realisation of the right to education, 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means …'.

The United Nations Committee on Economic Social and Cultural Rights has stated that the right to education requires that functioning educational institutions and programmes must be available in sufficient quantity within a country.₁

The changes to the Higher Education Support Act in Schedule 1 of the Bill enables the Commonwealth to make grants to certain higher education providers for the purposes of:

• assisting Indigenous students to undertake higher education; and

• increasing the number of Indigenous students enrolling in, progressing in and completing courses leading to higher education awards.

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Assistance may include providing scholarships, academic support (including supplementary tuition), pastoral care, and strategies to accelerate improvements to Indigenous student outcomes or foster culturally-safe learning environment in higher education.

The arrangements provided for by Schedule 1 of the Bill will facilitate assistance to Indigenous students to access higher education and attain higher education awards.

Schedule 2 streamlines and improves the efficiency of transmission of data between the Department of Education and Training and the Australian Taxation Office, simplifying administration, reducing the potential for fraud, and improving data accuracy and reliability. By ensuring the integrity of HELP, Schedule 2 helps preserve access to higher education.

The Bill therefore advances the right to education.

**Right to social security**

The right to social security is contained in Article 9 of the ICESCR, which recognises ‘the right of everyone to social security, including social insurance’. This could also include support for students to access tertiary education.

Schedule 1 amends the *Social Security Act 1991* (Social Security Act) and the *Veterans’ Entitlements Act 1986* (Veterans’ Entitlements Act) to ensure that a scholarship provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary under subsection 8(8AAA) of the Social Security Act are not income for the purposes of the Social Security Act or the Veterans’ Entitlements Act.

Schedule 1 of the Bill also amends the Social Security Act and the *Student Assistance Act 1973* to ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary by legislative instrument does not qualify for certain payments or benefits. This is consistent with existing rules in relation to a person in receipt of scholarships provided for under Part 2-4 of the Higher Education Support Act.
Schedule 2 of the Bill seeks to ensure the integrity of HELP, thereby protecting the sustainability of financial support to students for higher education.

These measures protect a person’s entitlement to social security payments.

The Bill therefore promotes the right to social security.

**Prohibition on interference with privacy**

The prohibition on interference with privacy is contained in Article 17 of the ICCPR, which prohibits the unlawful or arbitrary interference with a person’s privacy. Article 17 provides that all persons have the right to the protection of the law against such interference.

While the United Nations Human Rights Committee states that an arbitrary interference with privacy extends to interference provided for under the law, it also provides that where the interference is reasonable in the circumstances and in accordance with the aims and objectives of the ICCPR, the interference will not be considered arbitrary.

The Bill engages with the prohibition on interference with privacy in two ways. Firstly, Schedule 1 includes amendments which provide for the use and disclosure of information in relation to the administration of grants (including grants for scholarships) under new Part 2-2A of the Higher Education Support Act. Secondly, Schedule 2 allows the Secretary to access students’ TFNs to support data improvement and more effective administration of HELP loans.

Schedule 1 of the Bill amends section 195 of the *Social Security (Administration) Act 1999* (Administration Act) to ensure that the Secretary can require a person to give the Department of Human Services or the Department of Social Services information about the amount or value of scholarships provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary by legislative instrument in relation to a course of study being undertaken by the person. This arrangement is consistent with the Secretary’s power to obtain information about the amount or value of scholarships provided for under Part 2-4 of the Higher Education Support Act.
This amendment to section 195 of the Administration Act pursues the legitimate objective of ensuring compliance with social security law (including verifying claims for social security payments), and will be subject to the existing protections under this section (including that irrelevant information be destroyed within 13 weeks of being provided to the Secretary).

Schedule 1 also amends section 202 of the Administration Act to provide that a person may obtain, make a record, use or disclose protected information (as defined in section 23 of the Social Security Act) for the purposes of the administration of scholarships that are provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary by legislative instrument. This is necessary for the pursuit of the legitimate objective of ensuring that these scholarships can be administered effectively. This arrangement is no wider than necessary as it is consistent with existing arrangements in the Administration Act for scholarships provided for under Part 2-4 of the Higher Education Support Act.

To the extent that amendments to sections 195 and 202 of the Administration Act limit the right to privacy, these arrangements are reasonable, necessary and proportionate. The amendments are restricted to clearly specified purposes to ensure a person’s privacy is not arbitrarily interfered with. Furthermore, these arrangements are consistent with existing arrangements for the administration of scholarships and will enable effective administration of scholarships and other social security payments.

Schedule 1 also amends the Higher Education Support Act to protect the use and disclosure of personal information (within the meaning of section 179-5 of the Higher Education Support Act) by making it an offence for a person that receives information about grants under Part 2-2A to use or disclose information that is personal information unless it is for a purpose permitted under the Higher Education Support Act. This amendment ensures that rules in the Higher Education Support Act about the use and disclosure of information are the same for grants under Part 2-2A and grants under Part 2-3, and serves to protect a person’s privacy.

Schedule 2 enables the Secretary to access TFNs for students who obtain a VET FEE-HELP loan, and gives the Secretary access to TFNs not previously provided to
the Secretary. While there may be concerns that these amendments have the potential to compromise student and debtor privacy, this data sharing will only be allowed in specific circumstances, between the specified entities, and for confined and specific purposes as defined in the Bill. The change to enable the Department of Education and Training to access TFNs for VET FEE-HELP students and for students who disclosed their TFNs prior to the Secretary being allowed to access them, is merely an extension of current processes that apply to new students who access all other HELP loans, and for other government programs such as the Trade Support Loan program.

The collection of TFNs for VET FEE-HELP students, and for students who previously disclosed their TFN could be seen as limiting a person’s right to privacy. However, this information is collected for the legitimate objective of administering HELP. All parties with access to this data are required to use appropriate safeguards to ensure the confidentiality of this information. Access to TFNs will be limited to Commonwealth officers with a legitimate need to access and use TFNs for HELP debt administration. New provisions authorising the disclosure of TFNs will only authorise the disclosure of TFNs from the Secretary to the Commissioner of Taxation. All other disclosure or use of HESA information will be limited to HELP program Commonwealth officers who will be either delegates of the Secretary or Commissioner, or officers specified by the Minister by legislative instrument.

To the extent that Schedule 2 limits the right to privacy, the amendments are reasonable, necessary and proportionate. This is because these amendments preserve the integrity of HELP and provide for protections to ensure a person’s privacy is not arbitrarily interfered with.

The Bill is compatible with the prohibition on interference with privacy as it either protects the right to privacy, or to the extent it limits the right to privacy, the limitations are reasonable, necessary and proportionate.

**Protection from economic and social exploitation**

The right of young persons to be protected from economic and social exploitation is recognised in Article 10 of the ICESCR.
The provision in Schedule 2 that enables the Secretary to be provided with TFNs is a necessary student protection, as it will enable the Secretary to remove any HELP debts that have been incorrectly or unfairly incurred. As these HELP debts may have been incurred prior to the commencement of this provision, it is important that the Secretary be given access to previously disclosed TFNs in order for HELP debt management to be effective and efficient.

The Bill therefore promotes the protection of young persons from economic and social exploitation.

**Right of equality and non-discrimination**

The right of equality and non-discrimination is contained in Articles 2, 16 and 26 of the ICCPR, Article 2 of the ICESCR and Article 5 of the CERD.

The right of equality and non-discrimination recognises that all human beings have the right to be treated equally and to not be discriminated against.

‘Special measures’

To the extent that measures in relation to Indigenous Student Assistance in Schedule 1 of the Bill will mean Indigenous persons are provided with a different level of assistance to access higher education than other persons, the Bill is intended to be a ‘special measure’ within the meaning of Article 1(4) of the CERD and subsection 8(1) of the Racial Discrimination Act 1975.

‘Special measures’ are an exception to the general prohibition on racial discrimination, and are designed to ‘secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms’. For a measure to be characterised as a ‘special measure’ it must:

- Be for a particular group or individuals;
- Be taken for the sole purpose of securing the adequate advancement of those groups or individuals;

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• Be ‘necessary’; and

• Not continue after its objectives have been achieved.

The arrangements provided for in Schedule 1 are for Indigenous students. The Bill enables grants to higher education providers to provide assistance specifically to Indigenous students.

This measure has been taken for the sole purpose of securing the adequate advancement of Indigenous peoples to ensure their equal enjoyment or exercise of human rights, in particular the right to education and right of equality and non-discrimination.

Data available at the time the Schedule 1 amendments were developed indicates that Indigenous peoples do not access higher education or complete higher education at a rate equivalent to non-Indigenous peoples.

The United Nations Committee on Economic Social and Cultural Rights has expressed concern about disparities in access to the educational system for Indigenous peoples, including those living in remote areas, compared with the rest of the population, as well as the deficient quality of education provided to persons living in remote areas, in particular Indigenous peoples.3

Schedule 1 facilitates the provision of targeted assistance to Indigenous students and allows them to better access, progress in and complete higher education awards in order to address the disparity in access to, and completion of, higher education as exists between Indigenous persons and other persons.

These measures are reasonably necessary to secure the equal enjoyment of the right to education and the right of equality and non-discrimination by Indigenous persons.

The 2012 Review recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes

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overall be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates (Recommendations 13 and 17).

The Commonwealth worked closely with universities, including with Indigenous staff from universities across Australia and the National Aboriginal and Torres Strait Islander Higher Education Consortium, to develop the reforms contained in the Bill.

Although the number of Indigenous persons accessing higher education is increasing, the arrangements provided for in Schedule 1 of the Bill are necessary to capitalise on improvements in Indigenous access to higher education and ensure students are not only enrolling, but also progressing and completing university awards, in greater numbers.

The Schedule 1 arrangements are appropriate, adapted and proportionate as they will facilitate the consolidation of existing higher education programmes which are known to be effective but could be improved. The reforms streamline and increase the capacity of universities to tailor assistance to the individual needs of Indigenous students.

The Schedule 1 arrangements give the Minister the power to determine the maximum payments for grants in respect of a year or multiple years. Annual reporting of expenditure, assistance and strategies will be required under the Indigenous Student Assistance Grants Guidelines. Assistance offered by universities under the Indigenous Student Success Programme will be monitored after twelve months and reviewed after two years to ensure that assistance has not diminished as a result of the flexibility in the Indigenous Student Success Programme. If necessary, the Indigenous Student Assistance Grants Guidelines will be revised in 2018 to ensure appropriate assistance is being offered to Indigenous students. This will ensure that that there will be a continual evaluation of the level of assistance that needs to be provided until the objective of the measures are achieved.

The Schedule 1 arrangements for Indigenous Student Assistance meet the criteria to be characterised as a special measure.
Conclusion

This Bill is compatible with human rights.

Minister for Indigenous Affairs, Senator the Hon Nigel Scullion