

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION SUPPORT AMENDMENT (2008 BUDGET  
MEASURES) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education the Honourable Julia Gillard  
MP)



# HIGHER EDUCATION SUPPORT AMENDMENT (2008 BUDGET MEASURES) BILL 2008

## OUTLINE

The Bill will amend the *Higher Education Support Act 2003* (HESA) to revise the maximum funding amounts in:

- section 30-5 for the Commonwealth Grant Scheme;
- section 41-45 for Other Grants; and
- section 46-40 for Commonwealth Scholarships

to reflect supplementation for indexation increases, Budget decisions and other technical adjustments for the years 2009 to 2012 and add maximum grant amounts for the year 2012.

These amendments provide for increased funding for the following measures announced in the 2008-2009 Budget:

- for additional Commonwealth supported places in early childhood education and nursing;
- to compensate higher education providers for the reduction in the maximum annual student contribution amount for certain students undertaking mathematics, statistics and science units of study;
- for additional Commonwealth supported places and transitional assistance for the phasing out of full fee paying domestic undergraduate places at Table A providers;
- for the expansion of Commonwealth scholarships including the doubling of the number of undergraduate scholarships from 44,000 to 88,000 by 2012 and the doubling of the total number of Australian Postgraduate Award (APA) holders to nearly 10,000 by 2012;
- for capital infrastructure, additional Commonwealth supported places and clinical outreach funding for the establishment of the James Cook University Dental School; and
- for capital infrastructure and additional Commonwealth supported places in medicine, nursing and education at the University of Notre Dame Australia.

Schedule 1 of the Bill will amend several sections of and include new provisions in HESA to implement the 2008-2009 Budget measure to provide for a reduction in compulsory Higher Education Loan Program (HELP) repayments and, in certain cases where repayments are not required, a reduction in HELP debt for eligible persons, in the form of a new HECS-HELP benefit. The detailed arrangements for the HECS-HELP benefit will be specified in HECS-HELP Benefit Guidelines to be made under HESA. People will apply to the Commissioner of Taxation for the HECS-HELP benefit in accordance with the guidelines. The Guidelines will implement the Budget measures to provide 'remissions' of HELP debts for certain mathematics and science graduates and early childhood education teachers.

The Bill will amend sections 30-10, 30-25 and 33-5 of HESA to provide for a transitional loading under the Commonwealth Grant Scheme to provide higher education providers with funding for the reduction in revenue due to the lower maximum student contribution amount for mathematics, statistics and science units of study. Transitional loading may also be provided to assist with the costs of replacing full fee paying places with Commonwealth supported places (over and above the funding for those places under the Commonwealth Grant Scheme).

The Bill will amend section 36-30 of HESA to provide that commencing undergraduate domestic students at public universities may not be enrolled on a full fee paying basis from 2009 with certain exceptions. It will become a condition of receiving a grant under the Commonwealth Grant Scheme for Table A providers that a provider may enrol an eligible person only as a Commonwealth supported student on or after 1 January 2009 except where:

- HESA already specifies that the person cannot be Commonwealth supported; or
- the person commenced with the provider the undergraduate course of study of which the unit forms a part before 1 January 2009. A person is taken to have commenced the undergraduate course of study before 1 January 2009 if they transfer to it on or after 1 January 2009 from a course at the same level with the same provider that they commenced before 1 January 2009 and have not completed the requirements of the course from which they have transferred; or
- the provider has made an offer to enrol the person in a fee paying place in a course of study to commence in 2008 and the person accepts that offer but, with the higher education provider's approval, does not commence the course until a later year; or
- the person commenced the undergraduate course of study of which the unit forms part as an overseas student.

The Bill will also amend subsection 93-10(1) of HESA to provide for a reduction in the maximum annual student contribution amount for mathematics, statistics and science units of study to the same amount as for education and nursing units of study (the 'national priorities' student contribution band) for students commencing a course of study from 1 January 2009 and students who transfer from a course of study that was not in the natural and physical sciences to a course of study which is in the natural and physical sciences.

The Bill will enable higher education providers to charge 'continuing' students the existing maximum student contribution amount for mathematics, statistics and science units of study (that is, the maximum annual student contribution amount for existing students will be that currently specified in Section 93-10 of HESA, indexed in accordance with Division 198).

## **FINANCIAL IMPACT**

In relation to the Higher Education Support Act 2003, the Bill:

- increases the overall appropriation by \$2,259,982,000 for the period 1 January 2008 to 31 December 2012 (excluding HELP).

The estimated financial impact of these measures on HELP over the forward estimates period (2008-09 – 2011-12) is -\$26.050 million on the fiscal balance, resourcing amounts to \$4.198 million and underlying cash is -\$33.252 million.

# **HIGHER EDUCATION SUPPORT AMENDMENT (2008 BUDGET MEASURES) BILL 2008**

## **NOTES ON CLAUSES**

### **Clause 1 - Short title**

Provides for the Act to be cited as the *Higher Education Legislation Amendment (2008 Budget Measures) Act 2008*.

### **Clause 2 – Commencement**

Provides for the Act to commence on the day on which it receives the Royal Assent.

### **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.

## **Schedule 1 - HECS-HELP Benefit**

### ***Higher Education Support Act 2003***

#### **Item 1 – After paragraph 140-1(2)(d)**

Section 140-1 is an information provision which provides an outline of Division 140 which deals with how accumulated HELP debts are worked out for any given financial year. Subsection (2) provides that Stage 1 of the process of working out a person's accumulated HELP debt is to work out a person's former accumulated HELP debt for the preceding financial year by taking account of a range of specified matters. **Item 1** amends subsection (2) to add proposed new paragraph (e) which has the effect of providing that if compulsory repayment amounts are not required to be paid in respect of a person's debt, the HECS-HELP benefit must be taken into account. A proposed new step in the method statement at subsection 140-5 (see **item 2**) sets out how the HECS-HELP benefit is to be taken into account.

#### **Items 2– Subsection 140-5(1) (method statement, after step 4)**

Section 140-5 deals with the method of working out a person's former accumulated HELP debt for a financial year, by way of multiplying a HELP debt indexation factor (defined under Schedule 1 as having the meaning given in section 140-10 of the Act) by an amount worked out using a method statement which is set out under section 140-5.

**Item 2** inserts a proposed new step 4A with the effect that in the process of working out a person's former accumulated HELP debt, in the period (referred to in Step 3 of the method statement) subtract the amount of HECS-HELP benefit, if any, which has been determined in respect of the person by the Commissioner of Taxation for an income year, if the person did not have any compulsory repayment amounts for that year. The HECS-HELP benefit guidelines will specify the circumstances in which a person may receive the HECS-HELP benefit when the person does not have a compulsory repayment amount.

#### **Item 3– subsection 140-5(1) (example after step 4)**

The example set out at the end of the method statement at subsection 140-5(1) provides a hypothetical working out of a person's former accumulated HELP debt using the method statement. **Item 3** inserts a new example after step 4 with the effect of indicating how proposed new step 4A (see **item 2**) might apply to the hypothetical scenario.

#### **Item 4 – At the end of section 140-5(1)**

Adds proposed new subsection (3) which has the effect of providing that if a determination by the Commissioner of a person's HECS-HELP benefit is reviewed:

- the reference in Step 4A of the method statement in subsection (1) to the determination includes a reference to the decision on review; and
- to the extent that the decision on review affects any Step in the Method statement, the decision on review must be taken into account in working out a person's former accumulated HELP debt.

The review of the decision would include revising a person's accumulated HELP debt for any prior year.

#### **Item 5 – section 148-1 (second paragraph)**

Chapter 4 deals with repayment of loans. Part 4-2 of Chapter 4 deals with discharge of indebtedness or how a person discharges a HELP debt, either by voluntary or compulsory repayments. Section 148-1 is an information provision which explains what Part 4-2 is about. **Item 5** repeals the second paragraph of section 148-1, and substitutes 2 paragraphs with the effect of explaining that, where a person is required to make compulsory repayments based on whether that person's income is above a particular amount, that the person's repayment amounts may be reduced by the HECS-HELP benefit if the person is eligible and applies for it. The paragraphs also make clear that the Commissioner of Taxation determines eligibility for and the amount of a person's HECS-HELP benefit.

#### **Item 6 – At the end of Division 148**

**Item 6** inserts proposed new section 148-5. This is an information provision which notes that the HECS-HELP benefit is also dealt with in the HECS-HELP Benefit Guidelines, made by the Minister under section 238-10 (and which are a legislative instrument), and that the provisions of Part 4-2 indicate when a particular matter is or may be dealt with in these Guidelines.

#### **Item 7 – Subsection 154-1(1)**

Section 154-1 deals with whether or not a person is liable to repay amounts in reduction of his or her repayable HELP debt. **Item 7** is an amendment to subsection 154-1(1) which is required as a consequence of proposed new section 154-3 (see **item 8**).

#### **Item 8 – After section 154-1**

**Item 8** adds proposed new section 154-3 with the effect of providing that if the Commissioner of Taxation has determined in respect of a person an amount of HECS-HELP benefit for an income year, the amount that the person is liable to pay under section 154-1 in reduction of the person's debt is reduced by the amount of the benefit. The first note to assist readers clarifies that the calculation of the person's compulsory repayment amount remains unaffected by the reduction of liability by the HECS-HELP benefit. The benefit applies as a reduction of the liability arising under section 154-1. The effect is that the amount calculated as the person's compulsory repayment amount is used to reduce the person's HELP debt even though the person is liable to pay and is required to pay less than the compulsory repayment amount as a result of receiving the HECS-HELP benefit. The second note to assist readers clarifies

that if a determination by the Commissioner of a person's HECS-HELP benefit is reviewed, a reference to the determination includes a reference to the decision on review.

#### **Item 9 - At the end of section 154-35**

Section 154-35 deals with the power of the Commissioner of Taxation to make assessments of a person's accumulated HELP debt and the amount required to be paid in respect of that debt. **Item 9** inserts a note at the end of the section to assist readers to clarify that the amount that the person actually pays will be less than the amount otherwise required to be paid in respect of the debt if the person receives the HECS-HELP benefit.

#### **Items 10 and 11 – section 154-40**

Section 154-40 deals with notification by the Commissioner of Taxation of notices of assessment of tax. **Items 10 and 11** amend the section to make the existing section subsection (1) and add a proposed new subsection (2) to provide that if the Commissioner has determined an amount of HECS-HELP benefit in respect of a person for the income year, that the notice of assessment for that year may also refer to the benefit (as well as the person's income for that year, the amount of accumulated HELP debt and the amount to be repaid). A note at the end of proposed new subsection (2) to assist readers clarifies that if a determination by the Commissioner of a person's HECS-HELP benefit is reviewed, a reference to the determination includes a reference to the decision on review.

#### **Item 12 – at the end of Subdivision 154-D**

Subdivision 145-D deals with the application of tax legislation to compulsory repayments. **Item 12** adds proposed new section 154-85, which provides that for the purposes of Subdivision 154-D that, where the Commissioner of Taxation has determined a HECS-HELP benefit in respect of a person for an income year, that person's compulsory repayment amount in respect of that year is to be reduced by the amount of HECS-HELP benefit. A note at the end of proposed new subsection 154-85 (2) to assist readers clarifies that if a determination by the Commissioner of a person's HECS-HELP benefit is reviewed, a reference to the determination includes a reference to the decision on review.

#### **Item 13 – At the end of Part 4-2**

**Item 13** is a substantive amendment which inserts **proposed new Division 157** which provides for the HECS-HELP benefit.

**Proposed new Subdivision 157-A** deals with who is eligible for the HECS-HELP benefit.

**Proposed new section 157-1** provides that a person may apply to the Commissioner of Taxation for the HECS-HELP benefit in respect of an income year if the HECS-

HELP Benefit Guidelines set out eligibility requirements for the HECS-HELP benefit and the person satisfies those requirements.

**Proposed new section 157-5** provides that an application to the Commissioner of Taxation for the HECS-HELP benefit must be in a form and contain all information required by the HECS-HELP Benefit Guidelines.

**Proposed new section 157-10** provides that an application must be in the manner and within the time specified in the HECS-HELP Benefit Guidelines.

**Proposed new subdivision 157-B** deals with the amount of the HECS-HELP benefit.

**Proposed new section 157-15** provides that the amount of the HECS-HELP benefit for an income year is the amount specified in or worked out in accordance with the HECS-HELP Benefit Guidelines and that, if an amount is required to be paid under section 154-1, the amount of the HECS-HELP benefit must not be more than the amount required to be paid (i.e. the compulsory repayment amount for that year).

**Proposed new subdivision 157-C** deals with determination of applications for HECS-HELP benefit.

**Proposed new section 157-20(1)** provides that if a person applies for the HECS-HELP benefit for an income year, that the Commissioner of Taxation must determine whether the person is eligible for the benefit for that income year and, if eligible, the amount of the benefit worked out in accordance with the HECS-HELP Benefit Guidelines.

**Proposed new subsection 157-20 (2)** provides assistance to readers to clarify that the determination is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection clarifies that the determination is not an additional exemption under section 7 of the *Legislative Instruments Act 2003* which declares which instruments are not legislative instruments.

**Proposed new section 157-25** provides that the Commissioner must notify the applicant in writing of his or her determination, and that this notice must be given within the time specified in the HECS-HELP Benefit Guidelines. A note to assist readers clarifies that this notification may also be given to a person by referring to the amount of HECS-HELP benefit in the person's notice of assessment.

**Proposed new subsection 157-30** provides that if a determination by the commissioner of Taxation under proposed new section 157-20 is reviewed, a reference Part 4-2 (other than in the proposed new Division 157) to the determination includes a reference to the decision on review.

#### **Item 14 – Section 206-1 (after table item 4)**

Part 5-7 set out that some decisions made under the Act are subject to reconsideration and then review by the Administrative appeals Tribunal. The table at section 206-1 sets out the decisions which are reviewable under this Act and the decision maker for

those decisions. **Item 14** inserts at new item 4A of the table for determinations of HECS-HELP benefit eligibility and amounts under proposed new section 157-20, and that the decision maker is the Commissioner of Taxation.

#### **Item 15 – Subsection 238-10(1) (after table item 4)**

Section 238-10 provides that the Minister may by legislative instrument make specified Guidelines on matters either: required or permitted by a specified Chapter, Part or section of the Act; or necessary or convenient to be provided in order to carry out or give effect to that Chapter Part or section. **Item 15** inserts a new item 4A in the table at subsection 238-10(1) to provide that the Minister may make HECS-HELP Benefit Guidelines on matters specified in Part 4-2.

#### **Item 16 – Clause 1 of Schedule 1**

Inserts a new definition of *HECS-HELP benefit* in the Dictionary at clause 1 of Schedule 1, to mean a benefit for an income year that:

- If a compulsory repayment amount is required to be paid, has the effect of reducing the amount actually payable for that year, and
- If a compulsory repayment amount is not required to be paid, reduces a person's accumulated HELP debt for that year.

The HECS-HELP Benefit Guidelines will provide for the circumstances in which an eligible person may receive each form of benefit.

#### **Item 17 – Application**

**Item 17** is an application provision which provides that the amendments made by Schedule 1 apply in respect of the 2008-2009 and later income years.

## **Schedule 2 – Other Amendments**

### ***Higher Education Support Act 2003***

#### **Item 1 – Paragraphs 30-5(1)(d) to (g)**

Amends paragraphs 30-5(1)(d), (e), (f) and (g) to vary the level of maximum grants under the Commonwealth Grant Scheme (Part 2-2) for the years 2008-2011 to provide funding for 2008-09 Budget measures, technical adjustments and supplementation consistent with indexation arrangements. Item 1 also inserts a new paragraph 30-5(1)(h) to provide base funding for 2012 consistent with the forward estimates.

The 2008-09 Budget measures funded under this item are:

- for additional Commonwealth supported places in early childhood education and nursing;
- to compensate higher education providers for the reduction in the maximum annual student contribution amount for certain students undertaking mathematics, statistics and science units of study;
- for additional Commonwealth supported places and transitional assistance for the phasing out of full fee paying domestic undergraduate places at Table A providers;
- for additional Commonwealth supported places for the establishment of the James Cook University Dental School; and
- for additional Commonwealth supported places in medicine, nursing and education at the University of Notre Dame Australia.

#### **Item 2 – At the end of subsection 30-10 (3)**

Section 30-10 deals with the allocation of Commonwealth supported places to higher education providers. Item 2 adds proposed new paragraph (d) at the end of subsection (3) to provide that the allocation may also specify the number of places that have a transitional loading.

#### **Items 3 and 4 – Subsection 30-25(3) [After paragraph 30-25 (3) (ca) and after paragraph (da)]**

Section 30-25 deals with the power of the Minister to enter funding agreements with higher education providers, relating to Commonwealth Grants Scheme grants in respect of each year in a period of 3 years (the grant years).

**Item 3** amends subsection 30-25(3) to insert a proposed new paragraph (cb) which has the effect of providing that the agreement may specify the maximum number of Commonwealth supported places provided by the provider which can have a transitional loading in the grant years.

**Item 4** amends subsection 30-25(3) to insert a proposed new paragraph (e) which has the effect of providing that the agreement may specify the maximum amount of transitional loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant years.

#### **Item 5 – At the end of section 33-5**

Section 33-5 relates to the working out of basic Commonwealth Grant Scheme grant amounts payable to a higher education provider. The basic grant amount is the sum of a set of specified amounts listed at paragraphs (a) to (d). **Item 5** adds a proposed new paragraph (e) to provide that if the allocation has specified a number of Commonwealth supported places that have a transitional loading under proposed new paragraph 30-10(3)(d) (see **item 2**), the amount of transitional loading worked out under the Commonwealth Grant Scheme Guidelines for those places must also be added to the other specified amounts at paragraphs 33-5(a) to (d).

#### **Item 6 – After paragraph 36-30(1)(a)**

Section 36-30 deals with the requirement of providers to fill Commonwealth supported places before accepting other enrolments. Subsection 36-30(1) sets out that if a person is enrolled with a Table A provider in a unit of study that is covered by the person's Student Learning Entitlement, and the provider is not prohibited from advising the person that he or she is a Commonwealth supported student in relation to the unit, the provider must enrol the person in the unit as a Commonwealth supported student. **Item 6** inserts the condition at paragraph (aa) that the unit to be undertaken with the provider forms part of an undergraduate course of study. A note to assist readers provides that the heading to section 36-30 is replaced with the heading "Providers to enrol persons as Commonwealth supported students".

#### **Item 7 – subsection 36-30 (2)**

**Item 7** repeals the subsection and inserts proposed new subsection (2) which provides that the requirement for providers to enrol a person as a Commonwealth supported student as a result of the proposed amendment in **Item 6** does not apply where subsection (1) would otherwise apply if one the following four scenarios apply:

- The person commences the undergraduate course of study with the provider before 1 January 2009; **or**
- The person transfers to the undergraduate course of study with the provider on or after 1 January 2009 from another undergraduate course of study in which the person was enrolled with the same provider before 1 January 2009; **and** the person had not completed that other undergraduate course of study; **or**
- The person was offered and accepted a place other than a Commonwealth supported place in the undergraduate course of study with the provider before 1 January 2009 **and** the undergraduate course of study was to commence before 1 January 2009 **and** with the provider's approval the person commences the course of study after that time; **or**
- At the time the person commences the undergraduate course of study with the provider the person is an overseas student.

The amendments at **items 6 and 7** implement the Government's commitment to phase out domestic undergraduate full fee paying places at public universities. Table A providers will not be able to enrol any commencing fee paying domestic undergraduate students in courses of study that commence on or after 1 January 2009, with some exceptions as specified at proposed new subsection 36-30(2). Existing full fee paying students will be able to continue their courses on a fee paying basis.

**Item 8 – subsection 36-30(5)**

A technical provision to amend subsection 36-30(5) to remove reference to notices which are repealed as a consequence of the amendment made by **item 7**.

**Item 9 – Subsection 41-45 (1) (table items 4 to 7)**

Repeals items 4, 5, 6 and 7 of the table in subsection 41-45(1) and inserts new table items 4, 5, 6 and 7 to vary the maximum payments for Other Grants under Part 2-3 for the years 2008-2011 to provide funding for 2008-09 Budget measures and supplementation consistent with indexation arrangements. **Item 9** also inserts a new table item 8 to provide base funding for 2012 consistent with the forward estimates.

The 2008-09 Budget measures funded under this item are:

- for capital infrastructure and clinical outreach funding for the establishment of the James Cook University Dental School; and
- for capital infrastructure at the University of Notre Dame Australia.

**Item 10 – Section 46-40 (table items 6-8)**

Repeals items 6, 7 and 8 of the table in subsection 46-40(1) and inserts new table items 6, 7 and 8 to vary the maximum payments for Commonwealth Scholarships under Part 2-4 for the years 2009-2011 to provide funding for 2008-09 Budget measures and supplementation consistent with indexation arrangements. **Item 10** also inserts a new table item 9 to provide base funding for 2012 consistent with the forward estimates.

The 2008-09 Budget measures funded under this item will:

- for new National Priority Scholarships and National Accommodation Scholarships and post graduate awards.

**Items 11 and 12 – subsection 93-10 (1) (table items 3 and 6)**

Subsection 93-10(1) sets out the maximum contribution amounts for places in a unit of study. **Item 11** repeals table item 3 and inserts new table item 3 to reflect the new maximum student contribution amounts for a place in a unit of study in:

- Mathematics and statistics announced in the 2008-09 Budget.

**Item 12** repeals table item 6 and inserts new table item 6 to reflect the new maximum student contribution amount for a place in a unit of study in:

- Science announced in the 2008-09 Budget.

### **Item 13 – application**

An application provision which provides that:

- the amendments made by **items 2 to 5** of Schedule 2 apply in respect of the year 2009 or a later year;
- the amendments made by **items 6 and 7** of Schedule 2 apply in relation to an enrolment of a person in a unit of study on or after 1 January 2009;
- the amendments made by **items 11 and 12** of Schedule 2 apply in relation to a person's enrolment in a unit of study that forms a part of a course of study if the person commences that course of study on or after 1 January 2009; or that course of study is in natural or physical sciences and the person transfers to that course on or after 1 January 2009 from a course of study (other than in natural or physical sciences) that the person did not complete;
- in **subitem (3)** 'course of study' in relation to natural and physical sciences means a course of study in the field of natural and physical sciences classified as Broad Field 01 by the Australian Bureau of Statistics in the publication known as the Australian Standard Classification of Education (ASCED) 2001 as updated from time to time. This updating can be by publication of a new version from time to time, or material in the current version of the publication can be updated by other publications of the Australian Bureaus of Statistics from time to time.