



Education Legislation Amendment (2020 Measures No. 1) Act 2020

No. 62, 2020

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

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

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No. 62, 2020

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

[Assented to 19 June 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education Legislation Amendment (2020 Measures No. 1) Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	19 June 2020
2. Schedule 1	1 January 2021.	1 January 2021
3. Schedules 2, 3 and 4	The day this Act receives the Royal Assent.	19 June 2020
4. Schedule 5, Part 1	Immediately after the commencement of Schedule 1 to the <i>Education Legislation Amendment (2019 Measures No. 1) Act 2019</i> .	1 January 2020
5. Schedule 5, Part 2	The day this Act receives the Royal Assent.	19 June 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Student identifiers

Higher Education Support Act 2003

1 At the end of subsection 36-10(1)

Add:

; and (f) if:

- (i) the census date for the unit is on or after 1 January 2021 and before 1 January 2023 and the person commenced the course of study on or after 1 January 2021; or
- (ii) the census date for the unit is on or after 1 January 2023;

the person has a *student identifier immediately before the census date.

2 After paragraph 104-1(1)(g)

Insert:

(ga) if:

- (i) subparagraph (f)(i) applies, the census date for the unit is on or after 1 January 2021 and before 1 January 2023 and the student commenced the course of study on or after 1 January 2021; or
- (ii) subparagraph (f)(i), (ii) or (iii) applies and the census date for the unit is on or after 1 January 2023;

the student has a *student identifier immediately before the census date; and

3 After paragraph 118-1(1)(ha)

Insert:

- (hb) if the student made the application on or after 1 January 2021—the student has a *student identifier immediately before the student made the application; and

4 At the end of subsection 126-1(1)

Add:

; and (e) if the day on which the fee is payable is on or after 1 January 2023—the student has a *student identifier immediately before the day on which the fee is payable.

5 Subclause 1(1) of Schedule 1

Insert:

student identifier has the same meaning as in the *Student Identifiers Act 2014*.

VET Student Loans Act 2016

6 Paragraph 17(1)(b)

Omit “(if any)”.

7 Application—requirement to provide student identifier

The amendment of paragraph 17(1)(b) of the *VET Student Loans Act 2016* made by this Schedule applies in relation to applications for VET student loans made on or after the commencement of this item.

Schedule 2—Validation of certain loans and payments

1 Loans and payments relating to FEE-HELP assistance and VET FEE-HELP assistance

Scope

- (1) This item applies if:
- (a) a payment was made by the Commonwealth to a higher education provider or a VET provider; and
 - (b) the payment was purportedly on account of an amount (the ***excess amount***) of FEE-HELP assistance or VET FEE-HELP assistance for a unit of study or a VET unit of study; and
 - (c) the payment was purportedly paid under the *Higher Education Support Act 2003* to discharge the liability of a student (a ***relevant student***) to pay the student's tuition fee for the unit of study or the VET unit of study with the provider; and
 - (d) the relevant student was not entitled to the excess amount because the amount exceeded the relevant student's HELP balance; and
 - (e) the census date for the unit occurred during the period:
 - (i) starting on 1 January 2005; and
 - (ii) ending on 31 December 2019.

Recovery of overpayment

- (2) To the extent that it has not already been repaid to the Commonwealth before the commencement of this item, the payment:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Commonwealth in a court of competent jurisdiction.

Adjustment of payments and entitlements

- (3) If the Secretary determines that this subitem applies to a relevant student in relation to an excess amount and a unit of study or VET unit of study:

- (a) for the purposes of this item, the relevant student's HELP balance is taken, on the census date for the unit, to have been increased by:
 - (i) an amount equal to the excess amount; or
 - (ii) if the Secretary determines another amount—that amount; and
 - (b) the Commonwealth must lend to the student an amount of FEE-HELP assistance or VET FEE-HELP assistance for the unit equal to the excess amount or the determined amount (as the case may be); and
 - (c) the Commonwealth must pay the amount lent to the provider in discharge of the student's liability to pay the student's tuition fee for the unit.
- (4) The Secretary may, on behalf of the Commonwealth, set off the amount of a debt due to it by a provider under subitem (2) against an amount that is payable to the provider under paragraph (3)(c).
- (5) The Consolidated Revenue Fund is appropriated for the purposes of payments under subitem (3).

Application of the Higher Education Support Act 2003

- (6) Subitem (7) applies if the Secretary makes a determination in relation to a relevant student under subitem (3).
- (7) The *Higher Education Support Act 2003* has effect, and is taken to always have had effect, as if the Commonwealth had made the loan to the student, and made the payment to the provider:
 - (a) if the excess amount was a purported payment of FEE-HELP assistance for a unit of study—under section 110-1 of that Act for that unit of study; or
 - (b) if the excess amount was a purported payment of VET FEE-HELP assistance for a VET unit of study—under clause 55 of Schedule 1A of that Act for that unit of study; and to have done so immediately after the census date for the unit of study or VET unit of study.
- (8) Despite subsection 128-25(2) of the *Higher Education Support Act 2003*, the Secretary must not re-credit the relevant student's HELP balance with an amount equal to the amount lent to the student under this item if, and to the extent that, the re-crediting would have the effect

that the student's HELP balance would exceed the HELP loan limit for the student.

Delegation

- (9) The Secretary may, in writing, delegate to an SES employee, or an acting SES employee, in the Department all or any of the powers of the Secretary under subitems (3) and (4).
- (10) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

Determination is not a legislative instrument

- (11) A determination made under subitem (3) is not a legislative instrument.

Definitions

- (12) Expressions used in this item that are also used in the *Higher Education Support Act 2003* have the same meaning in this item as they have in that Act.

2 Approvals and payments relating to VET student loans

Scope

- (1) This item applies if:
- (a) a payment was made by the Commonwealth to an approved course provider; and
 - (b) the payment was purportedly on account of an amount (the **excess amount**) of a VET student loan for a course; and
 - (c) the payment was purportedly paid under the *VET Student Loans Act 2016* to pay tuition fees for a student (a **relevant student**) for the course; and
 - (d) the excess amount was greater than the amount of a loan that could be approved for the student because the excess amount would reduce the student's HELP balance to less than zero; and
 - (e) the census day for the course or a part of the course occurred during the period:
 - (i) starting on 1 January 2017; and
 - (ii) ending on 31 December 2019.

Recovery of overpayment

- (2) To the extent that it has not already been repaid to the Commonwealth before the commencement of this item, the payment:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Commonwealth in a court of competent jurisdiction.

Adjustment of payments and entitlements

- (3) If the Secretary determines that this subitem applies to a relevant student in relation to an excess amount and a course:
- (a) for the purposes of this item, the relevant student's HELP balance is taken, on the census day for the course or a part of the course, to have been increased by:
 - (i) an amount equal to the excess amount; or
 - (ii) if the Secretary determines another amount—that amount; and
 - (b) the Secretary is taken to have approved a loan amount for the student for the course equal to the excess amount or the determined amount (as the case may be); and
 - (c) the Secretary must pay an amount equal to the approved loan amount to the provider to pay the student's tuition fee for the course.
- (4) The Secretary may, on behalf of the Commonwealth, set off the amount of a debt due to it by a provider under subitem (2) against an amount that is payable to the provider under paragraph (3)(c).
- (5) The Consolidated Revenue Fund is appropriated for the purposes of payments under subitem (3).

Application of the VET Student Loans Act 2016

- (6) Subitem (7) applies if:
- (a) the Secretary makes a determination in relation to a relevant student under subitem (3); and
 - (b) the excess amount was paid to the provider on or after 1 July 2019.
- (7) The *VET Student Loans Act 2016* has effect, and is taken to always have had effect, as if the Secretary had:
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- (a) approved the loan for the student under section 7 of the *VET Student Loans Act 2016*; and
 - (b) used the loan to make the payment to the provider under section 19 of that Act;and to have done so immediately after the census day for the course or a part of the course.
 - (8) Despite subsection 73A(2) of the *VET Student Loans Act 2016*, the Secretary must not re-credit the relevant student's HELP balance with an amount equal to the amount lent to the student under this item if, and to the extent that, the re-crediting would have the effect that the student's HELP balance would exceed the HELP loan limit for the student.

Application of the Higher Education Support Act 2003

- (9) Subitem (10) applies if:
 - (a) the Secretary makes a determination in relation to a relevant student under subitem (3); and
 - (b) the excess amount was paid to the provider before 1 July 2019.
- (10) The *Higher Education Support Act 2003* has effect, and is taken to always have had effect, as if the Secretary had:
 - (a) approved the loan for the student under section 7 of the *VET Student Loans Act 2016*; and
 - (b) used the loan to make the payment to the provider under section 19 of that Act;and to have done so immediately after the census day for the course or a part of the course.
- (11) Despite subsection 128-25(2) of the *Higher Education Support Act 2003*, the Secretary must not re-credit the relevant student's HELP balance with an amount equal to the amount lent to the student under this item if, and to the extent that, the re-crediting would have the effect that the student's HELP balance would exceed the HELP loan limit for the student.

Delegation

- (12) The Secretary may, in writing, delegate to an SES employee, or an acting SES employee, in the Department all or any of the powers of the Secretary under subitems (3) and (4).
- (13) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

Determination is not a legislative instrument

- (14) A determination made under subitem (3) is not a legislative instrument.

Definitions

- (15) Expressions used in this item that are also used in the *VET Student Loans Act 2016* have the same meaning in this item as they have in that Act.

3 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Schedule 3—HELP balances

Higher Education Support Act 2003

1 Subparagraphs 128-15(1)(a)(i) to (iv)

Omit “payable to”, substitute “payable for”.

2 After subsection 128-15(1)

Insert:

- (1A) For the purposes of subparagraphs (1)(a)(i), (ii) and (iii), an amount of *HECS-HELP assistance, *FEE-HELP assistance or *VET FEE-HELP assistance is taken to have been payable for a person immediately after the *census date for the unit to which the assistance relates (whether or not the amount has been paid at that time).
- (1B) For the purposes of subparagraph (1)(a)(iv), an amount of a *VET student loan is taken to have been payable for a person immediately after the *census day for the course or a part of the course to which the loan amount relates (whether or not the amount has been paid at that time).

3 Subclause 1(1) of Schedule 1

Insert:

census day, for a course or a part of a course, has the same meaning as in the *VET Student Loans Act 2016*.

Schedule 4—Student loan fee exemption

Higher Education Support Act 2003

1 Paragraph 137-10(2)(b)

Repeal the paragraph, substitute:

- (b) if paragraph (a) does not apply and the loan relates to FEE-HELP assistance for a unit of study that forms part of an *undergraduate course of study:
 - (i) for a unit of study with a *census date between 1 April 2020 and 30 September 2020—the amount of the loan; or
 - (ii) otherwise—an amount equal to 125% of the loan; or

Schedule 5—Other amendments

Part 1—Amendments commencing 1 January 2020

Division 1—Amendments

Higher Education Support Act 2003

1 Subsection 128-20(2)

Repeal the subsection, substitute:

- (2) A *course of study in aviation* is a *course of study, or an approved course (within the meaning of the *VET Student Loans Act 2016*), specified in the FEE-HELP Guidelines for the purposes of this subsection.

Division 2—Application and transitional provisions

2 Application of amendments

The amendment of section 128-20 of the *Higher Education Support Act 2003* made by this Part applies in relation to a student who is enrolled in a course of study in aviation on or after the commencement of this item, whether the student enrolled in that course before or after that commencement.

Part 2—Amendments commencing on Royal Assent

Higher Education Support Act 2003

3 Subsection 16-15(1) (table)

Omit “University of Western Sydney”.

4 Subsection 16-15(1) (table)

Insert: “Western Sydney University”.

5 Subsection 166-20(5)

Omit “An approved course provider”, substitute “A higher education provider”.

*[Minister’s second reading speech made in—
House of Representatives on 11 June 2020
Senate on 18 June 2020]*

(80/20)
