



Higher Education Legislation Amendment (Student Services and Amenities) Act 2011

No. 130, 2011

**An Act to amend legislation relating to higher
education, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Higher Education Legislation Amendment (Student Services and Amenities) Act 2011

No. 130, 2011

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

[Assented to 3 November 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation
Amendment (Student Services and Amenities) Act 2011*.

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 |
| Provision(s) | 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. | 3 November 2011 |
| 2. Schedule 1 | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | |

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Higher Education Support Act 2003

1 Paragraph 3-10(c)

Omit “study.”, substitute “study;”.

2 After paragraph 3-10(c)

Insert:

- (d) SA-HELP assistance for meeting student services and amenities fees imposed by higher education providers.

3 Subsection 5-1(2) (after table item 5)

Insert:

| | | |
|----|-------------------------------|--|
| 5A | Part 3-5 (SA-HELP assistance) | Applies to eligible students of the *Australian branch of the provider who are enrolled at the Australian branch in a *course of study or *bridging course for overseas-trained professionals. |
|----|-------------------------------|--|

4 At the end of section 19-37

Add:

- (4) Subsection (2) does not apply to a *student services and amenities fee that the higher education provider requires the person to pay.
- (5) A *student services and amenities fee* is an amount:
 - (a) that a higher education provider requires a person enrolled, or seeking to enrol, with the provider to pay for a period starting on or after 1 January 2011 to support the provision to students of amenities and services not of an academic nature, regardless of whether the person chooses to use any of those amenities and services; and
 - (b) that is determined by the provider in accordance with the Administration Guidelines; and
 - (c) that is not more than the amount worked out for that period for the person in accordance with those guidelines; and

- (d) that is payable on a day determined in accordance with those guidelines; and
- (e) that is such that the total of all amounts that are covered by paragraphs (a), (b), (c) and (d) for the same provider and person is not more than \$250, for amounts for periods falling wholly or partly within a calendar year starting on or after 1 January 2011.

Note 1: The Administration Guidelines are made by the Minister under section 238-10.

Note 2: The amount of \$250 mentioned in paragraph (5)(e) is indexed under Part 5-6.

Note 3: Paragraph 19-102(3)(b) prevents a student services and amenities fee from being a fee as defined in section 19-102.

- (6) If a higher education provider determines a *student services and amenities fee, the provider:
 - (a) must publish, in accordance with the Administration Guidelines:
 - (i) enough information to enable a person liable to pay the fee to work out the amount of the fee; and
 - (ii) notice of the day on which the fee is payable; and
 - (b) must, on request by a person who is or may become liable to pay the fee, inform the person of the amount of the fee and the day on which it is or would be payable.

5 After section 19-37

Insert:

19-38 Higher education providers' expenditure of student services and amenities fees

- (1) A higher education provider must not spend an amount paid to the provider as a *student services and amenities fee to support:
 - (a) a political party; or
 - (b) the election of a person as a member of:
 - (i) the legislature of the Commonwealth, a State or a Territory; or
 - (ii) a local government body.

- (2) If a higher education provider pays a person or organisation an amount paid to the provider as a *student services and amenities fee, the provider must make the payment on the condition that none of the payment is to be spent by the person or organisation to support:
- (a) a political party; or
 - (b) the election of a person as a member of:
 - (i) the legislature of the Commonwealth, a State or a Territory; or
 - (ii) a local government body.
- (3) A higher education provider must not spend, for a purpose other than that specified in subsection (4), an amount paid to the provider as a *student services and amenities fee.
- (4) Subsection (3) does not prohibit expenditure for a purpose that relates to the provision of any of the following services:
- (a) providing food or drink to students on a campus of the higher education provider;
 - (b) supporting a sporting or other recreational activity by students;
 - (c) supporting the administration of a club most of whose members are students;
 - (d) caring for children of students;
 - (e) providing legal services to students;
 - (f) promoting the health or welfare of students;
 - (g) helping students secure accommodation;
 - (h) helping students obtain employment or advice on careers;
 - (i) helping students with their financial affairs;
 - (j) helping students obtain insurance against personal accidents;
 - (k) supporting debating by students;
 - (l) providing libraries and reading rooms (other than those provided for academic purposes) for students;
 - (m) supporting an artistic activity by students;
 - (n) supporting the production and dissemination to students of media whose content is provided by students;
 - (o) helping students develop skills for study, by means other than undertaking *courses of study in which they are enrolled;

- (p) advising on matters arising under the higher education provider's rules (however described);
- (q) advocating students' interests in matters arising under the higher education provider's rules (however described);
- (r) giving students information to help them in their orientation;
- (s) helping meet the specific needs of *overseas students relating to their welfare, accommodation and employment.

Note: Examples of expenditure for a purpose that relates to the provision of a service specified in subsection (4) include:

- (a) expenditure by the higher education provider in directly providing the service; and
- (b) expenditure by the higher education provider in getting someone else to provide the service or subsidising the provision of the service by someone else; and
- (c) expenditure by the higher education provider on infrastructure for the provision of the service.

(5) Without limiting who is a child of a person for the purposes of paragraph (4)(d), someone is the *child* of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

(6) To avoid doubt, subsections (1), (2) and (3) apply to an advance made to a higher education provider on account of *SA-HELP assistance in the same way as they apply to an amount paid to the provider as a *student services and amenities fee.

Note: An amount of SA-HELP assistance paid to a provider is an amount paid to the provider as a student services and amenities fee because, under section 128-1, the SA-HELP assistance is paid to discharge the student's liability to pay the fee.

(7) Subsection (6) does not limit subsection 164-10(2).

Note: Subsection 164-10(2) applies to an advance on account of an amount the conditions that would apply to payment of the amount.

6 After section 19-65

Insert:

19-67 Special requirements for student services, amenities, representation and advocacy in 2012 and later years

- (1) A higher education provider that receives a grant under Part 2-2 in respect of the year 2012 or a later year must comply in respect of
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the year with the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as those guidelines were in force on the 30 June just before the year.

Note: The Student Services, Amenities, Representation and Advocacy Guidelines are made by the Minister under section 238-10.

- (2) The Student Services, Amenities, Representation and Advocacy Guidelines may provide for:
- (a) requirements for providing students with information about services that are not of an academic nature and that support students; and
 - (b) requirements for providing students with access to such services; and
 - (c) requirements relating to the representation and advocacy of the interests of students.
- (3) However, the Student Services, Amenities, Representation and Advocacy Guidelines cannot require a provider to fund an organisation of students, or of students and other persons.
- (4) Subsection 19-65(1) does not apply in relation to the Student Services, Amenities, Representation and Advocacy Guidelines.

7 Section 65-1

Omit “3 kinds” (wherever occurring), substitute “4 kinds”.

8 Section 65-1

Omit:

- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3.4).

Substitute:

- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3-4);

- SA-HELP assistance—assistance to a student on whom a student services and amenities fee is imposed (see Part 3-5).

9 Section 65-1

Omit “and FEE-HELP assistance)”, substitute “, FEE-HELP assistance and SA-HELP assistance)”.

10 At the end of Chapter 3

Add:

Part 3-5—SA-HELP assistance

Division 125—Introduction

125-1 What this Part is about

A student may be entitled to SA-HELP assistance for a student services and amenities fee imposed on him or her by a higher education provider, if certain requirements are met.

The amount of the assistance is the amount of the fee, less any amounts of the fee paid on or before the day the fee is payable (except any SA-HELP assistance paid under this Part). The assistance is paid to the provider to discharge the student’s liability to pay the fee.

Note: Amounts of assistance under this Part may form part of a person’s HELP debts that the Commonwealth recovers under Part 4-2.

Division 126—Who is entitled to SA-HELP assistance?

126-1 Entitlement to SA-HELP assistance

- (1) A student is entitled to *SA-HELP assistance for a *student services and amenities fee imposed on the student for a period by a higher education provider if:
 - (a) the student meets the citizenship or residency requirements under section 126-5; and

- (b) the student is enrolled with the provider in a *course of study or a *bridging course for overseas-trained professionals on the day on which the fee is payable; and
 - (c) the student *meets the tax file number requirements (see section 187-1); and
 - (d) the student has, on or before the day on which the fee is payable, completed, signed and given to an *appropriate officer of the provider a *request for Commonwealth assistance in relation to the fee.
- (2) A ***request for Commonwealth assistance***, in relation to a *student services and amenities fee imposed for a period on a person who is enrolled with a higher education provider in a *course of study or a *bridging course for overseas-trained professionals, means a document:
- (a) in which the person requests the Commonwealth to provide assistance under this Act in relation to the fee for the period (and any student services and amenities fee imposed for a later period during which the person is enrolled in the course or bridging course); and
 - (b) that is in the form approved by the Minister.

126-5 Citizenship or residency requirements

- (1) A student meets the citizenship or residency requirements under this section in relation to a *student services and amenities fee imposed on the student by a higher education provider if the student is, on the day the fee is payable:
 - (a) an Australian citizen; or
 - (b) a *permanent humanitarian visa holder resident in Australia.
- (2) Despite subsection (1), a *permanent humanitarian visa holder does not meet the citizenship or residency requirements in relation to a *student services and amenities fee imposed on the visa holder by a higher education provider if the provider reasonably expects that the visa holder will not undertake in Australia any *units of study with the provider.

Division 127—How are amounts of SA-HELP assistance worked out?

127-1 The amount of SA-HELP assistance for a student services and amenities fee

The amount of *SA-HELP assistance to which a student is entitled for a *student services and amenities fee is the difference (if any) between:

- (a) the fee; and
- (b) the sum of any payments of the fee (other than a payment of SA-HELP assistance under this Part) made on or before the day on which the fee is payable.

Division 128—How are amounts of SA-HELP assistance paid?

Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

128-1 Payments to higher education providers of loans to students

If a student is entitled to an amount of *SA-HELP assistance for a *student services and amenities fee imposed by a higher education provider, the Commonwealth must:

- (a) as a benefit to the student, lend to the student the amount of SA-HELP assistance; and
- (b) pay to the provider the amount lent in discharge of the student's liability to pay the fee.

128-5 Repayment by higher education provider if student does not have tax file number

A higher education provider must repay the Commonwealth an amount paid to the provider under section 128-1 in discharge of a person's liability to pay a *student services and amenities fee if subsection 193-15(1) applies to the person.

Note 1: Subsection 193-15(1) applies to a person who does not have a tax file number.

Note 2: The person's SA-HELP debt will be remitted if the higher education provider must repay the amount under this section: see subsection 137-16(4).

11 Section 134-1

Omit “or OS-HELP assistance”, substitute “, OS-HELP assistance or SA-HELP assistance”.

12 After paragraph 137-1(c)

Insert:

- (ca) *SA-HELP debts;

13 After section 137-15

Insert:

137-16 SA-HELP debts

Incurring SA-HELP debts

- (1) A person incurs a debt to the Commonwealth if, under section 128-1, the Commonwealth:
- (a) makes a loan to the person; and
 - (b) uses the amount lent to make a payment of the person’s liability to pay a *student services and amenities fee.

The debt is an **SA-HELP debt**.

- (2) The amount of the *SA-HELP debt is an amount equal to the loan.

When SA-HELP debts are incurred

- (3) An *SA-HELP debt is taken to have been incurred by a person immediately after the day on which the *student services and amenities fee to which the loan relates is payable, whether or not the Commonwealth has made a payment in respect of the fee.

Remission of SA-HELP debts

- (4) A person’s *SA-HELP debt in relation to a *student services and amenities fee imposed by a higher education provider is taken to be remitted if, under section 128-5, the provider must repay the Commonwealth the amount the Commonwealth paid the provider in relation to the fee.

14 Subsection 140-5(1) (method statement, step 2, after paragraph (e))

Insert:

(ea) *SA-HELP assistance for *student services and amenities fees imposed on the person by one particular higher education provider; or

15 Subsection 140-5(1) (method statement, step 2, note)

After “(e),” insert “(ea),”.

16 Subsection 140-25(1A) (method statement, step 1, after paragraph (e))

Insert:

(ea) *SA-HELP assistance for *student services and amenities fees imposed on the person by one particular higher education provider; or

17 Subsection 140-25(1A) (method statement, step 1, note)

After “(e),” insert “(ea),”.

18 Paragraph 154-55(1)(a)

After “applied for”, insert “one or more of the following”.

19 Subparagraph 154-55(1)(a)(i)

Omit “or” (last occurring).

20 Subparagraph 154-55(1)(a)(ii)

Omit “and”.

21 At the end of paragraph 154-55(1)(a)

Add:

(iii) *SA-HELP assistance for a *student services and amenities fee for a period; and

22 Subparagraph 169-5(1)(b)(i)

After “unit”, insert “or for a *student services and amenities fee imposed on the person by the provider”.

23 Section 169-30

Before “In”, insert “(1)”.

24 At the end of section 169-30

Add:

- (2) In communications under, or for the purposes of, this Act between the Commonwealth and a higher education provider concerning a person who:
- (a) has had a *student services and amenities fee imposed on him or her by the provider; and
 - (b) has indicated that the person is seeking *SA-HELP assistance for the fee;
- the provider must use any identifier for that person that the *Secretary has indicated must be used in such communications.

25 Section 169-35

Before “If:”, insert “(1)”.

26 At the end of paragraph 169-35(b)

Add “other than *SA-HELP assistance”.

27 At the end of section 169-35

Add:

- (2) If:
- (a) more than 6 weeks after the day on which a *student services and amenities fee imposed on a person by a higher education provider was payable, the person gives the provider information in writing (the *correct information*) that establishes that information contained in or accompanying a *request for Commonwealth assistance made by the person in relation to the fee was incorrect; and
 - (b) the correct information establishes that the person was entitled to *SA-HELP assistance for the fee;
- this Act applies as if the person had never been entitled to the SA-HELP assistance.

28 Subsections 187-1(1) and (1A)

After “Chapter 3”, insert “, except *SA-HELP assistance,”.

Note: The following heading to subsection 187-1(1) is inserted “*Assistance other than SA-HELP assistance*”.

29 Subsection 187-1(3)

After “*request for Commonwealth assistance”, insert “, except a request for Commonwealth assistance relating to a *student services and amenities fee,”.

30 After subsection 187-1(3A)

Insert:

SA-HELP assistance

- (3B) A student who is enrolled, or proposes to enrol, with a higher education provider in a *course of study or *bridging course for overseas-trained professionals ***meets the tax file number requirements*** for *SA-HELP assistance if:
- (a) the student notifies his or her *tax file number to an *appropriate officer of the provider, and the provider is satisfied (in accordance with subsection (4)) that this number is a valid tax file number; or
 - (b) the student gives to the officer a certificate from the *Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student.
- (3C) Compliance by a person with subsection (3B) in relation to the person’s actual or proposed enrolment in a *course of study or *bridging course for overseas-trained professionals is to be ignored in determining whether there has been compliance by the person with subsection (3B) in relation to the person’s actual or proposed enrolment in another such course or bridging course.
- (3D) If the student is seeking *SA-HELP assistance for a *student services and amenities fee, he or she does not meet the tax file number requirements for the assistance unless he or she complies with subsection (3B) on or before the day the fee is payable.
- (3E) A notification under paragraph (3B)(a) may be included in any *request for Commonwealth assistance relating to a *student services and amenities fee imposed on the student in connection
-

with his or her enrolment in the *course of study or *bridging course for overseas-trained professionals.

31 Paragraph 187-1(4)(a)

After “paragraph (1)(a)”, insert “or (3B)(a)”.

Note: The following heading to subsection 187-1(4) is inserted “*Commissioner’s role*”.

32 Transitional—guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003*

- (1) Guidelines in force under subsection 187-1(4) of the *Higher Education Support Act 2003* immediately before the commencement of the amendment of that subsection by this Schedule have effect after that commencement as if they had been issued under that subsection as amended by this Schedule.
- (2) Subitem (1) does not prevent the repeal or amendment of the guidelines.

33 Subsection 187-1(5)

After “paragraph (1)(b)”, insert “or (3B)(b)”.

Note: The following heading to subsection 187-1(7) is inserted “*Commissioner’s guidelines are legislative instruments*”.

34 After subsection 193-1(4)

Insert:

Requests for SA-HELP assistance

- (4A) A higher education provider must notify a person in writing how to *meet the tax file number requirements if:
 - (a) the person is enrolled with the provider in a *course of study or *bridging course for overseas-trained professionals; and
 - (b) the provider has imposed a *student services and amenities fee on the person; and
 - (c) the person has, on or before the day on which the fee is payable, completed, signed and given to the *appropriate officer of the provider a *request for Commonwealth assistance in relation to a student services and amenities fee imposed on the person for a period during which he or she is enrolled in the course or bridging course; and

- (d) in that request, the person requests *SA-HELP assistance for the student services and amenities fee; and
 - (e) the request does not include a number that purports to be the person's *tax file number.
- (4B) The provider must notify the person under subsection (4A):
- (a) on or before the day the *student services and amenities fee is payable; or
 - (b) within 7 days after the person gives the provider the *request for Commonwealth assistance;
- whichever is earlier.

35 Paragraph 193-1(5)(a)

Omit “or *OS-HELP assistance”, substitute “, *OS-HELP assistance or *SA-HELP assistance”.

36 At the end of Division 193

Add:

193-15 No entitlement to SA-HELP assistance for students without tax file numbers

- (1) This subsection applies to a person if:
- (a) a higher education provider has imposed a *student services and amenities fee on the person; and
 - (b) the provider receives notice under section 190-15 or 190-20 to the effect that the person does not have, or no longer has, a *tax file number; and
 - (c) at the end of 28 days after the provider receives that notice, the provider has not been notified of a number that the provider is satisfied (in accordance with subsection (2)) is a valid tax file number; and
 - (d) the person is entitled to *SA-HELP assistance for the fee (ignoring paragraph 126-1(1)(c)).

Note: If subsection (1) applies to a person:

- (a) the provider must repay any amount paid to the provider by the Commonwealth to discharge the person's liability for the student services and amenities fee (see section 128-5); and
- (b) the person's SA-HELP debt relating to the payment by the Commonwealth is remitted (see subsection 137-16(4)).

- (2) A higher education provider must, in deciding whether it is satisfied that a number is a valid *tax file number for the purposes of paragraph (1)(c), comply with the guidelines issued by the *Commissioner under subsection 187-1(4).
- (3) A higher education provider must comply with any requirements, set out in guidelines issued by the *Commissioner, relating to procedures for informing persons of the need to obtain a valid *tax file number, where the persons may be affected by subsection (1) applying to them.
- (4) A guideline issued under subsection (3) is a legislative instrument.

37 Section 198-5 (before table item 1)

Insert:

| | | | |
|-----|---|------------------|------|
| 1AA | Amount mentioned in paragraph 19-37(5)(e) | Section 19-37 | 2011 |
|-----|---|------------------|------|

38 Subsection 238-10(1) (table item 1, column headed “Chapter/Part/section”)

Before “Chapter 5”, insert “Section 19-37;”.

39 Subsection 238-10(1) (before table item 11)

Insert:

| | | |
|-----|--|---------------|
| 10A | Student Services, Amenities, Representation and Advocacy Guidelines | section 19-67 |
|-----|--|---------------|

40 Subclause 1(1) of Schedule 1 (after paragraph (b) of the definition of *request for Commonwealth assistance*)

Insert:

- (ba) in relation to a *student services and amenities fee imposed on a person enrolled with a higher education provider in a *course of study or *bridging course for overseas-trained professionals—has the meaning given by subsection 126-1(2); and

41 Subclause 1(1) of Schedule 1

Insert:

SA-HELP assistance means assistance payable under Part 3-5.

42 Subclause 1(1) of Schedule 1

Insert:

SA-HELP debt has the meaning given by section 137-16.

43 Subclause 1(1) of Schedule 1

Insert:

student services and amenities fee has the meaning given by subsection 19-37(5).

Income Tax Assessment Act 1936

44 Paragraph 202(c)

After “institutions of higher education”, insert “or in respect of the costs of other services and amenities available to students in connection with such institutions”.

[Minister’s second reading speech made in—
House of Representatives on 29 September 2010
Senate on 22 November 2010]

(169/10)
