



Education Legislation Amendment (2021 Measures No. 2) Act 2021

No. 55, 2021

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
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No. 55, 2021

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

[Assented to 24 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education Legislation Amendment (2021 Measures No. 2) Act 2021*.

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.	24 June 2021
2. Schedule 1, Part 1	1 January 2022.	1 January 2022
3. Schedule 1, Parts 2 to 5	The day after this Act receives the Royal Assent.	25 June 2021
4. Schedule 2	The day after this Act receives the Royal Assent.	25 June 2021

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Higher education support amendments

Part 1—Student eligibility for Commonwealth assistance

Higher Education Support Act 2003

1 Paragraphs 90-5(1)(b) and 104-5(1)(b)

After “*permanent humanitarian visa holder”, insert “, or an *eligible former permanent humanitarian visa holder,”.

2 Paragraph 118-5(1)(b)

After “*permanent humanitarian visa holder”, insert “or an *eligible former permanent humanitarian visa holder”.

3 Paragraph 126-5(1)(b)

After “*permanent humanitarian visa holder”, insert “, or an *eligible former permanent humanitarian visa holder, who is”.

4 Subclause 1(1) of Schedule 1

Insert:

eligible former permanent humanitarian visa holder means a person who:

- (a) is not a *permanent humanitarian visa holder; and
- (b) was previously a permanent humanitarian visa holder; and
- (c) is the holder of a visa in a class or subclass of visas specified in a determination under subclause (1A).

5 After subclause 1(1) of Schedule 1

Insert:

- (1A) The Minister may, for the purposes of paragraph (c) of the definition of ***eligible former permanent humanitarian visa holder*** in subclause (1), make a determination in writing specifying a class

or subclass of visas provided for by the *Migration Act 1958* or regulations made under that Act.

(1B) A determination under subclause (1A) is a legislative instrument.

6 Application provisions

- (1) The amendments of sections 90-5 and 104-5 of the *Higher Education Support Act 2003* made by this Part apply in relation to determining entitlement to HECS-HELP assistance, or FEE-HELP assistance, for units of study with a census date on or after 1 January 2022.
- (2) The amendment of section 118-5 of the *Higher Education Support Act 2003* made by this Part applies in relation to applications for receipt of OS-HELP assistance made on or after 1 January 2022.
- (3) The amendment of section 126-5 of the *Higher Education Support Act 2003* made by this Part applies in relation to requests for Commonwealth assistance in relation to a student services and amenities fee made on or after 1 January 2022.

Part 2—HECS-HELP re-crediting and repayment provisions

Higher Education Support Act 2003

7 Before section 36-24C

Insert:

36-24BB Providers to repay amounts—provider completes request for assistance

- (1) This section applies to a person if the person's *HELP balance is re-credited with an amount relating to *HECS-HELP assistance for a unit of study under section 97-45.

Note: The person's HECS-HELP debt relating to the unit is taken to be remitted if the person's HELP balance is re-credited in relation to the unit under section 97-45: see section 137-5.

- (2) The higher education provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to the person's *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.
- (3) Subsection (2) does not apply to the provider if:
- (a) the person enrolled in the unit as a *replacement unit; or
 - (b) it is determined that section 36-24A applies to the person in relation to the unit.
- (4) The Higher Education Provider Guidelines may, in setting out the *tuition protection requirements, specify, in relation to circumstances to which paragraph (3)(a) applies:
- (a) the amount (if any) that is to be paid to the person; and
 - (b) the amount (if any) that is to be paid to the Commonwealth; and
 - (c) the person (if any) who is to pay the amounts.

36-24BC Providers to repay amounts—person not entitled to assistance

- (1) This section applies to a person if the person's *HELP balance is re-credited with an amount relating to *HECS-HELP assistance for a unit of study under section 97-50.

Note: The person's HECS-HELP debt relating to the unit is taken to be remitted if the person's HELP balance is re-credited in relation to the unit under section 97-50: see section 137-5.

- (2) The higher education provider must:
- (a) pay to the person an amount equal to the payment, or the sum of the payments, that the person made in relation to the person's *student contribution amount for the unit; and
 - (b) pay to the Commonwealth an amount equal to any *HECS-HELP assistance to which the person was entitled for the unit.
- (3) Subsection (2) does not apply to the provider if:
- (a) the person enrolled in the unit as a *replacement unit; or
 - (b) it is determined that section 36-24A applies to the person in relation to the unit.
- (4) The Higher Education Provider Guidelines may, in setting out the *tuition protection requirements, specify, in relation to circumstances to which paragraph (3)(a) applies:
- (a) the amount (if any) that is to be paid to the person; and
 - (b) the amount (if any) that is to be paid to the Commonwealth; and
 - (c) the person (if any) who is to pay the amounts.

8 Section 96-5

Repeal the section.

9 Subsection 137-5(4)

Omit "or 36-24B", substitute ", 36-24B, 36-24BB or 36-24BC".

10 Subsection 137-5(4)

After "36-20(3)", insert ", 36-24BB(3) or 36-24BC(3)".

11 Subsection 238-10(1) (table item 6)

Omit “section 96-5;”.

12 Application provisions

- (1) Subject to this item, the amendments of the *Higher Education Support Act 2003* made by this Part apply in relation to units of study with a census date on or after 1 January 2021.
- (2) Subitem (3) applies if, before the commencement of this item:
 - (a) a person’s HELP balance was re-credited with an amount relating to HECS-HELP assistance for a unit of study under section 97-45 or 97-50 of the *Higher Education Support Act 2003*; and
 - (b) the higher education provider paid to the Commonwealth an amount equal to any HECS-HELP assistance to which the person was entitled for the unit, in accordance with section 96-5 of that Act.
- (3) Paragraphs 36-24BB(2)(b) and 36-24BC(2)(b) of the *Higher Education Support Act 2003*, as inserted by this Part, do not apply to the provider in relation to the person and the unit.

Part 3—Other grants

Higher Education Support Act 2003

13 Section 41-25

Repeal the section, substitute:

41-25 Conditions on grants

- (1) A grant is made on the following conditions:
 - (a) if the grant is made under a program and the Other Grants Guidelines specify conditions that apply to a grant under that program—on the conditions provided for in the guidelines;
 - (b) if the body receiving the grant is a higher education provider—on the condition that the body must meet the *quality and accountability requirements;
 - (c) on such other conditions (if any) as the Minister determines in relation to the grant under subsection (2).
- (2) The Minister may, in writing, determine conditions in relation to a grant for the purposes of paragraph (1)(c).
- (3) A determination under subsection (2) is not a legislative instrument.

14 Subsection 41-40(1)

Repeal the subsection, substitute:

- (1) If a body to which a grant (the *original grant*) under this Part has been made in respect of a year fails to spend an amount (the *unspent amount*) of the grant before the end of the year, then:
 - (a) unless paragraph (b) applies—the unspent amount is taken to be granted to the body under this Part in respect of the next following year; or
 - (b) if the *Secretary specifies an amount (not greater than the unspent amount) in relation to the body and the original grant in a determination under subsection (1A)—the specified amount is taken to be granted to the body under this Part in respect of the next following year.

- (1A) The *Secretary may, in writing, make a determination for the purposes of paragraph (1)(b) specifying an amount in relation to a body and a grant.

15 Subsection 41-40(2)

After “The amount”, insert “taken to be granted under subsection (1)”.

16 Subsection 41-40(3)

After “The grant”, insert “taken to be made under subsection (1)”.

17 At the end of section 41-40

Add:

- (4) Subsection (1) does not apply to a body in relation to a grant if the *Secretary specifies the body in relation to the grant in a determination under subsection (5).
- (5) The *Secretary may, in writing, make a determination for the purposes of subsection (4) specifying a body in relation to a grant.
- (6) A determination under subsection (1A) or (5) is not a legislative instrument.

18 Section 41-50

Repeal the section.

19 Application and transitional provisions

- (1) Subject to this item, the amendments made by this Part apply in relation to grants made under Part 2-3 of the *Higher Education Support Act 2003* on or after the time (the **commencement time**) when this item commences.
- (2) Subitem (3) applies to a grant made on conditions if:
 - (a) the grant was made under Part 2-3 of the *Higher Education Support Act 2003* before the commencement time; and
 - (b) if the grant had been made on or after the commencement time, the conditions would or could have been imposed under section 41-25 of the *Higher Education Support Act 2003* as amended by this Part.

Schedule 1 Higher education support amendments

Part 3 Other grants

- (3) On and after the commencement time, treat the conditions on the grant as conditions imposed under section 41-25 of the *Higher Education Support Act 2003* as amended by this Part.

Part 4—Grants for Commonwealth scholarships

Higher Education Support Act 2003

20 Subsection 46-35(1)

Repeal the subsection, substitute:

- (1) If a higher education provider to which a grant (the ***original grant***) under this Part has been made in respect of a year fails to spend an amount (the ***unspent amount***) of the grant before the end of the year, then:
 - (a) unless paragraph (b) applies—the unspent amount is taken to be granted to the provider under this Part in respect of the next following year; or
 - (b) if the *Secretary specifies an amount (not greater than the unspent amount) in relation to the provider and the original grant in a determination under subsection (1A)—the specified amount is taken to be granted to the provider under this Part in respect of the next following year.
- (1A) The *Secretary may, in writing, make a determination for the purposes of paragraph (1)(b) specifying an amount in relation to a higher education provider and a grant.

21 Subsection 46-35(2)

After “The amount”, insert “taken to be granted under subsection (1)”.

22 At the end of section 46-35

Add:

- (3) Subsection (1) does not apply to a higher education provider in relation to a grant if the *Secretary specifies the provider in relation to the grant in a determination under subsection (4).
- (4) The *Secretary may, in writing, make a determination for the purposes of subsection (3) specifying a higher education provider in relation to a grant.

- (5) A determination under subsection (1A) or (4) is not a legislative instrument.

23 Application provision

The amendments made by this Part apply in relation to grants made under Part 2-4 of the *Higher Education Support Act 2003* on or after the commencement of this item.

Part 5—Other amendments

Higher Education Support Act 2003

24 Subsections 19-36B(2) and 19-36C(2)

Omit “*FEE-HELP assistance”, substitute “assistance payable under Chapter 3”.

25 Section 30-15 (table item 3)

Omit “Foreign Languages”, substitute “Indigenous and Foreign Languages”.

26 Subsection 33-10(1) (table item 3)

Omit “Foreign Languages”, substitute “Indigenous and Foreign Languages”.

27 Section 93-10 (table item 3)

Omit “Foreign Languages” (wherever occurring), substitute “Indigenous and Foreign Languages”.

28 Subclause 1(1) of Schedule 1 (paragraph (c) of the definition of *grandfathered student*)

Repeal the paragraph, substitute:

- (c) the person undertakes a unit of study (the *later unit of study*) that has a *census date on or after 1 January 2021; and
- (d) the later unit of study is one of the following:
 - (i) part of the ongoing course, honours course, later course or higher qualification course (as the case may be);
 - (ii) a *replacement unit in relation to an *affected unit of that course;
 - (iii) part of a *replacement course in relation to that course.

29 Subclause 1(1) of Schedule 1 (note to the definition of *grandfathered student*)

Omit “Note”, substitute “Note 1”.

30 Subclause 1(1) of Schedule 1 (at the end of the definition of *grandfathered student*)

Add:

Note 2: For the effect of a restructure of an ongoing course (or of a replacement course in relation to an ongoing course), see subclause (1C).

31 Before subclause 1(2) of Schedule 1

Insert:

(1C) For the purposes of the definition of *grandfathered student* in subclause (1), if a *course of study covered by subclause (1D) is or was restructured by the provider on or after 1 January 2021, treat the course of study as continuing in existence as the same course of study after the restructure.

(1D) This subclause covers a *course of study that is:

- (a) an ongoing course (within the meaning of paragraph (a) of the definition of *grandfathered student* in subclause (1)); or
- (b) a *replacement course in relation to such an ongoing course.

32 Application provisions

- (1) The amendment of section 19-36B of the *Higher Education Support Act 2003* made by this Part applies in relation to cold-calls made on or after the commencement of this item.
- (2) The amendment of section 19-36C of the *Higher Education Support Act 2003* made by this Part applies in relation to a contact with a student (as referred to in paragraph 19-36C(1)(b) of that Act) that occurs on or after the commencement of this item.
- (3) The amendments of sections 30-15 and 33-10 of the *Higher Education Support Act 2003* made by this Part apply in relation to the following:
 - (a) funding agreements entered into under Part 2-2 of that Act in respect of 2021 and later calendar years;
 - (b) grants payable under Part 2-2 of that Act for 2021 and later calendar years.

- (4) The amendment of section 93-10 of the *Higher Education Support Act 2003* made by this Part applies in relation to units of study with a census date on or after 1 January 2021.
- (5) The amendments of Schedule 1 to the *Higher Education Support Act 2003* made by this Part apply in relation to the following:
- (a) funding agreements entered into under Part 2-2 of that Act in respect of 2021 and later calendar years;
 - (b) grants payable under Part 2-2 of that Act for 2021 and later calendar years;
 - (c) units of study with a census date on or after 1 January 2021.

Schedule 2—Education services for overseas students amendments

Education Services for Overseas Students Act 2000

1 At the end of Division 1 of Part 1

Add:

7AB Application to former registered providers

- (1) This Act continues to apply in relation to a person or entity that was a registered provider as if the person or entity were still a registered provider.
- (2) Subsection (1) applies:
 - (a) for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the person or entity was a registered provider; and
 - (b) without limiting paragraph (a)—for the purposes of dealing with or resolving any matter that relates to:
 - (i) tuition fees or other money received by the person or entity, or money owed by the person or entity, in accordance with this Act (whether or not the money is received, or the debt arises, while the person or entity is a registered provider); or
 - (ii) a default (whether or not the default occurs while the person or entity is a registered provider).

2 Subsections 8(1) and (2)

Repeal the subsections, substitute:

- (1) A person commits an offence if:
 - (a) the person:
 - (i) provides a course at a location to an overseas student; or
 - (ii) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or

- (iii) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or
 - (iv) holds himself, herself or itself out as able or willing to provide a course at a location to overseas students; and
- (b) the person is not registered to provide that particular course at that particular location.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the provision, offer, inviting or holding out is in accordance with an arrangement that the person has with a registered provider for that particular course for that particular location.

Note 1: This means that, if 2 or more providers jointly provide a course, then only one of the providers needs to be registered.

Note 2: However, a provider of a course who is not registered must identify the registered provider in any written material promoting the course (see section 107) and must not engage in misleading or deceptive conduct in relation to the course (see subsection 83(2)).

Note 3: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

3 Subsection 8(3)

Omit “A person does not commit an offence under paragraph (1)(d)”, substitute “Subsection (1) does not apply as a result of subparagraph (1)(a)(iv)”.

4 Section 20

Repeal the section.

5 Subsection 28(1) (note)

Omit “Note”, substitute “Note 1”.

6 At the end of subsection 28(1)

Add:

Note 2: The obligation to maintain an account under this section may continue to apply to a person or entity that ceases to be a registered provider until matters relating to tuition fees paid into the account in

accordance with section 29 have been dealt with or resolved (see section 7AB).

7 Subsections 46B(7), 46D(8), 46F(6), 47D(6), 47E(5) and 47H(6)

Repeal the subsections.

8 Paragraphs 48(2)(a) and 49(1)(a)

Omit “(or former registered provider)”.

9 Subsection 50C(2) (note)

Repeal the note.

10 After subsection 50C(2)

Insert:

(2A) If the provider is required to maintain an account in accordance with section 28, the payment of that amount must be made out of the account to the extent that there is a sufficient amount standing to the credit of the account.

(2B) To avoid doubt, subsection (2A) is subject to subsections 29(4) and (5).

11 Subsection 50C(5)

Repeal the subsection.

12 Paragraph 108(c)

Repeal the paragraph.

*[Minister’s second reading speech made in—
House of Representatives on 18 March 2021
Senate on 13 May 2021]*

(28/21)
