



Appendix B – Higher Education Legislation
Amendment (Student Services and
Amenities) Bill 2010

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT
SERVICES AND AMENITIES) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations, the Senator the Honourable Chris Evans MP)

HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010

OUTLINE

This Bill will amend the *Higher Education Support Act 2003* to allow higher education providers to charge a compulsory student services and amenities fee. The fee will be capped at \$250 per student per annum (indexed to \$254 in 2011, and thereafter indexed annually). The Bill provides for the establishment of a new component of the Higher Education Loan Program (HELP): Services and Amenities-HELP (SA-HELP), which will provide eligible students with an option to access a loan for the fee through SA-HELP if they wish. In addition, the Bill will require higher education providers that receive funding for student places under the Commonwealth Grant Scheme, to comply with new benchmarks from 2011 onwards, for the provision of information on and access to basic student support services of a non-academic nature; and requirements to ensure the provision of student representation and advocacy.

FINANCIAL IMPACT

The estimated financial impact of SA-HELP over the period 2010-11 to 2013-14 is -\$50.498 million on fiscal balance.

HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010

NOTES ON CLAUSES

Clause 1 – Short title

Provides for the Act to be cited as the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2010*.

Clause 2 – Commencement

Subclause 2(1) inserts a three 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 for sections 1-3 and any provision not covered elsewhere in the table, to commence on Royal Assent; for Schedule 1 to commence on a day to be fixed by Proclamation, or for any provisions which have not commenced within six months of the Act receiving Royal Assent, the day after the six month period expires.

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.

For ease of description, this explanatory memorandum uses the following abbreviation:

‘the Act’ means the *Higher Education Support Act 2003*.

Schedule 1 – Student services and amenities

Higher Education Support Act 2003

Items 1 and 2 – paragraph 3-10(c), after paragraph 3-10(c)

Insert new paragraph (d) into section 3-10. Section 3-10 lists the assistance provided to students contained in Chapter 3 of the Act. New paragraph (d) adds SA-HELP assistance to the list of assistance provided under Chapter 3 of the Act.

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

Amends the table titled ‘Application of Act to Table C providers’ contained in subsection 5-1(2) to include a reference to new Part 3-5 regarding SA-HELP assistance. This is a consequential amendment.

Item 4 – At the end of section 19-37

Inserts new subsections 19-37(4), (5) and (6) into section 19-37. Section 19-37 contains rules concerning higher education providers requiring membership of certain organisations or the payment of certain amounts.

Subsection 19-37(2) provides that a higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service. New subsection 19-37(4) provides an exception to subsection (2) and allows an education provider to require the payment of a ‘student services and amenities fee.’

New subsection 19-37(5) defines *student services and amenities fee*. A *student services and amenities fee* is:

- a fee imposed by a higher education provider on a person enrolled, or seeking to enrol with the provider to pay for a period on or after 1 January 2011 to support the provision to students of amenities and services not of an academic nature,
- determined by the provider in accordance with the Administration Guidelines;
- payable on a day determined by the provider in accordance with the Administration Guidelines; and
- an amount of not more than \$250 if the fee is for a calendar year starting on or after 1 January 2011 (note the first year of indexation will apply in 2011 altering the maximum fee for 2011 to \$254) and is worked out in accordance with the Administration Guidelines.

There are three notes at the end of new subsection 19-37(5).

Note 1 provides that the Administration Guidelines are made by the Minister under section 238-10 of the Act.

Note 2 provides that the maximum amount of the fee as prescribed in new paragraph (5)(e) as \$250 is indexed in accordance with Part 5-6 of the Act (commencing 2011).

Note 3 makes a reference to paragraph 19-102(3)(b) of the Act which prevents a student services and amenities fee from being a fee defined in section 19-102 of the Act.

New subsection (6) imposes obligations on higher education providers who require the payment of a student services and amenities fee. New subsection (6) requires providers to:

- publish, in accordance with the Administration Guidelines, enough information for a person liable to pay the fee to work out the amount of the fee, and notice of the day on which the fee is payable; and
- on request by a person who is, or may become, liable to pay a fee, inform the person of the amount of the fee and the day it is or would be payable.

Item 5 – After section 19-37

Inserts new section 19-38. This new section will limit the way higher education providers can spend the student services and amenities fees they receive.

New subsection (1) prevents a provider from spending an amount paid to them to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (2) requires that, where a higher education provider pays a person or organisation an amount paid to a provider as a student services and amenities fee, the provider must make the payment on condition that none of the payment will be spent by the person or organisation to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (3) provides that a higher education provider must not spend any amounts received as student services and amenities fees for purposes other than those specified in the new subsection (4).

The effect of new subsection (4) is to require higher education providers to only spend amounts received as student services and amenities fees on the following services:

- providing food or drink to students on a campus of the higher education provider
- supporting a sporting or other recreational activity by students
- supporting the administration of a club most of whose members are students
- caring for children of students
- providing legal services to students
- promoting the health or welfare of students
- helping students secure accommodation

- helping students obtain employment or advice on careers
- helping students with their financial affairs
- helping students obtain insurance against personal accidents
- supporting debating by students
- providing libraries and reading rooms (other than those provided for academic purposes) for students
- supporting an artistic activity by students
- supporting the production and dissemination to students of media whose content is provided by students
- helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled
- advising on matters arising under the higher education provider's rules
- advocating students' interests in matters arising under the higher education provider's rules
- giving students information to help them in their orientation
- helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

A note at the end of new subsection (4) gives the following examples of allowable expenditure under subsection (4):

- expenditure by the higher education provider itself where it directly provides the service in question
- expenditure by the higher education provider where it arranges for someone else to provide the service, or the provider subsidises that person's provision of the service
- expenditure by the higher education provider on infrastructure for the provision of the service.

The effect of new subsection (5) is to provide that, for the purposes of new paragraph 19-38(4)(d), a child of a student includes (but is not limited to) a child of a person within the meaning of the *Family Law Act 1975*.

New subsection (6) ensures that the provisions limiting the expenditure of the student services and amenities fee contained in new subsection 19-38 will apply to advances made to higher education providers on account of SA-HELP assistance.

New subsection (7) provides that subsection (6) does not limit subsection 164-10(2). Subsection 164-10(2) provides that where an advance on account is made, the conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.

Item 6 – After section 19-65

Inserts new section 19-67. New subsection 19-67(1) provides a higher education provider that receives a grant under Part 2-2 of the Act must, in each calendar year starting in 2012, comply with the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as they were in force on 30 June just before the year.

New subsection 19-67(2) prescribes what may be contained in the Student Services, Amenities, Representation and Advocacy Guidelines.

New subsection 19-67(3) prevents the Student Services, Amenities, Representation and Advocacy Guidelines from requiring a provider to fund an organisation of students, or of students and other persons.

New subsection 19-67(4) prescribes that subsection 19-65(1) does not apply to the Student Services, Amenities, Representation and Advocacy Guidelines.

Items 7, 8 and 9 – Section 65-1

These amendments are consequential amendments to include references to the new SA-HELP assistance in the Table contained in section 65-1. This Table summarises Chapter 3 of the Act which contains the provisions relating to assistance to students.

Item 10 – At the end of Chapter 3

Inserts new Part 3-5. New Part 3-5 contains the substantive provisions relating to SA-HELP assistance.

New Division 125 provides a description of new Part 3-5.

New Division 126 provides eligibility criteria for SA-HELP assistance. A student is entitled to SA-HELP assistance where the student:

- meets the citizenship or residency requirements under new section 126-5;
- is enrolled in a course of study with the provider or a bridging course for overseas-trained professionals on a day on which the fee is payable;
- meets the tax file number requirements; and
- 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.

New subsection 126-1(2) defines a *request for Commonwealth assistance* in relation to a student services and amenities fee. This is defined as a document in which a person requests the Commonwealth to provide assistance under the Act in relation to the student assistance and amenities 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 of study or bridging course for overseas-trained professionals) and is on a form approved by the Minister.

The citizenship or residency requirements contained in new section 126-5 require a student, on the day the fee is payable, to be either an Australian citizen or a permanent humanitarian visa holder resident in Australia. New subsection 126-5(2) provides that a permanent humanitarian visa holder does not meet the citizenship or residency requirements where the provider reasonably expects that the visa holder will not undertake in Australia any units of study with the provider.

New Division 127 provides how the amount of SA-HELP assistance to which a student is entitled is worked out. The amount of SA-HELP assistance to which an eligible student is entitled is the difference between the fee and the sum of any payments of the fee made on or before the day on which the fee is payable.

New Division 128 sets out how amounts of SA-HELP are paid. New section 128-1 provides that where a student is entitled to SA-HELP assistance the Commonwealth must lend the amount of SA-HELP assistance to the student and pay the higher education provider the amount lent.

New section 128-5 provides that a provider must repay an amount of SA-HELP assistance to the Commonwealth if new subsection 193-15(1) applies to the student. See Item 36 for new subsection 193-15(1).

Note 1 provides that subsection 193-15(1) applies to a person who does not have a tax file number.

Note 2 provides that the SA-HELP debt will be remitted if the higher education provider must repay the amount under section 128-5.

Item 11 – Section 134-1

Amends section 134-1 to include a reference to SA-HELP assistance. This is a consequential amendment.

Item 12 – After paragraph 137-1(c)

Amends paragraph 137-1(c). This amendment includes SA-HELP debts in the definition of HELP debts.

Item 13 – After section 137-15

Inserts new section 137-16. New section 137-16 provides for when SA-HELP debts occur.

New subsection 137-16(1) provides that a person incurs an SA-HELP debt where the Commonwealth makes a loan to the person and uses the amount lent to make a payment of the person's student services and amenities fee.

New subsection 137-16(2) provides that the amount of the SA-HELP debt is an amount equal to the loan.

New subsection 137-16(3) provides that an SA-HELP debt is 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.

New subsection 137-16(4) provides that a person's SA-HELP debt is remitted if the provider must repay the Commonwealth the amount the Commonwealth paid the provider in relation to the fee.

Items 14 and 15 – Subsection 140-5(1)

Insert references to SA-HELP assistance into subsections 140-5(1) and 140-25(1A) respectively. These are consequential amendments relating to Item 13.

Items 16 and 17 – Subsection 140-25(1A)

Inserts references to SA-HELP assistance into subsection 140-25(1A). These are consequential amendments relating to Item 13.

Items 18, 19 and 20 – Paragraph 154-55(1)(a)

Are technical amendments relating to Item 21.

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

Inserts new subparagraph 154-55(1)(a)(iii) to include a reference to SA-HELP assistance into paragraph 154-55(1)(a). This amendment extends the provisions which require higher education providers to give information in their possession relating to students to the Commissioner (if asked by the Commissioner) to information in their possession relating students who have applied for SA-HELP assistance.

Item 22 – Subparagraph 169-5(1)(b)(i)

Amends subparagraph 169-5(1)(b)(i) to insert a reference to the student services and amenities fee. Subsection 169-5(1) currently provides that a higher education provider must give notices, as required by the Administration Guidelines, to a person who is:

- enrolled with the provider for a unit of study and;
- who is seeking Commonwealth assistance under the Act for the unit or is a Commonwealth supported student for the unit.

This amendment will require higher education providers to also give notices as required by the Administration Guidelines in relation to student services and amenities fees.

Item 23 – Section 169-30

Is a technical amendment relating to Item 22.

Item 24 – At the end of section 169-30

Inserts new subsection 169-30(2). This new subsection provides that, in communications under (or for the purposes of) the Act between the Commonwealth and a higher education provider concerning a person who has had a student services and amenities fee imposed on them and has indicated they are seeking SA-HELP for the fee, then the provider must use any identifier for that person that the Secretary has indicated must be used in such communications. This amendment mirrors a provision which currently exists regarding other Commonwealth assistance.

Items 25 and 26 – Section 169-35, at the end of paragraph 169-35(b)

Amends section 169-35 to insert a reference to SA-HELP assistance. These are technical amendments relating to Item 27.

Item 27 – At the end of section 169-35

Inserts new subsection 169-35(2). This new subsection has the effect of limiting the period, during which a person can correct the information provided in the request for Commonwealth assistance made in relation to a student services and amenities fee where the effect of correcting the information gives rise to an entitlement to SA-HELP, to six weeks after the day on which a student services and amenities fee imposed on a person by a higher education provider was payable. This amendment mirrors the provisions which currently exist for other forms of Commonwealth assistance contained in the Act.

Items 28 and 29 – Subsections 187-1(1) and (1A), subsection 187-1(3)

Amends subsections 187-1(1), (1A) and 1(3). These are technical amendments relating to Item 30.

Item 30 – After subsection 187-1(3A)

Inserts new subsections 187-1(3B), (3C), (3D) and (3E). These subsections contain the tax file number requirements for obtaining SA-HELP assistance.

New subsection 187-1(3B) provides that a student will satisfy the tax file number requirements in one of two ways. Either by providing their tax file number to an appropriate officer of the provider and the provider being satisfied that the number is a valid tax file number or by giving the officer a certificate from the Commissioner of Taxation which states that they have applied for a tax file number.

New subsection 187-1(3C) provides that compliance by a person with the tax file number requirements in relation to the person's actual or proposed enrolment in a course of study or bridging course for overseas-trained professionals under subsection (3B) must be ignored in determining whether the person has complied with subsection

(3B) in relation to his or her actual or proposed enrolment in another such course or bridging course.

New subsection 187-1(3D) provides that a student does not meet the tax file number requirements for SA-HELP unless they comply with these requirements on or before the day the fee is payable.

New subsection 187-1(3E) provides that a student may include a notification under paragraph (3B)(a) in any request for Commonwealth assistance relating to a student services and amenities fee in connection with their enrolment in the course of study or bridging course for overseas-trained professionals.

Item 31 – Paragraph 187-1(4)(a)

Amends paragraph 187-1(4)(a) to insert a reference to new paragraph 187-1(3B)(a). Subsection 187-1(4) provides that the Commissioner may issue guidelines about the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number for the purposes of paragraph 187-1(1)(a) or (3B)(a). This amendment will extend these guidelines to include SA-HELP assistance.

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

Inserts transitional provisions regarding the guidelines made under subsection 187-1(4) relating to the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number.

Subitem (1) provides that any guidelines made under subsection 187-1(4) prior to commencement of the amendments to that subsection will remain in force after commencement of the amendments.

Subitem (2) provides that subitem (1) does not prevent the repeal or amendment of the guidelines.

Item 33 – Subsection 187-1(5)

Amends subsection 187-1(5) to insert a reference to new paragraph (3B)(b). Subsection 187-1(5) provides that a certificate issued by the Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student must be in a form approved by the Commissioner. This amendment will extend the requirement in subsection 187-1(5) to include SA-HELP assistance.

Item 34 – After subsection 193-1(4)

Inserts new subsections 193-1(4A) and (4B). New subsection 193-1(4A) provides that a higher education provider must notify a person in writing how to meet the tax file number requirements if:

- the person is enrolled in a course of study or bridging course with the provider; and
- the provider has imposed a student services and amenities fee on the person; and
- the person has (on or before the day on which the fee is payable) completed and signed a request for Commonwealth assistance in relation to a student services and amenities fee imposed for a period during which the person is enrolled in the course or bridging course; and
- in that request, the person requests SA-HELP assistance for the student services and amenities fee; and
- the request does not include a number that purports to be the person's tax file number.

New subsection 193-1(4B) provides that the provider must notify the person under new subsection 193-1(4A) either:

- on or before the day the student services is payable; or
 - within seven days after the person gives the provider the request for Commonwealth assistance;
- whichever is earlier.

Item 35 – Paragraph 193-1(5)(a)

Amends paragraph 193-1(5)(a) to insert a reference to SA-HELP assistance. Subsection 193-1(5) provides that section 193-1 does not apply to a person if the person (in the request for Commonwealth assistance) requests HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, but the person is not entitled to the assistance. This amendment will extend these provisions to include SA-HELP assistance. That is, the tax file number requirements in section 193-1 will not apply to a person where they have applied for SA-HELP assistance but are not entitled to the assistance.

Item 36 – At the end of Division 193

Inserts new section 193-15. New section 193-15 provides circumstances in which there is no entitlement to SA-HELP assistance for students without valid tax file numbers. New subsection 193-15(1) provides that subsection 193-15(1) applies to a person if:

- a higher education provider has imposed a student services and amenities fee on a person; and
- the provider receives a notice under section 190-15 or 190-20 of the Act that the person does not have or no longer has a tax file number; and
- 28 days after the provider receives the notice the person does not have a tax file number, the provider has not been notified of a tax file number which the provider is satisfied is valid; and

- the person is entitled to SA-HELP assistance for the fees.

New subsection 193-15(2) provides that in deciding whether a tax file number is valid for the purposes of paragraph (1)(c) the provider must comply with the guidelines issued by the Commissioner under subsection 187-1(4).

New subsection 193-15(3) provides that where persons may be affected by subsection (1) applying to them, 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.

New subsection 193-15(4) provides that the guidelines issued under subsection (3) are legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 37 – Section 198-5 (before table item 1)

Amends the table in section 198-5. This table sets out the amounts under the Act that are to be indexed and lists the first year of indexation. This amendment adds the student services and amenities fee as an amount that is to be indexed and lists 2011 as the first year of indexation.

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

Amends item 1 of the table in subsection 238-10(1) to insert “Section 19-37;” before “Chapter 5” in the third column. The effect of this amendment is to allow the Administration Guidelines to provide for matters concerning the student services and amenities fee in addition to matters concerning Chapter 5.

Item 39 – Subsection 238-10(1) (after table item 10)

Inserts reference to the Student Services, Amenities, Representation and Advocacy Guidelines into the Table in section 238-10. This section provides that the Minister may, by legislative instrument, make Guidelines specified in the Table. This amendment provides the legislative basis for the Minister to make the Student Services, Amenities, Representation and Advocacy Guidelines.

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

Inserts paragraph (ba) into the definition of *request for Commonwealth Assistance* contained in Clause 1 of Schedule 1. This amendment includes the student services and amenities fee in the definition of *request for Commonwealth assistance*.

Items 41, 42 and 43 – Subclause 1(1) of Schedule 1

Inserts definitions of *SA-HELP assistance*, *SA-HELP debt* and *student services and amenities fee* into subclause 1(1) of Schedule 1. These are consequential amendments.

Income Tax Assessment Act 1936

Item 44 – Paragraph 202(c)

Amends paragraph 202(c).

Section 202 provides the objects of Part IVA of the Act and includes, at paragraph (c), the establishment of a system of tax file numbers to facilitate the administration of legislation under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respects of the costs of courses of study provided by higher education institutions. This amendment will extend the coverage of paragraph 202(c) to include the provision of benefits to students in respect of ‘costs of other services and amenities available to students in connection with [higher education] institutions.’ This amendment will include the student services and amenities fee under this section.

Normally an amendment to sections 8WA and 8WB of the *Taxation Administration Act 1953* (TAA 1953) is required to ensure that a person does not commit an offence when carrying out his or her duties with tax file numbers in respect of certain legislated purposes. This would entail excluding certain paragraphs of section 202 of the *Income Tax Assessment Act 1936* (ITAA 1936) from the offence provisions in the above mentioned sections of the TAA 1953. The amendment of section 202 merely extends the existing purposes of paragraph 202(c) of the ITAA 1936. The extended wording of paragraph 202(c) is automatically included in the exceptions to the offence provisions.

The purpose of the Schedule is to introduce a student services and amenities fee and to give students the option of deferring payment of the cost of other services and amenities connected with their education at institutions of higher education (SA-HELP). In order to facilitate the deferral and repayment of those debts the tax file number is to be used in a similar manner to that used under the HECS-HELP. This is consistent with other benefits provided by government where the tax file number is used to verify the identity of the debtor/recipient of a benefit and to facilitate the repayment of the debt/overpayment.

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Higher Education Legislation
Amendment (Student Services and
Amenities) Bill 2010**

No. , 2010

(Tertiary Education, Skills, Jobs and Workplace Relations)

**A Bill for an Act to amend legislation relating to
higher education, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **higher education, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Higher Education Legislation*
6 *Amendment (Student Services and Amenities) Act 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
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.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

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.
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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

1 (e) that is such that the total of all amounts that are covered by
2 paragraphs (a), (b), (c) and (d) for the same provider and
3 person is not more than \$250, for amounts for periods falling
4 wholly or partly within a calendar year starting on or after
5 1 January 2011.

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

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

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

12 (6) If a higher education provider determines a *student services and
13 amenities fee, the provider:

14 (a) must publish, in accordance with the Administration
15 Guidelines:

16 (i) enough information to enable a person liable to pay the
17 fee to work out the amount of the fee; and

18 (ii) notice of the day on which the fee is payable; and

19 (b) must, on request by a person who is or may become liable to
20 pay the fee, inform the person of the amount of the fee and
21 the day on which it is or would be payable.

22 **5 After section 19-37**

23 Insert:

24 **19-38 Higher education providers' expenditure of student services** 25 **and amenities fees**

26 (1) A higher education provider must not spend an amount paid to the
27 provider as a *student services and amenities fee to support:

28 (a) a political party; or

29 (b) the election of a person as a member of:

30 (i) the legislature of the Commonwealth, a State or a
31 Territory; or

32 (ii) a local government body.

33 (2) If a higher education provider pays a person or organisation an
34 amount paid to the provider as a *student services and amenities
35 fee, the provider must make the payment on the condition that none

- 1 of the payment is to be spent by the person or organisation to
2 support:
- 3 (a) a political party; or
4 (b) the election of a person as a member of:
5 (i) the legislature of the Commonwealth, a State or a
6 Territory; or
7 (ii) a local government body.
- 8 (3) A higher education provider must not spend, for a purpose other
9 than that specified in subsection (4), an amount paid to the provider
10 as a *student services and amenities fee.
- 11 (4) Subsection (3) does not prohibit expenditure for a purpose that
12 relates to the provision of any of the following services:
13 (a) providing food or drink to students on a campus of the higher
14 education provider;
15 (b) supporting a sporting or other recreational activity by
16 students;
17 (c) supporting the administration of a club most of whose
18 members are students;
19 (d) caring for children of students;
20 (e) providing legal services to students;
21 (f) promoting the health or welfare of students;
22 (g) helping students secure accommodation;
23 (h) helping students obtain employment or advice on careers;
24 (i) helping students with their financial affairs;
25 (j) helping students obtain insurance against personal accidents;
26 (k) supporting debating by students;
27 (l) providing libraries and reading rooms (other than those
28 provided for academic purposes) for students;
29 (m) supporting an artistic activity by students;
30 (n) supporting the production and dissemination to students of
31 media whose content is provided by students;
32 (o) helping students develop skills for study, by means other than
33 undertaking *courses of study in which they are enrolled;
34 (p) advising on matters arising under the higher education
35 provider's rules (however described);
36 (q) advocating students' interests in matters arising under the
37 higher education provider's rules (however described);
-

- 1 (r) giving students information to help them in their orientation;
2 (s) helping meet the specific needs of *overseas students relating
3 to their welfare, accommodation and employment.

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

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

13 (5) Without limiting who is a child of a person for the purposes of
14 paragraph (4)(d), someone is the *child* of a person if he or she is a
15 child of the person within the meaning of the *Family Law Act*
16 *1975*.

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

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

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

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

28 **6 After section 19-65**

29 Insert:

30 **19-67 Special requirements for student services, amenities, 31 representation and advocacy in 2012 and later years**

32 (1) A higher education provider that receives a grant under Part 2-2 in
33 respect of the year 2012 or a later year must comply in respect of
34 the year with the requirements of the Student Services, Amenities,
35 Representation and Advocacy Guidelines as those guidelines were
36 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

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

3 **10 At the end of Chapter 3**

4 Add:

5 **Part 3-5—SA-HELP assistance**

6 **Division 125—Introduction**

7 **125-1 What this Part is about**

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

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

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

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

19 **126-1 Entitlement to SA-HELP assistance**

- 20 (1) A student is entitled to *SA-HELP assistance for a *student
21 services and amenities fee imposed on the student for a period by a
22 higher education provider if:
- 23 (a) the student meets the citizenship or residency requirements
24 under section 126-5; and
 - 25 (b) the student is enrolled with the provider in a *course of study
26 or a *bridging course for overseas-trained professionals on
27 the day on which the fee is payable; and
 - 28 (c) the student *meets the tax file number requirements (see
29 section 187-1); and

- 1 (d) the student has, on or before the day on which the fee is
2 payable, completed, signed and given to an *appropriate
3 officer of the provider a *request for Commonwealth
4 assistance in relation to the fee.
- 5 (2) ***A request for Commonwealth assistance***, in relation to a *student
6 services and amenities fee imposed for a period on a person who is
7 enrolled with a higher education provider in a *course of study or a
8 *bridging course for overseas-trained professionals, means a
9 document:
- 10 (a) in which the person requests the Commonwealth to provide
11 assistance under this Act in relation to the fee for the period
12 (and any student services and amenities fee imposed for a
13 later period during which the person is enrolled in the course
14 or bridging course); and
- 15 (b) that is in the form approved by the Minister.

16 **126-5 Citizenship or residency requirements**

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

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

3 **127-1 The amount of SA-HELP assistance for a student services and**
4 **amenities fee**

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

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

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

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

15 **128-1 Payments to higher education providers of loans to students**

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

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

23 **128-5 Repayment by higher education provider if student does not**
24 **have tax file number**

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

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

31 Note 2: The person's SA-HELP debt will be remitted if the higher education
32 provider must repay the amount under this section: see subsection
33 137-16(4).

1 **11 Section 134-1**

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

4 **12 After paragraph 137-1(c)**

5 Insert:

6 (ca) *SA-HELP debts;

7 **13 After section 137-15**

8 Insert:

9 **137-16 SA-HELP debts**

10 *Incurring SA-HELP debts*

11 (1) A person incurs a debt to the Commonwealth if, under
12 section 128-1, the Commonwealth:

13 (a) makes a loan to the person; and

14 (b) uses the amount lent to make a payment of the person’s
15 liability to pay a *student services and amenities fee.

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

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

18 *When SA-HELP debts are incurred*

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

23 *Remission of SA-HELP debts*

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

29 **14 Subsection 140-5(1) (method statement, step 2, after**
30 **paragraph (e))**

1 Insert:

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

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

6 After “(e),” insert “(ea),”.

7 **16 Subsection 140-25(1A) (method statement, step 1, after
8 paragraph (e))**

9 Insert:

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

13 **17 Subsection 140-25(1A) (method statement, step 1, note)**

14 After “(e),” insert “(ea),”.

15 **18 Paragraph 154-55(1)(a)**

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

17 **19 Subparagraph 154-55(1)(a)(i)**

18 Omit “or” (last occurring).

19 **20 Subparagraph 154-55(1)(a)(ii)**

20 Omit “and”.

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

22 Add:

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

25 **22 Subparagraph 169-5(1)(b)(i)**

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

1 **23 Section 169-30**

2 Before “In”, insert “(1)”.

3 **24 At the end of section 169-30**

4 Add:

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

14 **25 Section 169-35**

15 Before “If:”, insert “(1)”.

16 **26 At the end of paragraph 169-35(b)**

17 Add “other than *SA-HELP assistance”.

18 **27 At the end of section 169-35**

19 Add:

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

32 **28 Subsections 187-1(1) and (1A)**

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

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

4 **29 Subsection 187-1(3)**

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

8 **30 After subsection 187-1(3A)**

9 Insert:

10 *SA-HELP assistance*

11 (3B) A student who is enrolled, or proposes to enrol, with a higher
12 education provider in a *course of study or *bridging course for
13 overseas-trained professionals ***meets the tax file number***
14 ***requirements*** for *SA-HELP assistance if:

15 (a) the student notifies his or her *tax file number to an
16 *appropriate officer of the provider, and the provider is
17 satisfied (in accordance with subsection (4)) that this number
18 is a valid tax file number; or

19 (b) the student gives to the officer a certificate from the
20 *Commissioner stating that the student has applied to the
21 Commissioner asking the Commissioner to issue a tax file
22 number to the student.

23 (3C) Compliance by a person with subsection (3B) in relation to the
24 person’s actual or proposed enrolment in a *course of study or
25 *bridging course for overseas-trained professionals is to be ignored
26 in determining whether there has been compliance by the person
27 with subsection (3B) in relation to the person’s actual or proposed
28 enrolment in another such course or bridging course.

29 (3D) If the student is seeking *SA-HELP assistance for a *student
30 services and amenities fee, he or she does not meet the tax file
31 number requirements for the assistance unless he or she complies
32 with subsection (3B) on or before the day the fee is payable.

33 (3E) A notification under paragraph (3B)(a) may be included in any
34 *request for Commonwealth assistance relating to a *student
35 services and amenities fee imposed on the student in connection

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

3 **31 Paragraph 187-1(4)(a)**

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

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

6 **32 Transitional—guidelines issued under subsection 187-1(4)**
7 **of the *Higher Education Support Act 2003***

8 (1) Guidelines in force under subsection 187-1(4) of the *Higher Education*
9 *Support Act 2003* immediately before the commencement of the
10 amendment of that subsection by this Schedule have effect after that
11 commencement as if they had been issued under that subsection as
12 amended by this Schedule.

13 (2) Subitem (1) does not prevent the repeal or amendment of the guidelines.

14 **33 Subsection 187-1(5)**

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

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

18 **34 After subsection 193-1(4)**

19 Insert:

20 *Requests for SA-HELP assistance*

21 (4A) A higher education provider must notify a person in writing how to
22 *meet the tax file number requirements if:

- 23 (a) the person is enrolled with the provider in a *course of study
24 or *bridging course for overseas-trained professionals; and
25 (b) the provider has imposed a *student services and amenities
26 fee on the person; and
27 (c) the person has, on or before the day on which the fee is
28 payable, completed, signed and given to the *appropriate
29 officer of the provider a *request for Commonwealth
30 assistance in relation to a student services and amenities fee
31 imposed on the person for a period during which he or she is
32 enrolled in the course or bridging course; and

- 1 (d) in that request, the person requests *SA-HELP assistance for
2 the student services and amenities fee; and
3 (e) the request does not include a number that purports to be the
4 person's *tax file number.
- 5 (4B) The provider must notify the person under subsection (4A):
6 (a) on or before the day the *student services and amenities fee is
7 payable; or
8 (b) within 7 days after the person gives the provider the *request
9 for Commonwealth assistance;
10 whichever is earlier.

11 **35 Paragraph 193-1(5)(a)**

12 Omit "or *OS-HELP assistance", substitute " , *OS-HELP assistance or
13 *SA-HELP assistance".

14 **36 At the end of Division 193**

15 Add:

16 **193-15 No entitlement to SA-HELP assistance for students without**
17 **tax file numbers**

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

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

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

1 (2) A higher education provider must, in deciding whether it is
2 satisfied that a number is a valid *tax file number for the purposes
3 of paragraph (1)(c), comply with the guidelines issued by the
4 *Commissioner under subsection 187-1(4).

5 (3) A higher education provider must comply with any requirements,
6 set out in guidelines issued by the *Commissioner, relating to
7 procedures for informing persons of the need to obtain a valid *tax
8 file number, where the persons may be affected by subsection (1)
9 applying to them.

10 (4) A guideline issued under subsection (3) is a legislative instrument.

11 **37 Section 198-5 (before table item 1)**

12 Insert:

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

13 **38 Subsection 238-10(1) (table item 1, column headed**
14 **“Chapter/Part/section”)**

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

16 **39 Subsection 238-10(1) (after table item 10)**

17 Insert:

10A	Student Services, Amenities, Representation and Advocacy Guidelines	section 19-67
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18 **40 Subclause 1(1) of Schedule 1 (after paragraph (b) of the**
19 **definition of *request for Commonwealth assistance*)**

20 Insert:

21 (ba) in relation to a *student services and amenities fee imposed
22 on a person enrolled with a higher education provider in a
23 *course of study or *bridging course for overseas-trained
24 professionals—has the meaning given by subsection
25 126-1(2); and

26 **41 Subclause 1(1) of Schedule 1**

27 Insert:

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

1 **42 Subclause 1(1) of Schedule 1**

2 Insert:

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

4 **43 Subclause 1(1) of Schedule 1**

5 Insert:

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

8 ***Income Tax Assessment Act 1936***

9 **44 Paragraph 202(c)**

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