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Higher Education Legislation Amendment Bill 2004

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Higher Education Legislation Amendment Bill 2004

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30 March 2004

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Higher Education Legislation Amendment Bill

Date Introduced: 11 March 2004

House: House of Representatives

Portfolio: Education, Science and Training

Commencement: Royal Assent

Purpose

To amend the *Higher Education Funding Act 1988*, the *Higher Education Support Act 2003* and the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* for various purposes, including:

- minor funding adjustments
- the remission of HECS-HELP debts for work experience students
- transitional arrangements for the University of Notre Dame, and
- allowing Ministerial discretion with regard to 2005 funding increases resulting from the implementation of the National Governance Protocols.

Background

Commonwealth funding for higher education is currently provided under the terms of the *Higher Education Funding Act 1988* (the HEFA). From 2005 funding will be provided under new arrangements as provided for by the *Higher Education Support Act 2003* (the HESA) and the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

The Bill will make minor adjustments to the funding levels contained in the HEFA, resulting in additional expenditure of \$11.047 million in 2004. According to the explanatory memorandum (the EM), these additional funds are primarily for over-enrolments, the Regional Protection Fund and indigenous education in the Northern Territory.¹

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Funding changes to the HESA will result in an additional \$157.980 million expenditure over the 2005-2007 triennium. The EM states that this will provide for the reinstatement of funding for the Workplace Reform Fund and the enrichment of indigenous education in the Northern Territory.²

In his second reading speech, the Minister stated that the additional amounts provided to enrich indigenous education in the Northern Territory would be \$1.5 million each year in 2004 and 2005.³ These funds are to facilitate an affiliation between the Batchelor Institute of Indigenous Tertiary Education and Charles Darwin University. The actual arrangements will be a matter for the institutions themselves. If this affiliation does not occur, then the funds will be used in other ways to enhance indigenous education in the Northern Territory.

Commonwealth Funding for Private Higher Education Institutions

The Bill will change the funding arrangements for the University of Notre Dame Australia, a private institution located in Fremantle, WA.

From 1999 the Commonwealth began funding places at the Broome campus of the University of Notre Dame on the same basis as public universities. The rationale for the funding of Notre Dame was the remoteness of the campus, the lack of alternative providers, and the particular needs that the campus serves (ie. the Aboriginal student population). From 2000 Commonwealth triennial funding (and HECS access) was extended to student places for teacher education at the Fremantle campus of Notre Dame. This was justified on the basis that the university was providing teachers for the Catholic school system in WA, a role performed the Australian Catholic University in the eastern states. However, Avondale College, a private higher education institution which produces teachers for the Seventh Day Adventist school system only receives Commonwealth grants on an annual contractual basis.

The Government's higher education policy statement of 2003, *Backing Australia's Future*, stated that funding for private higher education institutions would be rationalised, with 1400 Commonwealth supported places being set aside for allocation to these bodies. These places would include the 655 Commonwealth supported places currently provided to Avondale (teaching) and Notre Dame (teaching, information technology and the places at Broome for indigenous students). The 745 new places would be allocated on the basis of the Commonwealth's assessment of needs and priorities, in consultation with States and Territories with regard to their labour market needs. Marcus Oldham College, a small private farm management institution, was provided with a one-off payment in lieu of future annual funding.

The HESA distinguishes between two types of higher education provider: Table A providers and Table B providers. The former consist of all 37 public universities, plus the Australian Maritime College and the Bachelor Institute of Indigenous Tertiary Education.

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Table B comprises Bond University, Notre Dame and the Melbourne College of Divinity. However, the minister also has the power under s.16-25 of the HESA to approve a body as a higher education provider. Such determinations are disallowable instruments. Under s.30-1 of the HESA providers that are not Table A providers can only receive grants under the Commonwealth Grant Scheme if the grant 'relates only to national priorities'. The current national priority areas are teaching and nursing.

However, Part 4 of Schedule 1 of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* has the effect of exempting Notre Dame from the Table B funding restrictions and treating the institution as a Table A provider until the end of 2008. The Bill will repeal these provisions, thus ensuring that Notre Dame will be subject to the conditions relating to Table B providers. This would mean that Notre Dame could only receive grants in respect of national priorities ie. the indigenous and information technology places might not be funded. The EM states that transitional arrangements relating to Commonwealth supported students at Notre Dame will be managed through the Commonwealth Grant Scheme Guidelines.⁴ As the Minister has the power to specify the national priorities in these guidelines, it would be possible to define the relevant Notre Dame courses as national priorities and thus ensure their continued funding.

According to the second reading speech, the transitional provision had “unintended consequences” for the university.⁵ These consequences are not specified in the second reading speech or the EM. It might be noted that Table A providers receiving assistance under the Commonwealth Grants Scheme are subject to a number of conditions set out in Division 36 of the HESA. For example, section 36-35 requires providers to ensure that at least 65 per cent of places in an undergraduate course must be Commonwealth supported places (ie. not full-fee places). Under the existing transition provisions, Notre Dame would be required to meet this condition.

National Governance Protocols

Section 33-15 of the HESA provides that higher education providers' basic grants can be increased by 2.5 per cent in 2005 if they meet the requirements of the National Governance Protocols and if their certified agreements made after 22 September 2003 offer Australian Workplace Agreements in accordance with the *Workplace Relations Act 1996*.

The Bill will amend the *Education Support (Transitional Provisions and Consequential Amendments) Act 2003* to soften the requirements for meeting the National Governance Protocols. These requirements have been set out in the draft guidelines for the Commonwealth Grant Scheme.⁶ They include such matters as the size, role and responsibilities of university governing bodies. Some of these require amendments to State legislation and are thus incapable of implementation by the institutions themselves. The amendment will enable the Minister to approve the additional funding for 2005 in respect

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of the Protocols so long as the provider has met some of the requirements and has taken all reasonable steps to meet all of the requirements.

Main Provisions

Schedule 1 adjusts funding levels in the HEFA and HESA.

Schedule 2 amends the HESA to enable HECS-HELP repayments to students who have been enrolled in a work experience unit, but have been unable to complete the requirements of the unit because of special circumstances.

Note: students who are enrolled in HECS-HELP places but who are unable to complete their courses because of special circumstances are entitled to a refund because of the operation of HESA section 36-20 and Division 79. The amendment will enable work experience students also to obtain a refund if they are in the same circumstances.

Items 2 and 3 of Schedule 3 amend the HESA to enable higher education providers to determine the student contribution amounts and tuition fees for the life of a course for students who commence that course in a particular year.

Note: the Minister has stated that this flexibility was requested by higher education providers.⁷ Under the current terms of the HESA, providers are required to provide details of their student contribution and tuition fee levels for units of study on an annual basis.

Schedule 4 repeals the transitional arrangements for the University of Notre Dame contained in the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

Item 10 of Schedule 5 inserts a **new section 21A** in the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*. This will enable the Minister to approve additional funding for higher education providers for the year 2005 if they have taken all reasonable steps to meet the requirements of the National Governance Protocols.

Endnotes

- 1 Explanatory Memorandum, p 4.
- 2 *ibid.*
- 3 *House Hansard*, 23 March 2004, p. 26016.

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- 4 Explanatory Memorandum, p 14.
- 5 *House Hansard*, 23 March 2004, p. 26016
- 6 These draft guidelines can be obtained from:
http://www.backingaustraliasfuture.gov.au/guidelines/documents/cgs_guide.pdf
- 7 Second reading speech, *House Hansard*, 23 March 2004, p. 26016.

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