



Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005

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Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005

Date Introduced: 14 September 2005

House: House of Representatives

Portfolio: Education, Science and Training

Commencement: Royal Assent

Purpose

To amend the *Higher Education Support Act 2003* (HESA) to:

- permit the operation of foreign higher education providers in Australia; and
- improve consumer protection mechanisms for students; and
- make a number of technical amendments as a result of the commencement of the *Legislative Instruments Act 2003* on 1 January 2005.

Background

Foreign Higher Education Providers

The HESA provides for the regulation and funding of higher education in Australia. At present, there are two major categories of self-accrediting higher education providers¹ listed in sub-division 16-B of the Act:

- Table A providers (the public universities and two specialist institutions²) which are eligible for the full range of grants provided by the Commonwealth Government; and
- Table B providers³ which are eligible for grants for research and research training, and for assistance under the Commonwealth Grant Scheme in special circumstances.⁴

The HESA also allows the Minister to approve a body corporate as a higher education provider as long as the body is established under Australian law, has its central management and control in Australia, and meets a range of other conditions.

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The Bill will create a new category of higher education providers – Table C providers. These are overseas higher education institutions with Australian branches. These providers and their students are explicitly excluded from the Commonwealth Grant Scheme and other HESA grants, Commonwealth scholarships and the HECS-HELP scheme. However, the Australian students of Table C providers will have access to FEE-HELP and OS-HELP⁵ assistance and the providers will have to adhere to the quality, fairness and contribution/fee requirements set out in sub-divisions 19-C, 19-D and 19F of the HESA. They will also have to meet the requirements of Chapter 4 (which deals with the repayment of HELP loans) as well as a range of administrative requirements set out in Chapter 5.

The Carnegie Mellon Proposal

Carnegie Mellon University⁶ (CMU) is a private US institution with around 8000 undergraduate and postgraduate students. Its headquarters are in Pittsburgh, Pennsylvania, with subsidiary campuses in California and Qatar. CMU consists of seven colleges and schools: the Carnegie Institute of Technology (engineering), the College of Fine Arts, the College of Humanities and Social Sciences, the Mellon College of Science, the David A. Tepper School of Business, the School of Computer Science and the H. John Heinz III School of Public Policy and Management.

On 29 October 2004 the State of South Australia and Carnegie Mellon signed Heads of Agreement expressing their intention to collaborate in the establishment of a privately-owned university in Adelaide. The Premier of South Australia, the Hon M.D. Rann, MP, has described the South Australian Government's objectives as follows:⁷

doubling South Australia's share of overseas students within 10 years, which would have a major positive economic impact on our state;

having more of the academic programs that will help to take advantage of new economic opportunities, for instance, in the IT industry;

increasing the efficiency of government through better training of our public servants given the status of Carnegie Mellon worldwide in the areas of public administration;
and

positioning Adelaide to be Australia's leader and to be known internationally as an education city.

The South Australian Government has committed up to \$20 million over four years to assist with the establishment of the University. This funding comprises scholarships, start-up grants and operational support. The University will also be provided with accommodation in the historic Torrens Building in central Adelaide.

On 4 July 2005 the South Australian Minister for Employment, Training and Further Education, the Hon. S.W. Key, MP, announced that in accordance with the National

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Protocols for Higher Education Approval Processes and pursuant to South Australia's *Training and Skills Development Act 2003*, he had approved CMU's application to be considered as a university in accordance with the Act. As a result of this determination, CMU's courses can now be accredited in Australia and listed on the Australian Qualifications Framework. This determination was also required for registration on the Commonwealth Register of Institutions and Courses for Overseas Students, which will enable CMU to provide courses to overseas students.

According to a statement released by the Australian Embassy on 5 November 2004:

The university would offer both US and Australian postgraduate degrees and locally accredited undergraduate degrees with courses in information technology, public administration and policy and business management. It was also planned to develop special niche faculties and an emphasis on public policy and government.⁸

However, its initial course offerings appear to be restricted to a number of postgraduate courses. In May 2005 CMU stated that it hoped to offer its Master of Science in Information Technology and its Master of Science in Public Policy and Management in early 2006 through the Adelaide branch of its Heinz School of Public Policy and Management.⁹ In May 2005 Flinders University announced that it was engaged in active discussions with the Heinz School of Public Policy and Management about collaborative teaching and research arrangements in public policy and management.¹⁰

Criticism of the Proposal

Criticism of the proposal has centred on the \$20 million subsidy from the South Australian Government and the potential threat to the three Australian universities in Adelaide.¹¹ Senator Stott Despoja has been quoted as stating that 'introducing private competitors which can pick off lucrative sections of the international student market, yet have no obligation to provide high cost or low demand courses, may further undercut our three existing universities.'¹²

Economic Implications

The three South Australian Universities generated \$95.6 million from overseas student fees and \$10.9 million from domestic student fees in 2003 (not including HECS). These sums represented about 12 per cent of their revenue. It is possible that some of this income will be redirected to Carnegie Mellon.

The economic benefit of overseas students in Australia derives more from their general living expenses than from their fee payments. For example, in 2003 total expenditure by overseas students in Australia was estimated to be \$5.1 billion. Of this amount, \$1.7 billion was for higher education fees.¹³ The South Australian Government evidently considers that the general economic benefit to the community will outweigh any adverse impact on the fee revenue of local institutions.

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Tuition Assurance Requirements

Higher education providers (other than Table A providers) must comply with the tuition assurance requirements if they are to maintain their approval as providers under the Act. The purpose of the requirements is to provide:

- Course assurance – if a provider is unable to provide a course of study, then a student must receive credit for any completed units of study in that course from a second provider; and
- Contribution or tuition fee repayment – if a provider is unable to provide a course of study then the student must be repaid any contribution or fee amounts that they paid for the undelivered parts of the course.

If their provider is unable to offer the units in which they are enrolled, students can choose either the ‘course assurance’ option or the ‘contribution/fee repayment’ option. The tuition assurance requirements are set out in the Higher Education Provider Guidelines.¹⁴

The Bill contains a number of provisions to improve the tuition assurance requirements. Details of these can be found in the *Explanatory Memorandum* for the Bill.

Main Provisions

Item 1 of Schedule 1 inserts a **new section 5-1** which contains a table detailing the application of the Act to Table C providers.

Item 6 of Schedule 1 inserts a **new section 16-22** listing Carnegie Mellon as a Table C provider.

Schedule 2 introduces a number of amendments to strengthen the tuition assurance requirements.

Schedule 3 contains a number of technical amendments relating to legislative instruments that result from the commencement of the *Legislative Instruments Act 2003*.

Endnotes

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- 1 Self-accrediting institutions, such as universities, can issue their own qualifications. A complete listing of these bodies, together with a description of the Australian Qualifications Framework, can be found at <http://www.aqf.edu.au>

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- 2 The two specialist bodies are the Batchelor Institute of Indigenous Tertiary Education and the Australian Maritime College.
- 3 There are only three Table B providers: Bond University, the University of Notre Dame Australia, and the Melbourne College of Divinity.
- 4 The Commonwealth Grant Scheme (CGS) provides the basic operating grants for institutions, based upon the number of Commonwealth supported places in various 'funding clusters', each of which has a specific Commonwealth payment per place. Students in Commonwealth supported places are eligible for assistance under the HECS-HELP scheme. Table B providers can only receive CGS grants for places that relate to identified national priorities, such as increasing the number of nurses or teachers.
- 5 The FEE-HELP and OS-HELP schemes provide loans to Australian students for tuition fees and overseas study respectively.
- 6 See: <http://www.cmu.edu/home/about/about.html>, for more information about the university.
- 7 Premier's Statement to the House of Assembly, 8 November 2004.
- 8 'US university to open in Australia', Media Release, Embassy of Australia, Washington, 5 November 2004.
- 9 Press Release, 16 May 2005.
- 10 See: <http://www.flinders.edu.au/news/articles/?mr050516>, for the Flinders university media release on the subject.
- 11 See: <http://www.flinders.edu.au/stuassoc/Downloads/M7Mellon.pdf>, for a critical press release from the Student Association of Flinders University.
- 12 'Carnegie Mellon makes four for SA', *Campus Review*, 25 May 2005, pp.1,12.
- 13 DEST, *Annual Report 2003-04*, p.105; DEST, *Selected Higher Education Statistics Finance 2003*, Table 1.
- 14 The Guidelines can be obtained from:
http://www.dest.gov.au/sectors/higher_education/programmes_funding/forms_guidelines/highered_provider_guidelines.htm

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