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## Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Bill 2008

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## Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Bill 2008

**Date introduced:** 13 February 2008

**House:** House of Representatives

**Portfolio:** Education, Employment and Workplace Relations

**Commencement:** Royal Assent

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Bill will amend the *Higher Education Support Act 2003* (the HESA) by repealing section 33-17 and thereby removing the provision for a reduction in a higher education provider's Commonwealth Grants Scheme funding if the provider has not met the Higher Education Workplace Relations Requirements (HEWRRs) and the National Governance Protocols (the Protocols).

The Bill will also make a range of minor technical amendments.

### Background

The Commonwealth provides assistance for higher education through the provisions of the *Higher Education Support Act 2003* (the HESA). Part 2-2 of the HESA sets out the conditions for the Commonwealth Grant Scheme (CGS), which provides grants to higher education providers on the basis of the number of places they have been allocated in specified funding clusters. The detailed funding conditions for providers are contained in the CGS Guidelines made by the Minister under Section 238-10 the HESA, which, as legislative instruments, are disallowable.

### Higher Education Workplace Relations Requirements (HEWRRS)

As part of the 2003 higher education reforms the former Government increased funds per student place by 2.5 per cent in 2005, 5.0 per cent in 2006 and 7.5 per cent in 2007 conditional on providers offering Australian Workplace Agreements (AWAs) and

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complying with the model for institutional governance: the National Governance Protocols.

On 29 April 2005 the former Minister for Education, Science and Training (the Hon Brendan Nelson) and the former Minister for Employment and Workplace Relations (the Hon Kevin Andrews) announced a set of Higher Education Workplace Relations Requirements (HEWRRs) for higher education providers.<sup>1</sup> The HEWRRs were implemented in the *Higher Education Legislation Amendment (Workplace Relations Requirements) Act 2005* and continued the compliance requirements for full CGS funding provided for in Section 33-17 of the HESA.

### National Governance Protocols

The National Governance Protocols were implemented under the former Government's reforms in higher education: *Our Universities: Backing Australia's Future*. The Protocols provide a set of standards to ensure that governing bodies effectively oversee university operations and aim to ensure a consistent national approach to governance. The Protocols became effective in 2004.

In late 2005, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) commissioned a review of the impact of the Protocols and the scope for their enhancement. The Joint Committee on Higher Education (JCHE) undertook the review which was placed on hold when the 2007 election was called.<sup>2</sup>

In the Minister's second reading speech, the Hon Julia Gillard stated that the Bill 'will put an end to the HEWRRS and the protocols'.<sup>3</sup> If passed the Bill will end the HEWRRS and the Protocols as a condition of funding. However both the HEWRRS and the Protocols have been rendered ineffectual through a Legislative Instrument registered on 23 February 2008 and tabled 11 March 2008. The Legislative Instrument (see F2008L00559) has removed Chapter 7 of the Commonwealth Grant Scheme Guidelines, thereby removing the imposition on higher education providers of the HEWRRs and the Protocols.<sup>4</sup> As discussed above the Legislative Instrument is disallowable. Should Parliament not pass the Bill, then Section 33-17 will continue to apply compliance requirements for HEWRRS and

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1. B. Nelson (Minister for Education, Science and Training) and K. Andrews, (Minister for Employment and Workplace Relations) [Modernising workplace relations in our universities](#), joint media release, 29 April 2005.
  2. For further background on the National Governance Protocols see the review's [Issues paper](#)
  3. Julia Gillard (Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion), [Second Reading Speech](#), House of Representatives, *Debates*, 13 February 2008, p.189.
  4. [Higher Education Support Act 2003: Amendment No. 2 to the Commonwealth Grant Scheme Guidelines No. 1, 23 February 2008, F2008L00559](#).

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the Protocols that no longer exist. The Legislative Instrument would need to be disallowed for Section 33-17 to be meaningful.<sup>5</sup>

### Basis of policy commitment

In the Labor Party's 2006 white paper on higher education and research, Labor promised to 'end Government interference in the internal management of universities and reduce compliance and reporting burdens' and specifically to remove the workplace relations and governance conditions attached to funding.<sup>6</sup>

Australian Workplace Agreements (AWAs) are a key element of HEWRRs and their abolition is consistent with the Labor Government's commitment to abolish AWAs. The Minister points out that 'the Government believes that universities should be subject to the same workplace relations laws as all other employers.'<sup>7</sup>

The proposed abolition of HEWRRS should be welcomed by higher education providers. In 2005 the AVCC, now Universities Australia, opposed HEWRRs claiming they would be inflexible, increase administrative workloads and be:

Very intrusive in terms of universities' capacity to manage their internal affairs. The HEWRRs proposal constitutes a 'one size fits all' approach, whereas the AVCC takes the view that the focus should be on desired outcomes, rather than specific industrial processes and particular industrial instruments.<sup>8</sup>

Higher education providers should also welcome the abolition of conditionality of funding to the Protocols. Universities accepted and implemented the Protocols but oppose any further prescriptive requirements that add costs and compliance requirements that are 'inconsistent with the potential benefits'. In their submission to the review of the Protocols university chancellors and vice-chancellors stressed 'it was not wise to apply a "one size

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5. Under the *Legislative Instruments Act*, the Instrument was tabled on 11 March 2008. As of 17 March 2008 there were 13 sitting days remaining for notice to be disallowed. *House of Representatives Disallowable Instrument List*, [17 March 2008](#).
  6. [Australia's Universities: Building our Future in the World](#), issued by Jenny Macklin MP, July 2006, pp 9–10.
  7. Julia Gillard (Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion), Second Reading Speech, as tabled with the Bill, 13 February 2008.
  8. [AVCC Submission to Senate Employment, Workplace Relations and Education Legislation Committee](#): Inquiry into the Provisions of the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005, September 2005, p. 1.

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fits all” governance model (that extends into areas of management), particularly when the stated object of the Government is to promote diversity’.<sup>9</sup>

## Financial implications

Nil.

## Main provisions

**Item 6** provides for the repeal of section 33-17 requiring higher education providers to meet the Higher Education Workplace Relations Requirements (HEWRRs) and the National Governance Protocols as a condition of Commonwealth Grants Scheme funding.

**Items 1, 2, 3, 4 and 9** are technical amendments relating to the definition and scope of a quality auditing body. **Proposed section 19-29** enables the Minister to list additional auditing bodies in the Higher Education Provider Guidelines.

**Item 5** provides for additional causes for the Minister to revoke a body’s approval as a higher education provider.

**Item 8** is a transitional mechanism which extends eligibility for Other Grants funding to allow the transfer of unspent funds to the new Diversity Fund for those corporate bodies entitled to receive grants under the former Collaboration and Structural Reform Fund.<sup>10</sup>

## Concluding comments

The Bill significantly demarcates the Government’s policy from that of the Coalition Government which was seen to impose an increasing prescriptive and costly administrative ‘red tape’ burden on higher education providers. The Minister’s speech to the House described the administrative burden as ‘unwarranted, bullying government interference’ in the running of universities and she foreshadowed a more collaborative relationship with universities.

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9. [Review of National Governance Protocols - Joint submission by the University Chancellors Council and Universities Australia](#), July 2007, p. 1.

10. [The Diversity Fund](#) commenced on 1 January 2008 and subsumed the former Collaboration and Structural Reform Fund. It will promote structural reform by universities that support greater specialisation, diversity and responsiveness to local labour market needs.

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The provisions sit within the Government's broad policy of introducing a negotiated 'compact' model of university funding first proposed in the Labor Party's 2006 white paper on higher education and research that would 'value universities' individual missions and their different roles and circumstances'.<sup>11</sup> The Group of Eight universities envisage that under a compact model there 'will be a much reduced compliance, bidding and reporting burden placed on universities, and greater flexibility over the use of resources.'<sup>12</sup>

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11. [\*Australia's Universities: Building our Future in the World\*](#), issued by Jenny Macklin MP, July 2006, p. 9.
  12. Group of Eight [\*Operationalising Labor's Compacts for Universities: a discussion paper\*](#) January 2008, p. 2.

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