

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005**

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**Australian Government**

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**Department of Education, Science and Training**

Submission to the Senate Employment, Workplace Relations and  
Education Committee

Inquiry into the Higher Education Legislation Amendment Bill  
(2005 Measure No. 4) 2005

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## **Introduction**

The purpose of this submission is to provide information on the provisions of the *Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005* (the Bill). In calling for submissions, the Committee indicated that it would examine in particular the ramifications of the first application by an offshore provider, the issue of FEE-HELP provision to eligible Australian students at offshore providers, the background to Carnegie Mellon University's successful application under the National Protocols for Higher Education Approval Processes, implications for States and Territories' accreditation processes, for the National Protocols and for other providers.

## **Overview of the Bill**

This Bill amends the *Higher Education Support Act 2003* (HESA) to:

- Insert a category of Table C providers;
- improve consumer protection mechanisms for students, relating to the tuition assurance requirements under the HESA; and
- make a number of technical amendments as required by *Legislative Instruments Act 2003*.

## **Amendments under the Higher Education Support Act 2003**

### **Establish Table C providers**

The Bill will amend the *Higher Education Support Act 2003* (HESA) to enable high quality foreign universities to be listed as overseas higher education providers, approved under the National Protocols for Higher Education Approval Processes by an authorised accreditation authority as listed in the Australian Qualifications Framework Register.

To do this, the Bill will insert a new category of "Table C" providers within HESA. There are currently Table A providers (37 public universities and other higher education providers such as the Australian Maritime College and Batchelor Institute of Indigenous Tertiary Education) and 3 Table B providers (self-accrediting higher education providers, Bond University, the University of Notre Dame Australia and the Melbourne College of Divinity). Table C providers will be for approved overseas higher education institutions. This will provide an operational framework for all such institutions to operate a branch in Australia.

The Bill will enable approved overseas higher education providers to have **limited** access to certain Commonwealth assistance, through FEE-HELP for eligible Australian students. Consequently, Australian students studying at an Australian branch of an overseas provider will have the same entitlement that they would have if they had enrolled at an Australian higher education provider.

These amendments will enable the first such provider, the private, not-for-profit United States based institution, Carnegie Mellon University, to operate as a university in Adelaide, and to access FEE-HELP for eligible students studying at its Australian branch.

The Bill will also strengthen and clarify issues relating to eligible students attending Australian branches of an approved higher education provider and will make a range of technical amendments to HESA including:

- clarifying “Table C providers” in other relevant areas of HESA;
- outlining certain conditions, requirements and limitations relating to the operations of foreign owned universities within Australia;
- clarifying the definitions of Australian based overseas providers and Australian based students; and
- enabling the Minister to make future guidelines with respect to “Table C providers” by way of a legislative instrument.

## **Background to the Amendments**

The Australian Government is committed to the development of a strong and high quality higher education sector that is internationally competitive, underpinning our economic, cultural and social development. The changes proposed in the Bill have been developed to provide a framework for the operation of overseas higher education providers in Australia.

Higher education is increasingly being delivered in a global context with international benchmarking being a key measure of quality. Australian institutions are a part of the global context and should be exposed to different forms of educational provision if they are to remain internationally relevant.

The entry of foreign universities will enable Australian institutions to compare their offerings and methods of operation with other institutions that are highly regarded internationally. This should facilitate improved practices and efficiencies within the Australian system. In time it is envisaged that the operation of foreign universities in Australia will facilitate the exchange of academic staff, teaching and research knowledge which will benefit the quality of teaching and research within Australian based institutions.

In addition, the Australian Government is committed to free trade internationally and has recently concluded a number of free trade agreements. These agreements, while making limited commitment to public higher education, permit universities based in other countries to operate in Australia as long as they meet appropriate standards of quality.

Just as Australian universities are establishing branches, campuses and collaborations in other countries, foreign universities are similarly looking to expand their markets overseas.

### **Ramifications of the first application by an offshore provider**

The current higher education legislative regime is explicitly linked to the National Protocols for Higher Education Approval Processes and is built around compliance with the National Protocols. The legislative amendment proposed in this Bill gives further effect to the provisions of the National Protocols. The Australian Government would not move to list any provider as a Table C provider unless it was assured that the appropriate approval process had been applied by the relevant jurisdiction.

The National Protocols have been endorsed by the Commonwealth, State and Territory Ministers for Education and have provided for the establishment of overseas universities in Australia since 2000. The Bill will ensure that any overseas providers approved under the National Protocols will be subject to the same quality and accountability requirements that apply to all local providers under the *Higher Education Support Act 2003*.

### **Provision of subsidies to overseas providers**

The Bill does not provide subsidies or any other financial assistance to overseas providers. The amendments will give equal access to FEE-HELP for eligible Australian students who enrol in a fee-paying course regardless of whether they are studying in an Australian university or foreign university that has been approved under the National Protocols.

As reported in the Explanatory Memorandum, the financial impact of providing Carnegie Mellon University postgraduate students with access to FEE-HELP is minimal. Over the forward estimates period (2005-06 to 2008-09) there is a negligible impact on the fiscal balance (\$0.1 million), expenses amount to \$0.7 million and headline cash is -\$2.6 million.

### **Background to the application by Carnegie Mellon University**

State and Territory Governments have responsibility for approving applications from institutions seeking to operate as a university within their State or Territory. Carnegie Mellon is the first foreign university seeking to establish a branch within Australia. In April 2005, Carnegie Mellon submitted an application to the South Australian Government for assessment under National Protocol 2, as an overseas higher education institution seeking to operate in Australia. This application was approved on 4 July 2005 and the South Australian Government formally recognised Carnegie Mellon in its legislation under section 5 of the *Training and Skills Development Act 2003*.

This Bill provides for other foreign universities to also establish themselves in Australia, provided they meet the same stringent accreditation, approval and quality and accountability requirements that are in place for Australian higher education providers.

### **Implications for accreditation processes in other States and Territories**

There are no implications for accreditation processes in other jurisdictions. The assessment and treatment of the application by Carnegie Mellon has been undertaken in line with existing accreditation processes which operate within the National Protocols.

### **Implications for the National Protocols**

There are no implications for the National Protocols. The Bill does not alter, but rather gives effect to, the National Protocols which have provided for the operation of overseas higher education providers in Australia since 2000.

### **Implications for other providers**

Carnegie Mellon is a prestigious and highly-regarded institution which will provide a relatively small number of postgraduate places in public policy/management and information technology. It will operate at the higher end of the fee-paying market, drawing on overseas sources as well as the domestic Australian market for executive education.

Existing Australian universities are already subject to some limited competition in the market from the private sector. Approved Australian private higher education providers are able to access grants for national priority places and FEE-HELP loans for their eligible Australian students.

Through the provision of FEE-HELP loans, eligible Australian students of approved foreign universities will be placed on a similar footing as eligible Australian students of other approved private providers.

Overall, the establishment of foreign universities is expected to enhance the viability of Australian universities by facilitating the exchange of ideas and innovative learning, teaching and research practices that could drive further institutional efficiencies and improved outcomes.

Australian universities will be, for the first time, able to actively collaborate with foreign universities in Australia. The introduction into Australia of highly trained and internationally respected academics will facilitate the cross-fertilisation of ideas, and innovative learning, teaching and research practices that will further enrich the Australian university experience for higher education students and the wider community.

## **TUITION ASSURANCE RELATED AMENDMENTS**

The Bill also includes a series of amendments, unrelated to foreign universities, that will clarify strengthen and the tuition assurance requirements which protect students studying at non-Table A (or exempt) providers.

The tuition assurance requirements are set out in the Act.

The requirements ensure robust consumer protection for students in the event that a provider ceases to provide a course in which students are enrolled. Providers must have in place both course assurance and student contribution/tuition fee repayment arrangements to ensure that students can choose to either transfer to a comparable course of study or get a refund of monies paid for any uncompleted units.

The requirement for providers to have both course assurance and student contribution/tuition fee repayment options in place in the absence of guidelines will be removed from the Act as the Higher Education Provider (HEP) Guidelines will now contain detailed requirements.

The Act will retain the requirement for non-Table A providers to comply with the tuition assurance requirements stipulated in the HEP Guidelines.

The Bill will ensure that:

- where students choose the course assurance option, they will not incur any cost, including HELP debt, for units undertaken with the second provider that replace uncompleted units in which the student was enrolled with the first provider;
- where students choose the option of student contribution/tuition fee repayment, their HELP debt will be remitted and their Student Learning Entitlement or FEE-HELP balance will be re-credited;
- where students choose the course assurance option and enrol in replacement units with a second provider, both students who are subsequently forced to withdraw because of 'special circumstances' and the second providers offering the replacement units without any fee will be protected. Students will be able to get a refund without any impost on the second provider as the HEP Guidelines will stipulate that this refund is included in the first provider's tuition assurance repayment obligations; and
- technical amendments will make it clear that the Secretary has the power to act in relation to re-crediting and remitting students' balances and debts if a provider cannot do so, for example because it has ceased to operate.

Preliminary consultation with peak sector representatives indicates broad support for the proposed changes.

### **Changes required by the *Legislative Instruments Act 2003*.**

The Bill makes consequential amendments to the *Higher Education Funding Act 1988*, the *Higher Education Support Act 2003* and the *Higher Education Support (Transitional and Consequential Amendments) Act 2003* as required by the *Legislative Instruments Act 2003* to clarify that any disallowable instruments made under those Acts are now legislative instruments.