

The Senate

Standing Committee on
Employment, Workplace Relations
and Education

Higher Education Endowment Fund Bill
2007 [Provisions]

Higher Education Endowment Fund
(Consequential Amendments) Bill 2007
[Provisions]

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Chapter 1

Report on inquiry processes and details of the bill

Background

1.1 The *Higher Education Endowment Fund Bill 2007* (the bill) and *Higher Education Endowment Fund (Consequential Amendments) Bill 2007* (the consequential bill) were introduced into the House of Representatives on 16 August 2007 by the Minister for Education, Science and Training, the Hon Julie Bishop MP.

Reference of the bills

1.2 On the same day, the Senate adopted the Selection of Bills Committee Report No. 14 of 2007 and referred the provisions of the bills to the Senate Employment, Workplace Relations and Education Standing Committee for inquiry and report by 5 September 2007.

Submissions

1.3 The committee advertised its inquiry in *The Australian* on 22 August 2007, and on the committee's website. In addition, the committee contacted a number of individuals and organisations in writing alerting them to the inquiry and inviting them to make a submission. A list of submissions received appears at Appendix 1.

Hearing and evidence

1.4 The committee held a public hearing in Melbourne on 31 August 2007. Witnesses who appeared before the committee at the hearing are listed at Appendix 2.

1.5 Copies of the Hansard transcript from the hearing are tabled for the information of the Senate. They can be accessed on the internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.6 The committee wishes to thank all those who assisted with its inquiry.

Purpose of the bills

1.7 The purpose of the bill is to give effect to the Government's announcement in the 2007-08 Budget of the establishment of a perpetual endowment fund to generate earnings for capital expenditure and research facilities in higher education institutions. The key provisions of the bill will:

- Establish the Higher Education Endowment Fund (HEEF) as a financial asset fund consisting of cash and investments;

- Grant the Treasurer and the Finance Minister (the responsible Ministers) the power to credit cash amounts to the HEEF through a special account (the HEEF Special Account);
- Grant the Future Fund Board of Guardians (the Board) statutory responsibility, as per the *Future Fund Act 2006* (the Future Fund Act), to manage the investments of the HEEF;
- Require the responsible Ministers to issue an investment mandate to the Board regarding the investment of the HEEF (the HEEF Investment Mandate);
- Establish the Higher Education Endowment Fund Advisory Board (the Advisory Board) to advise the Education Minister (the Minister) on matters related to the making of grants to eligible higher education institutions.¹

1.8 The bill also contains provisions allowing for executive support for the Board; responsibility for operational activities associated with the HEEF's investments; and requires the responsible Ministers to determine rules for the maximum level of payments from the HEEF.

1.9 The purpose of the consequential bill is to amend the provisions of the Future Fund Act. The amendments will extend the operation of that act to deal with the expansion of the Board's duties in relation to the HEEF. Accordingly, the provisions of the consequential bill are mostly technical and consequential to the enactment of the bill. The consequential bill will:

- Extend the Board's functions to include the Board's functions under the bill;
- Clarify that the responsible Ministers can issue two Investment Mandates: one for the Future Fund and one for the HEEF;
- Clarify that the Board has two investment functions: one for the Future Fund and one for the HEEF;
- Specify limitations of the Future Fund Investment Mandate to ensure that the Future Fund is not invested in a way that is inconsistent with the Future Fund's objectives;
- Prevent the responsible Ministers from directing the Board to use the assets of the Future Fund to invest or support particular financial assets;
- Amend the *Income Tax Assessment Act 1997* to allow deductible gifts of money to be made to the HEEF.

Provisions of the Higher Education Endowment Fund Bill 2007

1.10 The HEEF provides an additional stream of funding to eligible higher education institutions in relation to capital expenditure and research facilities (the

1 Explanatory Memorandum, p. 2.

primary objectives).² There are two separate governance processes required to bring the HEEF into operation.

The HEEF

Endowment

1.11 The first governance process is the establishment of the HEEF. Part 2 Division 2 of the bill sets up the HEEF consisting of the HEEF Special Account and the investments of the HEEF, that is, it is a financial asset fund. The Government has committed to providing the HEEF with an initial investment of \$6 billion funded from the 2006-07 budget surplus, \$5 billion of which must be credited to the HEEF Special Account.³

HEEF Special Account

1.12 The main purposes of the HEEF Special Account are set out in the bill. As a special account, defined under the *Financial Management and Accountability Act 1997*, all amounts credited to the HEEF Special Account are to be quarantined within the Consolidated Revenue Fund to be debited only for the purposes set out in clause 16. These purposes include the payment of investment and administration expenses. The Board must ensure that the amount of money standing to the credit of the HEEF Special Account is sufficient to cover the debit of grant amounts, and investments of the HEEF can be realised to meet these amounts.⁴

Investments of the HEEF

1.13 The Board is responsible for deciding how to invest amounts standing to the credit of the HEEF Special Account. Clause 21 of the bill sets out the investment objectives. The investments themselves will consist of financial assets held in the name of the Board, but beneficially belonging to the HEEF, that is, the Commonwealth.

1.14 The Board can invest the HEEF in a broad range of financial assets. There are some conditions relating to derivatives' investment, and the Board is bound by the bill, the HEEF Investment Mandate provided by the responsible Ministers, and the Future Fund Act. The Board will be accountable to the responsible Ministers.⁵

2 Higher Education Endowment Fund Bill 2007, cl. 3.

3 Budget 2007-08; Hon. Julie Bishop MP, Media Release, 21 August 2007; Higher Education Endowment Fund Bill 2007, cl 13.

4 Higher Education Endowment Fund Bill 2007, cl. 17 & 23(3).

5 Higher Education Endowment Fund Bill 2007, cl. 24.

The HEEF Investment Mandate

1.15 The bill provides that the responsible Ministers may give the Board written directions about the performance of its HEEF investment functions. Also significant is sub-clause 24(5) which allows the responsible Ministers to include the policies to be pursued by the Board in relation to matters of risk and return, and the allocation of financial assets.

Limitations on the HEEF Investment Mandate

1.16 The investment mandate must be consistent with the bill. There are limitations in clause 25, which aim to ensure that the HEEF is not invested in a manner inconsistent with the primary objectives. The responsible Ministers are prevented from directing the Board to use the HEEF assets to invest in a particular financial asset (such as shares in a particular infrastructure company), or effectively to use the HEEF assets to support a particular business entity, a particular activity or a particular business.

Capital expenditure and research facilities

1.17 The second governance process required to bring the HEEF into operation lies within the Minister's portfolio.

Advisory Board

1.18 Part 4 Division 2 of the bill establishes the Advisory Board consisting of persons appointed by the Minister. The function of the Advisory Board is to advise the Minister about matters relating to the primary objectives.

Grants

1.19 Clause 45 provides that the Minister may authorise in writing a grant of financial assistance to an eligible higher education sector in relation to capital expenditure and research facilities. Eligible higher education institutions are defined in the bill as those listed under Table A and Table B in the *Higher Education Support Act 2003*. The terms and conditions on which financial assistance is granted to an eligible higher education institution are required to be set out in a written agreement between the Commonwealth and the eligible higher education institution.⁶

Maximum grant rules

1.20 The Minister alone will be responsible for the allocation of grants however clause 46 of the bill prohibits the Minister from authorising a grant unless a statement has been provided by the Board for the relevant financial year. The statement will specify a maximum grants amount calculated by the Board in accordance with the

6 Higher Education Endowment Fund Bill 2007, cl. 50.

Maximum Grants Rules, and the Minister is prohibited from exceeding the maximum grants amount.

1.21 The Maximum Grants Rules will be determined by the responsible Ministers. In developing the rules, the responsible Ministers must have regard only to the medium- to long-term (five years plus) objective that grants should not result in the balance of the HEEF falling below the real value of Government contributions, and the objective of moderating volatility in maximum grants amounts from one financial year to the next.⁷

1.22 Another limitation in the bill is sub-clause 47(5). This states an over-arching principle: the maximum grants amount must not exceed the accumulated nominal earnings of the HEEF as at the start of the financial year. 'Accumulated nominal earnings' is restrictively defined in clause 49 of the bill.

1.23 The Maximum Grants Rules are to be made no later than 1 July 2008, whereupon the Board will issue its first statement to the Minister.

Higher Education Endowment Fund (Consequential Amendments) Bill 2007

1.24 The consequential bill amends the Future Fund Act and the *Income Tax Assessment Act 1997* (ITAA) to support implementation of the HEEF.

Future Fund Act amendments

1.25 Apart from minor amendments, the consequential bill will effect five changes to the Future Fund Act. These changes consist of two primary amendments with three subsequent and related changes.

1.26 First, the consequential bill extends the Board's functions under the Future Fund Act to include its functions under the HEEF legislation. Two of the subsequent changes clarify the issues of concurrent responsibility: the responsible Ministers can issue two types of investment mandate to the Board, the Future Fund Investment Mandate and the HEEF Investment Mandate; and the Board has two investment functions, the Future Fund Act and the HEEF.

1.27 The second change to the Future Fund Act is the inclusion of two limitations on its mandate, ensuring that investments will be consistent with the Future Fund's objectives. Ministers will be prevented from directing the Board to use the assets of the Future Fund to invest in a particular financial asset, and from issuing any directive that the Board will use the assets of the Future Fund to support a particular business entity, a particular activity or a particular business. These provisions are mirrored in the bill.

7 Higher Education Endowment Fund Bill 2007, sub-cll. 47(3) & (4).

Chapter 2

Key issues

2.1 The principle of an endowment fund bill to provide an additional income stream for universities has been widely supported. The HEEF is expected to significantly increase the funds that are available to be invested in the higher education sector.¹ This investment has been enthusiastically welcomed by the sector.

2.2 The bill to come before the Senate provides a legislative framework for guidelines, and procedures for the administration of investment and disbursement of dividends which have yet to be announced. This can only be done following consultations between the Minister and the higher education sector, which is expected to take place over the next six months.

2.3 The committee was therefore restricted in its inquiry by the limited information available on the practicalities of the legislation. It heard about misgivings held by the higher education sector in regard to some current provisions, particularly in regard to powers of ministers. The committee was interested also in the projections of likely financial benefit to universities, based on the rate of return on investments by the HEEF.

Investments of the HEEF

2.4 It is difficult to predict the returns on the investments of the HEEF. The Federation of Australian Scientific and Technological Societies estimated that the HEEF is likely to provide a funding stream of \$300 - \$400 million per annum.² Professor Richard Larkins estimated a potential funding stream of approximately \$400 - \$500 million per annum.³ The Treasurer's Budget Paper No. 2 lists a notional return of just over \$300 million for each year of the 2008-2011 triennium.⁴

2.5 There will be some 'volatility' on returns in the short-term. The Government has acknowledged this probability, adding that international experience suggests that predictable returns will be achievable only after five years.⁵ A principal with Mercer Investment Consulting, Bruce Gregor, told the committee:

1 Second Reading Speech, Hon Julie Bishop MP, 16 August 2007, p. 3.

2 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 1.

3 Professor Richard Larkins, Universities Australia and Group of Eight, *Committee Hansard*, Melbourne, 31 August 2007, p. 4.

4 Hon Peter Costello MP, Budget Paper No. 2, 8 May 2007, p. 114.

5 Second Reading Speech, Hon Julie Bishop MP, 16 August 2007, pp 3-4.

It is my understanding of the bill, if it is correct, that the grants which might be given in the early years might be low and, if there was extreme market volatility in the first years, they could be nil compared to what I gather is the general expectation of grants emerging from this fund at the level I indicated earlier as typical for endowment funds.⁶

2.6 Ultimately, the HEEF will deliver returns linked to its performance and the market. The committee understands that the investments of the HEEF are not guaranteed to produce predictable and material returns over the short-term, however, this is not expected to be the case over the long-term. As one witness told the committee:

The beauty of this fund is that it is something where the corpus is maintained so there is an assurance of ongoing returns from that into the future. And directing it towards capital and major research infrastructure is a very appropriate use of dividends.⁷

The HEEF Investment Mandate

2.7 The Explanatory Memorandum argued that it is appropriate for the Government, as manager of the economy and owner of the HEEF, to articulate its broad expectations for how the HEEF will be invested and managed by the Board. It described the HEEF Investment Mandate as a 'framework that enables the Government to give strategic guidance to the Board while preserving the Board's role in managing the investment of the HEEF at arms length from Government'.⁸

Capital expenditure and research facilities

2.8 The Group of Eight welcomed the HEEF initiative as a strong recognition of the importance of Australia's universities to the nation's future. But the Group of Eight injected a note of caution into the inquiry:

While \$6 billion is a large amount of money it needs to be viewed in the context of recent funding trends for Australia's public universities, the recurrent expenses and infrastructure challenges they now face, and international developments in public investment in higher education systems.⁹

2.9 Its submission then detailed the current context of higher education funding:

- Budget cuts: the 1996-97 Budget cuts for university operating grants, \$850 million for the period 1997-2000, continues to have flow on effects.

6 Mr Bruce Gregor, Mercer Investment Consulting, *Committee Hansard*, Melbourne, 31 August 2007, p. 10.

7 Professor Richard Larkins, Universities Australia and Group of Eight, *Committee Hansard*, Melbourne, 31 August 2007, p. 4.

8 Explanatory Memorandum, p. 15.

9 Group of Eight, *Submission 8*, p. 1.

- Compounding indexation shortfall: indexation of these grants has no link with real increases in relevant wages; the notional salary component within these grants (75 per cent) is indexed only by the Safety Net Adjustment, and the non-salary component (25 per cent) by the Consumer Price Index. A 2004 estimate by the Group of Eight found that if the Average Weekly Earnings were substituted for the Safety Net Adjustment, then the grants for 2003 alone would have been short \$845 million. The Group of Eight stated that the shortfall would now be approaching \$1 billion per annum.
- Expectations for matching funds: the grants themselves are under considerable pressure mainly due to the ever-increasing demands of competitive research schemes for matching funding from institutions.¹⁰ This cost supplementation was estimated at \$450 million per annum for the whole higher education sector in 2003-04. The committee was told that this figure is now likely to be closer to \$500 million per annum.
- Implications of funding pressures: a decade of funding pressure has manifested itself in a number of ways, including the deferment of essential expenditure on the maintenance of buildings and facilities, with long-term consequences for the quality of essential infrastructure.
- International trends: Australia's gross expenditure on research and development is 1.8 per cent of Gross Domestic Product. This places Australia fifteenth among OECD countries, which average an expenditure of 2.3 per cent. This would translate into an additional \$5 billion if Australia invested at the OECD average rate.¹¹

2.10 The Group of Eight concluded:

The \$300 to \$400 million [the HEEF] is expected to produce annually in the initial years, must be viewed in the context of the recurrent and backlog expenses Australia's universities face due to past funding cuts and punitive indexation arrangements, and alongside the huge investments in research and higher education systems being made by competitor countries.¹²

2.11 At the committee's hearing in Melbourne, Professor Richard Larkins added:

Although the additional infusion of money is very much appreciated and goes some way towards redressing the historical shortfall over the last 11

10 Matching funds was a common and fundamental concern for some submitters. The committee was told that, if part of the HEEF legislation, this would have major implications, including seriously disadvantaging new, small and/or regional institutions, and that there is little support for the proposal among higher education institutions: National Tertiary Education Industry Union, *Submission 11*, pp 4-5.

11 Group of Eight, *Submission 3*, pp 1-3. The highest investing nations in R&D are the United States (\$410 billion), China (\$170 billion) and Japan (\$160 billion).

12 Group of Eight, *Submission 8*, p. 3. Also, Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 1.

years or so, it still does not place us in a position to be really competitive with the huge infusion of funds through Asia, Europe and North America.¹³

2.12 The committee understands that internationally, major investments are being made in universities and research facilities. These countries are Australia's economic competitors, both now and in the future, and if Australia is to be successful on an international scale, then it is imperative for Australia to be able to compete in the top end of the market.

2.13 It is apparent to the committee that the infrastructure of Australian higher education institutions is, if not sub-standard, certainly in need of investment. The comments from the Group of Eight were reinforced by the Department of Education, Science and Training which in 2005 estimated that deferred maintenance in higher education sector infrastructure was approximately \$1.5 billion. Again, this estimate has no doubt grown over the past two years.¹⁴

2.14 Grants from the HEEF are intended to promote the development of a world-class higher education sector with the provision of significant, targeted and strategic investments in the sector. The committee believes the HEEF has the capacity to deliver excellence in the higher education sector. However, the HEEF will not be operable until the end of the current financial year, and it will not immediately benefit higher education institutions, much less alleviate degrading or outdated infrastructure in the short-term.

Advisory Board

2.15 There was considerable interest shown by the committee on the composition of the Advisory Board and its relationship to the Minister. Once operable, grants will need to be allocated from the HEEF in a manner which best enhances the higher education sector. The Minister intends to achieve this result with the assistance of the Advisory Board, which will advise:

...on the best strategic investment proposals which provide quality infrastructure and support Australian Government policy with respect to diversity, specialisation, and responsiveness to labour market needs.¹⁵

2.16 The committee notes the findings of the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Report).¹⁶ In that review, Mr

13 Professor Richard Larkins, Universities Australia and Group of Eight, *Committee Hansard*, Melbourne, 31 August 2007, p. 2.

14 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 1 and Productivity Commission, *Public Support for Science and Innovation, Productivity Commission Research Report*, 9 March 2007, p. 214.

15 DEST, *Submission 9*, p. 2.

16 *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, 2003.

John Uhrig analysed the then existing governance arrangements for statutory authorities and office holders, and identified reforms that might assist in improving the performance of these bodies, without compromising their statutory status, including the selection process for board members and office holders, the mix of experience and skills required by boards, their development, and their relationship to government. Two broad templates of governance principles and arrangements were created with a clear division between those statutory authorities whose major activities were commercial, and those whose major activities were regulatory and service provision operations.

2.17 For statutory authorities undertaking commercial operations, it was considered necessary for an effective board to be delegated the full power to act. This would include internal strategy setting, supervision of management, the oversight of risk, and the ability to appoint and terminate the CEO. The committee notes that the Advisory Board will be characterised by most of these features.

2.18 In the executive management template, the government establishes a narrow set of outputs to be delivered by a statutory authority.

In these circumstances a parallel can be drawn to closely held companies where a limited delegation of power, and the influence of a limited number of parties controlling the entity, indicate that an independent board may not provide the best governance. In circumstances where government is not providing a broad delegation it is likely that holding either chief executives or commissioners directly accountable for performance will produce better governance.¹⁷

2.19 The committee notes that some of these characteristics are also present in the Advisory Board, most especially the more limited governance structure with direct responsibility to the responsible Ministers. It assumes that full delegation of power is not appropriate, which is certainly the case with the composition of the Advisory Board and the HEEF Investment Mandate.¹⁸

2.20 Regardless of which structure is most appropriate, the fundamental point is that either structure is capable of and designed to achieve effective governance arrangements for statutory authorities, and clarity in roles and responsibilities. The committee therefore believes that the Advisory Board will be effective in implementing the objectives of the bill.

17 *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, 2003, p. 5.

18 Hon Nick Minchin MP, Media Release, 12 August 2004 in which the government accepted the governance templates recommended in the Uhrig Report and advised that the selection of the appropriate template would depend on the degree to which the authority 'has been delegated full power to act'.

2.21 Nonetheless, the Advisory Board was one of the most discussed aspects of the bill, with several submitters decrying its composition. First, the Minister's ability to appoint and terminate members of the Advisory Board at will was criticised.

2.22 The National Tertiary Education Industry Union submitted that:

Given previous experience of the use of Ministerial power in relation to areas like the Australia Research Council grants process, the interests of transparency and good governance would be better met if the functions and responsibilities of the Board are set out in the Higher Education Endowment Fund Bill 2007. This should include the appointment process, which should be open and transparent.¹⁹

2.23 The Australian Academy of the Humanities told the committee:

The Academy would like to see selection procedures in place that ensure that the Board enjoys the confidence of the sector, and includes persons with a range of expertise, experience and disciplinary background.²⁰

2.24 Confidence in the process can be gleaned from experience, and the committee does not believe that the Minister's ability to control composition of the Advisory Board is inimical to its success.

Funding applications

2.25 There were also suggestions regarding the expertise of the Advisory Board. The Australian Academy of Science expressed its hope that members of the Advisory Board will be appointed for their knowledge of the higher education sector, and on the basis that there is no conflict of interest.²¹ The Australian Technology Network agreed that:

It is imperative that the Advisory Board is comprised of individuals with an advanced understanding of the sector to contextualise proposals. Applications should be assessed in light of their potential to build on existing infrastructure and deliver benefits to significant parts of university activity.²²

2.26 Alternately, the Council of Deans of Nursing & Midwifery submitted that, in assessing claims in the fields of nursing and midwifery, the assessment panels must include experts in these fields.²³ The committee believes that similar comments could, and probably would, be made by other highly skilled and technical occupations.

19 National Tertiary Education Industry Union, *Submission 11*, p. 3.

20 Australian Academy of the Humanities, *Submission 7*, p. 1.

21 Australian Academy of Science, *Submission 4*, p. 1. The committee notes clause 43 of the bill which requires board members to disclose a material personal interest in a matter being, or about to be, considered by the Advisory Board.

22 Australian Technology Network, *Submission 10*, p. 1.

23 Council of Deans of Nursing & Midwifery, *Submission 5*, p. 1.

2.27 This view is supported in the submission from the Federation of Australian Scientific and Technological Societies which, without supporting overly prescriptive legislative requirements, stated that:

[The Advisory Board] should contain sufficient diversity of expertise to ensure the prospect of a credible process. FASTS believe merit and expertise should be the key determinants as distinct from a representative or formulaic structure giving representation to formal university groupings.²⁴

2.28 The committee acknowledges submitters' concerns, noting particularly those relating to the expertise of the Advisory Board. No doubt there will be generalist areas in which board members with knowledge of the higher education sector will suffice. There will also be skilled and technical areas in which more detailed knowledge will be required to properly assess applications for grants from the HEEF. The committee is not convinced that this expertise can be obtained solely from the Australian Chief Scientist and the Secretary of the Department of Education, Science and Training participating on the Advisory Board in an ex-officio capacity. If this concern is not addressed in the legislation, it should certainly be taken into account in the HEEF funding application guidelines.

Financial grants from the HEEF

2.29 The Minister advised that deliberations regarding the Maximum Grant Rules would be informed by external advice from an asset consultant, an approach consistent with international best practice for endowment funds.²⁵ The committee notes that this is neither reflected in the bill, nor do the responsible Ministers themselves appear to have committed to such advice. Again, the committee received no evidence on this point in submissions and from witnesses.

Grants selection and allocation processes

2.30 Many submissions queried the selection criteria for grants.

2.31 The Federation of Australian Scientific and Technological Societies was wary of the Minister having control over the entire process, including the virtually unmitigated authority to allocate grants.²⁶ This suspicion was also reflected in the submission from the Group of Eight:

The Bill vests control over the selection and allocations of grants from the Fund to the Minister of the day. With such large amounts of public funding involved, the policy priority should be the achievement of clear, transparent and non-political mechanisms for allocating grants... There are risks under this model that funding allocations will be based on political factors rather

24 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

25 Second Reading Speech, Hon Julie Bishop MP, 16 August 2007, p. 3.

26 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

than on the merits of individual proposals, or through any strategic consideration of the sector's infrastructure needs.²⁷

2.32 A transparent distribution process was considered necessary by the Australian Academy of Science, however, the Academy also advocated a competitive distribution process.²⁸ While a competitive distribution process is envisaged by the Minister²⁹, it was resisted by some submitters.

Competitive grants from the fund should have a strategic focus...There is a risk though, that a series of annual, competitive project grants will lead to opportunistic planning and short horizons in universities rather than strategic investments...it is a good idea to have two streams of grants.³⁰

2.33 Or, as argued by the Group of Eight:

[There is a potential difficulty] that funding will be spread across all universities for all manner of capital works, if not skewed to regional institutions, with little thought given to strategic national priorities.³¹

2.34 Under the Federation of Australian Scientific and Technological Societies' proposal for two streams of grants, 50 per cent of the maximum grants amount could be provided as a block grant determined by a composite formula. This would provide higher education institutions with some notion of likely income in the medium-term, and enable them to make wise investments. The block grants could incorporate accountability measures. The remaining 50 per cent of the maximum grants amount would be available for competitive grants with consistent and clear selection criteria made publicly available well before each selection round.³²

2.35 The Group of Eight was also critical of the Minister's proposed method for distributing the HEEF, and argued that there are a variety of options available that could ensure an efficient and more strategic allocation of grants. However, its submission contained a proposal almost identical to that of the Federation of Australian Scientific and Technological Societies.

2.36 The Group of Eight suggested that a significant proportion of the funds, say 50 per cent of available funds per annum, could be allocated as university block grants

27 Group of Eight, *Submission 8*, p. 3.

28 Universities Australia, *Submission 1*, p.1 and Australian Academy of Science, *Submission 4*, p. 1.

29 Hon Julie Bishop MP, Media Release, 8 May 2007.

30 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 3. Also, Australian Technology Network, *Submission 10*, p. 1 which strongly recommended that the HEEF is allocated on a strategic and targeted basis, where rationalisation and economies of scale are maximised.

31 Group of Eight, *Submission 8*, p. 3. Also, National Tertiary Education Industry Union, *Submission 11*, p. 4.

32 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 3.

based on an independent assessment of the total Asset Replacement Value (ARV) of the building and infrastructure stock of each institution.³³ The committee notes that this would necessarily favour the more established and urban higher education institutions, but agrees with Professor Richard Larkins that the proposal is the best proxy for maintenance and refurbishment of all higher education institution facilities:

We need a system where universities are able to compete internationally and that is best achieved by having more money for infrastructure in the sector in general, and having it directed towards areas of international excellence, again wherever they are in the sector. I do not believe in the view that a small number of universities should receive a very large amount of the funding, irrespective of their performance. It should be related to performance.³⁴

2.37 Medium and long-term planning was a clear concern for higher education institutions, and the committee was interested in the Group of Eight's solution to that perceived problem. The Group of Eight argued that the HEEF could enable higher education institutions to employ sound asset management and dedicate around four per cent of their ARV to maintenance activities, which few institutions can currently afford.³⁵

2.38 The committee is aware that it would be impossible for the HEEF to immediately provide higher education institutions with sufficient funds to clear maintenance backlogs, much less four per cent of each institution's ARV. Either of these amounts would easily exceed the expected return on the investments of the HEEF. The Group of Eight's response is to allow for pro-rata allocations of one per cent based on institutions' ARV. The Group of Eight argues that this is not only feasible and would comprise a portion only of the maximum grants amount each year, but would also have the benefits of:

- Certainty: providing baseline funding certainty to rectify and maintain existing capital with future investment in infrastructure;
- Transparency: ensuring targeted allocations based on independently assessed measures of the replacement value of capital stock and associated infrastructures;
- Efficiency: reducing institutions' and the Advisory Board's workloads in preparing and assessing applications, respectively;
- Proportionality: balancing the attention given to existing as opposed to new infrastructure.

33 The total ARV of buildings and associated infrastructure across all higher education institutions was estimated at \$26.5 billion in 2006: Group of Eight, *Submission 8*, p. 4.

34 Professor Richard Larkins, Universities Australia and Group of Eight, *Committee Hansard*, Melbourne, 31 August 2007, pp 3 & 6.

35 In 2006 the Group of Eight universities dedicated approximately \$291 million only (or less than three percent of their total ARV) to maintenance activities: Group of Eight, *Submission 8*, p. 4.

2.39 Other submissions noted that the bill does not contain any detail regarding how the grants are to be allocated by the Minister from the HEEF. The criticisms here were twofold.

2.40 First, three submissions raised the issue of uncertainty in the application process itself. The Group of Eight submitted that the formula-based scheme could be replaced with another burdensome periodic submission-based scheme, the risk being that the Minister could, at any time, introduce new conditions attaching to grants, such as matching funds.³⁶ The National Tertiary Education Industry Union feared that the grant process might be perceived as non-independent and non merit-based given its current configuration.³⁷ In more colourful language, the Federation of Australian Scientific and Technological Societies described the HEEF in its current form as running the risk of:

...lacking credibility and accountability in the sector and wider community by becoming, in effect, a significant slush fund for Ministerial pork-barrelling.³⁸

2.41 The committee discounts the likelihood of this occurring given that funds are limited and the potential risk of incurring charges of favouritism in the sector are highly transparent.

2.42 Other submissions focussed quite specifically on the type of capital expenditure and/or research facility which could be the subject of a HEEF grant.

2.43 The Australian Academy of the Humanities favoured a full range of capital expenditures, including expenditures on facilities that support teaching and learning, community engagement, knowledge transfer and campus life. In relation to research facilities, it supported research facilities of outstanding quality and/or significant potential, regardless of discipline, and across-the-board research, rather than duplication of existing 'measures' which are devoted primarily or exclusively to science research.³⁹ The Academy proposed libraries as an example of an area in critical need

2.44 The Council of Australian University Librarians submitted that new and refurbished library buildings are important in creating social and educational capital. Citing studies conducted in the United States and Canada, the Council told the committee that increased use of library facilities has been reported where new libraries have been constructed, or existing libraries have been expanded, renovated or

36 Group of Eight, *Submission 8*, p. 3. The committee notes that matching funds was briefly raised throughout the inquiry.

37 National Tertiary Education Industry Union, *Submission 11*, p. 3.

38 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

39 Australian Academy of the Humanities, *Submission 9*, p. 1.

reconfigured. The availability of facilities and well maintained buildings are also instrumental in students' selection of an higher education institution.⁴⁰

2.45 More significantly, libraries are considered to be the equivalent of research laboratories for researchers in the arts and humanities. They provide not only resources, but also the information and communications technologies (ICT) infrastructure and equipment to make use of these resources.

For all disciplines, in this increasingly complex and often chaotic information age, having access to a library that has the infrastructure and facilities to support the use of current and emerging technologies that enable the learning and research experience for students and academic staff is universally understood and accepted.⁴¹

2.46 The committee notes that the influence of ICT has fundamentally altered research behaviour, and library support in the research process. The committee acknowledges also that academic libraries are the cornerstone of academic and research endeavour, and provide an invaluable resource to collaborative efforts, specific interest groups, and the general community. It follows, and the evidence suggests, that there is a need for investment in the higher education sector's ICT infrastructure (such as wireless access, computers, multimedia and presentation equipment).

2.47 The committee is of the opinion that grants from the HEEF could improve research quality with targeted attention toward refurbishing libraries in Australian universities. The Minister and the Advisory Board will doubtless consider a major upgrade to academic libraries.

2.48 The Council of Deans of Nursing & Midwifery also submitted advice of an immediate need for every School of Nursing and Midwifery to have purpose-built simulation laboratories for clinical nursing and for midwifery practice.⁴² There will be countless other demands for a slice of the HEEF dividends as they are announced.

2.49 The committee was also told that consideration must be given to the kind of industry sectors that will emerge over the next decade and beyond. It was argued that the National Research Priorities inadequately address this issue, and consequently, the emerging national research infrastructure strategy fails to reflect the needs and demands placed on the higher education sector by industry.⁴³ The committee believes that this is a concern for the sector but the issue is largely beyond the scope of this inquiry.

40 Council of Australian University Librarians, *Submission 3*, p. 1.

41 Council of Australian University Librarians, *Submission 3*, p. 2.

42 Council of Deans of Nursing & Midwifery, *Submission 5*, p. 1.

43 Australian Technology Network, *Submission 10*, p. 2.

Continuation of current funding

2.50 The Minister has announced that the HEEF is in addition to the Commonwealth's current investments in infrastructure for the higher education sector.⁴⁴ At present, these programs include the Capital Development Pool (CDP), which has had approximately \$607 million invested over the past 11 years; the Research Infrastructure Block Grants, which has had approximately \$1.5 billion invested for the same period; and the Major National Research Facilities Program in which over \$59 million has been invested. Over the next five years, an estimated \$540 million will be invested in the National Collaborative Research Infrastructure Strategy (NCRIS).

2.51 Despite these assurances, some submitters from the higher education sector were unconvinced that the HEEF will not replace existing funding schemes. The Innovative Research Universities Australia submitted that NCRIS was a vital initiative intrinsic to the sustenance of its national research capacity.⁴⁵ The Group of Eight noted that the lack of an on-going commitment to the *Backing Australia's Ability* Science and Innovation package beyond 2011 raised the spectre of the HEEF being used to substitute for several existing block funding schemes.⁴⁶

2.52 The fear behind these types of comments was captured by the Federation of Australian Scientific and Technological Societies which told the committee:

FASTS are concerned that future Governments or Ministers will use the existence of HEEF as a reason to cut back other programs such that over time HEEF does not provide additional funding but is used in whole or part as replacement funding. This eventuality cannot be legislated for, but FASTS will expect all political parties to recognise and honour the intent that HEEF provide additional funding.⁴⁷

2.53 In the same vein, the National Tertiary Education Industry Union told the committee:

It is also unclear how HEEF funding will operate alongside existing Commonwealth schemes aimed at directly or indirectly investing in capital and research facilities in universities, such the Institutional Grants Scheme, the Research Infrastructure Block Grant Scheme and the National Collaborative Infrastructure Strategy.⁴⁸

44 Second Reading Speech, Hon. Julie Bishop MP, *House Hansard*, 16 August 2007, p. 3 and DEST, *Submission 9*, p. 1.

45 Innovative Research Universities Australia, *Submission 2*, p. 2.

46 Group of Eight, *Submission 8*, p. 3.

47 Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

48 National Tertiary Education Industry Union, *Submission 11*, p. 4.

2.54 Other submitters were more optimistic. While maintaining the importance of existing funding programs, the Group of Eight stated:

The Go8 is therefore heartened by the Minister's recognition when introducing the Bill that funding for the HEEF is in addition to these existing infrastructure programs and will serve a very different purpose to these. In the Go8's view the purpose of the HEEF should be to provide institutions with an income stream to address the serious backlog maintenance challenges outlined in this submission, and for new capital and/or research infrastructure projects judged to be in the national interest through an open and transparent competitive process.⁴⁹

2.55 Essentially, this statement summarises the view of the committee. There are many competing demands for a university's capital budget, and the various competitive education and research grants do not guarantee any alternate source of higher education funding. The HEEF is necessary to plug these gaps, prevent higher education institutions from falling into neglect, and develop them into world-class institutions. The committee believes that higher education institutions will be able to identify and plan adequately for necessary projects in applying for a grant from the HEEF.

Consultations

2.56 As potential beneficiaries, it was not surprising that higher education institutions generally favoured the HEEF initiative. But, as indicated earlier in this report, there was a concern about an appropriate program design for grants from the HEEF.

2.57 In response to these concerns, the Minister has several times indicated that consultations will shortly be held with the higher education sector on a range of issues.

2.58 Universities Australia noted in its submission:

The legislation does not set out in any detail the rules by which funding is to be distributed under the HEEF. However, it is understood that the Department of Education, Science and Training is developing a set of Guidelines and Administrative Information which will outline those details. Given the significance of the HEEF to the higher education sector, it will be important that this associated information reflects the highest possible levels of transparency and fairness.⁵⁰

49 Group of Eight, *Submission 8*, p. 5.

50 Universities Australia, *Submission 1*, p.1.

Higher Education Endowment Fund (Consequential Amendments) Bill 2007

2.59 The Government gave its reasons for the consequential bill as the review and updating of legislation, as required by responsible governance.⁵¹ The committee does not disagree with this rationale. It is important to clarify legislation, and the roles and responsibilities of all those involved in implementing the HEEF initiative.

2.60 With this in mind, only one aspect of the consequential bill drew comment from submissions and witnesses, that of philanthropy.

2.61 In introducing the bill, the Minister stated that Australian higher education institutions have not been as successful as their overseas competitors in attracting philanthropic donations.

In fact, in Australian universities, less than two per cent of income comes from philanthropic donations. In comparable universities overseas it can be as high as 15 or 20 per cent.⁵²

2.62 The Government has therefore created a new avenue for business and the general public to make philanthropic donations to the higher education sector, and signalled to the community that greater philanthropic support to universities should be provided.

2.63 Mercer Investment Consulting cautioned against an over-reliance on philanthropic support:

In the US some of the larger endowments contribute quite a large proportion of the expenditure of the universities. The average is I think about 10 per cent. I think Yale is now at about 35 per cent. Where you have a dependence on the flow of support like that and where the cost of maintaining those sorts of universities is really above the general economic growth and inflation level, there is a dependence on a flow of future bequests as well as maintaining the real value of the fund. From my academic point of view of studying funds, that would need to be something that is added in the future.⁵³

2.64 The perpetual investment and tax deductible status to be granted under the ITAA by provisions in the consequential bill are intended to encourage or induce

51 Second Reading Speech, Hon Julie Bishop MP, *House Hansard*, 16 August 2007, p. 5 and DEST, *Submission 9*, p. 3.

52 Second Reading Speech, Hon Julie Bishop MP, *House Hansard*, 16 August 2007, p. 4.

53 Mr Bruce Gregor, Mercer Investment Consulting, *Committee Hansard*, Melbourne, 31 August 2007, p. 10.

private donations to the HEEF.⁵⁴ However, Professor Richard Larkins told the committee:

The people who want to give money to our universities do not want to give it to a university per se. They want to give it for particular activities within the university...We find that the more general and non-tied the philanthropy is, the less likely we are to be successful...So if the idea is that the industry or private givers would give money to the higher education endowment fund to support the sector, I think that is just one more level removed. I think alumni sometimes want to support their university. More often they want to support the part of the university where they were or with scholarships to support disadvantaged students from similar backgrounds to their own or specific areas of research. I do not know that [the legislation] is going to be a huge attractor of new philanthropic support.

The vast majority of institutions in the sector have fairly sophisticated ways of managing the funds that they have and it is hard to see, given the benchmarking that is done in relation to industry best practice, given the fact that tax deductibility is already there for donations and unless there are some special provisions made in relation to providing special tax arrangements for the higher education endowment fund compared with the usual tax arrangements for charitable foundations of various sorts, how there is a huge potential.⁵⁵

2.65 The committee recognises that the tradition of public philanthropy is not as well developed in this country as in the United States or Europe. The disparity in the size of the population and the absence until recent years of dynastic wealth makes any comparison tenuous between Australia and other countries with hundreds of years of university history. While a secondary objective of the bill, the encouragement of public philanthropy to universities is encouraged.

Recommendation

The committee recommends that the bill be passed.

Senator Judith Troeth

Chairman

54 DEST, *Submission 9*, p. 3 and Higher Education Endowment Fund (Consequential Amendments) Bill 2007, Items 75, 76 and 77.

55 Professor Richard Larkins, Universities Australia and Group of Eight, *Committee Hansard*, Melbourne, 31 August 2007, pp 7-8. Also, Federation of Australian Scientific and Technological Societies, *Submission 5*, p. 4.

Opposition Senators' Report

Introduction

1.1 The Higher Education Endowment Fund Bill 2007 and the Higher Education Endowment Fund (Consequential Amendments) Bill 2007 were referred to the Senate Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 5 September 2007.

1.2 The Higher Education Endowment Fund Bill establishes the Higher Education Endowment Fund, a perpetual endowment fund to generate earnings for capital expenditure and research facilities in higher education facilities.

1.3 The Higher Education Endowment Fund (Consequential Amendments) Bill 2007 amends the *Future Fund Act 2006* and the *Income Tax Assessment Act 1997* to support the implementation of the Higher Education Endowment Fund. The Consequential Amendments Bill also provides that investments made by the Future fund Board of Guardians will be determined by the Future Fund Board of guardians, not by ministerial direction. This bill also specifies that the responsible Ministers cannot direct the Future fund Board of Guardians to use the assets of the Future Fund to invest in a particular asset.

1.4 The bills are linked and will be dealt with together.

Background

1.5 Labor Senators note that Australian Universities have, by the Government's own analysis, a significant backlog of deferred infrastructure maintenance. According to a submission by the Department of Education, Science and Training to the Productivity Commission's Report on Science and Innovation in 2006, this deferred maintenance expenditure was estimated at \$1.5 billion for the University sector. This was a point made by several submissions, including the Federation of Australian Scientific and Technological Societies (FASTS), the Group of Eight Universities, and the National Tertiary Education Union. The Group of Eight Universities estimated that total the deferred maintenance liabilities was \$1.53 billion in 2006 across Go8 universities alone.

1.6 Labor Senators note that the principal reason behind this backlog is the fact that since it came to power more than 11 years ago, the Howard Government has undermined the higher education sector. Labor Senators note that a number of submissions pointed out that the Commonwealth Government's under funding of the University sector since it came to power is a significant contributor to the current situation. The submission by the Group of Eight noted that

While \$6 billion is a large amount of money it needs to be viewed in the context of recent funding trends for Australia's public universities, the recurrent expenses and infrastructure challenges they now face...¹

1.7 It is worth briefly recapping the Commonwealth Government's record on higher education investment since 1996. As the Group of Eight submission note, the Howard Government's first Federal Budget in 1996 cut university operating grants by a cumulative six per cent over the forward estimates from 1997-2000, resulting in a significant \$850 million in cuts to the sector.² This had significant flow-on effects for subsequent years as universities dealt with the impact of these cuts.

1.8 An associated factor was the removal in 1995 of real increases in relevant wages in the indexation of university block grants. This has meant that since that time the salary component of university operating grants have been indexed against the Safety Net Adjustment applied to lowest paid workers and non-salary components indexed by the Treasury Measure of Underlying Inflation and more recently the Consumer Price Index.

1.9 The Group of Eight submission contends that had this indexation formula substituted average weekly earnings for the Safety Net Adjustment component then the university sector would have received an additional \$845 million in operating grants in 2003 alone.

1.10 Universities Australia have also confirmed that Government funding cuts in university operating grants since 1996 have put greater financial pressure on university finances, with flow-on effects to the way that universities operate. Recent work undertaken by Universities Australia demonstrates that funding shortfalls by the Commonwealth and an inadequate indexation formula has had direct impacts on teaching quality. That work shows that since 1995 student-staff ratios have increased, with the result that students today receive less time one-on-one with their lecturer and tutor than their counterparts 12 years ago. According to Universities Australia, student-staff ratio today is 20.4 compared to 14.6 in 1995. This assessment was reinforced by Group of Eight's submission which stated that the implications of funding pressures faced by universities today include:

- large increases in student to staff ratios, with implications for quality of teaching and learning;
- reductions in academic salaries relative to average wages, with implications for the sector's ability to attract top talent; and
- the deferment of essential expenditure on the maintenance of buildings and facilities, with long-term consequences for the quality of essential infrastructure

¹ Group of Eight, *Submission 8*, p. 1.

² Group of Eight, *Submission 8*, p. 1.

1.11 Labor Senators note that Australia's education system now relies more on private financing than all other OECD countries except for the United States, Japan and South Korea. More than half of the cost of tertiary education today is met from private sources – with dependence on private sources increasing to 52 per cent from 35 per cent in 1995. As a proportion of total revenue, Commonwealth grants to universities have decreased from 57 per cent of their revenue in 1996 to 41 per cent in 2004. At the same time, university revenue derived from fees and charges has increased from 13 per cent in 1996 to 24 per cent in 2004.

1.12 Labor Senators also note that while the Government claims that tertiary spending has increased by 25 per cent since 1996, enrolments have increased by more than double that since 1996. As a consequence, the average amount of Commonwealth funding per student in real terms has declined by nearly \$1,500, while student HECS contributions have increased by nearly \$2,000, and fees and charges have increased by over \$3,000.

Provisions of the Bill

1.13 The provisions of the Higher Education Endowment Fund Bill have been modelled on the provisions of the *Future Fund Act 2006* (Future Fund Act). The bill provides the Future Fund Board of Guardians with statutory powers to manage the investments of the Higher Education Endowment Fund (HEEF). The bill also provides that, as per the Future Fund Act, the Treasurer and the Minister for Finance and Administration are the responsible Ministers. In this capacity they will issue directions to the Board about the performance of its investment functions. The Board is therefore accountable to the Treasurer and the Finance Minister for meeting its obligation to manage the HEEF in accordance with the requirements of the Act and directions. The responsible Ministers will make the determination to credit government contributions (initially of \$6 billion) to the HEEF and any subsequent Government contributions to the HEEF.

1.14 The responsible Ministers are also responsible for setting rules to determine the maximum amount available for payments from the HEEF. The HEEF Advisory Board (the Advisory Board) will be established to provide advice to the Education Minister on grants.

1.15 Because of the different nature and intent of the HEEF compared to the Future Fund the Education Minister, not the responsible Ministers, is responsible for authorising grants of financial assistance to eligible higher education institutions and for appointments to the HEEF Advisory Board.

Potential problems with the Higher Education Endowment Fund

1.16 Labor Senators note the universal support and welcoming the Higher Education Endowment Fund (HEEF) has received from the higher education sector. Given the continued under funding of the sector by the Commonwealth Government, this is unsurprising.

1.17 Notwithstanding the welcome reception to the Higher Education Endowment Fund, the proposal is not without concern. This is confirmed in the detail of the bills to establish the Higher Education Endowment Fund.

1.18 A central concern expressed by a number of submissions relates to the transparency of Ministerial determinations.

1.19 Sections 40(2) and Section 40(3) provide that the Minister determines who sits on the Fund's Advisory Board, while Section 40(4) sets out how the Board will operate and Section 41 determines how the Board will undertake its functions. Section 45 provides that the Minister for Education authorizes grants of financial assistance to eligible higher education institutions in relation to capital expenditure. Section 50 outlines the terms and conditions of funding, including that the terms and conditions on which financial assistance is provided to a higher education provider be set out in written agreement between the Minister for Education, on behalf of the Commonwealth, and the eligible higher education institution.

1.20 A number of submissions identified the potential that funding allocations will be based on political factors rather than on the merits of individual proposals or through, as the Group of Eight identified, "...*any strategic consideration of the sector's infrastructure needs.*"³ More prosaically, the FASTS submission argued that in its current form, the Fund is in effect

...a significant slush fund for Ministerial pork-barrelling.⁴

1.21 FASTS noted that while directions and grant decisions are to be tabled, they are not disallowable instruments. Equally, there is no requirement that the Advisory Board's recommendations or any variations to those recommendations be made public. As FASTS argued:

FASTS believes this is not a good governance model and recommends the legislation be amended to ensure the Minister makes public both Advisory Board recommendations and significant Ministerial variances from this advice.⁵

1.22 This concern was also expressed by the NTEU, who recommended that the HEEF be amended to set out the functions, responsibilities and appointment process of the HEEF Advisory Board.⁶

1.23 Universities Australia expressed some concern that the legislation does not set out in any detail the rules by which funding is to be distributed under the HEEF, and

³ Group of Eight, *Submission 8*, p. 3.

⁴ Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

⁵ Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

⁶ National Tertiary Education Industry Union, *Submission 11*, p. 3.

that these details are being developed by the Department of Education, Science and Training in the form of Guidelines and Administrative Information.

1.24 Labor Senators are particularly concerned about this point. Section 49 provides that in the event of a bad year and the Fund returns little or no income then the Fund will not release money. This potentially would have the effect that the Fund would not discharge any of the \$300 million forecast by the Howard Government. This has implications for eligible higher education providers that may be relying on being awarded approval for HEEF funds for infrastructure projects.

1.25 This was confirmed by the Department of Education, Science and Training's submission, which stated that

...only accumulated returns are made available each year for payment to higher education institutions. The returns available for distribution to the sector will be linked to the performance of the HEEF and in turn the market...in the short term there may be some volatility.⁷

1.26 It is also unclear what is meant by the term used by DEST that '*only accumulated returns are made available each year*'. There is little detail provided as to the investment strategy being considered by the Board of Guardians, including the time frame and scope of investments being made on behalf of the Commonwealth. While Labor Senators accept that the Board of Guardians must invest for the long-term benefit of the Australian higher education sector, some clarity on the investment strategy being considered by the Board would be useful. Given, for instance, that the legislation provides that the release of funds is conditional upon accumulated returns being available, it would be useful for the higher education sector to know if that means that the Board of Guardians are considering an investment approach in the first few years that will not allow for returns to be released to eligible higher education providers. If this were the case, then that would be at significant variance to the Budget Papers which forecast an estimated average 6 per cent return per year.

1.27 In this context, evidence provided by Mercer Investment Consulting to the Inquiry on 31 August is instructive. Mercer Investment Consulting stated that

...the grants which might be given in the early years might be low and, if there was extreme market volatility in the first years, they could be nil compared to what... is the general expectation of grants emerging from this fund⁸

and

⁷ DEST, *Submission 10*, p. 3.

⁸ Mr Bruce Gregor, Mercer Investment Consulting, *Committee Hansard*, Melbourne, 31 August 2007, p. 10.

...if in the first year the money was invested and the return was, say, eight per cent and there was an intention to distribute five per cent every year and inflation was three per cent, then you could distribute five per cent and you could use the three per cent to upgrade the value with inflation and everybody would be happy and everything would work out perfectly. If, however, the money was invested immediately in the long-term portfolio allocation with 60 per cent in the share market and the share market were to fall by, say, 20 per cent in the first year, then obviously the remainder is unlikely to make up that deficit and you could see a return of zero per cent or less in the first year. My reading of that clause is that if the valuation at the beginning of the financial year 2008-09 showed the value to be less than the \$6 billion that has been put in, then no grant could be made in that first financial year.

1.28 An associated complication is the fact that the Government has announced that for cash management reasons, transfers to the HEEF will be made at the end of October 2007 (\$3 billion) and the end of January 2008 (\$3 billion). Labor Senators are concerned at the potential implications for the income stream that can be made available for eligible higher education providers.

1.29 Concern was also raised as to the structure of the Advisory Board. There is no direction in the legislation as to the make-up of the Advisory Board. A number of submissions expressed concern at this, with FASTS arguing that the Board should

“...contain sufficient diversity of expertise to ensure the prospect of a credible process. FASTS believe merit and expertise should be the key determinants as distinct from a representative or formulaic structure giving representation to formal university groupings.”⁹

1.30 Similarly, NTEU’s submission argued that “...the interests of transparency and good governance would be better met if the functions and responsibilities of the Board are set out in the Higher Education Endowment Fund Bill 2007.”¹⁰

1.31 Submissions also expressed concern that the HEEF will continue to be additional funding and not a substitute for existing programs that provide funds for capital works and research infrastructure in Universities. While Labor Senators note the Minister’s commitment made during her second reading speech that “the Endowment Fund investment is in addition to existing programmes...”, Labor Senators remain concerned at comments made by the Minister in the media following the 2007 Budget that over time programs such as the Capital Development Pool (CDP) could be folded into the HEEF.

⁹ Federation of Australian Scientific and Technological Societies, *Submission 11*, p. 2.

¹⁰ National Tertiary Education Industry Union, *Submission 11*, p. 3.

1.32 A further concern relates to philanthropic donations. During the May Budget Estimates, the Department of Education, Science and Training stated categorically that philanthropic donations made into the Fund would be directed to where those funds go. On 30 May, Senator Carr asked DEST:

Senator CARR—So we have a private philanthropic donor being able to direct where those funds go?

Dr Arthur—Yes.

Ms Paul—They are clearly within the objects of the legislation, so for the purposes which the government has laid out and which will be encompassed in the legislation and its attending instruments.

1.33 This commitment has now been waived, departing significantly from the original intent of the legislation, with both the Minister's second reading speech and the DEST submission stating that philanthropic donations can be made only on an unconditional basis.

1.34 Finally, Labor Senators note the provision in the Higher Education Endowment Fund (Consequential Amendments) Bill 2007 specifying that the responsible Ministers cannot direct the Future fund Board of Guardians to use the assets of the Future Fund to invest in a particular asset.

1.35 Labor Senators also note the comments expressed by the Minister for Finance and Administration, Senator Nick Minchin, claiming that this amendment was to "*stop the Labor Party robbing future generations by raiding the Future Fund, taking its annual earnings and dictating to the Board that it should invest its money in advancing Labor's political interests*".

1.36 Labor Senators reject this characterisation. Labor has previously indicated its support for the Future Fund, and supports the establishment in principle of the Higher Education Endowment Fund. Labor is also committed to the Future Fund objective of meeting public sector superannuation liabilities.

1.37 Labor is committed to invest up to \$2.7 billion (from sold-down Telstra shares) in a National Broadband Network, with earnings reinvested in the Future Fund. Along with contributions from the private sector, the \$2 billion Communications Fund will be used to contribute to build the National Broadband Network.

1.38 Labor Senators note that the Government is enmeshed in legal action over its decision to award OPEL \$958 million to build a broadband network without providing equal information to all participants. Labor has written to the Auditor General following the Government's announcement with concerns over the probity of information provided to applicants and the selection process.

1.39 Labor Senators also note that the Government has no plans for long term investment in infrastructure. In contrast, Labor will invest future surpluses in the *Building Australia Fund* (BAF) and make earnings available for infrastructure investment, with investment priorities recommended by *Infrastructure Australia*.

Conclusion

1.40 Labor Senators note that the submissions supported the establishment of the Higher Education Endowment Fund. In light of the evidence presented by the higher education sector to the Committee, the measure to establish a Higher Education Endowment Fund is a welcome one. Indeed, the measure to increase Commonwealth funding for infrastructure purposes is long-overdue and comes after years of neglect by the Commonwealth of our higher education sector.

1.41 While supporting the establishment of the Higher Education Endowment Fund, Labor Senators remain concerned at the lack of transparency surrounding funding decisions and the scope available to the Minister for Education to make funding decisions for political reasons rather than on clearly defined criteria. Labor Senators believe that income from the HEEF should be targeted to those higher education infrastructure projects that genuinely advance our national interest. In its current form, Labor Senators believe that the Minister for Education does not have a sufficient check and balance when determining which projects the funds should be directed towards. This amplifies the risk that those infrastructure projects providing a political dividend to the Government of the day will be more favoured than those projects meeting a long-term national interest objective.

1.42 Labor Senators believe there is merit in the Government revisiting this issue and assessing the recommendations made by submissions to this Inquiry to increase the transparency of decisions taken by the Minister and the Advisory Board.

1.43 Labor Senators also question the assertion made by the Minister for Education that the Higher Education Endowment Fund will deliver an annual income of \$300 million to be used for university infrastructure purposes. Based on the evidence presented by the Government's own Department of Education, Science and Training, and by Mercer Investment Consulting, the suggestion that the Fund will deliver \$300 million per year in the first years of its operations is misleading.

Recommendation

1.44 Labor Senators support the proposed bill.

Senator Gavin Marshall
Deputy Chair

Minority Report by the Australian Democrats

1.1 The Australian Democrats welcome additional investment in higher education. These bills give effect to the key commitment of the Higher Education Endowment Fund and establish the broad mechanisms through which both the investments of the Fund and the grants to eligible higher education institutions will be managed.

1.2 The initial investment of \$5 billion, followed by a further investment of \$1 billion, is long overdue and will go some way towards redressing the many years of under-funding by the Government. It is important to see this amount in the context of cost-cutting to the sector by successive governments.

1.3 The Australian Democrats broadly support the concept of a fund that can provide grants for capital works or research infrastructure in perpetuity. There is an argument for investing the \$6 billion in the sector immediately to address maintenance backlogs and infrastructure demands, just as there are strong arguments that a reliable source of infrastructure funding is likely to be more beneficial in the long-run so long as it does not replace existing infrastructure funding programs.

1.4 There have been mixed messages from the Government in this regard. The Australian Democrats hope that more recent assurances that the HEEF will supplement, and not replace, existing infrastructure programs accurately reflects the Government's plans.

1.5 One of the apparent aims of this Fund is to attract higher levels of philanthropic support to the university sector. While this is a worthy goal, the Australian Democrats agree with evidence given at the Committee hearing by Professor Larkins that philanthropic donors tend to support specific activities that hold particular meaning for them. The more general a fund, the less likely it is to attract support. While the Democrats note the commitment by the Minister for Education, Science and Training, the Hon Julie Bishop MP, that further consultations on this would be held, the Fund currently does not allow for donors to have any say over how their contributions are spent. As such, we do not consider that this Fund will leverage significant philanthropic support.

1.6 The Australian Democrats also share the concerns of the National Tertiary Education Union, the Federation of Australian Scientific and Technological Societies, the Group of Eight, and the Australian Academy of the Humanities that there is a very high level of ministerial discretion at all key stages of this program. As written in these bills, the Minister of the day appoints the members of the Advisory Board, sets directions for the Board, signs off on program guidelines that are not even mentioned in these bills, and decides which applications are awarded funding, based on advice by the Advisory Board.

1.7 While we acknowledge that the Minister should have ultimate responsibility with regard to the disbursement of grants through this Fund, the Democrats want to ensure a higher level of transparency than these bills currently afford. We will seek to move amendments to clarify the composition of the Advisory Board and to require the Minister to make the recommendations of the Advisory Board publicly available.

1.8 The Democrats are also concerned that the likely impact of this Fund on the higher education sector cannot be estimated until issues such as the eligibility and merit criteria, the extent to which matching funding will be required, and whether grants will be linked to university implementation of broader government ideology, are all made clear. These will determine whether the Fund serves as a successful boost to infrastructure funding for the whole sector or instead generates unintended consequences and favours certain players over others.

1.9 These bills do not clarify the Government's position on these important issues and reflect a trend in behaviour by this Government to seek Parliamentary approval without giving the Parliament the kind of details that allow it to make informed decisions. The Democrats, therefore, will move another amendment to call for the program guidelines to be made a disallowable instrument, so that the Parliament can ensure that the funding it is being asked to approve will indeed have the effect that the higher education sector needs and wants.

1.10 Finally, while the Democrats support increased infrastructure funding for universities, it notes that this significant investment by the Commonwealth will not at all address the ballooning cost of higher education for students. This is just as pressing a concern and yet only a comparatively small allocation of \$222 million for student income support in the last Budget will have a direct impact on the affordability of higher education.

1.11 The Democrats reserve the right to move further amendments to this legislation when it is debated in the Senate.



Senator Natasha Stott Despoja

Appendix 1

List of submissions

Number	Submitter
1	Universities Australia, ACT
2	Innovative Research Universities Australia
3	Council of Australian University Librarians, ACT
4	Australian Academy of Science, ACT
5	Council of Deans of Nursing and Midwifery, NSW
6	Federation of Australian Scientific and Technological Societies (FASTS), ACT
7	The Australian Academy of the Humanities, ACT
8	The Group of Eight, ACT
9	Department of Education, Science and Training, Cwlth
10	Australian Technology Network of Universities (ATN), SA
11	National Tertiary Education Industry Union (NTEU), VIC

Appendix 2

Hearings and witnesses

State Parliamentary Offices, Melbourne, 31 August 2007

Universities Australia and Group of Eight

Professor Richard Larkins

Incoming Chairman, Universities Australia

Vice-Chancellor and President, Monash University

Mercer Investment Consulting

Mr Bruce Gregor, *Principal*

Federation of Australian Scientific and Technological Societies

Mr Bradley Smith, *Executive Director*

Department of Finance and Administration

Mr Alan Greenslade, *Branch Manager, Future Fund Branch, Financial Management Group*

Department of Education, Science and Training

Dr Evan Arthur, *Group Manager, Innovation & Research Systems*

National Tertiary Education Union

Dr Carolyn Allport, *National President*

Mr Andrew Nette, *Policy & Research Coordinator*

