

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Provisions of the Higher Education Legislation Amendment Bill (No.3) 2004**

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**Australian Government**

**Department of Education, Science and Training**



**Submission to the Senate Employment, Workplace Relations and  
Education Committee**

**Inquiry into the Higher Education Legislation Amendment Bill (No 3)  
2004**

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## Introduction

The purpose of this submission is to provide information on the broad implications of the *Higher Education Legislation Amendment Bill (No 3) 2004* ("the Bill") on Australia's higher education sector according to the terms of reference of the Inquiry.

In its call for submissions, the Committee indicated that it would examine the amendment which will add Melbourne University Private to the list of universities which are eligible to receive Commonwealth funding. It will also examine the amendments relating to summer schools, the extension of time within which students must submit a request for Commonwealth assistance, the definition of postgraduate and undergraduate higher education awards and the transitional arrangements for the repayment of special purpose grants under the previous higher education legislation.

This submission also provides information on a number of other amendments in the Bill.

## Overview of the Bill

The *Higher Education Legislation Amendment Bill (No 3) 2004* amends four Acts – the *Higher Education Support Act 2003*, the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*, the *Australian Research Council Act 2001* and the *Australian National University Act 1991*.

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

Several of the measures in this Bill, in particular, the amendments relating to summer schools were developed in response to and in consultation with the higher education sector. These amendments demonstrate the Government's willingness to refine its reforms in light of sector comment.

The Australian Government is also taking a final opportunity before the commencement in 2005 of the majority of the provisions of the *Higher Education Support Act 2003* to make a number of technical amendments to enhance its effective implementation and to give certainty to higher education providers.

The Bill amends the *Higher Education Support Act 2003* (HESA) to revise the maximum funding amounts in section 30-5 under the Commonwealth Grant Scheme to provide funding currently provided through the Department of Health and Ageing for radiation oncology places at the University of Newcastle and the Royal Melbourne Institute of Technology for Commonwealth supported students for the years 2005-06. The increased funding for the measure in HESA will be wholly offset by savings from DoHA's budget appropriation. This change will ensure that these places are administered in a manner that is consistent with the higher education reform package.

The Bill introduces a number of new policy initiatives including:

- o adding Melbourne University Private to the list of Table B higher education providers; and
- o allowing Higher Education Providers to operate summer schools as they do now.

The Bill also makes amendments to HESA to further smooth implementation of the higher education reforms in 2004. These include amendments to:

- o allow students more time to submit their requests for Commonwealth assistance by providing that such requests are not required until the census date;
- o allow students to continue to undertake studies on a cross-institutional basis as Commonwealth supported students;
- o extend and clarify entitlement to OS-HELP assistance;

- o clarify that the 'excess amount' of an advance payment under section 164-10 is a debt to the Commonwealth; and
- o include a definition of undergraduate and postgraduate higher education award.

Universities are making decisions at the moment regarding their offerings for next year and are due to publish this information for students shortly. Measures contained in this Bill directly impact on those decisions. Passage would give the sector certainty so that arrangements for 2005 can be finalised.

### **Amendments to other legislation**

The Bill amends the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* to provide for transitional arrangements for the repayment of 'special purpose' grants made under the *Higher Education Funding Act 1988*.

The Bill amends the *Australian Research Council Act 2001* (ARCA) to update annual funding caps to reflect revised forward estimates and to provide financial assistance for approved research programs for the financial year. The ARCA is amended annually to update the funding caps for adjustments made in the budget process and to insert a new funding cap for the out year of the forward estimates.

The Bill also amends the *Australian National University Act 1991* (ANUA), to extend the time within which the Minister must make appointments to the ANU Council from 28 days to 60 days. Currently subsection 10(7) of the ANUA provides that in making appointments to the ANU Council the Minister must either make an appointment or decide not to make an appointment within 28 days after receiving written nominations from the Nominations Committee of the ANU Council. It is often not practicable for a decision to be made within this time frame - extending the time limit to 60 days would enable a decision to be made with time for consultation that may be required.

### **Principle amendments to be considered**

#### **Melbourne University Private**

The Australian Government is committed to developing a more sustainable and diverse higher education system, with a range of institutions servicing different communities and varied requirements.

Under the *Higher Education Support Act 2003* (HESA) there are two ways of being approved as a Higher Education Provider (HEP) in order to receive Commonwealth assistance. A higher education institution can either be listed in the Act (on either Table A or Table B) or it can apply for approval by the Minister as a HEP. Either way requires the scrutiny of the Parliament.

A private Higher Education Provider (HEP) which is not listed in the Act is eligible for the following assistance under HESA:

- access to FEE-HELP on behalf of their students from 2005; and
- may apply for Commonwealth-supported National Priority Places in teaching and nursing.

Only private institutions listed on Table B are eligible for research funding through the Institutional Grants Scheme (IGS) and the Research Training Scheme (RTS), and only staff at Table A and Table B institutions can apply for and hold Australian Research Council (ARC) Grants.

All Australian universities, except for Melbourne University Private, are listed on either Table A or Table B of the HESA. The other Australian private universities (the University of Notre Dame

Australia and Bond University) are already listed on Table B, and have access to Australian Government research funding.

Under HESA, an Australian university means a body corporate that:

- is established or recognised as a university by or under State, Territory or Commonwealth legislation, and
- meets Protocol 1 of the National Protocols for Higher Education Approval Processes.

In 2003, Melbourne University Private (MUP) was approved as a self-accrediting university by Ministerial Order under the Victorian *Tertiary Education Act 1993*. Its approval by Ministerial Order is consistent with both HESA and National Protocol 1, which require that the establishment or recognition as a university in Australia should only occur by the mechanism of a legislative instrument (either by a separate Act or a regulation or order made under an Act).

The 2003 Ministerial Order also confirms that MUP was for the first time assessed under the National Protocols, and met the requirements for a new university set out in the Protocols. These requirements include that approval may be given provisionally for a period of up to five years, during which time the accrediting authority may establish conditions for its operation.

MUP therefore meets the requirements of HESA for a university.

All higher education providers must meet the quality and accountability requirements set out in HESA. These include financial viability requirements; quality requirements (including quality audit and accreditation requirements); fairness requirements, including grievance, selection, review and tuition assurance procedures; and requirements related to the setting of fees. Before moving this amendment in the *Higher Education Legislation Amendment Bill (No 3) 2004* the Minister for Education, Science and Training has required MUP to meet the quality and accountability requirements.

If the Minister had approved MUP as a higher education institution under Section 16-25, rather than proposing that MUP be listed on Table B of HESA, such approval would have given MUP access to FEE-HELP on behalf of its students but would not have addressed its anomalous position as the only university not having access to the Research Training Scheme or the Institutional Grants Scheme and whose academic staff are therefore unable to hold ARC grants. Listing MUP on Table B addresses this anomaly.

Under Section 22-10 of HESA, the Minister may revoke a body's approval as a Higher Education Provider if it ceases to be a university. If MUP ceased to be a university – that is, if the Victorian Government revoked its accreditation in the future – its approval as a higher education provider would also be revoked.

Under the conditions placed on its reaccreditation in 2003, MUP is required to produce a level of research output appropriate for an Australian university. Without access to DEST research funding or ARC grants, it will be very difficult for MUP to reach the level of research output expected of a university in Australia. The Government expects both public and private universities to provide education and produce the research which Australia needs to be economically competitive.

One of the principle issues for consideration by the Senate Legislation Committee was to establish the impact of the Bill on similar associated entities, for example the Victorian College of the Arts. There are no 'associated entities' of the University of Melbourne (or of other Australian universities) which are similar to MUP. While Victoria College of the Arts is legally a separate entity from the University of Melbourne, its students are students of the University of Melbourne and are awarded degrees of the University of Melbourne. The VCA is not authorised to deliver its own higher education awards, either as a self-accrediting or non self-accrediting provider, and so is not eligible

to be approved as a Higher Education Provider under HESA. By contrast, MUP is a self-accrediting university and its students take out MUP awards.

### **Fee-paying summer schools**

Universities currently offer units of study in summer schools on a fee-paying basis to allow students to fast-track their course or make up for a failed unit of study. The student load associated with these units of study is currently not counted for the purpose of complying with the 25% limit on fee paying places for domestic students in an undergraduate course of study.

This amendment will allow higher education providers to continue to operate their full fee summer schools as they do now under the new *Higher Education Support Act 2003* (HESA). It also will ensure that the student load associated with these units of study is not counted for the purpose of complying with the 35% limit on fee paying places for domestic students in an undergraduate course of study.

The amendment will not restrict universities who choose to make their students Commonwealth supported during summer school periods. Universities will be able to offer a unit of study in a summer school on the same basis as it is offered at other times (i.e. standard HESA provisions apply). They do not need to do anything to achieve this.

The amendment means that universities will be able to offer a unit of study in a summer school on a fee paying only basis by determining that section 36-10 of HESA applies to the unit. Universities can only do this if:

- o the unit starts on or after 1 November in a year and ends after 1 January, but before 1 March in the following year; and
- o each person undertaking the unit could undertake, or could have undertaken, the unit outside the summer school period.

Commonwealth supported students will not be required to pay full fees for any unit of study they undertake as part of their course of study. Any units of study offered in a full fee summer school must also be available to students on a Commonwealth supported basis outside the summer school period. Students must be able to complete the requirements of their course of study without needing to undertake a unit of study in a full fee summer school.

Students can fast-track their courses of study by undertaking additional units of study in their course during any other study periods. The only units in which students may not be Commonwealth supported are those in full fee only summer schools. All full fee summer school units are available on a Commonwealth supported basis during the year.

Full fee summer schools provide additional opportunities for students by allowing them to fast-track their course. These units are offered over a shorter period of time on an intensive basis. Without the option to charge fees for these units, many summer schools will not be financially viable, and so these opportunities would be lost to students.

Universities have generally allocated their Commonwealth supported (HECS) load to units undertaken throughout the year. Summer school places are additional places for students. Students also have access to FEE-HELP assistance for these units.

### **Request for Commonwealth assistance to be given on or before census date**

Each year universities determine a census date, by which time enrolments in a unit of study for a year are finalised.

Currently, HESA requires students to submit a request for Commonwealth assistance on or before the person's enrolment in the unit of study. Students who do not submit the request in the given timeframe must have their enrolment cancelled and/or will not have access to Commonwealth assistance.

This technical amendment to require a request for Commonwealth assistance to be made before the census date, rather than the enrolment date, will give students more time to submit their request for Commonwealth assistance, therefore ensuring that students are not disadvantaged by an earlier submission date that an institution may set for applications. The requirement for the request for Commonwealth assistance to be submitted on or before the census date is already specified in some sections of HESA, but not in the definition of the request itself. Therefore, the amendment also addresses an existing inconsistency in the legislation.

### **Definition of undergraduate and postgraduate course of study**

HESA is being amended to insert two new definitions. Postgraduate course of study is being defined to mean a course of study that leads to a graduate diploma; a graduate certificate; a master's degree; or a doctoral degree. Undergraduate course of study is being defined to mean a course of study that is neither an enabling course nor a postgraduate course of study.

This amendment will ensure that there is no confusion for higher education providers and students about the application of the 20% loan fee for FEE-HELP, which applies to undergraduate courses of study only.

### **Transitional provisions for 'special purpose' payments**

Both the *Higher Education Funding Act 1988* and the *Higher Education Support Act 2003* provide for 'special purpose' grants or 'advances' to universities, which are required to be repaid to the Commonwealth within one, two or three years. Under HEFA, this provision is at section 20A; under HESA, it is at section 33-40.

The *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* does not make provision for requiring repayment of grants made under HEFA that are due for repayment in 2005, 2006, and 2007. An amendment is required to this Act in order for the Commonwealth to be able to reclaim advances currently provided to universities under section 20A of HEFA.

### **Other amendments in the Bill**

#### **Cross-institutional studies**

The Bill will amend the *Higher Education Support Act 2003* to enable students, who are enrolled in units of study on a cross-institutional basis, to be Commonwealth supported, and/or access HECS-HELP and FEE-HELP assistance for those units, at the host provider as well as the home provider.

Cross-institutional studies give students more choice and flexibility, and give providers more opportunity to specialise in their areas of expertise. The amendment will ensure that students undertaking these studies will not be required to be full fee-paying students for units of study undertaken on a cross-institutional basis.

## **OS-HELP eligibility**

OS-HELP was announced under *Our Universities: Backing Australia's Future* to assist eligible undergraduate students in Commonwealth supported places to study abroad for one or two study periods of their degree programme. It will offer students loans of up to \$5,000 per six month study period to finance their overseas study. OS-HELP will assist students with travel and living expenses while overseas as the majority of students undertaking formal exchange programmes are exempt from tuition fees.

The amendments in the Bill will allow students who have undertaken an equivalent full-time year of study that comprises study prior to 2005 to be eligible for OS-HELP. This will ensure that all Commonwealth-supported students are eligible to apply.

It will also allow students to receive OS-HELP for study undertaken at an overseas campus of an Australian higher education provider as well as with an overseas institution - giving students greater choice for their overseas study options.

## **Successful completion of OLA units**

This is a technical amendment to clarify that the requirement for a person who has undertaken 8 units of study through Open Learning Australia (OLA) to have successfully completed at least 50% of those units to access FEE-HELP, only applies to a person's study with OLA, not other units that may be undertaken with another provider.

## **Advances**

This is a technical amendment.

An advance of an amount that is expected to become payable to a higher education provider may be made under Section 164-10 of HESA. This provision will mainly be used to make advances to providers of amounts that are expected to become payable under the various HELP Programmes (HECS-HELP, FEE-HELP and OS-HELP).

The amendment clarifies that if the advance exceeds the amount that becomes payable, the excess is a debt to the Commonwealth. The excess may be recovered from any amount payable to the provider under HESA or recovered as a debt due to the Commonwealth.

Department of Education, Science and Training

17 August 2004