

The Senate

---

Employment, Workplace Relations  
and Education Legislation Committee

---

Provisions of the Higher Education Legislation  
Amendment (2005 Measures No.1) Bill 2005

May 2005

© Commonwealth of Australia

ISBN 0 642 71507 6

This document was produced by the Senate Employment, Workplace Relations and Education Legislation Committee and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

## Membership of the Committee

### *Members*

Senator Judith Troeth (appointed 14 April 2005 Chair from 10 May 2005)	LP, Victoria	Chair
Senator Gavin Marshall	ALP, Victoria	Deputy Chair
Senator David Johnston	LP, Western Australia	
Senator Guy Barnett	LP, Tasmania	
Senator Penny Wong	ALP, South Australia	
Senator Natasha Stott Despoja	AD, South Australia	

### *Former Chair*

Senator John Tierney (resigned 14 April 2005)	LP, New South Wales
--	---------------------

### *Substitute Members*

Senator Trish Crossin ALP, Northern Territory	for Senator Penny Wong
Senator Andrew Murray AD, Western Australia	for Senator Natasha Stott Despoja
Senator Kim Carr ALP, Victoria	for Senator Penny Wong

### *Secretariat*

Senate Employment, Workplace Relations and Education  
Legislation Committee Secretariat  
Suite SG. 52  
The Senate  
Parliament House  
Canberra ACT 2600  
Phone: 02 6277 3520  
Fax: 02 6277 5706  
E-mail: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)  
Internet: [www.aph.gov.au/senate\\_employment](http://www.aph.gov.au/senate_employment)



## Table of Contents

<b>Membership of the Committee .....</b>	<b>iii</b>
<b>Majority report .....</b>	<b>1</b>
Provisions of the bill.....	1
Extension of the Capital Development Pool to Table B providers .....	1
<b>Opposition Senators' Report.....</b>	<b>5</b>
Specific issues: access for private providers to Commonwealth capital funding ..	6
An effective real funding cut.....	7
Undermining the intention of Table B .....	7
Possibilities for further extension of funding to table B institutions.....	8
Future policy directions .....	8
Conclusion .....	10
Recommendation.....	11
<b>Democrats' Supplementary Report.....</b>	<b>13</b>
<b>Appendix 1 .....</b>	<b>15</b>
<b>List of submissions.....</b>	<b>15</b>



## Majority report

1.1 On 9 March 2005, the Senate referred to the Legislation Committee the Higher Education Legislation Amendment (2005 Measures No. 1) Bill 2005, for inquiry and report on 16 March 2005.

1.2 Due to the inquiry's short time frame, submissions were called for immediately. Six submissions were received.

### Provisions of the bill

1.3 Like the previous higher education funding bills which have been considered by this committee, the Higher Education Legislation Amendment (2005 Measures No. 1) Bill 2005 is omnibus legislation which amends the *Higher Education Support Act 2003* (HESA), the *Higher Education Funding Act 1988*, (HEFA) and the *Maritime College Act 1978*. The main purpose of the bill is to honour a number of election and other commitments for 2004-08, which follow from the higher education reforms announced in *Our Universities: Backing Australia's Future*. Among other provisions, the proposed funding will create one hundred new radiation therapy places as part of the Government's Strengthening Cancer Care package; provide the infrastructure for Charles Darwin University to improve its information technology; and enable James Cook University to establish a school of veterinary science and agriculture.

1.4 Other funding measure include forty additional aged care nursing places; funding for twelve additional medical places at James Cook University; an additional \$16.5 million in National Institute funding for the Australian National University; and a transfer of funds for infrastructure development at the Australian Maritime College's Point Nepean Campus. The bill will also introduce a number of initiatives under HESA to facilitate implementation of the Government's higher education reforms. These reforms substantially increase the total amount of funding under the Commonwealth Grant Scheme.

1.5 The committee's consideration of this bill was limited to the amendment to section 41-10 of HESA, which will make higher education providers listed on Table B under the Act eligible for funding under the Capital Development Pool (CDP). The committee also considered the possibility that this amendment will be used as a precedent for future funding decisions in relation to Table B institutions. At present, only Table A providers are eligible for funding under HESA.

### Extension of the Capital Development Pool to Table B providers

1.6 As noted in previous committee majority reports on higher education funding, it is Government policy to encourage the private higher education sector to meet the varying training and professional skills needs of industry. The Government believes that the private sector has an important role to play in the future delivery of flexible and multi-disciplinary courses.

1.7 According to DEST, the proposed amendment relating to the eligibility of Table B providers to CDP funds is mainly required to enable payment of a \$2 million grant to the University of Notre Dame (UNDA) for its new medical school in Fremantle. The grant was approved when UNDA was listed as a Table A provider under the former Higher Education Funding Act (HEFA). However, when UNDA was re-listed as a Table B provider following the Government's higher education reforms, it became ineligible to receive any grant money under the new legislative framework. The amendment will enable UNDA to receive capital development funds previously allocated under HEFA, but which need to be paid under the Higher Education Support Act.<sup>1</sup>

1.8 The committee received submissions from the University of Notre Dame, Bond University and the Melbourne College of Divinity, which are all Table B institutions, supporting the bill's provision extending the eligibility for CDP funding. Each university indicated that being eligible for CDP funds would enable overdue investment in infrastructure development. The University of Notre Dame, for example, indicated that having access to capital development grants would enable all of its student programs to be fully supported, including the National Priority Places which have been allocated to it.<sup>2</sup> The Melbourne College of Divinity submission also stressed that CDP funding would enable the Joint Theological Library, the graduate studies centre and the university's central administration to be located together at an appropriate site after almost one hundred years of renting different premises.<sup>3</sup>

1.9 The committee notes the concern of the AVCC that the amendment could be used as a precedent for the future funding of table B institutions. It does not however agree with the AVCC's conclusion that extending the eligibility of CDP funding to Table B providers is either inconsistent with the intent of Table B, or reduces the limited capacity of the CDP pool to provide for the capital needs of Table A institutions.<sup>4</sup> As the DEST submission highlighted, the amendment will only make Table B providers eligible to apply for CDP funding; it does not alter the distinction between the two tables under the Higher Education Act. Table B providers will not automatically be guaranteed any funds through the program: 'Funding allocations are made following a competitive assessment process. During the assessment process the advice of State and Territory Governments is sought on their priorities with regard to proposals'.<sup>5</sup>

1.10 The committee concludes that the bill before the committee will enable the Government to maintain its commitment to Notre Dame University and provide consistent treatment to other higher education providers listed on Table B (Bond

---

1 DEAT, *Submission 5*, p.2

2 The University of Notre Dame, *Submission 3*, p.1

3 The Melbourne College of Divinity, *Submission 1*, p.2

4 AVVC, *Submission 4*, p.2

5 DEST, *Submission 5*, p.2



University and Melbourne College of Divinity). The amendment in this bill, which is consistent with current funding arrangements under HESA, will ensure consistency and fairness in the provision of Commonwealth funds across the private higher education sector.

### **Recommendation**

**The committee commends this bill to the Senate and recommends its passage without amendment.**

Senator Judith Troeth  
Chair



## Opposition Senators' Report

2.1 The Government's policy agenda in higher education is clear. Its March 2005 Discussion Paper, *Building University Diversity*, takes as its starting point the desirability of a more diverse higher education sector, where public institutions cohabit with private; where universities sit alongside small, specialised, niche institutions; where foreign providers are welcomed; and in which the title "university" is applied to a far broader range of institutions, freed from the shackles currently imposed by the "restrictive" National Protocols for Higher Education Approval processes. The Discussion Paper refers to the "global trend towards a changed mix of public and private provision in higher education". It does not note that, in virtually all countries comparable to Australia in terms of economic development, expansion of private provision, where it is taking place, is accompanied by a sharp increase in public funding for higher education. This last point is pertinent to the Labor senators' concerns about the bill that is the subject of the committee's current inquiry.

2.2 Opposition senators regard this inquiry in the context of a series of bills brought before the Parliament by the Government, all seeking to amend the *Higher Education Support Act 2003* (HESA) to provide access to various forms of Commonwealth funding for private higher education providers. A bill has been introduced to add Melbourne University Private to Table B of HESA, effectively bestowing eligibility on the institution and its staff for Commonwealth selective research funds. This follows a similar, failed attempt in 2004 when evidence provided at a committee hearing indicated that Melbourne University Private did not have a research output or record comparable with those of other Australian universities.

2.3 The specific issue before this inquiry is a proposed amendment to HESA that would provide access to Commonwealth funds for certain private higher education institutions - those listed on Table B of HESA - for capital infrastructure. The funds are available through the Capital Development Pool, which is a small discretionary fund (of \$42 million) allocated annually by the Minister. Given the modest funds available under the program, this might seem a small matter. Seen against the backdrop of the current Government's longer term policy direction, however, the significance of this change is thrown into relief.

2.4 In addition to the efforts made by the Government to increase incrementally the opportunities available for private providers to gain access to public funds, the Minister, Dr Nelson, has steadily augmented the list of private higher education institutions whose students are eligible for Commonwealth-subsidised loans through the new FEE-HELP scheme. There are 39 public providers of higher education, whose fee-paying students are eligible for FEE-HELP loans: in addition, 28 private institutions are also listed (at the date of drafting of this report) as eligible. Decisions by the Minister to admit new institutions to this list are subject to disallowance by the Parliament. After 30 June 2005 this process will effectively become a rubber stamp for this student financing aspect of the Government's reform agenda.

2.5 While Labor senators will not oppose this bill which includes a range of necessary amendments to the HESA legislation, they take this opportunity to express their continued disquiet about the policy directions of the Government in higher education. In particular, Labor senators have grave concerns about the lack of transparency in the process of consultation leading to introduction of this bill, and more generally in the pursuit and application of the Government's ideologically driven agenda. The discussion documents released by the Minister do not present open questions, nor do they canvas genuine alternative policy directions to the Government's chosen ones.

2.6 It is hoped that this inquiry will open up one aspect of this ideological bundle that constitutes the Government's plans for Australian higher education, and contribute to open debate about these matters so central to the nation's future economic and social wellbeing.

### **Specific issues: access for private providers to Commonwealth capital funding**

2.7 Opposition senators are concerned about the provision that would allow access for three private institutions to the Commonwealth's Capital Development Pool. These concerns go to the lack of consultation with the higher education sector as a whole in the lead up to the bill's introduction to the Parliament. More broadly, the proposed measure, which may appear minor and technical in nature, in fact has implications that are far-reaching. Finally, the Government has failed to provide a satisfactory rationale for including this provision in the legislation.

2.8 In evidence presented to the Committee, DEST indicated that the justification for the extension of eligibility to the CDP to table B institutions is derived from the need to find a mechanism for the University of Notre Dame Australia (UNDA) to receive \$2 million in capital funding which was announced prior to the Government's higher education reforms. As a Table A institution under the former HEFA legislative regime, UNDA was eligible for CDP funding: following the reforms, as a table B institution under the HESA, it is no longer eligible.<sup>1</sup>

2.9 However, the higher education community has expressed serious concern regarding the extension of access to the CDP for all Table B providers, with the sole aim of meeting this Government commitment to Notre Dame. It would be well within the power of the Minister to authorise, or if necessary to introduce legislation to grant, a one-off payment to the University, thereby keeping its commitment to provide the funding in question. It is not necessary to provide access to the CDF on an ongoing basis for this university and indeed for two further private institutions. Further, opening up access to the CDP for the three private providers, as proposed, simply in order to allow one of them to receive a grant previously allocated completely outside

---

1 DEST, *Submission 5*, p.2

---

the normal CDP application process undermines that process itself – based as it is on competitive principles. Notre Dame has not submitted itself to that process in this instance.

2.10 In fact there are good reasons why the measure should not have been included in the bill. These are discussed in the proceeding sections.

### **An effective real funding cut**

2.11 By broadening access to the CDP, the amendment reduces its already limited capacity to provide for the capital needs of Table A institutions. The AVCC points out that , even as things stand, the “Capital Development Pool does not have sufficient funds to address the extensive backlog of major infrastructure renewal in universities.”<sup>2</sup> To add additional institutions to those drawing on the CDP simply reduces the funds available to those currently eligible to draw funds from the pool. Labor senators stress the point that increasing the number of institutions eligible for Commonwealth funding without increasing the overall size of the pool amounts to an effective real cut in university funding.

2.12 The concerns of those in the higher education sector about the effective funding cut which this amendment makes are not allayed by the competitive assessment process which applies to applications for CDP funds. Any successful application made by a Table B institution to the fund will be money that is taken away from a Table A institution.

2.13 Compounding this effective funding cut is the Government’s stated intention to extend the list of institutions included on Table B. As noted by the AVCC, the Government has already signalled its intention to include Melbourne University Private on the list of Table B institutions. This amendment will encourage other institutions to seek inclusion on Table B, and any such inclusion will spread public funding more thinly.

### **Undermining the intention of Table B**

2.14 Labor senators believe that the distinction between Tables A and B should be maintained and, with this distinction, the original purpose of the second Table. Table B exists as a mechanism to provide public research funding to institutions which are not eligible for broad-ranging funding for student places under the Commonwealth Grants Scheme. Inclusion on Table B gives access to funding in specifically limited areas: research funds under the Institutional Grants Scheme and Research Training Scheme., It does not lead to the provision of funds for undergraduate teaching and related purposes.

---

2 AVCC, *Submission 4*, p.3

While the Capital Development Pool funds certain types of infrastructure development in Table A institutions, it is not intended to provide funds for research infrastructure. DEST notes in its evidence that the CDP primarily supports two types of projects:

- Electronic delivery infrastructure projects that increase the cost-effectiveness of education delivery or provide increased access to higher education provision, particularly in regions with relatively low tertiary participation; and
- New campus developments in suburban growth corridors and regional centres which involve collaboration with TAFE and have the support of the relevant State or Territory Government.<sup>3</sup>

2.15 Neither of these two types of project is research focused. As the AVCC notes, the Government has a specific program, the National Collaborative Research Infrastructure Strategy, designed for the targeted support of research infrastructure: this is not available to Table B institutions. Providing access to the CDP for Table B providers changes the nature of Table B in that it potentially allows funding for broad teaching-related purposes. Thus the proposed amendment goes well beyond the “minor housekeeping” that the Government claims it to be.

### **Possibilities for further extension of funding to table B institutions**

2.16 Labor senators believe that to advance access for Table B providers to CDP funding is intended by the Government as a precedent that would support arguments in favour of extending eligibility for access to further higher education funding and financing programs such as the Commonwealth Grants Scheme and across-the-board HECS-HELP. The AVCC’s evidence notes this: it points out that the amendment opens the door for other non-research programs which are currently limited to Table A institutions to be extended to those on Table B.<sup>4</sup>

2.17 Currently the demarcation between Table A institutions and those on Table B is conceptually clear. If this clear distinction between Tables A and B is undermined then the already stretched public funding now available to Table A institutions could be further diluted by the claims of Table B institutions. The AVCC has recommended in its evidence that the Parliament should not give any further consideration to this bill until these issues have been satisfactorily resolved.

### **Future policy directions**

2.18 This bill is a further example of the Government’s policy approach with regard to private provision in higher education: it apparently aims to alter the current balance between public and private – that strongly emphasises public provision – and

---

3 DEST, *Submission 5*, pp.2-3

4 AVCC, *Submission 4*, p.2

---

to extend the availability of public funding the *Higher Education Support Act 2003* (HESA) to additional, private, providers. This report has already noted that there is a bill before the Parliament which aims to extend recognition on Table B to Melbourne University Private – something that the Government initially attempted to achieve in 2004. Labor senators refer the Senate to the Committee’s report of its inquiry into this legislation: *Inquiry into the provisions of the Higher Education Legislation Amendment Bill (no,3) 2004* (August 2004) where the Committee heard evidence that Melbourne University Private did not have the necessary credentials, including research credentials and record, to justify its treatment on the same basis, for any purposes, as properly established, stand-alone universities in either the public or the private sector.

2.19 There was no prior warning and no public discussion about this amendment before the introduction to the parliament of the bill that is the subject of the current inquiry. The Government did not make its purpose clear or transparent. While DEST has presented the amendment under discussion as a mechanism to meet a previous funding commitment to UNDA, no rationale has been provided as to why this could not be achieved by means of a special, one-off payment to UNDA. Labor senators are concerned that the Government’s move may be used as precedent to extend access to funding under more significant programs to non-Table A institutions, in particular in light of the probable increase in the number of institutions included on Table B.

2.20 Labor senators also note concerns raised with regard to the 28 higher education providers which fall outside Tables A and B and which, at the time of tabling of this report, have been directly approved by the Minister for access to various public subsidises. There has been no comment on whether the Government intends to extend eligibility for other funds to these providers. It is likely that many of these providers would not meet general standards which should be expected of institutions enjoying access to public funding, such as: guaranteed minimum levels of quality and standards; non-discriminatory admission and exclusion policies; open governance structures; commitment to free and open inquiry; and curriculum which exposes students to, and tolerates, a variety of perspectives.<sup>5</sup>

2.21 It is evident that a number of providers do not meet these standards. Labor senators are aware of several examples of Christian-oriented colleges, whose students have access to FEE-HELP, and whose admission requirements include stipulations for applicants that would exclude the majority of potential students: They require, for example, endorsement of the application by a pastor or equivalent religious leader and ask the applicant to declare that he or she subscribes to a particular denomination or religious belief.

2.22 The exclusion policies of some providers are also potentially discriminatory. One college includes the following in its advice to applicants:

---

5 NTEU, *Submission 6*, pp.2-3

If events occur which bring the Christian integrity of a student into question, that student is expected to inform Tabor College so that the situation may be evaluated with regard to the student's continuing in a Christian course of study.<sup>6</sup>

2.23 The requirements applied to these providers by the Commonwealth as a condition of funding, in particular in relation to reporting, are far less onerous than those applying to Table A institutions, and as such these private providers are significantly less accountable to the Commonwealth for the funding they might receive.

2.24 It is acknowledged that this bill does not seek to extend Commonwealth funding or any type of Commonwealth endorsement or recognition to private higher education providers beyond those currently listed on Table B of HESA. However, Labor senators believe that the general direction of Government policy in the area of private provision constitutes a background against which to view any moves of the kind proposed in the bill. It would seem that the Government favours the expansion of private higher education, and that it is prepared to encourage this process by providing subsidies and funding of various kinds to private institutions. Labor senators consider that such a policy needs to be debated fully and explicitly in the public arena. Unless and until stringent accountability requirements, similar to those applying to public universities, are applied to private institutions, this policy should not proceed by stealth.

2.25 In support of their view that the proposed amendment to the bill under discussion represents just one step in a particular general policy direction, Labor senators note that DEST has argued in support of the move on the basis of "fairness and consistency"<sup>7</sup>. It said that these considerations constituted grounds for extension of access to CDP funding to Table B providers. A similar argument may be developed by the Government in the future to extend access to public funding to those other private providers which currently enjoy access to FEE-HELP and/or funding for student places in disciplines of national priority. In the opinion of Labor senators, this would be undesirable unless it occurred in the context of full and open public debate of the implications of such a policy, and with unequivocal public support.

## **Conclusion**

2.26 The purpose of this inquiry by the committee has been to provide an opportunity for the formal expression of views by the higher education community on the Government's planned extension of access to Commonwealth funding for certain private providers in the sector. In addition, the inquiry has required the Government formally to justify its decision to take this step. It is important, in public debate, to be clear about the implications of policy decisions. The public has a right to understand both the reasons for, and the thinking behind, changes in policy, no matter how

---

6 <http://www.taborelaide.com/pages/?pageid=158> [accessed 12/4/05]

7 Department of Education, Science and Training, Submission p.2



---

“technical” or “insignificant” they are claimed to be by those instigating them. Labor senators in this report have drawn out these implications and provided a critique of the Government’s stated reasons for the policy change proposed. Nothing in the Government’s stance has eased the concerns, raised here, about the Government’s general policy intentions with regard to the expansion of private higher education, and the shift in emphasis that it seeks away from public provision.

### **Recommendation**

Labor senators recommend:

- (i) That the Senate note that the Government has failed to provide a clear or adequate rationale for amending the *Higher Education Support Act 2003* to allow the institutions listed on Table B access to funding from the Capital Development Pool, and that this gives rise to concerns that the Government is attempting to expand subsidies to private higher education providers by stealth; and
- (ii) That the Senate note the concerns about the Government’s policy intentions in higher education raised in this report. In particular, that the Senate express concern that the Government is proceeding to expand public subsidies to private higher education providers in the absence of the stringent quality requirements, as well as the public reporting and other accountability requirements, placed on public universities.

Senator Kim Carr



## Democrats' Supplementary Report

The Democrats are in agreement with the conclusions, recommendations and the majority of the content of the Opposition Senators' report. Accordingly, our supplementary comments and recommendations will be confined to additional issues or areas where we have different views from those covered in the Opposition Senators' report.

We acknowledge the useful information produced during this brief inquiry and its relevance to the current debate on the issues surrounding future higher education policy, specifically in relation to further privatisation of the higher education sector.

The Democrats, however, believe the evidence presented to the committee and many of the arguments raised in the Opposition Senators' report warrant stronger recommendations.

The decline in Commonwealth funding of education, relative to other portfolios, over the past thirty years is of particular concern to the Democrats, as are the recent HECS fee increases for students. The Democrats believe Government policy should work to reverse this trend, not strengthen it.

### **Recommendation**

That the Senate omit *Item 2 of Schedule 1 of the Higher Education Legislation Amendment (2005 Measures No.1) Bill 2005*, which amends the *Higher Education Support Act 2003* to allow the institutions listed on Table B access to funding from the Capital Development Pool.

Senator Natasha Stott Despoja



# Appendix 1

## List of submissions

<b>Sub No:</b>	<b>From:</b>
1	Melbourne College of Divinity
2	Bond University
3	University of Notre Dame
4	Australian Vice-Chancellors' Committee
5	Department of Education, Science and Training
6	National Tertiary Education Industry Union
7	Dr Gideon Polya, Vic

