

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007**

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**Australian Government**

**Department of Education, Science and Training**

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

**Inquiry to the Higher Education Legislation Amendment (2007  
Measures No.1) Bill 2007**

**13 April 2007**

## **Introduction**

The purpose of this submission is to provide information on implications of the Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007 (“the Bill”) for Australia’s higher education sector, according to the terms of reference for the Inquiry.

The Committee has indicated it will examine the amendments relating to the Research Quality Framework (RQF), the *National Protocols for Higher Education Approval Processes* and the HECS-HELP, FEE-HELP and OS-HELP Schemes.

## **Overview of the Bill**

The Bill will amend three Acts – the *Higher Education Support Act 2003* (HESA), the *Higher Education Funding Act 1988* (HEFA) and the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* (TCA).

### **Amendments to the *Higher Education Support Act 2003* (HESA)**

The Bill will revise the maximum funding amounts in section 41-45 of the HESA to provide funding to support the implementation of the Research Quality Framework (RQF).

The Bill will amend the HESA to reflect changes to the *National Protocols for Higher Education Approval Processes*. The National Protocols regulate the recognition of new universities, the operation of overseas universities in Australia and the accreditation of courses offered by providers of higher education. These changes to the HESA will:

- align key definitions with those used in the revised National Protocols and the Australian Qualifications Framework;
- reflect new arrangements for the National Protocols to apply to all new and existing higher education institutions (the Protocols previously applied only to new institutions);
- allow for approval and regulation of the new types of higher education institutions, as defined in the revised National Protocols, as higher education providers;
- align the definition of ‘to operate’ with that used in the revised National Protocols; and
- allow for new types of higher education institutions, as defined in the revised Protocols, to apply for approval to operate in the External Territories.

The Bill includes a number of measures which will improve the administration of the Higher Education Loan Programme (HELP), including amendments to:

- clarify overseas study requirements in relation to eligibility for OS-HELP assistance;

- clarify requirements for eligibility for Commonwealth supported places in relation to a provider's ability to offer a student a Commonwealth supported place that is restricted to a particular campus of the provider;
- clarify residency requirements for permanent residents in relation to Commonwealth support and HECS-HELP and FEE-HELP assistance for study undertaken offshore; and
- allow any provider with Commonwealth supported places to offer a place to a student undertaking cross-institutional study.

The Bill will also amend the HESA to allow students six weeks from the census date to correct information so as to establish an entitlement to Commonwealth assistance.

Finally, the Bill makes a range of minor technical amendments which will improve the overall operation of the HESA by:

- ensuring persons undertaking a bridging course for overseas-trained professionals with Open Universities Australia may be entitled to FEE-HELP assistance;
- providing for the suspension of higher education providers approved under the HESA to be a legislative instrument which can be registered on the Federal Register of Legislative Instruments (FRLI); and
- reflecting the name change of Victoria University of Technology to Victoria University.

#### **Amendments to the *Higher Education Funding Act 1988 (HEFA)***

The HEFA will be amended to clarify that students can no longer establish entitlement to assistance provided under this Act.

#### **Amendments to the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 (TCA)***

The TCA will be amended to allow students six weeks from the census date to correct information so as to establish an entitlement to Commonwealth assistance.

## **1. Amendments relating to the Research Quality Framework (RQF)**

Schedule 9 of the Bill provides \$40.8 million (in current year prices) over four calendar years to assist with the implementation of the Research Quality Framework (RQF), from July 2007 to December 2010. This will support the activities and systems required for higher education providers to effectively and efficiently engage with the RQF. Specifically, funding will provide for the Australian Scheme for Higher Education Repositories (ASHER) and the Implementation Assistance Programme (IAP) programmes.

### **Australian Scheme for Higher Education Repositories (ASHER)**

The ASHER programme will provide support to assist with the establishment of digital storage systems (institutional repositories) in higher education providers that are participating in the RQF. The Australian Government is providing \$24.9 million (in current, calendar year prices) through this programme over three years to support the purchase of hardware and software required by higher education providers to establish an appropriate repository to meet the requirements of the RQF. Support is also available to assist higher education providers to populate repositories with research outputs for assessment in the first RQF cycle.

Support through the ASHER programme will allow higher education providers to place their research outputs, including journal articles and less traditional outputs such as digitised artworks or x-ray crystallography images in an accessible digital store so that RQF Assessment Panels can access the research. This approach underpins the longer-term goal of establishing infrastructure to make publicly funded research more widely available.

ASHER builds on the \$35 million invested by the Australian Government since 2003 for research and development of data repository technology, the management of user authentication and access, and related copyright issues. This work was funded under the Systemic Infrastructure Initiative as part of the 2001 *Backing Australia's Ability: An Innovation Action Plan for the Future* as well as the Australian Government's policy initiative Quality and Accessibility Frameworks for publicly funded research.

The Accessibility Framework will make available to researchers and the general community information about research and how to assess it, for the benefit of business, the community and the Australian Government.

### **Implementation Assistance Programme (IAP)**

The IAP will assist in the implementation of new administrative and reporting systems as well as other compliance costs associated with the RQF. The Australian Government is providing \$15.9 million (in current, calendar year prices) through this programme over four years to ensure the best information and results can be obtained from the RQF for the benefit of the Australian Government, taxpayers, institutions, businesses and industries.

## **Background to Amendments**

On 14 November 2006, the Minister for Education, Science and Training, the Hon Julie Bishop MP, announced that the Government had agreed to proceed with the Research Quality Framework (RQF). The RQF will assess research conducted in Australian universities and other eligible HEPs against international benchmarks

based on research quality and impact and will provide transparency about public investment in research. The RQF will affect two research block grants programmes, the Institutional Grants Scheme (IGS) and the Research Training Scheme (RTS) from 2009.

On 18 December 2006, Minister Bishop announced \$87.3 million (fiscal balance) in financial support for the implementation of the first cycle of the Research Quality Framework (RQF). Of the \$87.3 million, around \$45.4 million (fiscal balance) will be provided in departmental funding for preparatory work for the RQF in 2007 and for implementation for 2008. Departmental funding will be used for continuing consultation with the sector, the development of metrics, development of the RQF Information Management System, and the remuneration of reference committee members, assessment panel chairs and panel members. Around \$41 million will be provided as administered funding for eligible institutions, which is being made available through the Bill.

## **2. Amendments relating to the *National Protocols for Higher Education Approval Processes***

### Higher Education Providers

Schedule 1 of the Bill amends Chapter 2 of HESA, which sets out what is a higher education provider for the purposes of HESA.

To reflect changes in the revised National Protocols, the amendments will:

- Allow for new types of higher education institution which may be approved under the revised National Protocols, to apply to become higher education providers under HESA. These include Australian universities (previously the National Protocols did not distinguish between Australian and overseas universities) and new types of self-accrediting institutions where self-accrediting authority may be limited by the field and/or level of study.
- Align key terminology with terms used in the revised National Protocols (e.g. Australian university; government accreditation authority).
- Reflect the requirement for all existing and new higher education institutions to comply with the revised National Protocols, and for their compliance to be assessed through standard quality assurance processes. The original National Protocols applied only to new institutions.

### The provision of higher education in the External Territories

Schedule 1 of the Bill amends Chapter 6 of HESA, which provides for higher education entities to be approved to operate in the external Territories, and for accreditation of their courses.

To reflect changes in the revised National Protocols, the amendments will:

- Provide for the approval of new types of higher education institutions to operate in the external Territories, e.g. universities (including specialist universities, university colleges and overseas universities), and self-accrediting institutions which may have limits on their self-accrediting authority.

- Align key definitions with terms used in the National Protocols (e.g. 'Operating in Australia' and 'Purporting to operate in Australia').
- Provide for mutual recognition of institutions with self-accrediting authority granted by another Australian jurisdiction, by allowing them to exercise that authority in the external Territories without separate authorisation.

In addition, an amendment provides for the Minister to request additional information on applications for approval to operate and accreditation of courses, to enable the Minister to decide the application.

### **Background to Amendments**

Under the *National Protocols for Higher Education Approval Processes* (the National Protocols) approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) in 2000, responsibility for approval of higher education institutions and accreditation of their courses is shared by the Australian Government, State and mainland Territory Governments. Each state and mainland Territory has passed legislation to enact the National Protocols and provide for approval of higher education institutions to operate in their jurisdictions. Institutions approved under the National Protocols are listed on the Australian Qualifications Framework Register.

Under provisions in Chapter 6 of the HESA, the Australian Government is responsible for the approval of higher education institutions seeking to operate in the external Territories. To date, there are no higher education institutions approved to operate in the external Territories.

Chapter 2 of HESA sets out what is a higher education provider, processes for their approval, quality and accountability requirements and processes for revocation or suspension of approval. Any applicant seeking to become a higher education provider must first be approved to operate as a higher education institution in Australia. The National Protocols set out the criteria and processes for approval to operate as a higher education institution in Australia. Higher education providers must meet the relevant requirements in the National Protocols.

In 2006, MCEETYA approved revised National Protocols for Higher Education Approval Processes.

### **Timing**

Schedule 1 of the Bill will commence on a date to be proclaimed. It is important that it does not commence before implementation of the revised National Protocols, which are due to take effect on 31 December 2007. Furthermore, the implementation of the revised National Protocols will require the States and Territories to make changes to their legislation and it is not clear whether all jurisdictions will have the required legislative changes in place before 31 December 2007. Allowing Schedule 1 to take effect on a date to be proclaimed allows for co-ordination with other jurisdictions and will assist national consistency in implementation of the revised National Protocols.

### **3. Amendments relating to the HECS-HELP, FEE-HELP and OS-HELP Schemes**

The Bill contains a number of technical amendments that will clarify existing Higher Education Loan Programme (HELP) and Commonwealth supported student arrangements.

#### *Overseas study requirements for OS-HELP assistance*

OS-HELP provides eligible students with a loan to assist them with travel and living expenses while undertaking some of their course of study overseas. OS-HELP assistance is provided in respect of six month study periods. The Bill amends division 118 of HESA to clarify that a student is not entitled to assistance for a study period if the student applies for assistance after the completion of study related to that period. The Bill also clarifies that a student can be outside Australia when they apply for OS-HELP assistance.

#### *Commonwealth supported study at particular campus*

Under current arrangements, once a student has been advised they are Commonwealth supported for a course of study, they are entitled to be Commonwealth supported for all units undertaken as part of that course of study (sections 36-10, 36-15, 36-25 and 36-30 of HESA).

The Bill clarifies that the obligation to offer continued Commonwealth support does not require that the provider must do so by allowing a student to be Commonwealth supported at any campus. If a provider chooses not to offer Commonwealth supported places at a particular campus it can still meet the requirement for continued Commonwealth support by allowing a student to be Commonwealth supported in the unit at another campus.

In general, campuses without Commonwealth supported places are established by providers for a specific purpose. Examples include overseas campuses and campuses designed for onshore overseas students. The Bill will allow providers to advise a Commonwealth supported student wishing to study at one of these campuses that they have to do so otherwise than as a Commonwealth supported student.

#### *Residency requirements for Commonwealth assistance*

In order to access Commonwealth assistance under HESA, holders of a permanent visa and New Zealand citizens are required to be resident within Australia for the duration of the unit. HESA includes exceptions to this requirement so that eligibility for Commonwealth assistance is not affected when such a person's period of stay overseas cannot reasonably be regarded as indicating an intention to reside outside Australia (for example where the student is on holiday or where a student is required to be overseas as part of their unit of study).

Currently where a permanent resident or New Zealand citizen is residing overseas, a provider is only required to assess whether the period overseas can be regarded as an intention to reside overseas for an individual unit of study. The Bill will amend HESA to clarify that a permanent resident will not be entitled to Commonwealth assistance under HESA if the provider reasonably expects that they are undertaking their entire course of study overseas.



The Bill does not change the requirements for access to Commonwealth assistance for Australian citizens.

#### *Corrections to information affecting entitlements*

A student establishes entitlement to Commonwealth assistance on or before the census date by submitting a request form to their higher education provider. The request form collects a range of information about a person's eligibility for Commonwealth assistance. HESA does not currently provide for a student to correct information they have provided in their request form after the census date.

Types of Commonwealth assistance that require a request form to be submitted by the end of the census date are:

- Commonwealth support;
- HECS-HELP assistance; and
- FEE-HELP assistance.

The Bill will amend HESA so that a student has six weeks after the census date to correct information so as to establish an entitlement, or to establish a different entitlement, to Commonwealth assistance.

Providers are required to issue a *Commonwealth Assistance Notice (CAN)* to all students in receipt of Commonwealth assistance. The CAN sets out detailed information of the student's enrolment and Commonwealth assistance with respect to each unit of study, and must be given to the student within 28 days of the earliest census date indicated in the CAN. Under current arrangements, a student has a period of 14 days after issue of the CAN to correct the information contained in the notice. This does not relate to establishing an entitlement by correcting information provided previously by the student.

HESA does not set out any time limit for a student to supply information that corrects the information supplied in their request form that would entitle them to assistance to which they had not previously established an entitlement.

The new arrangements will provide students with a six week period to correct information they have provided in their request form. In practice it will allow students the opportunity to receive the CAN and, if necessary, provide information correcting that provided on their request form, to establish an entitlement to Commonwealth assistance.

The Bill will not alter current arrangements that exist with regard to circumstances where corrected information demonstrates that students are not eligible for Commonwealth assistance. In those circumstances, regardless of when the corrected information is provided, students will be taken to have never been entitled to the Commonwealth assistance.

The Bill does not place a time limit on providers' correcting an error where a student has established an entitlement prior to the census date but the provider has made an administrative error in recognising that entitlement.

The Bill also amends the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 (TCA)* so that corrections that would establish an entitlement under HESA established by the operation of the TCA are also limited by a six week period.

The *Higher Education Funding Act 1988* (HEFA) is amended by the Bill to specify that student eligibility for assistance under this Act can no longer be established.

#### Commonwealth support for cross-institutional study

In general, a student can only be Commonwealth supported for a unit of study where the unit is contributing to a course of study in which the student is enrolled with a higher education provider. However, HESA allows Commonwealth support where a student is enrolled in a course of study with one provider (home provider) and undertakes a unit of study with another provider (host provider) where that unit of study contributes to the course of study with the home provider (cross-institutional study).

Currently, a student can only be Commonwealth supported for cross-institutional study if the student's home and host provider are both Table A higher education providers.

The Bill alters current arrangements to allow any provider that has been allocated Commonwealth supported places to offer those places to students undertaking cross-institutional study irrespective of the student's home provider. It is at the host providers' discretion to accept students for cross-institutional study, and to offer a Commonwealth supported place – except where the unit is a compulsory requirement of the course of study in which the student is enrolled with the home provider as a Commonwealth supported student, in which case the student must be Commonwealth supported.

This amendment provides greater flexibility for providers and extends the range of study options available to students.

Changes to subdivision 19-F relating to student contribution and fee requirements and paragraph 79-1 relating to re-crediting of student learning entitlement (SLE) are consequential amendments to give effect to the new cross-institutional arrangements.

#### FEE-HELP for bridging courses for overseas-trained professionals at Open Universities Australia

The Bill will amend 104-C of HESA to ensure that persons undertaking a bridging course for overseas-trained professionals with Open Universities Australia may be entitled to FEE-HELP assistance.

This is a minor technical amendment, consistent with existing Australian Government policy, to clarify that eligible students enrolled with Open Universities Australia may receive FEE-HELP for a bridging course for overseas-trained professionals.