

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).

