

# 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...<sup>1</sup>

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.<sup>2</sup> 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

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<sup>1</sup> Group of Eight, *Submission 8*, p. 1.

<sup>2</sup> 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.*"<sup>3</sup> More prosaically, the FASTS submission argued that in its current form, the Fund is in effect

...a significant slush fund for Ministerial pork-barrelling.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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

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<sup>3</sup> Group of Eight, *Submission 8*, p. 3.

<sup>4</sup> Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

<sup>5</sup> Federation of Australian Scientific and Technological Societies, *Submission 6*, p. 2.

<sup>6</sup> National Tertiary Education Industry Union, *Submission 11*, p. 3.

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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.<sup>7</sup>

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 fund<sup>8</sup>

and

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<sup>7</sup> DEST, *Submission 10*, p. 3.

<sup>8</sup> 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.”<sup>9</sup>

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.”<sup>10</sup>

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.

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<sup>9</sup> Federation of Australian Scientific and Technological Societies, *Submission 11*, p. 2.

<sup>10</sup> 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**